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Committee on the Elimination of Discrimination against Women

Concluding observations on the combined third to fifth periodic reports of Malaysia*

1. The Committee considered the combined third to fifth periodic report of Malaysia (CEDAW/C/MYS/3-5) at its 1572nd and 1573rd meetings, on 20 February 2018 (see CEDAW/C/SR.1572 and 1573). The Committee's list of issues and questions is contained in CEDAW/C/MYS/Q/3-5 and the responses of Malaysia are contained in CEDAW/C/MYS/Q/3-5/Add.1.

A. Introduction

2. The Committee appreciates the submission by the State party of its combined third to fifth periodic reports, but regrets that they were submitted with an eight year delay. It also appreciates the State party's written replies to the list of issues and questions raised by the pre-sessional working group. It welcomes the oral presentation by the delegation as well as the additional clarification provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee commends the State party on its large and multi-sectoral delegation, which was headed by Ms. Suriani Ahmad, Secretary General of the Ministry of Women, Family and Community Development. The delegation also included representatives of the Ministry of Home Affairs, the Attorney General's Chambers, the Ministry of Education, the Ministry of Health, the Ministry of Rural and Regional Development, the Ministry of Human Resources, and the Permanent Mission of Malaysia to the United Nations Office and other international organizations in Geneva.

4. The Committee appreciates the open and constructive dialogue that took place between the delegation and the members of the Committee, twelve years after the last dialogue in 2006. However, it regrets the lack of relevant and sufficient data provided by the delegation to the majority of questions posed by the Committee during the dialogue.

B. Positive Aspects

5. The Committee welcomes the progress achieved since the consideration in 2006 of the State party's combined initial and second periodic report (CEDAW/C/MYS/CO/2) in undertaking legislative reforms, in particular the adoption of:

(a) Amendments to the Penal Code to increase the penalties for offences relating to rape and incest, in 2006;

* Adopted by the Committee at its sixty-ninth session (19 February-9 March 2018).

(b) The Anti-Trafficking in Persons Act of 2007, subsequently amended as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act of 2007 in 2010 and further amended in 2015;

(c) Amendments to the Domestic Violence Act of 1994 to widen the definition of domestic violence to include emotional, mental and psychological forms of violence, in 2011, and to improve protection for survivors of abuse, in 2017;

(d) Amendments to the Employment Act of 1955 to prohibit sexual harassment in the workplace and to extend maternity leave benefits for all women employees, in 2012.

6. The Committee welcomes the fact that, in the period since the consideration of the previous report, the State party has ratified or acceded to the following international instruments:

(a) The Convention on the Rights of Persons with Disabilities, in 2010;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2012;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2012.

7. The Committee also notes with appreciation the initiatives taken by the State party to promote gender equality, such as the adoption of the National Women's Policy and Action Plan (2009 – 2015), the policy objective of achieving women's representation in at least 30 per cent of decision-making positions in public and private sectors, and efforts to encourage the private sector to implement flexible working arrangements to provide wider opportunities for women to participate in the labour force.

C. Parliament

8. **The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with parliamentarians, adopted at the forty-fifth session, in 2010). It invites the Parliament of Malaysia, in line with its mandate, to take the necessary steps regarding the implementation of the present concluding observations between now and the next reporting period under the Convention.**

D. Principal areas of concern and recommendations

Reservations

9. The Committee welcomes the withdrawal of the State party's reservations to articles 5(a), 7(b) and 16(2) of the Convention in July 2010. However, the Committee notes with concern the remaining reservations to articles 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g), which are contrary to the object and purpose of the Convention, but continue to be justified by the State party on the ground that these provisions are not compatible with the Federal Constitution and Islamic or Syariah law. It further notes with concern that the State party has not taken steps to withdraw its reservation to article 9(2) of the Convention or to give effect to the withdrawal of its reservation to article 16(2).

10. **The Committee reiterates its previous recommendation (CEDAW/C/MYS/CO/2, para.10) that the State party demonstrate its commitment to eliminating all forms of discrimination against women by withdrawing all of its remaining reservations to articles 9 and 16 within a clear time frame so as to ensure the full applicability of the Convention in the State party.**

Constitutional and legislative framework

11. The Committee reiterates its previous concern that the Convention is not yet part of the domestic legal system and thus its provisions are not enforceable in domestic courts. It also reiterates its concern about the continued absence of a definition of discrimination

against women in the State party's legislation, in accordance with article 1 of the Convention, as well as the narrow interpretation by the courts of the prohibition of gender-based discrimination under article 8 (2) of the Federal Constitution, restricting it to acts by the authorities and not protecting women against discrimination by private actors, such as private employers. While the Committee notes the intention expressed by the State party since 2006 to adopt a Gender Equality Act which incorporates the provisions of the Convention, it regrets the lack of any progress made in this regard. The Committee is further concerned that the lack of legal clarity and inconsistent application of the Convention is further compounded by the federal structure of the State party, as well as the existence of a parallel legal system of civil law and multiple versions of Syariah law, which have not been harmonized in accordance with the Convention, as previously recommended by the Committee (CEDAW/C/MYS/CO/2, para.14), which leads to a gap in the protection of women against discrimination, including on the basis of their religion. The Committee also regrets the lack of measures taken to ratify the Optional Protocol to the Convention.

12. Recalling its previous recommendations (CEDAW/C/MYS/CO/2, paras. 8 and 12) and its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, the Committee recommends that the State party:

(a) Take immediate measures to ensure that the Convention and its provisions are incorporated into national law and become fully enforceable in the domestic legal system;

(b) Adopt a concrete timeframe for the adoption of the Gender Equality Act, which defines and prohibits all forms of discrimination against women, encompassing direct and indirect discrimination in the private and public spheres, as well as intersecting forms of discrimination against women, in line with article 1 of the Convention and target 5.1 of the Sustainable Development Goals (SDGs);

(c) Take effective measures to ensure that civil law and Syariah law are in full compliance with the provisions of the Convention at local, state and federal levels so as to ensure that the rights of all women are legally guaranteed on an equal footing throughout the State party. The Committee reminds the State party that provisions of its internal law cannot be used as justification for its failure to abide by its obligations under the Convention;

(d) Adopt a concrete timeframe for the ratification of the Optional Protocol to the Convention.

Access to justice

13. The Committee appreciates the State party's efforts to improve access to legal aid by introducing the Legal Aid (Amendment) Bill 2017, which aims to introduce a more practical approach to determine a person's eligibility for legal aid. Nevertheless, the Committee remains concerned about the existence of multiple barriers impeding women and girls from obtaining access to justice and effective remedies for violations of their rights, including discriminatory stereotypes and gender bias among personnel throughout the justice system and the exclusion of non-nationals from accessing legal aid services offered by the State except in capital punishment cases. It is concerned that such obstacles negatively impact women who are already in precarious situations, such as migrant women, particularly undocumented migrant women, women held in immigration detention centres, and asylum-seeking and refugee women.

14. Recalling its general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party:

(a) Simplify the procedure for accessing legal aid and ensure that it is available and accessible to all women, regardless of nationality in all cases of criminal, civil, social, administrative, constitutional and family law;

(b) Identify and address the specific obstacles faced by women who are in disadvantaged situations to ensure that they have access to justice and recourse to effective remedies, including migrant women, particularly undocumented migrant

women, women held in immigration detention centres, and asylum-seeking and refugee women;

(c) **Strengthen the gender responsiveness and gender sensitivity of the justice system, including by increasing the number of women in the justice system and providing systematic capacity-building to judges, prosecutors, lawyers, police officers and other law enforcement officials on the Convention, as well as on the Committee's jurisprudence and its general recommendations;**

(d) **In its next periodic report, provide data disaggregated by sex, age, nationality and other relevant factors, on the number of applicants for legal aid, the number of individuals who were assisted, and the number of cases which were successfully concluded in favour of the applicant.**

National machinery and policies for the advancement of women

15. The Committee appreciates the efforts made by the Ministry of Women, Family and Community Development, as the national women's machinery, to adopt policies and strategies aimed at the advancement of women, such as the National Policy on Women and its associated National Action Plan, gender mainstreaming programmes, and gender responsive budgeting. However, the Committee is concerned at their limited effectiveness, as acknowledged by the State party, due to lack of political will and understanding on the part of Government agencies in relation to gender equality and lack of institutional mechanisms, including the lack of capacity to advise Government agencies and to monitor, track and evaluate policies and programmes. It also regrets the lack of gender disaggregated data available to identify areas where women lack substantive equality and to evaluate the impact of measures taken to address the situation.

16. **The Committee recommends that the State party:**

(a) **Ensure that all policies, strategies and action plans aimed at the advancement of women, such as the National Women's Policy and Plan of Action, gender mainstreaming and gender responsive budgeting, are accompanied by clear targets, indicators, time frame as well as effective coordination, monitoring and evaluation mechanisms;**

(b) **Undertake systematic and regular training of officials who are responsible for the planning and implementation of policies, strategies and action plans aimed at the advancement of women to increase their awareness, knowledge and capacity not only with regard to technical knowledge and expertise but also with regard to gender equality;**

(c) **Ensure that gender mainstreaming is applied consistently in the development and implementation of all laws, policies and programmes in all ministries and legislative structures, including by strengthening gender training programmes and the Gender Focal Point system, and establishing a coordinating committee across agencies;**

(d) **Ensure that gender responsive budgeting, integrated into outcome based budgeting, is effectively institutionalized through a comprehensive roadmap in all Government agencies at the federal, state and local council levels;**

(e) **Develop a comprehensive system to collect, analyse and publish data on all areas covered by the Convention, disaggregated by sex, age, disability, ethnic origin, religion and other relevant factors, so that such data and analyses can be used for the formulation, monitoring and evaluation of laws, policies and plans, as well as the SDGs.**

Temporary special measures

17. The Committee appreciates the initiatives taken by the State party to increase the participation of women in the labour force and in decision-making positions, such as the targets set out in the Eleventh Malaysia Plan (2016 – 2020). However, the Committee is concerned that the use of temporary special measures has been limited, and that the

measures which have been adopted thus far lack specific guidelines and mechanisms for their implementation, monitoring and evaluation.

18. The Committee recommends that the State party:

(a) **Ensure that temporary special measures are accompanied by specific guidelines and mechanisms to ensure their effective implementation, monitoring and evaluation, in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures;**

(b) **Expand the use of temporary special measures, such as outreach or support programmes, allocation and/or reallocation of resources, targeted recruitment, hiring and promotion, numerical goals connected with time frames, and quota systems, to accelerate the realization of women's substantive equality with men in all areas where women continue to be underrepresented or disadvantaged, and in particular targeting women who face multiple and intersecting forms of discrimination.**

Stereotypes

19. The Committee reiterates its previous concern (CEDAW/C/MYS/CO/2, para.15) about the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society, which present a significant impediment to the implementation of the Convention and are a root cause of the disadvantaged position of women in several areas, including in the labour market and in political and public life. In addition, while noting that offensive language or sexist remarks have been prohibited in Parliament following the amendment of Standing Order 36 (4) of the House of Representatives in November 2012, the Committee is concerned that sexist or condescending remarks about women by members of Parliament persist, and that those responsible have not been held accountable. It expresses further concern about reports of "moral policing" of women by private citizens and religious authorities to impose dress codes on women.

20. The Committee recommends that the State party:

(a) **Adopt a comprehensive strategy with proactive and sustained measures that target women and men at all levels of society, including religious and traditional leaders, to eliminate discriminatory stereotypes and patriarchal attitudes concerning the roles and responsibilities of women and men in the family and society;**

(b) **Adopt measures to encourage men to share child-rearing and housework responsibilities equally, including by introducing paternity leave in both the public and private sectors and by introducing flexible work arrangements for fathers as well as mothers;**

(c) **Adopt innovative measures targeting the media to strengthen the understanding of substantive equality of women and men and use the education system to enhance positive and non-stereotypical portrayals of women;**

(d) **Ensure that members of Parliament are held accountable for sexist or condescending remarks about women through the effective application of Standing Order 36 (4) as amended in 2012;**

(e) **Monitor and review the measures taken to combat stereotypes in order to assess their impact and revise them as appropriate.**

Female genital mutilation

21. The Committee expresses deep concern about the issuance of a *fatwa* on female circumcision by the Malaysian National Council of Islamic Religious Affairs in April 2009, which makes it obligatory for Muslim women to undergo female genital circumcision. It is further concerned that the Ministry of Health has developed guidelines in 2012 to reclassify female circumcision as a medical practice, which has allowed the practice to be performed in health care facilities and has contributed to the endorsement of female genital mutilation as a medically safe and beneficial procedure.

22. **The Committee stresses that female genital mutilation, female circumcision or female genital cutting cannot be justified on religious grounds and constitutes a harmful practice to exert control over the bodies and sexuality of women and girls in violation of the Convention, irrespective of the extent of removal or cutting of the female genital organs and of whether or not it is performed within or outside a medical institution. It therefore recommends that the State party:**

(a) **Prohibit all forms of female genital mutilation in its criminal code that cannot be overruled by any fatwas or issuance from religious or clerical authorities, as well as in practice, in accordance with the Committee's joint general recommendation No. 31 (2014) of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, as well as target 5.3 of the SDGs and General Assembly resolution 69/150 on intensifying global efforts for the elimination of female genital mutilations;**

(b) **Engage in constructive dialogue with religious authorities, women's non-governmental organizations and the public to convey the point that female genital mutilation cannot be justified by religion;**

(c) **Undertake awareness-raising and educational activities aimed at promoting consensus towards the elimination of female genital mutilation, in particular by addressing the misconception that female circumcision is acceptable as it is presumed to lead to medical and hygienic benefits.**

Gender-based violence against women

23. The Committee welcomes the measures taken by the State party to enhance the legal protection of women from gender-based violence, including by amending the Domestic Violence Act in 2017. Nevertheless, the Committee remains concerned about:

(a) The lack of data available regarding the prevalence of all forms of gender-based violence against women in the State party, as well as the number of complaints resulting in investigations, prosecutions and convictions;

(b) The lack of legislation criminalizing marital rape, given that Section 375 of the Penal Code stipulates that rape within a marriage does not constitute rape;

(c) The lack of inclusion of intimate partner violence within the scope of the Domestic Violence Act of 1994, thereby denying unmarried women access to protection orders and compensation under the Act;

(d) Perpetrators of rape evading prosecution by marrying their underage victims;

(e) The use of whipping by Syariah courts as a form of punishment, whereas whipping of women is prohibited under the Criminal Procedural Code.

24. **Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that the State party:**

(a) **Establish a system to regularly collect, analyse and publish statistical data on the number of complaints about all forms of gender-based violence against women, disaggregated by sex, age, ethnicity, geographic location and relationship between victim and perpetrator, the number and type of protection orders issued, the rates of dismissal and withdrawal of complaints, prosecution and conviction and the amount of time taken for the disposal of cases;**

(b) **Criminalize marital rape in domestic legislation, defining such rape on the basis of lack of freely given consent of the woman;**

(c) **Ensure that victims of intimate partner violence have access to protection orders and compensation on an equal footing with married women;**

(d) **Take effective measures to ensure that perpetrators of rape, including those who rape women with an object or through incest, are effectively punished and that they do not evade criminal sanctions by marrying their victims;**

(e) **Harmonize Syariah law with Section 289 of the Criminal Procedural Code to prohibit the use of whipping of women as a form of punishment;**

(f) **Adopt concrete measures to combat gender-based violence against women and girls, including the provision of mandatory, recurrent and effective capacity-building, education and training for members of the judiciary, lawyers and law enforcement officials, and educational campaigns targeting men and boys.**

Trafficking and exploitation of prostitution

25. The Committee acknowledges the efforts made by the State party to combat trafficking, including the adoption of the Anti-Trafficking in Persons and Anti-Smuggling in Migrants Act 2007 and its successive amendments as well as the National Action Plan on Anti-Trafficking in Persons (2016 – 2020). Nevertheless, it remains deeply concerned that the State party remains a destination country for trafficking of women and girls, including asylum-seeking and refugee women and girls, for purposes of sexual exploitation, begging, forced labour, or forced marriage. The Committee is particularly concerned about:

(a) The lack of a formal and uniform victim identification procedure, which may lead to the punishment of women and girls who have been trafficked for violation of immigration laws;

(b) Complicity among law enforcement officials, including those who reportedly accept bribes to allow undocumented border crossings, and impunity for those responsible, including officials who were complicit in the mass graves and abandoned human trafficking camps along the Malaysia-Thailand border which were discovered in May 2015;

(c) The inadequate assistance provided to victims of trafficking, overcrowding and understaffing of shelters, as well as the restrictions on their right to freedom of movement and the right to work due to excessive bureaucratic requirements and procedures.

26. **The Committee recommends that the State party:**

(a) **Establish a formal victim identification procedure, which is applied uniformly throughout the State party, to promptly identify and refer victims of trafficking to appropriate services and protection, including assessment of their needs for international protection, and systematically train all relevant law enforcement officials on gender-sensitive procedures for dealing with trafficking victims;**

(b) **Ensure that victims of trafficking are not punished for violations of immigration laws and that they obtain effective protection, such as temporary residence permits irrespective of their ability or willingness to cooperate with law enforcement authorities, as well as redress, including rehabilitation and compensation;**

(c) **Investigate, prosecute and punish all cases of trafficking in persons, especially women and girls, including those involving law enforcement officials, and ensure that the sentences imposed on perpetrators are commensurate with the gravity of the crime, to combat impunity;**

(d) **Allocate adequate resources for the effective and sustainable implementation of existing services and assistance offered to victims of trafficking, and remove all bureaucratic barriers to guarantee in practice their right to freedom of movement and the right to work;**

(e) **Reinforce international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking, including by exchanging information and harmonizing legal procedures to prosecute traffickers with countries of origin, transit and destination, in particular with countries in the region.**

27. The Committee regrets the lack of information provided by the State party concerning the prevalence of exploitation of women and girls in prostitution, as well as the

absence of policies and measures taken to combat the phenomenon, including exit programmes for women and girls who wish to leave prostitution.

28. **The Committee recommends that the State party:**

(a) **Collect and analyse data on the exploitation of women and girls in prostitution;**

(b) **Adopt targeted measures to provide assistance, rehabilitation and reintegration programmes for victims of exploitation of prostitution;**

(c) **Provide exit programmes for women and girls wishing to leave prostitution, including by providing alternative income-generating opportunities.**

Participation in political and public life

29. The Committee welcomes the announcement made by the Prime Minister of Malaysia in December 2017 to adopt a minimum quota of 30 per cent for women's representation as Senators in the Upper House of Parliament. However, the Committee is concerned that women continue to be underrepresented in all areas of political and public life, including in Parliament, the cabinet, local government, the judiciary and the diplomatic service, particularly in decision-making positions. It also regrets the underrepresentation of women from marginalized groups in all areas of political and public life, such as women with disabilities, indigenous women, and ethnic minority women.

30. **The Committee recommends that the State party:**

(a) **Adopt measures, including temporary special measures, in accordance with article 4 (1) of the Convention and in line with the Committee's general recommendation No. 23 (1997) on women in political and public life and general recommendation No. 25 (2004) on temporary special measures, in order to guarantee and accelerate the full and equal participation of women at all levels, including in legislative bodies, ministerial posts and local government, the judiciary, and the diplomatic service;**

(b) **Provide information in the next periodic report on specific measures implemented, such as quotas, to increase the representation of women, including women with disabilities, indigenous women and ethnic minority women, in decision-making positions in political and public spheres.**

Women, peace and security

31. The Committee welcomes the active role played by the State party at international fora on issues related to conflict prevention and peaceful resolution of conflicts, and recognizes its significant contribution to United Nations peacekeeping missions through the contribution of military and police personnel. However, the Committee regrets that the State party has yet to adopt a national action plan for the implementation of Security Council resolution 1325 (2000) on women, peace and security, and to ratify the Arms Trade Treaty.

32. **With reference to its general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations and target 16.4 of the SDGs, the Committee recommends that the State party adopt a national action plan for the implementation of Security Council resolution 1325 (2000) on women, peace and security, and ratify the Arms Trade Treaty.**

Nationality

33. The Committee remains concerned about the discriminatory provisions in the Federal Constitution with regard to nationality, including the inability of Malaysian women married to foreigners to transmit their nationality to their children born abroad and to confer nationality to their spouses on an equal basis with Malaysian men.

34. **The Committee recommends that the State party amend all provisions of the Federal Constitution which deny women equal rights with respect to the transmission of their nationality to their children and foreign spouses. It also recommends that the State party ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

Education

35. The Committee commends the State party for the progress made in ensuring access to education for girls and women, as reflected in the high levels of literacy and educational attainment. However, it notes that women still remain underrepresented in traditionally male-dominated fields of study at the tertiary level, such as engineering, mathematics and physics. The Committee also notes with concern the significant difference in the percentage of men and women holding leadership positions in higher educational institutions. It further expresses concern that sex education in public schools is influenced by religious morals and focused on abstinence rather than a human rights-based approach. The Committee also regrets the lack of information provided by the State party concerning the educational attainment of girls who have married before 18 years of age as well as the percentage of girls who have continued to pursue education during and after their pregnancy. The Committee further regrets the bullying of students, including LGBTI students, and the lack of information on the policy of sending bullies to trainings in military institutions as a corrective measure and on the impact of such policy on the right to education of girls.

36. **Recalling its general recommendation No. 36 (2017) on the right of girls and women to education, the Committee recommends that the State party:**

(a) **Take measures to encourage girls to choose non-traditional fields of study and career paths such as engineering, mathematics and physics, as well as to eliminate traditional stereotypes and structural barriers that may deter girls' enrolment in such fields;**

(b) **Identify the underlying causes of underrepresentation of women in leadership positions in higher educational institutions and use temporary special measures and other specific measures to address such disparity;**

(c) **Introduce comprehensive age-appropriate and human rights-based sexuality education as part of the school curricula, which includes information on sexual and reproductive health and responsible sexual behaviour and the importance of concepts such as consent and gender-based violence;**

(d) **Collect and publish data on the educational attainment of girls who have married before 18 years of age as well as the number and percentage of girls who have continued to pursue education during and after pregnancy, and provide such information in its next periodic report;**

(e) **Adopt anti-bullying policies based on alternative strategies to address bullying, such as counselling services and positive discipline, and undertake awareness-raising measures to foster equal rights for LGBTI students.**

Employment

37. The Committee welcomes the efforts made by the State party to increase the labour participation of women, such as the objective set out in the Eleventh Malaysia Plan (2016 – 2020), as well as to increase the representation of women in decision-making positions in the private sector, such as the establishment of a target of 30 per cent and the launching of an initiative in July 2017 to publish the names of publicly-listed companies without women on their board of directors. Nevertheless, the Committee remains concerned about the low representation of women in decision-making positions in the private sector despite their high educational and professional achievements and qualifications, as well as the persistent wage gap in most occupational categories. The Committee also regrets the lack of sanctions for the termination of employment on the basis of pregnancy, as well as the lack of a comprehensive law on sexual harassment in the State party.

38. **The Committee recommends that the State party:**

(a) **Systematically review obstacles to women's access to decision-making positions in the private sector and adopt holistic measures to remove such barriers, including discriminatory stereotypes and gender bias in the workplace as well as family pressure on women to assume responsibilities in the home;**

(b) **Ensure that targets and initiatives aimed at increasing the representation of women in decision-making positions in the private sector are accompanied by specific guidelines and mechanisms to ensure their effective implementation, monitoring and evaluation;**

(c) **Reduce the gender wage gap by regularly reviewing wages in sectors in which women are concentrated, and establishing effective monitoring and regulatory mechanisms for employment and recruitment practices to ensure that the principle of equal pay for work of equal value is guaranteed in national legislation and adhered to in all sectors;**

(d) **Ensure that there are adequate sanctions in law and in practice for the termination of employment on the basis of pregnancy;**

(e) **Adopt a comprehensive law on sexual harassment, which enables complainants to seek redress without the time, cost and public nature of going to court.**

Health

39. The Committee is concerned about the obstacles faced by certain groups of women to access health care services in the State party, including asylum-seeking and refugee women, women migrant workers, rural women, transgender women and indigenous women. It is particularly concerned that non-citizens are required to pay a deposit prior to admission to public hospitals as well as higher fees than Malaysian nationals for the same health care services provided by public hospitals under the Fees Act (Medical) 1951 for Foreigners, which severely restricts access to health care by women with low income, such as asylum-seeking and refugee women, and women domestic migrant workers. The Committee is also concerned about a Government directive which requires public hospitals to refer undocumented asylum-seekers and migrants who seek medical attention to the Immigration Department, which has serious consequences for maternal, foetal and infant mortality and morbidity as women are deterred from accessing essential health care services due to fear of arrest and detention.

40. **The Committee recommends that the State party:**

(a) **Ensure that all women, regardless of nationality or income, have effective access to affordable health care services, including childbirth, family planning and reproductive health care services;**

(b) **Take measures to improve the affordability of health care services for non-citizens, including by fully exempting asylum-seeking and refugee women from the payment of deposits and higher fees than Malaysian nationals for the same health care services;**

(c) **Immediately repeal the directive requiring public hospitals to refer undocumented asylum-seekers and migrants to the Immigration Department.**

Rural women

41. The Committee appreciates the measures adopted by the State party to improve the quality of life of aboriginal people and ethnic minorities in rural areas. However, it is concerned about the lack of specific measures targeting women and girls in such communities, as well as the low representation of women in village committees and the high drop-out rates among rural school girls.

42. **With reference to its general recommendation No. 34 (2016) on the rights of rural women, the Committee recommends that the State party:**

(a) **Expand programmes aimed at facilitating women's and girls' access to education, employment and health care, including through the adoption of temporary special measures;**

(b) **Eliminate all barriers inhibiting rural women's participation in village committees and ensure the integration and mainstreaming of a gender**

perspective into all agricultural and rural development policies, strategies, plans and programmes, enabling rural women to act and be visible as stakeholders, decision-makers and beneficiaries;

(c) Ratify Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization.

Women migrant domestic workers

43. The Committee reiterates its previous concern (CEDAW/C/MYS/CO/2, para.25) regarding the situation of women migrant domestic workers, who are denied equal rights under the State party's labour laws vis-à-vis other migrant workers, including in relation to minimum wages, working hours, rest days, leave, freedom of association, and social security coverage. It is concerned that such lack of legal guarantees of their labour rights leaves women migrant domestic workers vulnerable to exploitation and abuse. The Committee is further concerned that women domestic workers are prohibited from getting pregnant during their contract of service, and that they are required to pay higher fees for health care services at public hospitals or clinics.

44. **Recalling its previous recommendations (CEDAW/C/MYS/CO/2, para.26), the Committee recommends that the State party:**

(a) Ensure that women migrant domestic workers are guaranteed the same level of protection and benefits as other migrant workers in law and in practice, and that they have access to effective remedies and redress against abuse by employers;

(b) Repeal the policy which prohibits women migrant domestic workers from becoming pregnant on the basis that their contract of service would normally be for two years;

(c) Ensure that women migrant workers have access to affordable health care services;

(d) Ratify the International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the ILO Domestic Workers Convention, 2011 (No. 189).

Refugee and asylum-seeking women

45. The Committee reiterates its previous concern (CEDAW/C/MYS/CO/2, para.27) that the State party has not enacted any laws or regulations concerning the status of asylum-seekers and refugees, and that asylum-seekers and refugees, including women and girls, are prosecuted for immigration-related offences and may be indefinitely detained at immigration detention centres or deported. While noting the assertion made by the State party that it complies with the principle of non-refoulement, the Committee expresses grave concern at reports indicating the contrary, including recent reports of refoulement of individuals, including women, despite the fact that they were registered with the United Nations High Commissioner for Refugees. The Committee is further concerned that the lack of legal and administrative framework to protect and regularize the status of asylum-seekers and refugees in the State party exposes asylum-seeking and refugee women and girls to a range of human rights violations, including arbitrary arrest and detention, exploitation, sexual and gender-based violence, including in detention centres, as well as limited access to the formal labour market, public education, health, social services and legal assistance.

46. **With reference to its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee recommends that the State party:**

(a) Ratify the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto without further delay;

(b) Adopt national asylum and refugee legislation and procedures, in conformity with international standards, which ensures that the specific needs of women and girls are addressed and codifies the principle of non-refoulement;

(c) **Fully respect the principle of non-refoulement and ensure that no individual who is registered with the United Nations High Commissioner for Refugees is deported;**

(d) **Ensure full access to asylum procedures for persons seeking asylum in the State party, including women and girls;**

(e) **Establish alternatives to detention for asylum-seeking and refugee women and girls, and in the meantime take concrete measures to ensure that detained women and girls have access to adequate hygiene facilities and goods and are protected from all forms of gender-based violence, including by ensuring that all complaints are effectively investigated, perpetrators are prosecuted and adequately punished, and victims are provided effective remedies;**

(f) **Ensure that asylum-seeking and refugee women and girls have access in practice to income generating opportunities, education, health care, and other basic social services which are appropriate for their particular needs, as well as legal assistance.**

Lesbian, bisexual, transgender and intersex women

47. The Committee is concerned at reports of discrimination, harassment and attacks against lesbian, bisexual, transgender and intersex (LBTI) women by State religious authorities and the police, as well as by private citizens. It notes with concern that their situation is exacerbated by the discriminatory laws and policies of the State party.

48. **The Committee recommends that the State party undertake awareness-raising measures to eliminate discrimination and negative stereotypes against lesbian, bisexual, transgender and intersex women. It particularly recommends that the State party:**

(a) **Amend all laws which discriminate against LBTI women, including the provisions of the Penal Code and Syariah laws that criminalize same-sex relations between women and cross-dressing;**

(b) **Apply a policy of zero-tolerance with regard to discrimination and violence against LBTI women, including by prosecuting and adequately punishing perpetrators;**

(c) **Expedite measures to discontinue all policies and activities which aim to “correct” or “rehabilitate” LBTI women.**

Women human rights defenders

49. The Committee is concerned that women human rights defenders, in particular those advocating for Muslim women’s rights, the rights of lesbian, bisexual, transgender and intersex women, as well as for democratic reforms, have reportedly been subjected to arbitrary arrests, harassment and intimidation by State authorities as well as religious institutions, including through the adoption of fatwas against women’s organizations working on the above-mentioned issues.

50. **The Committee recommends that the State party ensure that women human rights defenders can freely undertake their important work without fear or threat of arbitrary arrests, harassment and intimidation, including the issuance of fatwas by religious institutions, by fully guaranteeing their rights to freedom of expression, assembly and association. It also recommends that the State party provide capacity-building on women’s rights and gender equality to law enforcement officials, members of the judiciary and members of religious institutions.**

Foreign wives

51. The Committee is concerned that foreign women who are married to Malaysian men are dependent on their husbands to maintain their legal status in the country, which places them in a situation of vulnerability, particularly in cases of domestic violence. It also notes

with concern that foreign wives with Long Term Social Visit Passes are prohibited from engaging in any form of employment, which creates further dependence on their husbands.

52. The Committee recommends that the State party revise its laws and policies to simplify the process of granting legal status to foreign women who are married to Malaysian men, including by removing the requirement that the husband be present for renewals of the Long Term Social Visit Pass, as well as simplifying the process of obtaining permanent residency. It also recommends that the State party amend its laws and policies to enable foreign wives to work.

Marriage and family relations

53. The Committee welcomes the legislative amendments of the State party's civil law to end discrimination against women in marriage and in the family, as well as the Federal Court's decision of 29 January 2018 in the case of Indira Gandhi which inter alia affirmed the jurisdiction of civil courts over matters of Islamic law and actions of Islamic authorities. Nevertheless, the Committee remains concerned that:

(a) Muslims, who constitute sixty percent of the State party's population, are covered by the Islamic Family Laws, which have become increasingly discriminatory towards Muslim women;

(b) Muslim women do not have equal rights in family and marriage matters, including equal capacity as men to enter into marriage as well as to divorce, and with regard to maintenance, custody and guardianship of their children, religious conversion of children, and inheritance;

(c) Polygamy is permitted for Muslim men under the Islamic Family Law (Federal Territories) Act 2006 and that the criteria for polygamy have become less restrictive following amendments to the original act of 1984;

(d) Child marriages continue to be permitted under both the Law Reform (Marriage and Divorce) Act and the Islamic Family Law, despite the withdrawal of the State party's reservation to article 16(2) of the Convention, and that the rate of child marriages is increasing;

(e) Conversion from Islam to another religion or belief is prohibited, although conversion from other beliefs to Islam is allowed, despite the fact that it sometimes leads to serious consequences for the non-Muslim spouse.

54. The Committee reiterates its previous recommendation (CEDAW/C/MYS/CO/2, para.14) that the State party 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 Convention. In particular, it recommends that the State party:

(a) **Provide safeguards against violations of women's human rights in all family and marriage matters by enabling review by State courts or administrative bodies of all decisions and provisions of the Syariah law system, including actions of Islamic authorities, in accordance with the Federal Court's judgment of 29 January 2018 in the case of Indira Gandhi and the Committee's general recommendations No. 33 (2015) on women's access to justice and No. 29 (2013) on article 16 of the Convention (economic consequences of marriage, family relations and their dissolution);**

(b) **Ensure that Muslim women have equal rights in all family and marriage matters, including equal capacity as men to enter into marriage as well as to divorce, and with regard to maintenance, custody and guardianship of their children, and inheritance;**

(c) **Prohibit the unilateral religious conversion of children by the father who converts to Islam;**

(d) Discourage and prohibit polygamy, in accordance with the Committee's general recommendation No. 21 (1994) on equality in marriage and family relations, general recommendation No. 29 (2013) on article 16 of the Convention (economic consequences of marriage, family relations and their dissolution), and joint general recommendation No. 31 (2014) of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices;

(e) Raise the minimum age for marriage to eighteen years for women and men for both civil and Muslim marriages and request the full consent of women for any marriage;

(f) Fully guarantee the right to freedom of religion or belief, which includes the right of individuals to convert from Islam to another religion or belief, and ensure that religious interpretations do not perpetuate gender inequality, by taking appropriate measures as recommended in the reports of the Special Rapporteur on freedom of religion or belief.

Amendment to article 20(1) of the Convention

55. The Committee encourages the State party to accept the amendment to article 20 (1) of the Convention concerning the meeting time of the Committee.

Beijing Declaration and Platform for Action

56. The Committee calls upon the State party to use the Beijing Declaration and Platform for Action, in its efforts to implement the provisions of the Convention.

2030 Agenda for Sustainable Development

57. The Committee calls for the realization of substantive gender equality, in accordance with the provisions of the Convention, throughout the process of implementation of the 2030 Agenda for Sustainable Development.

Dissemination

58. The Committee requests the State party to ensure the timely dissemination of the present concluding observations, in the official language(s) of the State party, to the relevant State institutions at all levels (national, regional, local), in particular to the Government, the ministries, Parliament and the judiciary, to enable their full implementation

Ratification of other treaties

59. The Committee notes that the adherence of the State party to the nine major international human rights instruments¹ would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, Convention against Torture, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention for the Protection of All Persons from Enforced Disappearance, to which it is not yet a party.

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

Follow-up to concluding observations

60. The Committee requests the State party 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) above.

Preparation of the next report

61. The Committee invites the State party to submit its sixth periodic report in March 2022. The report should be submitted on time and should cover the entire period up to the time of its submission.

62. The Committee requests the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (see HRI/GEN/2/Rev.6, chap. I)).
