



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

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**Committee on the Elimination of Discrimination
against Women
Thirty-fifth session**

Summary record of the 732nd meeting

Held at Headquarters, New York, on Wednesday, 24 May 2006, at 3 p.m.

Chairperson: Ms. Manalo

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 18 of the Convention *(continued)*

Combined initial and second periodic reports of Malaysia (continued) (CEDAW/C/MYS/1-2, CEDAW/C/MYS/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Malaysia took places at the Committee table.*

Article 11 (continued)

2. **Ms. Faizah Mohd Tahir** (Malaysia), replying to questions raised at the previous meeting, said that the Government, in order to encourage more women to enter the labour force, especially at the professional and managerial levels, was helping women to perform their multiple roles by instituting flexible work arrangements such as home offices, part-time work or flexible schedules, offering retraining programmes, and providing childcare facilities. Government incentives to public-sector employers and the tax exemptions offered to private-sector employers to set up childcare centres in the workplace had not drawn much of a response; after consultations, new proposals were being developed. The Ministry of Women, Family and Community Development had proposed the establishment also of community childcare centres for low-income families to be run by recognized non-governmental organizations, with partial government subsidies and grants. Ten such community centres had been set up thus far.

3. The research done on the mismatch between the academic qualifications of women and the job opportunities for them had revealed initially that although women might be more qualified than men, private-sector employers preferred to hire men because they thought they would work more independently. That was not the case, however, in the public sector.

4. **Mr. Mohd Radzi Harun** (Malaysia) said that the most recent evidence of the Government's commitment to protecting the rights of foreign domestic workers had been the Memorandum of Understanding concluded after two years of bilateral negotiations with Indonesia, governing working conditions such as wages, rest hours, decent lodging and food, medical care and workers' compensation and stipulating that a

legally binding contract must be signed with the employee before the work began. Any abuse of domestic workers was dealt with under the Malaysian Penal Code.

5. **Mr. Aminuddin bin Ab. Rahman** (Malaysia) said that immigrant workers were, like all others, covered by the country's labour legislation, namely, the Employment Act 1955, the Industrial Relations Act 1967 and the Workmen's Compensation Act 1952. The latter included a special scheme requiring employers to insure any immigrant workers who were not permanent residents against work-related accidents, and providing for repatriation of the disabled. Statistics on the number of complaints lodged by immigrant workers would be provided in the next periodic report. The Ministry of Human Resources carried out routine workplace inspections and regularly investigated complaints by immigrant workers to ensure that employers were complying with the labour laws and industrial regulations.

6. **Ms. Faizah Mohd Tahir** (Malaysia) said that men and women received the same public pension benefits, although the total depended on the length of service. As for maternity benefits, women receiving daily wages were entitled to a per diem maternity allowance, while workers on a regular salary received monthly maternity benefits. Malaysia provided no incentive to small businesses to contribute to maternity benefits, and she would like to learn more about the German model mentioned.

7. **Ms. Shin** observed that the Memorandum of Understanding had resolved a number of the basic migrant worker issues by having the employer sign the contract with the employee rather than, as before, with the hiring agency. She wondered what provision the new Memorandum made, however, for monitoring the behaviour of an employer, and whether it allowed a foreign domestic worker who had filed a police complaint of harassment or violence against her by her employer to change employers, even in the course of the time-consuming investigation and trial of her case. The three non-governmental-organization shelters available for victims of domestic violence were not sufficient to provide refuge to such women. It would be interesting to know whether foreign domestic workers were informed of their rights and given emergency contact numbers before they signed a contract.

8. **The Chairperson**, speaking as a member of the Committee, asked how migrant women workers were protected in situations where no such Government-to-Government agreement had been concluded.

9. **Mr. Mohd Radzi Harun** (Malaysia) said that even if a domestic worker had lodged a complaint with the police against her employer, she could not change employers because her work permit was specific to that employer. The behaviour of employers was monitored by immigration officials from time to time, and a copy of the employer/employee contract was filed with the Immigration Department. As the Memorandum of Understanding specified links between the two Governments via the mission in Malaysia, an official mechanism was in place with regard to emergency contact numbers.

Article 12

10. **Ms. Tavares da Silva** observed that while the report indicated that women's access to health care was generally good, the Committee had outside information that young women had difficulty gaining access to sexual and reproductive health information and, as a result, were resorting to abortions in large numbers. She asked if sex education was effective and obligatory in Malaysia, if young women had access to it and to reproductive health services, and if there were any cultural constraints that conditioned women's lives and could compromise government policies and strategies. Bearing in mind that there had been a sharp rise in HIV/AIDS in men and that almost half the women infected thus far had been housewives, it was also crucial for the Government to sensitize men to their sexual responsibility.

11. **Ms. Coker-Appiah** observed that while Malaysia did provide health services in a number of areas, the question was whether they were accessible to all in terms of cost or cultural factors. Apparently not enough data were available, but the Government should continue gathering statistics so that it could monitor the situation. Even if the proposed efforts to privatize health care were successful, it was not clear that the vulnerable population would still have access to it, given the profit considerations. Not enough had been said about what the Government itself was doing to ensure fair, standardized employment contracts that stipulated access to health care, regular working hours and the like for all foreign domestic workers.

12. **Ms. Pimentel** said that she would appreciate more details about official action to improve family planning services by introducing the use of modern contraceptive methods and by lifting the restrictions on publicizing them. She also wondered what the Government was doing to eliminate unequal access to family planning based on geographical location, age or nationality; to reduce the number of deaths from unsafe abortions and ensure the practical application of the legal health exceptions to abortion; to investigate the higher incidence of maternal deaths among vulnerable groups; to implement existing policies on adolescent reproductive health and improve access by adolescents to family planning services; and to improve the quality of sex education in the schools.

13. **Ms. Hajjah Rosnah bt. Hj. Ismail** (Malaysia), acknowledging the scarcity of information on the health needs of adolescents, said that, over the past five years, special clinics for adolescents had been established in health centres across the country as part of the expansion of primary health care. Sex education for adolescents was provided in those clinics and also in schools, in conjunction with the Ministry of Education.

14. The HIV/AIDS awareness programme addressed the needs of both men and women. Measures were being taken to prevent mother-to-child transmission of HIV/AIDS, including the screening of pregnant women and the provision of information on the effects of infection and modes of transmission. In addition, "Women and HIV" had once been chosen as the year's theme for the Healthy Lifestyle Campaign.

15. More data was needed on the accessibility of health services. The Health Management Information System had been established for the purpose of data collection at the district, state and national levels, and the generation of gender-disaggregated data was planned.

16. Foreign workers had to pay fees for health care but were entitled to receive emergency treatment on humanitarian grounds. However, given the high cost of health care, foreign workers would in future be screened on entry to the country and would be returned to their country of origin if their state of health was deemed unsatisfactory.

17. Every effort would be made to safeguard health-care access for vulnerable groups in the context of privatization. Health spending was high: the Ministry

of Health had the third largest budget of all the Government ministries. To date, health care had been highly subsidized, but in the future it was likely that those who could afford it would be expected to pay for their own care.

18. With regard to family planning issues, she said that a very small proportion of abortions resulted in the death of the mother.

19. **Ms. Faizah Mohd Tahir** (Malaysia) said that the Government, through the National Population and Family Development Board, had set up 50 clinics around the country to provide access to modern methods of family planning. National guidelines on sex education in schools were to be introduced in the near future.

20. **Ms. Hajjah Rosnah bt. Hj. Ismail** (Malaysia) said that efforts were being made to reduce maternal mortality under the Safe Motherhood Initiative. A large number of alternative birthing centres had been established, with upgraded equipment and highly trained staff. The introduction of home-based records had enhanced the continuity of care for pregnant women. A confidential inquiry system had also been established to investigate the causes of maternal death.

Article 14

21. **Ms. Zou** said it was regrettable that much of the data on rural women in the report dated back to 1995. In the context of increasing globalization, the issues affecting rural women were likely to have changed significantly since then. Given that one tenth of rural households still lived below the poverty line, she would welcome information on any measures being taken to eradicate poverty in rural areas, and on how many men and women had benefited from the poverty alleviation programme mentioned in the report. She also asked whether women had to be included in the Government's extreme poverty list in order to obtain access to credit. Lastly, she asked whether rural women had easy access to health facilities, family planning services and information on HIV/AIDS prevention and whether women victims of domestic violence were entitled to legal aid.

22. **Ms. Tan** said that the large number of rural women described as "unpaid family workers" were being subjected to a form of exploitation by not being paid. She would like to know what measures were being taken to ensure that such women were paid for

their labour. She also asked whether the Government provided them with social security benefits and, if not, whether it planned to do so. Noting women's limited involvement in decision-making in rural organizations, she enquired about Government measures to help rural women form their own associations with a view to tackling mainstream issues that affected them, such as the control of resources and village development.

23. She asked whether there were sufficient one-stop crisis centres in rural areas for the provision of assistance to victims of rape and other forms of violence and, if not, what the Government planned to do to provide the necessary services.

24. Independent information indicated that, under the traditional laws of one community in Sabah, a wife had no exercisable right of survivorship in the event of her husband's death and could not claim any property acquired by either party during the marriage. She would like to know whether any studies had been carried out on the impact of those laws on the lives of widows in the community.

25. **Ms. Shin** asked what criteria were used for calculating labour force participation. Given that the participation of rural women (43.8 per cent in 2000) was slightly lower than overall female participation, she wondered whether that figure excluded unpaid family members working part-time on their own farms.

26. She asked whether a wife who worked part-time on a family farm was entitled to join the National Farmers' Association if her husband was already a member and whether any steps were being taken to encourage women to join the Association and to take leadership positions in it.

27. Commending the State party's efforts to improve vocational and leadership training for rural women, she asked whether the gender perspective was taken into account in that training and also in the training provided for trainers.

28. **Ms. Faizah Mohd Tahir** (Malaysia) said that efforts were being made to take account of the situation of rural women in the collection of gender-disaggregated data, but that comprehensive data were not yet available. The Government had introduced a number of measures aimed at alleviating poverty among rural women, for example encouraging them to participate in economic activities, providing training in information technology and other skills, and

conducting programmes on health, hygiene and social issues such as drugs awareness. Rural women were able to obtain loans from the Government. Those on the extreme poverty list compiled by the Ministry of Rural and Regional Development also had access to Government assistance.

29. There were currently no plans to introduce social security benefits for unpaid family workers. Her delegation would welcome advice from the Committee in that regard. In 2004, women had accounted for 26 per cent of the membership of the Area Farmers Organization but only 6 per cent of the members of the Board of Directors. No studies had been conducted to date on the impact of customary laws on widows.

30. The Ministry of Women, Family and Community Development was providing vocational and leadership training programmes for rural women, through the Women and Family Development Councils that had been established around the country. She did not have before her details on the method of calculating labour force participation, but, to her knowledge, it did not take account of unpaid family workers.

31. **Ms. Hajjah Rosnah bt. Hj. Ismail** (Malaysia) said that family planning services had been extended to an increasing number of rural areas over the years and were increasingly integrated with health centres and community clinics across the country. One-stop crisis centres were available in all state and district hospitals.

Articles 15 and 16

32. **Ms. Bokpe-Gnacadjia** expressed concern regarding the amendments to the Islamic Family Law (Federal Territories) (Amendment) Bill 2005. Allowing a polygamous husband to dispossess his existing wife or wives and use the joint matrimonial assets to prepare the dowry for a new wife implicitly forced those women to choose between maintenance and the division of matrimonial property. She asked why women did not have the reciprocal right to take more than one husband. It was troubling that the new provisions reinforced a man's right to enter into a polygamous marriage if a court found that it was "just or necessary", the word "or" having replaced the word "and" (CEDAW/C/MYS/1-2, para. 405). She asked why that change had been made. The State party should give details of the laws and procedures that the Government had introduced to control the practice of polygamy. It appeared that the new provisions made it

harder to exercise control and created greater scope for abuse.

33. Although the Constitution provided for equality before the law, she wondered what the *de facto* situation was. For example, in the event that a non-Muslim husband converted to Islam, converted his children also and married a second wife who was Muslim, what was the status of the first marriage before a sharia court? The State party should indicate what legal remedy was available to the first wife if she filed for custody of her children, given that the Civil Code had no jurisdiction to hear cases involving conversion to Islam. Those issues should be resolved as a matter of urgency.

34. **Ms. Tan**, referring to paragraph 380 of the State party's report, asked whether there had been any discernible trend away from discrimination against women in the context of family relations, particularly as a result of programmes such as SMARTSTART and the family development training conducted by the National Population and Family Development Board (CEDAW/C/MYS/Q/2/Add.1, p. 29). A change in the prevailing mentality was a prerequisite for *de facto* equality. Regarding the minimum age for marriage, she asked whether the Government was taking steps to remove its reservations to article 16, paragraphs 1 (a) and 2, of the Convention with a view to establishing 18 years as the minimum age for marriage without exception for both sexes. Such a measure would allow girls and young women to advance themselves through education and employment, thereby strengthening their economic independence and improving their bargaining power within marriage. Economic dependency was a major factor hindering women from breaking away from problematic or abusive marriages and beginning a new life.

35. **Ms. Nizam Zakaria** (Malaysia) said that feedback from those Malaysian states that had enforced the model law relating to the Islamic Family Law Enactments/Act showed that there was no discrimination against women, and that the sharia code was being administered much more efficiently with respect to family cases. Nor did the husband have an unfair advantage in claiming a share of matrimonial property. Historically, *harta sepencarian* (joint matrimonial property) was based on customary practice rather than on sharia law. According to those practices property acquired by the wife alone during the marriage was not regarded as joint matrimonial

property. The wife's contribution to caring for the family and home, and her involvement in any other matters relating to the acquisition of property were considered to be joint efforts; she had a claim to the property even if she did not earn an income. The husband's contribution to caring for the family and home would not be considered a joint effort; therefore, he could not claim any share of his wife's property if she was the only one working. However, any contribution by the husband to the improvement of his wife's property would be regarded as a joint effort, thus entitling him to claim a share of the joint property. If he did not make any improvements, he would have no claim to property that had already belonged to his wife before their marriage.

36. Referring to the concern raised regarding the use of the words "just or necessary" in reference to polygamous marriage, she said that the word "just" was not intended to reflect the concept of justice as established under Islam.

37. **Ms. Azailiza Mohd Ahad** (Malaysia), referring to the amendments to the Law Reform (Marriage and Divorce) Act 1976, said that a committee had been set up under the Attorney-General's Chambers to consider, *inter alia*, age of marriage, issues arising from conversion to or from Islam, dissolution of marriage on the grounds of conversion and consequential relief available in such cases. The Government, recognizing the sensitivity and complexity of matters relating to conversion and in view of the sentiments expressed by various groups in that regard, was taking steps to ensure a holistic approach to the issue in order to avoid dissatisfaction within the Malaysian community.

38. **Ms. Simms**, referring to matrimonial property, asked why a husband's contribution to caring for the family was not valued as much as that of his wife. Such inequality of treatment was tantamount to discrimination against men. The State party should indicate clearly what constituted matrimonial property, particularly in poor families whose female members were unable to contribute towards the purchase of land. It was of concern that property received by a husband from his family as a gift prior to his marriage did not form part of the joint matrimonial property, since that situation left the wife in a weak position. The matter of matrimonial property also made the issue of polygamy very confusing.

39. It would be helpful to see an analysis of the influence of socio-economic and other factors on age of marriage, particularly with respect to early marriage. The fact that children between 10 and 14 years of age could marry was entirely unacceptable. In that regard, she asked what the age of consent was, and whether the concept of carnal abuse was embodied in Malaysian legislation, since men who married children should be regarded as abusers rather than husbands. The State party should indicate what programmes were in place to protect young girls who fell pregnant while attending school, particularly given that the young men responsible were allowed to continue with their education, which could be regarded as discrimination. It would be interesting to know what factors influenced the decision by such girls to drop out of school — for example, the stigma attached to pregnancy outside of marriage — and the relative importance of each of those factors, particularly among ethnic minorities. Neither religious practices nor Government legislation should violate the right of children to be children.

40. **Ms. Schöpp-Schilling** expressed alarm at the figures for marriage, divorce and separation among children between 10 and 14 years of age. The next periodic report should provide a percentage breakdown of married women by age at marriage. In view of the concern that early marriage could lead young women to abandon their studies, it would be helpful to correlate the age of marriage of young women with their educational achievements and indicate what proportion of those women continued their studies once married.

41. **Ms. Tavares da Silva** said that she was puzzled by the discussion on the ambiguities of Islamic family law, and expressed concern that both the Committee and non-governmental organizations had had difficulty in understanding the provisions of that law. In that regard, she asked whether Malaysian judges had been made properly aware of the implications and possible interpretations of the law and its amendments, or whether they, too, were likely to misinterpret it. Such risk of misinterpretation should be taken into account by the Government.

42. **Ms. Bokpe-Gnacadjia** wished to clarify, with regard to the Islamic Family Law (Federal Territories) (Amendment) Bill 2005, that the interpretation of "just" was not what was troubling her. Rather, she felt uncomfortable with replacement of "and" by "or" in the phrase "The court may grant permission for

polygamy if it is satisfied that the proposed marriage is just and necessary” (annex IX to responses to the list of issues and questions, para. (iii)), as it seemed to make polygamy easier for men. Her concern regarding joint matrimonial property was that judges should have a clear understanding of the components of joint matrimonial property.

43. **Ms. Coker-Appiah**, echoing the concerns expressed by the previous speaker, asked whether Islamic law protected the rights of a non-Muslim wife whose husband decided to convert to Islam. It was particularly worrying that the courts did not have jurisdiction over issues relating to children where one of the parties to a marriage was subject to sharia law.

44. **Ms. Tan** said that the provision under the Islamic Family Law Enactments/Act establishing that the mother was the best person to take custody of her child while guardianship was vested in the father appeared to be discriminatory, since it denied a woman guardianship rights over her children. In that regard, she asked whether the 11 Malaysian states that had not yet adopted the Guardianship of Infants Act 1961 would be able to adopt that law as amended.

45. **Ms. Azailiza Mohd Ahad** (Malaysia) said that the Islamic Family Law (Federal Territories) (Amendment) Bill 2005 contained provisions to enhance the protection of women but that they were not always clearly worded. The drafting was being reviewed in order to remove any ambiguities. With regard to courts granting permission for a polygamous marriage if they were satisfied that the proposed marriage was “just and necessary”, the word “and” had been removed because “just” was considered more stringent than “just and necessary” and was therefore more difficult to prove.

46. In reply to the question regarding the amended Guardianship of Infants Act 1961 (Act 351), the Government had engaged all 11 states in the consultation process but only 4 had adopted the Act to date.

47. **Ms. Faizah Mohd Tahir** (Malaysia) said that the delegation shared the Committee’s concern that girls between 10 and 14 years of age were permitted to marry. However, it wished to point out that the average marriage age was actually much higher. With respect to the dropout rate, a small percentage of girls dropped out of school, usually for socio-economic reasons or due to pregnancy. The Government was taking steps to

introduce sex education programmes in schools and to improve the socio-economic status of the families concerned.

48. **Ms. Shin** recommended that, in the next periodic report, the data on marriageable age by level of schooling should include statistics for both rural and urban areas. Pointing out that she had not received a full answer to her question, she wished to know whether unpaid female farm workers were entitled to become members of the National Farmers’ Association. She would also appreciate receiving an answer to her question on whether the gender perspective had been taken into account in the training of vocational and leadership trainers.

49. **Ms. Schöpp-Schilling** pointed out that it was difficult to encourage employers to establish in-house childcare centres but that companies could “buy places” in public childcare centres. She urged the Government to improve the image of such centres, as they were often considered inferior and for low-income families only.

50. **Ms. Pimentel** wished to receive clarification regarding the State party’s interpretation of marital rape. The proposed addition to the Penal Code did not refer to marital rape but rather to a husband threatening his wife with physical violence if she refused to have sexual relations. Did the delegation consider them to be equivalent concepts?

51. The Committee had expressed concern regarding lack of access to safe abortion and had pointed out that lack of access to family planning and restrictive abortion laws tended to coincide with the prevalence of unsafe abortions and high maternal mortality rates. It would therefore be useful to know whether the Government was taking steps to relax the abortion laws.

52. **Ms. Tavares da Silva** wished to know whether the proposed amendment to the Penal Code criminalized the act of rape or the use of force by the husband.

53. **Ms. Azailiza Mohd Ahad** (Malaysia) said that the delegation did not have information on whether women could become members of the National Farmers’ Association but that relevant data would be included in the next periodic report. With respect to gender perspective and the training of vocational and leadership trainers, the matter was being investigated

by the Ministry of Rural and Regional Development. She took note of the comments regarding childcare centres and welcomed the suggestion that companies should subsidize childcare in public centres rather than establishing in-house childcare centres. She also wished to clarify that community childcare centres were open to everyone but were Government-subsidized for low-income families.

54. **Mr. Ahmad Razif Mohd Sidek** (Malaysia) said that, after thorough consideration, the Parliamentary Select Committee had concluded that marital rape could not be made an offence, as that would be inconsistent with sharia law. As a compromise, the Select Committee had proposed that hurting or threatening to hurt a wife in order to compel her to have relations would constitute an offence.

55. **Ms. Rosnah Ismail** (Malaysia) said that abortion was illegal unless the mother's life was at risk or the infant had severe congenital abnormalities. Statistics showed that maternal mortality due to abortion was actually on the decline.

56. **The Chairperson**, speaking as a member of the Committees, said that the Government appeared to be making a sincere effort to overcome the patriarchal attitudes present in Malaysian society. However, she called upon the State party to lift its reservations to articles 15 and 16 of the Convention and to develop a statewide mechanism for the formulation and implementation of policies and laws that upheld the basic human rights of Malaysian women.

57. With regard to the current legislative reforms, it was imperative that trafficking in persons should be criminalized immediately. The State party should also adopt a law that defined discrimination and provided for equality for women; temporary special measures and affirmative action would be helpful in areas where women remained disadvantaged, such as politics and education. There was also a need to sensitize the judiciary with respect to the Convention and its implementation. Finally, she urged the Government to develop policies and laws guaranteeing the basic human rights of female migrant workers.

58. With respect to health care, the Government was to be commended on its HIV/AIDS programme. However, given the link between illegal abortion and maternal mortality, the abortion laws should be reviewed. The Government also needed to establish a

programme to provide health care for the disadvantaged.

59. Finally, she would appreciate receiving more recent data on the situation of rural women.

60. **Ms. Faizah Mohd Tahir** (Malaysia) said that her Government was fully committed to ensuring full protection for migrant workers and that a cabinet committee on foreign workers had been established. Her delegation took note of the Chairperson's recommendations and would make every effort to promote gender-sensitive legislation and policies.

The meeting rose at 5.20 p.m.