

May 17, 2006

The Committee on the Elimination of Discrimination against Women (CEDAW)

Re: Supplementary information on Malaysia  
Scheduled for review during the CEDAW's 35th Session

Dear Committee Members:

This letter is intended to supplement the combined initial and second periodic report submitted by Malaysia, scheduled to be reviewed by this Committee during its 35th session. The Center for Reproductive Rights (The Center), an independent non-governmental organization, hopes to further the work of the Committee by providing independent information concerning the rights protected in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Reproductive rights are fundamental to women's health and social equality, and an explicit part of the Committee's mandate under CEDAW. Specifically, the Convention commits States Parties to: "ensure... access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning" [Article 10(h)]; "take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning" [Article 12(1)]; "take all appropriate measures to eliminate discrimination against women in rural areas in order to assure... access to adequate health-care facilities, including information, counseling and services in family planning..." [Article 14(2)(b)]; and, to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: . . . [t]he same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights." [Article 16].

The Committee's General Recommendation 24 on Women and Health affirms that "access to health care, including reproductive health, is a basic right under [CEDAW]"<sup>1</sup> and is fundamental to women's health and equality. Moreover, it obligates States Parties to take the following measures: "[e]nsure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health, and, in particular, allocate resources for programmes directed at adolescents for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS;" "[p]rioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance;" and, finally, to "[r]equire all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice."<sup>2</sup>

The government of Malaysia's combined initial and second report draws attention to the existence of gender specific health care values in the Malaysian healthcare system. The report outlines four basic principles which include the following: recognizing health as a right, promoting equity and access and the avoidance of disparity; recognizing the biological and other factors that result in gender based differences in health needs; and, promoting the role of women in optimizing their own health and that of others.<sup>3</sup> Some important reproductive health issues reviewed in the report include: maternal mortality, fertility, adolescent reproductive health and sexuality, sexual transmission of HIV/AIDS, reproductive health services, and access to family planning services. The Malaysian government has taken noteworthy steps to address some of these issues of concern. For example, there has been a notable reduction in the number of maternal deaths in the past decade. Furthermore, the government has introduced the Domestic Violence Act of 1994 to provide legal protection to domestic violence survivors. Finally, it is also important to note that in 2001, the Malaysian government amended Article 8(2) of the Federal Constitution to include the word "sex" as a ground against discrimination.

Notwithstanding notable progress, however, there remains a significant gap between the provisions of the Convention and the reality of women's lives in Malaysia. For example, with regard to women's reproductive rights, a significant proportion of Malaysian women, especially adolescent girls and other vulnerable groups of women, such as migrant and domestic workers, continue to experience lack of access to basic reproductive health services and information; the contraceptive prevalence rate remains relatively low, especially the use of modern methods;<sup>4</sup> despite an overall decline in the official maternal death rate, certain groups of women experience a higher incidence of mortality; and, women, especially adolescents, are forced to risk their lives and health from illegal and unsafe abortions due to the country's restrictive abortion law.<sup>5</sup>

We would like to take this opportunity to bring to the Committee's attention the following issues of concern, which directly affect the reproductive health and lives of women in Malaysia:

## **1. Right to Health Care, Including Reproductive Health Care and Family Planning (Articles 12, 14(2)(b) and (c), and 10(h))**

### **A. Lack of Access to Family Planning and Contraceptive Methods**

The Committee has frequently expressed concern over women's lack of access to and low use of contraceptive and family planning services in past concluding observations.<sup>6</sup> The Committee has regularly encouraged States Parties to ensure access to contraception for all women and girls through educational and programmatic measures,<sup>7</sup> and has underscored the need to accommodate vulnerable population groups.<sup>8</sup> The ability of women to control their fertility lies at the core of reproductive rights and this cannot be achieved without creating universal access to a complete range of family planning methods and services. Despite major advances in the public health system and the increase in contraceptive use noted in the government's report to the Committee,<sup>9</sup> a significant number of women in Malaysia do not have access to comprehensive family planning information and services.

The Malaysia National Population and Family Development Board conducted a Family Survey in 1994 which found that only 54.5% of married women aged 15-49 years used contraception and out of these women, less than two-thirds used modern methods.<sup>10</sup> Among those who did not use contraceptives, almost 60% had never practiced contraception while the remainder had discontinued its use.<sup>11</sup> It is important to note that while the 1994 survey seems to be the most recent study containing data on contraceptive prevalence in Malaysia,

more recently published reports by UN agencies estimate that only 30% of married women aged 15-49 use modern methods of contraception.<sup>12</sup> These studies show that Malaysia is falling behind other countries in the region such as Indonesia, Thailand and Vietnam in terms of modern contraceptive use.

It is important to note that the government's leading data on contraceptive prevalence exists only with regard to married women in the age group of 15-49. Considering that data constitutes the backbone of official policies and programs, this gap reveals the limited focus of the government's current approach and points to an inherent bias. The lack of data on the contraceptive behavior of unmarried women (single, divorced and widowed) indicates a failure on the part of the government to even consider their specific needs and suggests that women in Malaysia currently experience discrimination in access to family planning services and information based on their marital status.

The low use of modern methods of contraception is more pronounced in the Muslim community and is supported by statistical data gathered through the 1994 Malaysian Population and Family Survey which found that 22% of married Malay women aged 15-49 used a modern method, compared with 47% of Chinese women and 33% of Indian women respectively.<sup>13</sup> This trend may be explained by the belief prevalent in such communities that family planning is prohibited in Islam. There is also evidence of formal interference by the National Council for Islamic Affairs in family planning matters. For instance, in 1981, the Council issued a fatwa forbidding the sterilization of men and women on the premise that any form of contraception is *haram* (illegal).<sup>14</sup> This was issued despite the fact that there is no statute that restricts or bans contraceptive use in Malaysia and sterilization, particularly tubal-ligation, is in fact widely used, after the pill and condoms.<sup>15</sup>

Private sector regulation also stifles the spread of information on the availability of various types of contraception. Promotions and advertisements pertaining to contraceptives by the private sector are prohibited and information can only be provided by the Federal government, local authorities, public hospitals or the minister of health.<sup>16</sup>

While the overall contraceptive prevalence rate is relatively low, it is pertinent to note that the burden of family planning in Malaysia clearly falls on women. This has been noted by the government in its report to the Committee.<sup>17</sup> Evidence of this trend is established by statistics that show that in 2000, the pill was most preferred method among new users at 74 per cent followed by the condom at a mere 9 per cent.<sup>18</sup> Furthermore, with regard to sterilization, the same study shows that tubal-ligation (female sterilization) is far more common than vasectomy (male sterilization) which had virtually no takers among new users of family planning in 2000.<sup>19</sup>

## **B. Unsafe Abortion**

In past concluding observations, the Committee has raised general concerns about the lack of accessibility of safe abortion.<sup>20</sup> The Committee has also consistently made the point that lack of access to contraceptive methods and family planning services, as well as restrictive abortion laws, tend to coincide with the prevalence of unsafe abortions which in turn contributes to high rates of maternal mortality.<sup>21</sup>

The current law concerning abortion in Malaysia criminalizes the procedure, permitting it in limited circumstances and upon the fulfillment of specific authorization requirements. The law in Malaysia authorizes women to have an abortion only under the following conditions:

to save a woman's life; to preserve physical health; or, to preserve mental health.<sup>22</sup> While there is a dearth of comprehensive official data on the incidence and impact of unsafe abortion, it is important to note that the government has noted in its report to the Committee that "many illegal abortions take place."<sup>23</sup> It is both public and professional opinion (including the opinion of the Malaysia Medical Association) that many women practice termination of their pregnancies, resulting in unsafe abortion.<sup>24</sup> The continuing prohibition of abortion on the universally recognized grounds of rape, incest, and fetal impairment unnecessarily puts women's health and lives at risk and is inherently discriminatory.<sup>25</sup> Furthermore, at least one study indicates that complications from unsafe abortions are particularly widespread, in rural areas.<sup>26</sup> An unofficial report from the 1980s cited in a publication by the United Nations Population Fund estimated that for every three live births, one will end in abortion.<sup>27</sup> The Ministry of Health's Information and Documentation System Unit reported 33,759 induced abortions, nine of which led to death in 2002.<sup>28</sup> These deaths are a matter of concern considering that abortion is a safe medical procedure when performed by skilled providers in appropriate settings.

### **C. Barriers to Abortion where Permitted by Law**

The Committee has consistently criticized restrictive abortion laws,<sup>29</sup> often framing such laws as resulting in violations of the rights to life and health.<sup>30</sup> It has asked States Parties to review legislation making abortion illegal<sup>31</sup> and has praised States Parties for amending restrictive laws.<sup>32</sup>

The government has noted in its report to the Committee, the introduction of a therapeutic exception to the criminal abortion law in 1989, which permits abortion if the pregnancy endangers the physical or mental health of the woman.<sup>33</sup> Due to the lack of data and regular monitoring of the implementation of the existing abortion provisions, it is unknown how effective the application of the legal health exception has been in practice, although, since the 1989 health amendment, abortion ratios have reportedly doubled, especially in urban areas.<sup>34</sup>

The general criminalization of abortion has caused much sensitivity around the issue causing society to view the performance of the procedure as a criminal offense and discouraging women from seeking the service. The government in its report has stated that it "requires that medical practitioners performing abortions – whether legal or not – must treat the patient humanely and do everything possible to save her life or restore her health, just as for any other medical condition."<sup>35</sup> It is unclear how this policy has been implemented in practice and whether it has in fact reduced the stigma of criminal abortion and made safe abortion more accessible. According to local groups, religious conservatism has also prevented many women, especially low-income women, from obtaining legal abortions.<sup>36</sup> Studies show that many of the more devout women resort to traditional methods or continue through with their pregnancies at the risk of endangering their own health and lives.<sup>37</sup> According to a study conducted by the Asia-Pacific Resource and & Research Center for Women (ARROW), many Muslim Malay women expressed views about abortion that reflected a sense of moral ambiguity and lack of clarity about the law.<sup>38</sup>

### **D. Maternal Mortality**

The Committee has given considerable attention to the issue of maternal mortality due to unsafe abortion in numerous sets of concluding observations.<sup>39</sup> The Committee has explicitly framed this issue as a violation of women's right to life.<sup>40</sup>

The Malaysian government has made laudable progress towards decreasing maternal mortality and promoting safe motherhood. The maternal death ratio has fallen dramatically from 141 deaths per 100,000 live births in 1970 to 30 deaths per 100,000 live births in 2002.<sup>41</sup> As noted by the government in its report to the Committee, 95 per cent of all deliveries are conducted by skilled attendants.<sup>42</sup> The government has demonstrated high levels of political will in undertaking strategies to reduce maternal mortality including exemplary measures such as establishing a special confidential enquiry mechanism for investigating and determining the causes of maternal death.

Notwithstanding the Malaysian government's success in this critical area, further attention is required to address the disproportionate occurrence of maternal deaths among vulnerable groups of women such as rural women and migrant workers. Studies show that while the overall rate of maternal deaths initially decreased between 1970 and 1996, in 1997, the number of maternal deaths began to increase again.<sup>43</sup> This increase in numbers has been attributed by unofficial sources to the maternal deaths among migrant workers who work in the informal sector without health benefits or adequate access to public health services.<sup>44</sup>

The government states in its report that "the issue of abortion is closely related to maternal mortality and morbidity".<sup>45</sup> This official recognition of the link between unsafe abortion and maternal mortality in Malaysia is a welcome step considering that at least one study in 1998 showed that out of 188 medically certified and inspected deaths, 94 were caused by direct obstetric causes, from among which almost a quarter were due to abortion that year alone.<sup>46</sup> Clearly, unsafe abortions contribute significantly to maternal deaths in Malaysia and it would appear that the decriminalization of abortion could potentially lead to an immediate reduction in maternal deaths.

## **2. Information and Education on Sexuality (Articles 10(h), 12)**

### **A. Adolescents Right to Information and Education on Sexuality**

The Committee has made sexual and reproductive health education a priority in its concluding observations and has repeatedly asked state parties to implement sexual education programs.<sup>47</sup> The Committee has linked sexual education to the prevention of HIV/AIDS,<sup>48</sup> unwanted pregnancies,<sup>49</sup> high rates of teenage pregnancies,<sup>50</sup> and abortion.<sup>51</sup>

Adolescents aged 10-19 years account for 20 per cent of Malaysia's total population.<sup>52</sup> However, there are very few studies on the status of adolescents' reproductive health in Malaysia. This is confirmed by the government's report which states that "data on adolescent health in Malaysia is not readily available".<sup>53</sup> In 2001, the government introduced the National Adolescent Policy which aims to promote the development of adolescents by ensuring that they take responsibility for their health and by empowering them with the knowledge and skills needed to practice healthy behaviors.<sup>54</sup> As of 2001, there were around 170 clinics offering health services to adolescents.<sup>55</sup> However, it is doubtful whether these clinics are actually having a positive impact on adolescent reproductive health considering that it is the government's operational policy not to provide contraceptives to unmarried adolescents.<sup>56</sup> It appears that these clinics function on the assumption that adolescents must not engage in sexual behavior and are promoting a policy of abstinence resulting in a major gap in service provision which in practice exposes adolescent girls to the risk of unplanned pregnancy and sexually transmissible infections including HIV/AIDS.

A national study on abortion conducted in 1999 revealed that among women covered by the study who sought an induced abortion, almost one half (48.6%) were age 24 or younger, and had been pregnant, on average, for 13 weeks—a stage at which the woman is at an especially high risk of infection and may suffer from a perforated uterus.<sup>57</sup> This data indicates that female adolescents are in fact at risk of experiencing unplanned pregnancies and, as a result of this, unsafe abortion. The failure of the government to address the reproductive health needs of adolescents in a non-biased and comprehensive manner, through its policies indicates an official double standard on the part of the government as a result of which the health and lives of young women are being compromised.

Furthermore, while adolescent sexuality education has been integrated into the school curriculum, there are also indications that adolescent reproductive health education in Malaysia is still in need of great improvement. Studies show that in practice, teachers have shied away from teaching family health education and do not possess the skills needed to deal with the sensitivity of sexuality issues.<sup>58</sup> Researchers have noted that in some cases, teachers completely neglect to teach the areas of sexual and reproductive health education.<sup>59</sup>

### **B. Vulnerability to HIV/AIDS and Sexually-Transmitted Infections (STIs)**

The Committee has persistently expressed deep concern about the spread of HIV/AIDS among women calling for the special attention of States Parties to this issue.<sup>60</sup>

In Malaysia, according to the Ministry of Health, during 2002 alone, the reported number of HIV infections among women increased by 70%, from 370 to 629 reported cases.<sup>59</sup> The same data suggests that mother-to-child transmission of HIV has also been steadily increasing.<sup>60</sup> Although, by gender, men account for the majority of HIV/AIDS cases, the rate of HIV infection among women increased from 1.2% of cases (nine) in 1990 to 9% (629) cases in 2002.<sup>61</sup> The government's report to the Committee notes that there are roughly 4,000 newly infected persons a year.<sup>62</sup> It recognizes that women are biologically more vulnerable to STDs and HIV infection and that many high-risk women are of a child-bearing age, susceptible to prenatal transmission.<sup>63</sup> However, it does not discuss in detail official measures being undertaken to specifically address the vulnerability of women and girls to infection and discrimination. This is of particular concern in light of studies that reveal that by occupation, the largest percentage of infected women are housewives (26.3%), followed by industrial workers (4.1%) and sex-workers (2.8%).<sup>64</sup> Furthermore, according to data from the Malaysia AIDS council (compiled by the Ministry of Health), HIV patients often do not seek treatment, despite government subsidies for medication, because they fear being ostracized by the community.<sup>65</sup>

## **3. Right to Freedom from Violence, Sexual Exploitation and Marital Rape (Articles 1, 3, 5, 6, 12, 15, 16)**

### **A. Domestic Violence**

The Committee has highlighted the standard of state responsibility for domestic violence in numerous concluding observations, advocating for the support and enforcement of legislation to prevent and punish acts of domestic violence.<sup>66</sup>

According to the National Economic Council of Malaysia, the number of reported general violent crimes against women significantly increased from 1990–1991.<sup>67</sup> One study

conducted by the Women's Aid Organization estimated that in 1990, 39% of Malaysian women above the age of 15 suffered from spousal abuse.<sup>68</sup> The report submitted to the Committee by the Malaysian government states that out of 2,462 cases of reported domestic violence in 2000, 98% of the victims were women.<sup>69</sup> The Domestic Violence Act was enacted by the government in 1994 to provide legal recourse for women suffering from domestic violence and offers protection to victims even while an investigation is pending.<sup>70</sup> However, the continuing prevalence of domestic violence against women has given rise to major concerns, especially among women's groups, about the government's failure to effectively implement its own law.<sup>71</sup> The act is limited in scope in a number of important respects. For instance, it does not recognize psychological, emotional or mental forms of abuse.<sup>72</sup> Furthermore, while it is applicable to Muslims and non-Muslims, its protections do not extend to foreign domestic workers.<sup>73</sup> Despite many promises, recommendations submitted to the government for amendments to the bill by NGO's and women's groups have not been reviewed by the government.<sup>74</sup>

## **B. Sexual Exploitation and Trafficking**

The Committee has repeatedly expressed deep concern about the failure of governments to combat trafficking in its concluding observations,<sup>75</sup> primarily in the context of sexual exploitation.<sup>76</sup>

The penal code in Malaysia has a strict provision which deals with crimes relating to prostitution, however, there are no comprehensive anti-trafficking laws. The government has noted in its report to the Committee that "trafficking in persons is not specifically criminalized in Malaysia, nevertheless, there are laws aimed at and used to combat trafficking in persons."<sup>77</sup> The Immigration Act, 1963,<sup>78</sup> Restricted Residence Act, 1933,<sup>79</sup> and the Internal Security Act, 1960<sup>80</sup> are frequently used to prosecute traffickers. A major drawback of this approach is that these laws tend to be used by the police to arrest or deport women who are victims of trafficking rather than to punish actual individual traffickers.<sup>81</sup> Women who have been trafficked are treated as illegal immigrants and are subject to harsh penalties, including deportation, imprisonment and fines.<sup>82</sup> NGO reports have noted that foreign women currently imprisoned in Malaysian jails for illegal immigration are probably victims of trafficking.<sup>83</sup>

The penal code and Domestic Violence Act contain provisions to protect sex workers against violence and there are some rehabilitation programs to help young girls rise out of this work. Yet, the government report states that negative societal attitudes towards sex workers make it hard for the government to prosecute perpetrators.<sup>84</sup> This cannot be accepted as a plausible excuse considering that trafficking usually involves a series of acts such as abduction, illegal confinement, and rape, which are generally considered crimes under existing penal laws. The failure of law enforcement agents to protect the rights of victims of trafficking only leads to their double victimization.

## **D. Sexual Violence: Rape, Martial Rape and Sexual Harassment**

The Committee has comprehensively addressed many different forms of sexual violence against women in past concluding observations.<sup>85</sup>

In 2002, the Royal Police department reported that 1,418 cases of rape were registered that year which translates into approximately 4 cases a day.<sup>86</sup> According to researchers, this figure can be multiplied by ten to estimate the actual amount of cases which go unreported.<sup>87</sup>

One major flaw in the existing law is that the definition of Rape outlined in the penal code only recognizes sexual intercourse involving vaginal penetration as amounting to rape.<sup>88</sup> If an object other than the penis is used the act is deemed to amount to “assault with attempt to outrage modesty” which carries a lighter punishment.<sup>89</sup> The code does not recognize aggravated forms of rape, such as gang rape, or the rape of a pregnant woman. Furthermore, evidentiary requirements make prosecutions for rape difficult. Although there is no statutory requirement that the evidence presented by the complainant in a rape case must be corroborated, it has evolved as a rule of practice.<sup>90</sup>

It is pertinent to note that the Committee has on previous occasions linked sexual violence and access to abortion, condemning the criminalization of abortion, even in the case of rape.<sup>91</sup> In light of this trend, it is important to take into account the potential impact of the criminalization of abortion by the government of Malaysia on victims of violence who may be confronted with unwanted pregnancies. This prohibition underscores the need to make emergency contraception a routine part of emergency medical care for victims of sexual violence.

While the Domestic Violence Act does offer some protection to victims of domestic violence, it does not offer protection to victims of marital rape. The act has to be read in conjunction with the penal code, which does not recognize marital rape as an offense. Consequently, Malaysian women are legally protected from domestic violence, but not from marital rape unless, for instance, the wife is living separately from her husband under a decree of judicial separation.<sup>92</sup>

Another issue of concern is sexual harassment for which there are no separate laws. Sexual harassment claims are dealt with under the provisions of the penal code and the burden of proof lies on the prosecuting party.<sup>93</sup> The Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace introduced by the Ministry of Human Resources in 1999<sup>94</sup> has no legal force and has been adopted by approximately only 1% of the 400,000 registered companies in the country.<sup>95</sup> The situation of women working in the informal sector is of additional concern because their rights are determined largely by individual employers under the terms of undue contracts. These contracts are negotiated with supply agents and memoranda entered into by the government of Malaysia with governments of the workers’ countries of origin and tend to vary in content and scope.

**We hope that the Committee will consider addressing the following questions to the government of Malaysia:**

1. What is the Malaysian government doing to improve access to family planning information and services, more specifically, access to modern methods of contraception for women, and to remove formal restrictions on public advertising which impede access to information? What is being done to address unequal access to family planning services and information based on grounds such as geographic location, marital status, age and nationality?
2. What steps are being taken by the government to reduce the number of deaths due to unsafe abortion and to make safe abortion more widely accessible? What measures have been undertaken to ensure the practical application of the legal health exception to abortion?
3. What steps are being taken by the government to investigate the higher incidence of maternal deaths among certain vulnerable groups of women?



4. What measures are being undertaken to implement existing policies on adolescent reproductive health to improve access to information and services, and to end discrimination against adolescents in access to family planning services on the basis of their age and marital status? What specific measures are being undertaken to improve the quality of sex education programs in schools?
5. What steps are being taken by the government to ensure access to information about treatment for HIV/AIDS? Are any special measures being undertaken to address the high proportion of infection among housewives and to address the needs of other vulnerable groups of women?
6. What steps are being taken by the government of Malaysia to prevent abuses against victims of trafficking by state actors on the pretext of enforcing the national's immigration laws?
7. What does the government propose to do to ensure the practical application of the Domestic Violence Act, and to ensure the provision of tangible remedies? How does the government plan to address additional forms of violence that have been identified as concerns by women's groups, such as marital rape, and sexual harassment of women in the formal and informal sector?

Finally, we have included the following supporting documentation for the Committee's reference: *Women of the World: Laws and Policies Affecting Their Reproductive Lives, East and Southeast Asia* (Center for Reproductive Rights. ed. 2005).

We appreciate the active interest that the Committee has taken in reproductive health and rights and the strong concluding observations and recommendations the Committee has issued to governments in the past, stressing the need for governments to take steps to ensure the realization of these rights. We hope that this information is useful during the Committee's review of Malaysia's compliance with the provisions contained in the Convention. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Very truly yours,

---

Melissa Upreti  
Legal Adviser for Asia  
Center for Reproductive Rights  
USA

<sup>1</sup> Committee on the Elimination of Discrimination against Women, Gen. Recommendation 24, *Women and Health*, art. 12, para. 1, U.N. Doc. A/54/38/ (Part I) (1999).

<sup>2</sup> *Id.* at para. 31(b), (c).

<sup>3</sup> *Consideration of reports submitted by States parties under article 18 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Combined initial and second periodic reports of States parties, Malaysia*, CEDAW Committee, para. 239, U.N. Doc. CEDAW/C/MYS/1-2 (2004).

<sup>4</sup> ASIAN-PACIFIC RESOURCE & RESEARCH CENTRE FOR WOMEN (ARROW), *MONITORING TEN YEARS OF ICPD IMPLEMENTATION, THE WAY FORWARD TO 2015, ASIAN COUNTRY REPORTS* 248 (2005).

<sup>5</sup> *Id.* at 246.

<sup>6</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *BRINGING RIGHTS TO BEAR: AN ANALYSIS OF THE WORK OF UN TREATY MONITORING BODIES ON REPRODUCTIVE AND SEXUAL RIGHTS* 123 (2002); This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. **Antigua and Barbuda**, 12/08/97, U.N. Doc. A/52/38/Re v.1, Part II, ¶ 258; **Bangladesh**, 12/08/97, U.N. Doc. A/52/38/Rev.1, Part II, ¶ 438; **Belize**, 01/07/99, U.N. Doc. A/54/38, ¶ 56; **Burkina Faso**, 31/01/2000, U.N. Doc. A/55/38, ¶ 274; **Colombia**, 04/02/99, U.N. Doc. A/54/38, ¶ 395; **Czech Republic**, 14/05/98, U.N. Doc. A/53/38, ¶ 197; **Democratic Republic of the Congo**, 01/02/2000, U.N. Doc. A/55/38, ¶ 227; **Greece**, 01/02/99, U.N. Doc. A/54/38, ¶ 207; **Guinea**, 31/07/2001, U.N. Doc. A/56/38, ¶ 128; **Guyana**, 31/05/95, U.N. Doc. A/50/38, ¶ 621; **Hungary**, 09/05/96, U.N. Doc. A/51/38, ¶ 254; **Ireland**, 01/07/99, U.N. Doc. A/54/38, ¶ 186; **Lithuania**, 16/06/2000, U.N. Doc. A/55/38, ¶ 158; **Mexico**, 14/05/98, U.N. Doc. A/53/38, ¶ 394; **Mongolia**, 02/02/2001, U.N. Doc. A/56/38, ¶ 273; **Morocco**, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶ 68; **Nicaragua**, 31/07/2001, U.N. Doc. A/56/38, ¶ 303; **Paraguay**, 09/05/96, U.N. Doc. A/51/38, ¶ 123; **Peru**, 08/07/98, U.N. Doc. A/53/38/Re v.1, ¶ 341; **Uzbekistan**, 02/02/2001, U.N. Doc. A/56/38, ¶ 186; **Venezuela**, 12/08/97, U.N. Doc. A/52/38/Re v.1, ¶ 236; **Vietnam**, 31/07/2001, U.N. Doc. A/56/38, ¶¶ 66–267; **Zimbabwe**, 14/05/98, U.N. Doc. A/53/38, ¶ 148.

<sup>7</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See e.g.*, **Antigua and Barbuda**, 12/08/97, U.N. Doc. A/52/38/Re v.1, Part II, ¶ 267; **Azerbaijan**, 14/05/98, U.N. Doc. A/53/38, ¶ 73; **Belarus**, 31/01/2000, U.N. Doc. A/55/38, ¶ 374; **Burkina Faso**, 31/01/2000, U.N. Doc. A/55/38, ¶¶ 275–276; **Burundi**, 02/02/2001, U.N. Doc. A/56/38, ¶ 62; **Cameroon**, 26/06/2000, U.N. Doc. A/55/38, ¶ 60; **China**, 03/02/99, U.N. Doc. A/54/38, ¶ 300; **Colombia**, 04/02/99, U.N. Doc. A/54/38, ¶ 396; **Czech Republic**, 14/05/98, U.N. Doc. A/53/38, ¶ 205; **Democratic Republic of the Congo**, 01/02/2000, U.N. Doc. A/55/38, ¶ 228; **Ethiopia**, 09/05/96, U.N. Doc. A/51/38, ¶ 160; **Georgia**, 01/07/99, U.N. Doc. A/54/38, ¶ 112; **Greece**, 01/02/99, U.N. Doc. A/54/38, ¶ 208; **Guinea**, 31/07/2001, U.N. Doc. A/56/38, ¶ 129; **Hungary**, 09/05/96, U.N. Doc. A/51/38, ¶ 260; **Israel**, 12/08/97, U.N. Doc. A/52/38/Re v.1, Part II, ¶ 181; **Kyrgyzstan**, 27/01/99, U.N. Doc. A/54/38, ¶ 137; **Lithuania**, 16/06/2000, U.N. Doc. A/55/38, ¶ 159; **Nepal**, 01/07/99, U.N. Doc. A/54/38, ¶ 148; **Nigeria**, 07/07/98, U.N. Doc. A/53/38/Rev.1, ¶ 171; **Paraguay**, 09/05/96, U.N. Doc. A/51/38, ¶ 131; **Peru**, 08/07/98, U.N. Doc. A/53/38/Re v.1, ¶ 342; **Philippines**, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶ 301; **Republic of Moldova**, 27/06/2000, U.N. Doc. A/55/38, ¶ 110; **Romania**, 23/06/2000, U.N. Doc. A/55/38, ¶ 315; **Saint Vincent and the Grenadines**, 12/08/97, U.N. Doc. A/52/38/Re v.1, ¶ 147; **Slovakia**, 30/06/98, U.N. Doc. A/53/38/Rev.1, ¶ 92; **Slovenia**, 12/08/97, U.N. Doc. A/52/38/Re v.1, ¶ 119; **Zimbabwe**, 14/05/98, U.N. Doc. A/53/38, ¶ 161.

<sup>8</sup> For example, the committee has focused on the family planning needs of poor women in Mexico and Peru; and women living in rural areas as in Paraguay and the Ukraine. CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See*, **Mexico**, 14/05/98, U.N. Doc. A/53/38, ¶ 394; **Peru**, 08/07/98, U.N. Doc. A/53/38/Re v.1, ¶ 341; **Paraguay**, 09/05/96, U.N. Doc. A/51/38, ¶ 123; **Ukraine**, 09/05/96, U.N. Doc. A/51/38, ¶ 287. Other examples include: **Bangladesh**, 12/08/97, U.N. Doc. A/52/38/Re v.1, Part II, ¶ 438; **Burkina Faso**, 31/01/2000, U.N. Doc. A/55/38, ¶ 274; **Colombia**, 04/02/99, U.N. Doc. A/54/38, ¶ 396; **Lithuania**, 16/06/2000, U.N. Doc. A/55/38, ¶ 159; **South Africa**, 30/06/98, U.N. Doc. A/53/38/Rev.1, ¶ 36; **Venezuela**, 12/08/97, U.N. Doc. A/52/38/Re v.1, ¶ 243.

<sup>9</sup> CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra*

---

note 3, para.274.

<sup>10</sup> National Population and Family Development Board, Population Profile Malaysia 84 fig.5.4.

<sup>11</sup> *Id.* at 89 fig.5.7. Reasons cited for discontinuation were planning for pregnancy (37.9%), side effects (26%), medical advice (7.6%), method failure (4.7%), husband's objections (2.4%) and others (21.4%). *Id.* 95.

<sup>12</sup> See United Nations Population Fund (UNFPA), The State of World Population 2005, at 108 (estimate for 2005).

<sup>13</sup> National Population and Family Development Board, Population Profile Malaysia 87 fig.5.5.

<sup>14</sup> Reasons given by the Council are "1) Sterilisation is *haram* (forbidden) because it makes the sterilised person forever incapable of continuing the lineage, i.e. the effect of sterilisation is permanent; 2) contraception to limit the number of offspring is *haram* (forbidden) unless under *harus* (permissible) individual circumstances. Contraception that is not permanent in nature is permissible when several conditions are met; 3) to space the children for reasons of health, education and family happiness, using other methods than (1) and (2) is *harus* (permissible)." Nik Noraini & Nik Badli Shah, *Islam, Reproductive Health and Women's Rights in Malaysia, in Islam, Reproductive Health and Women's Rights* 179 (Zainah Anwar & Rashidah Abdullah eds., 2000).

<sup>15</sup> Department of Statistics Malaysia, Social Statistics Bulletin Malaysia 2001, at 187 tbl.4.18 (2002) (figures pertain to methods chosen by new family planning acceptors in 2000, data source NPFDB).

<sup>16</sup> Medicines (Advertisement & Sale) Act 1956, No. 290, § 3(b) (1956) (Malay.), *amended* by Medicine (Advertisement & Sale) (Amendment) Act 1980, No. 778 (1983) (Malay.), <http://www.pharmacy.gov.my/html/legislations/medicines%20act.doc>. Advertisements include any notice, circular, report, commentary, pamphlet, label, wrapper or other document, and any announcement made orally or by any means of producing or transmitting light or sound. *Id.* § 2. Medicine Advertisement Board (MAB), Ministry of Health Malaysia, Guidelines on Medical Advertisements (For Products), § 4.1, [http://www.pharmacy.gov.my/html/MAB/advertisement\\_board\\_guidelines.htm#Guidelines%20on%20Medical%20Advertisements](http://www.pharmacy.gov.my/html/MAB/advertisement_board_guidelines.htm#Guidelines%20on%20Medical%20Advertisements) (last visited May 19, 2005).

<sup>17</sup> CEDAW, *Combined initial and second periodic reports of States parties: Malaysia, supra* note 3, para. 274.

<sup>18</sup> Department of Statistics Malaysia, *supra* note 15.

<sup>19</sup> *Id.* at 187 tbl.4.

<sup>20</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. See e.g. **Ireland**, 01/07/99, U.N. Doc. A/54/38, ¶ 185; **Mexico**, 14/05/98, U.N. Doc. A/53/38, ¶ 399; **Saint Vincent and the Grenadines**, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶ 148; **Tunisia**, 31/05/95, U.N. Doc. A/50/38, ¶ 246.

<sup>21</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. See e.g. **Antigua and Barbuda**, 12/08/97, U.N. Doc. A/52/38/Re v.1, Part II, ¶ 258; **Chile**, 09/07/99, U.N. Doc. A/54/38, ¶¶ 209, 228; **Georgia**, 01/07/99, U.N. Doc. A/54/38, ¶ 111; **Greece**, 01/02/99, U.N. Doc. A/54/38, ¶ 207; **Guyana**, 31/05/95, U.N. Doc. A/50/38, ¶ 621; **Hungary**, 09/05/96, U.N. Doc. A/51/38, ¶ 254; **Lithuania**, 16/06/2000, U.N. Doc. A/55/38, ¶ 158; **Mauritius**, 31/05/95, U.N. Doc. A/50/38, ¶ 196; **Mongolia**, 02/02/2001, U.N. Doc. A/56/38, ¶ 273; **Paraguay**, 09/05/96, U.N. Doc. A/51/38, ¶ 131; **Ukraine**, 09/05/96, U.N. Doc. A/51/38, ¶ 287; **Venezuela**, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶ 236.

<sup>22</sup> Penal Code, No. 574, § 312 (1997) (Malay.), *amended* by Penal Code (Amendment) Act, No. 727 (1989).

<sup>23</sup> CEDAW, *Combined initial and second periodic reports of States parties: Malaysia, supra* note 3, para. 253.

<sup>24</sup> Email Correspondence from Syirin Junisya, Programme Officer, Asian-Pacific Resource & Research Center for Women, to Rachel Gore, Legal Assistant, Center for Reproductive Rights (May 5, 2006, 5:00:00 EST) (on file with author).

<sup>25</sup> *Report of the Human Rights Committee*, Vol. 1, 52nd Sess., Supp. No. 1, ¶ 167, U.N. Doc. A/52/40 (1997).

<sup>26</sup> Department of Economic and Social Affairs, United Nations Population Division (UNFPA), *Abortion Policies: A Global Review* 119–120 (2002), <http://www.un.org/esa/population/publications/abortion/doc/malaysia.doc>.

<sup>27</sup> *Id.*

<sup>28</sup> Public Health Department, Ministry of Health Malaysia, <http://dph.gov.my/> (last visited May 16, 2005); *See also* Regional Office for the Western Pacific, World Health Organization (WHO), Malaysia: Country Health Information Profile 174 (2004), <http://www.wpro.who.int/NR/rdonlyres/8AD8E3AE-B205-4587-BA50-7AAED9C1FFC7/137/maa.pdf>.

<sup>29</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See e.g.*, **Andorra**, 31/07/2001, U.N. Doc. A/56/38, ¶ 48; **Antigua and Barbuda**, 12/08/97, U.N. Doc. A/52/38/Re v.1, Part II, ¶ 258; **Belize**, 01/07/99, U.N. Doc. A/54/38, ¶ 56; **Bolivia**, 31/05/95, U.N. Doc. A/50/38, ¶ 82; **Chile**, 09/07/99, U.N. Doc. A/54/38, ¶ 228; **Chile**, 31/05/95, U.N. Doc. A/50/38, ¶ 139; **Colombia**, 04/02/99, U.N. Doc. A/54/38, ¶ 393; **Cyprus**, 09/05/96, U.N. Doc. A/51/38, ¶ 55; **Dominican Republic**, 14/05/98, U.N. Doc. A/53/38, ¶ 337; **Ireland**, 01/07/99, U.N. Doc. A/54/38, ¶ 185; **Jordan**, 27/01/2000, U.N. Doc. A/55/38, ¶ 180; **Liechtenstein**, 01/02/99, U.N. Doc. A/54/38, ¶ 169; **Luxembourg**, 12/08/97, U.N. Doc. A/52/38/Rev.1, Part II, ¶ 210; **Mauritius**, 31/05/95, U.N. Doc. A/50/38, ¶ 196; **Namibia**, 12/08/97, U.N. Doc. A/52/38/Re v.1, Part II, ¶ 111; **Nepal**, 01/07/99, U.N. Doc. A/54/38, ¶¶ 139, 147; **Panama**, 02/07/98, U.N. Doc. A/55/38/Re v.1, ¶ 201; **Paraguay**, 09/05/96, U.N. Doc. A/51/38, ¶ 131; **Peru**, 08/07/98, U.N. Doc. A/53/38/Re v.1, ¶ 339; **Saint Vincent and the Grenadines**, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶ 140; **United Kingdom of Great Britain and Northern Ireland**, 01/07/99, U.N. Doc. A/55/38, ¶ 309; **Venezuela**, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶ 236; **Zimbabwe**, 14/05/98, U.N. Doc. A/53/38, ¶ 159.

<sup>30</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See e.g.*, **Belize**, 01/07/99, U.N. Doc. A/54/38, ¶ 56; **Chile**, 09/07/99, U.N. Doc. A/54/38, ¶ 228; **Colombia**, 04/02/99, U.N. Doc. A/54/38, ¶ 393; **Dominican Republic**, 14/05/98, U.N. Doc. A/53/38, ¶ 337; **Paraguay**, 09/05/96, U.N. Doc. A/51/38, ¶ 131.

<sup>31</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See e.g.*, **Andorra**, 31/07/2001, U.N. Doc. A/56/38, ¶ 48; **Argentina**, 23/07/97, U.N. Doc. A/52/38 Re v.1, Part II, ¶ 319; **Belize**, 01/07/99, U.N. Doc. A/54/38, ¶ 57; **Burkina Faso**, 31/01/2000, U.N. Doc. A/55/38, ¶ 276; **Cameroon**, 26/06/2000, U.N. Doc. A/55/38, ¶ 60; **Chile**, 09/07/99, U.N. Doc. A/54/38, ¶ 229; **Chile**, 31/05/95, U.N. Doc. A/50/38, ¶ 158; **Colombia**, 04/02/99, U.N. Doc. A/54/38, ¶ 394; **Dominican Republic**, 14/05/98, U.N. Doc. A/53/38, ¶ 349; **Ireland**, 01/07/99, U.N. Doc. A/54/38, ¶ 186; **Jordan**, 27/01/2000, U.N. Doc. A/55/38, ¶ 181; **Mauritius**, 31/05/95, U.N. Doc. A/50/38, ¶ 196; **Mexico**, 14/05/98, U.N. Doc. A/53/38, ¶ 408; **Namibia**, 12/08/97, U.N. Doc. A/52/38/Re v.1, Part II, ¶ 127; **Nepal**, 01/07/99, U.N. Doc. A/54/38, ¶¶ 139, 148; **Panama**, 02/07/98, U.N. Doc. A/55/38/Re v.1, ¶ 201; **Paraguay**, 09/05/96, U.N. Doc. A/51/38, ¶ 131; **Peru**, 08/07/98, U.N. Doc. A/53/38/Rev.1, ¶ 340; **Peru**, 31/05/95, U.N. Doc. A/50/38, ¶¶ 446, 447; **Saint Vincent and the Grenadines**, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶ 148; **United Kingdom of Great Britain and Northern Ireland**, 01/07/99, U.N. Doc. A/55/38, ¶ 310; **Zimbabwe**, 14/05/98, U.N. Doc. A/53/38, ¶ 159.

<sup>32</sup> *See e.g.*, **Belgium**, 09/05/96, U.N. Doc. A/51/38, ¶ 181.

<sup>33</sup> CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 3, para. 252.

<sup>34</sup> Department of Economic and Social Affairs, United Nations Population Division (UNFPA), *supra* note 26, at 119–120.

<sup>35</sup> CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 3, para. 253.

<sup>36</sup> Email Correspondence from Syirin Junisya, *Supra* note 24.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the

---

following countries as cited in this publication. *See e.g.*, **Argentina**, 23/07/97, U.N. Doc. A/52/38 Rev.1, Part II, ¶ 304; **Azerbaijan**, 14/05/98, U.N. Doc. A/53/38, ¶ 73; **Belize**, 01/07/99, U.N. Doc. A/54/38, ¶ 56; **Bolivia**, 31/05/95, U.N. Doc. A/50/38, ¶¶ 82–83; **Burundi**, 02/02/2001, U.N. Doc. A/56/38, ¶ 61; **Chile**, 31/05/95, U.N. Doc. A/50/38, ¶ 152; **Chile**, 09/07/99, U.N. Doc. A/54/38, ¶¶ 209, 228; **Colombia**, 04/02/99, U.N. Doc. A/54/38, ¶ 393; **Dominican Republic**, 14/05/98, U.N. Doc. A/53/38, ¶ 337; **Georgia**, 01/07/99, U.N. Doc. A/54/38, ¶ 111; **Kyrgyzstan**, 27/01/99, U.N. Doc. A/54/38, ¶ 136; **Madagascar**, 12/04/94, U.N. Doc. A/49/38, ¶ 244; **Mongolia**, 02/02/2001, U.N. Doc. A/56/38, ¶ 273; **Morocco**, 12/08/97, U.N. Doc. A/52/38/Re v.1, ¶ 68; **Myanmar**, 28/01/2000, U.N. Doc. A/55/38, ¶ 129; **Namibia**, 12/08/97, U.N. Doc. A/52/38/Re v.1, Part II, ¶ 111; **Nepal**, 01/07/99, U.N. Doc. A/54/38, ¶ 147; **Nicaragua**, 31/07/2001, U.N. Doc. A/56/38, ¶¶ 300–301; **Paraguay**, 09/05/96, U.N. Doc. A/51/38, ¶¶ 108, 131; **Peru**, 08/07/98, U.N. Doc. A/53/38, ¶¶ 300, 339; **Peru**, 31/05/95, U.N. Doc. A/50/38, ¶ 443; **Romania**, 23/06/2000, U.N. Doc. A/55/38, ¶ 314; **Venezuela**, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶ 236; **Zimbabwe**, 14/05/98, U.N. Doc. A/53/38, ¶ 159.

<sup>40</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See e.g.*, **Belize**, 01/07/99, U.N. Doc. A/54/38, ¶ 56; **Colombia**, 04/02/99, U.N. Doc. A/54/38, ¶ 393; **Dominican Republic**, 14/05/98, U.N. Doc. A/53/38, ¶ 337.

<sup>42</sup> National Library of Medicine, *Mortality rates decline in Malaysia* [Abstract], 200 Population Headliners, [http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list\\_uids=12284509&dopt=Abstract](http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=12284509&dopt=Abstract) (last visited June 13, 2005); Information and Documentation System Unit, *supra* note 168. (MMR of .03 per 1000 live births in 2002).

<sup>42</sup> CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 3, para. 271.

<sup>43</sup> ASIAN-PACIFIC RESOURCE & RESEARCH CENTRE FOR WOMEN (ARROW), *supra* note 4 at 245.

<sup>44</sup> *Id.*

<sup>45</sup> CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 3, para. 252.

<sup>46</sup> ASIAN-PACIFIC RESOURCE & RESEARCH CENTRE FOR WOMEN (ARROW), *supra* note 4, at 246.

<sup>47</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See e.g.*, **Antigua and Barbuda**, 12/08/97, U.N. Doc. A/52/38/Rev.1, Part II, ¶¶ 258, 267; **Belize**, 01/07/99, U.N. Doc. A/54/38, ¶¶ 56–57; **Burundi**, 02/02/2001, U.N. Doc. A/56/38, ¶ 62; **Chile**, 09/07/99, U.N. Doc. A/54/38, ¶ 227; **Colombia**, 31/05/95, U.N. Doc. A/50/38, ¶ 608; **Democratic Republic of the Congo**, 01/02/2000, U.N. Doc. A/55/38, ¶ 228; **Dominican Republic**, 14/05/98, U.N. Doc. A/53/38, ¶ 349; **Greece**, 01/02/99, U.N. Doc. A/55/38, ¶¶ 207–208; **Hungary**, 09/05/96, U.N. Doc. A/51/38, ¶ 260; **Jamaica**, 02/02/2001, U.N. Doc. A/56/38, ¶ 224; **Kazakhstan**, 02/02/2001, U.N. Doc. A/56/38, ¶ 106; **Lithuania**, 16/06/2000, U.N. Doc. A/55/38, ¶ 159; **Mongolia**, 02/02/2001, U.N. Doc. A/56/38, ¶ 274; **Nepal**, 01/07/99, U.N. Doc. A/54/38, ¶ 148; **Nicaragua**, 31/07/2001, U.N. Doc. A/56/38, ¶ 303; **Peru**, 08/07/98, U.N. Doc. A/53/38, ¶ 342; **Republic of Moldova**, 27/06/2000, U.N. Doc. A/55/38, ¶ 110; **Romania**, 23/06/2000, U.N. Doc. A/55/38, ¶ 315; **Saint Vincent and the Grenadines**, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶ 147; **Slovakia**, 30/06/98, U.N. Doc. A/53/38/Re v.1, ¶ 92; **Slovenia**, 12/08/97, U.N. Doc. A/52/38/Re v.1, ¶ 119; **Spain**, 01/07/99, U.N. Doc. A/54/38, ¶ 266; **Uganda**, 31/05/95, U.N. Doc. A/50/38, ¶ 338; **United Kingdom of Great Britain and Northern Ireland**, 01/07/99, U.N. Doc. A/54/38, ¶¶ 309–310; **Uzbekistan**, 02/02/2001, U.N. Doc. A/56/38, ¶¶ 185–186; **Vietnam**, 31/07/2001, U.N. Doc. A/56/38, ¶¶ 266–267; **Zimbabwe**, 14/05/98, U.N. Doc. A/53/38, ¶¶ 160–161.

<sup>48</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See e.g.*, **Dominican Republic**, 14/05/98, U.N. Doc. A/53/38, ¶ 349; **Uganda**, 31/05/95, U.N. Doc. A/50/38, ¶ 338.

<sup>49</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the

---

following countries as cited in this publication. *See e.g.*, **Belize**, 01/07/99, U.N. Doc. A/54/38, ¶ 56; **Nepal**, 01/07/99, U.N. Doc. A/54/38, ¶ 148.

<sup>50</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See e.g.*, **Belize**, 01/07/99, U.N. Doc. A/54/38, ¶¶ 56–57; **Chile**, 09/07/99, U.N. Doc. A/54/38, ¶¶ 226–227; **Greece**, 01/02/99, U.N. Doc. A/55/38, ¶¶ 207–208; **Saint Vincent and the Grenadines**, 12/08/97, U.N. Doc. A/52/38/Re v.1, ¶ 147; **United Kingdom of Great Britain and Northern Ireland**, 01/07/99, U.N. Doc. A/54/38, ¶¶ 309–310.

<sup>51</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See e.g.*, **Belize**, 01/07/99, U.N. Doc. A/54/38, ¶¶ 56–57; **Burundi**, 02/02/2001, U.N. Doc. A/56/38, ¶ 62; **Greece**, 01/02/99, U.N. Doc. A/55/38, ¶¶ 207–208; **Slovakia**, 30/06/98, U.N. Doc. A/53/38/Re v.1, ¶ 92; **Slovenia**, 12/08/97, U.N. Doc. A/52/38/Re v.1, ¶ 119; **Spain**, 01/07/99, U.N. Doc. A/54/38, ¶ 266.

<sup>52</sup> *See* Department Of Statistics Malaysia, Yearbook Of Statistics Malaysia 2002, 39 tbl.3.9 (2002) (mid-year estimates of population; data calculated by dividing adolescent population figures by total population).

<sup>53</sup> CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 3, para. 263.

<sup>54</sup> MINISTRY OF HEALTH MALAYSIA, NATIONAL ADOLESCENT HEALTH POLICY 10 (2001). The policy defines adolescents as the population between the ages of 10–19 years. *Id.*

<sup>55</sup> NATIONAL POPULATION AND FAMILY DEVELOPMENT BOARD (NPFDB), MINISTRY OF WOMEN, FAMILY AND COMMUNITY DEVELOPMENT, ANNUAL REPORT 2001, 22 TBL.2.7.3 (2002). NPFDB, MINISTRY OF WOMEN, FAMILY AND COMMUNITY DEVELOPMENT, HISTORY, at <http://www.lppkn.gov.my/History.htm> (last visited May 18, 2005).

<sup>56</sup> Communication with Syrin Junisya & Rashidah Abdullah, Asian-Pacific Resource & Research Centre for Women (ARROW), *Women of the World: Laws and Policies Affecting Their Reproductive Lives- Malaysia (draft)* 2–3 (June 13, 2004) (on file with the Center for Reproductive Rights).

<sup>57</sup> *Id.*

<sup>58</sup> CENTER FOR REPRODUCTIVE RIGHTS & ASIAN-PACIFIC RESOURCE CENTER FOR WOMEN, WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES, EAST AND SOUTHEAST ASIA, 107 (2005) [hereinafter WOMEN OF THE WORLD].

<sup>59</sup> *Id.* at 6.

<sup>60</sup> Committee on the Elimination of Discrimination against Women, Gen. Recommendation 15, *Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)*, art. 12, para. 1, U.N. Doc. A/54/38/ (Part I) (1999)

<sup>59</sup> MINISTRY OF HEALTH, HIV/AIDS UPDATE: 2002, at 1 (Email from Dr. Abdul Rasid Bin Kasri, Principle Assistant Director, Disease Control Division, Ministry of Health, to Syrin Junisya, Program Officer, Asian-Pacific Resource and Research Center for Women (ARROW) (May 31, 2003, 11:48, on file with Center for Reproductive Rights).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 8.

<sup>62</sup> CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 3, para. 255-258.

<sup>63</sup> *Id.* para. 258.

<sup>64</sup> WOMEN OF THE WORLD, *supra* note 57 at 97.

<sup>65</sup> Email Correspondence from Syrin Junisya, *Supra* note 24.

<sup>66</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. *See e.g.*, **Algeria**, 27/01/99, U.N. Doc. A/54/38, ¶ 79; **Bolivia**, 31/05/95, U.N. Doc. A/50/38, ¶ 99; **Burkina Faso**, 31/01/2000, U.N. Doc. A/55/38, ¶ 271; **Cameroon**, 26/06/2000, U.N. Doc. A/55/38, ¶ 50; **Colombia**, 04/02/99, U.N. Doc. A/54/38, ¶¶ 373–374; **Egypt**, 02/02/2001, U.N. Doc. A/56/38, ¶ 345; **Germany**, 02/02/2000, U.N. Doc. A/55/38, ¶ 320; **Guinea**, 31/07/2001, U.N. Doc. A/56/38, ¶ 135; **Guyana**, 31/07/2001, U.N. Doc. A/56/38, ¶ 173; **India**,

01/02/2000, U.N. Doc. A/55/38, ¶ 69; **Jamaica**, 02/02/2001, U.N. Doc. A/56/38, ¶ 226; **Kazakhstan**, 02/02/2001, U.N. Doc. A/56/38, ¶ 96; **Lithuania**, 16/06/2000, U.N. Doc. A/55/38, ¶ 151; **Luxembourg**, 12/08/97, U.N. Doc. A/52/38/Rev.1, Part II, ¶ 207; **Luxembourg**, 21/01/2000, U.N. Doc. A/55/38, ¶ 411; **Maldives**, 02/02/2001, U.N. Doc. A/56/38, ¶ 138; **Mongolia**, 02/02/2001, U.N. Doc. A/56/38, ¶ 262; **Namibia**, 12/08/97, U.N. Doc. A/52/38/Rev.1, Part II, ¶ 120; **Nicaragua**, 31/07/2001, U.N. Doc. A/56/38, ¶¶ 308–309; **Republic of Moldova**, 27/06/2000, U.N. Doc. A/55/38, ¶ 102; **Romania**, 23/06/2000, U.N. Doc. A/55/38, ¶¶ 300, 306–307; **Slovakia**, 30/06/98, U.N. Doc. A/53/38/Rev.1, ¶ 80; **Spain**, 01/07/99, U.N. Doc. A/54/38, ¶ 264; **Thailand**, 02/02/99, U.N. Doc. A/54/38, ¶ 243; **Turkey**, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶ 194; **United Kingdom of Great Britain and Northern Ireland**, 01/07/99, U.N. Doc. A/54/38, ¶ 311; **Uzbekistan**, 02/02/2001, U.N. Doc. A/56/38, ¶ 177; **Vietnam**, 31/07/2001, U.N. Doc. A/56/38, ¶ 259.

<sup>67</sup> ASIAN-PACIFIC RESOURCE & RESEARCH CENTRE FOR WOMEN (ARROW), *supra* note 4 at 243.

<sup>68</sup> *Id.* at 244.

<sup>69</sup> CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 3, para. 103.

<sup>70</sup> Domestic Violence Act of 1994, Part 2 (1994) available at [http://www.wccpenang.org/dva\\_act\\_ii.htm](http://www.wccpenang.org/dva_act_ii.htm)

<sup>71</sup> Asian-Pacific Resource & Research Centre for Women (ARROW), *supra* note 4 at 244.

<sup>72</sup> For a comprehensive exposition on the limitations of the Domestic Violence Act, see Memorandum prepared by the Women's Centre For Change, Penang at [http://www.wccpenang.org/s\\_legal\\_00.htm](http://www.wccpenang.org/s_legal_00.htm) (last visited June 10, 2005).

<sup>73</sup> An analysis of media coverage of foreign domestic worker abuse has revealed that abuse of foreign domestic workers is a recurring phenomenon in Malaysian society. WOMEN'S AID ORGANISATION, WAO RESEARCH AND ADVOCACY, FOREIGN DOMESTIC WORKER ABUSE: THE GROWING PROBLEM OF FOREIGN DOMESTIC WORKER ABUSE IN MALAYSIA, <http://www.wao.org.my/research/fdw.htm> (last visited June 10, 2005).

<sup>74</sup> ONLINE WOMEN IN POLITICS, WOMEN'S HUMAN RIGHTS SITUATION IN MALAYSIA 2, <http://www.onlinewomeninpolitics.org/womensit/mly.pdf> (last visited June 10, 2005).

<sup>75</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. See e.g. **Austria**, 15/06/00, U.N. Doc. A/55/38, ¶¶ 228, 239; **Azerbaijan**, 14/05/98, U.N. Doc. A/53/38, ¶ 74; **Bangladesh**, 12/08/97, U.N. Doc. A/52/38/Rev.1, Part II, ¶ 459; **Belarus**, 31/01/2000, U.N. Doc. A/55/38, ¶ 349, 371–372; **Bulgaria**, 14/05/98, U.N. Doc. A/53/38, ¶¶ 243, 256; **China**, 03/02/99, U.N. Doc. A/54/38, ¶¶ 290–291; **China—Hong Kong Special Administrative Region**, 03/02/99, U.N. Doc. A/54/38, ¶¶ 299(c), 326; **Cyprus**, 09/05/96, U.N. Doc. A/51/38, ¶¶ 53, 61; **Denmark**, 12/08/97, A/52/38/Rev.1, ¶ 269; **Dominican Republic**, 14/15/98, U.N. Doc. A/53/38, ¶¶ 333, 346; **Finland**, 02/02/01, U.N. Doc. A/56/38, ¶¶ 303–304; **Georgia**, 01/07/99, U.N. Doc. A/54/38, ¶¶ 101–102; **Germany**, 02/02/00, U.N. Doc. A/55/38, ¶¶ 321–322; **Greece**, 01/02/99, U.N. Doc. A/54/38, ¶¶ 197–198; **India**, 01/02/00, U.N. Doc. A/55/38, ¶¶ 62, 76–77; **Indonesia**, 14/05/98, U.N. Doc. A/53/38, ¶¶ 296, 300, 310; **Kazakhstan**, 02/02/01, U.N. Doc. A/56/38, ¶¶ 97–98; **Kyrgyzstan**, 27/01/99, U.N. Doc. A/54/38, ¶¶ 129–130; **Lithuania**, 16/06/00, U.N. Doc. A/55/38, ¶¶ 152–153; **Mauritius**, 03/05/95, U.N. Doc. A/50/38, ¶ 209; **Mexico**, 14/05/98, U.N. Doc. A/53/38, ¶ 395; **Mongolia**, 02/02/01, U.N. Doc. A/56/38, ¶¶ 265–266; **Myanmar**, 28/01/00, U.N. Doc. A/55/38, ¶¶ 119–120, 121; **Nepal**, 01/07/99, U.N. Doc. A/54/38, ¶¶ 149–150; **Netherlands**, 31/07/01, U.N. Doc. A/56/38, Part II, ¶¶ 198, 211–212; **Nicaragua**, 31/07/01, U.N. Doc. A/56/38, Part II, ¶¶ 314–315; **Norway**, 31/05/95, U.N. Doc. A/50/38, ¶ 494; **Philippines**, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶¶ 292, 299; **Republic of Moldova**, 27/06/00, U.N. Doc. A/55/38, ¶¶ 103–104; **Romania**, 23/06/00, U.N. Doc. A/55/38, ¶¶ 300, 308–309; **Singapore**, 31/07/01, U.N. Doc. A/56/38, Part II, ¶¶ 90–91; **Slovakia**, 30/06/98, U.N. Doc. A/53/38, ¶¶ 81–82; **Sweden**, 31/07/01, U.N. Doc. A/56/38, Part II, ¶¶ 354–355; **Thailand**, 02/02/99, U.N. Doc. A/54/38, ¶¶ 236–238; **United Republic of Tanzania**, 06/07/98, A/53/38, ¶ 240; **Uzbekistan**, 31/07/01, U.N. Doc. A/56/38, Part II, ¶¶ 178–179; **Vietnam**, 31/07/01, U.N. Doc. A/56/38, Part II, ¶¶ 260–261.

<sup>76</sup> See Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, Human Rights Commission, 56th Sess., Agenda Item 12(a), ¶ 13, U.N. Doc.E/CN.4/2000/68 (2000).

<sup>77</sup> CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra*

---

note 3, para. 105.

<sup>78</sup> Immigration Act 1959/63, No. 155. (1963) (Malay.).

<sup>79</sup> Restricted Residence Act 1933, No. 377, § 2 (1933) (Malay.). If the Minister, on the basis of written information and an inquiry, is satisfied that reasonable grounds exist for it, the Minister can issue an order directing a person to reside within a specified area for a fixed term. Under § 2A, the person may also be subjected to police supervision for up to five years.

<sup>80</sup> Internal Security Act 1960,

<sup>81</sup> HUMAN RIGHTS WATCH, HUMAN RIGHTS NEWS, MALAYSIA: MASS EXPULSION PUTS MIGRANTS AT RISK (2004), <http://hrw.org/english/docs/2004/11/19/malays9704.htm> (Nov. 23, 2004).

<sup>82</sup> Immigration (Amendment) Act 2002, No. 1154 (2002) (Malay.).

<sup>83</sup> *Id.*

<sup>84</sup> CEDAW, *Combined initial and second periodic reports of States parties: Malaysia, supra* note 3, para. 108.

<sup>85</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following country as cited in this publication. *See e.g., Vietnam*, 31/07/2001, U.N. Doc. A/56/38, ¶¶ 258–259.

<sup>86</sup> ASIAN-PACIFIC RESOURCE & RESEARCH CENTRE FOR WOMEN (ARROW), *supra* note 4 at 243.

<sup>87</sup> *Id.*

<sup>88</sup> Penal Code, No. 574, § 374. This offence carries a maximum sentence of ten years imprisonment, fines, or whipping or any combination of two such punishments. *Id.*

<sup>89</sup> *Id.* The narrow definition of rape under the Penal Code does not encompass other forms of acts of violation such as forced cunnilingus, fellatio and anal penetration. In such cases, the unnatural offences under Sections 377, 377A, 377B, 377C, and 377D of the Penal Code will be applicable.

<sup>90</sup> WOMEN'S CRISIS CENTRE, PENANG, SHAME, SECRECY AND SILENCE: STUDY OF RAPE IN PENANG 104 (Rohana Ariffin ed., 1997).

<sup>91</sup> CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO PROGRAMME OF REPRODUCTIVE AND SEXUAL HEALTH LAW, *supra* note 6. This is supported by the Committee's Concluding Observations to the following country as cited in this publication. *See e.g. Colombia*, 04/02/99, U.N. Doc. A/54/38, ¶ 393; *Jordan*, 27/01/2000, U.N. Doc. A/55/38, ¶¶ 180–181; *Myanmar*, 28/01/2000, U.N. Doc. A/55/38, ¶ 129; *Ne pal*, 01/07/99, U.N. Doc. A/54/38, ¶ 147; *Panama*, 02/07/98, U.N. Doc. A/53/38/Re v.1, ¶ 201; *Ve ne zue la*, 12/08/97, U.N. Doc. A/52/38/Re v.1, ¶ 236.

<sup>92</sup> Penal Code, No. 574, § 375, Exceptions 1–2 (1997) (Malay.).

<sup>93</sup> *See* Forensic Medicine for Medical Students, Burden of Proof,

[http://www.forensicmed.co.uk/burden\\_of\\_proof.htm](http://www.forensicmed.co.uk/burden_of_proof.htm) (last visited June 14, 2005). The meaning of beyond reasonable doubt was discussed in *Miller v. Minister of Pensions* (1947) 2 All ER 372. *Id.*

<sup>94</sup> MINISTRY OF HUMAN RESOURCES, CODE OF PRACTICE ON THE PREVENTION AND ERADICATION OF SEXUAL HARASSMENT IN THE WORKPLACE (1999).

<sup>95</sup> Zarizana Abdul Aziz & Cecelia Ng, *Combating Sexual Harassment: The Way Forward* (2001) (presented at 11th Malaysian Law Conference, Nov. 8–10, 2001, Kuala Lumpur), [http://www.wccpenang.org/r\\_sex\\_h\\_05a.htm](http://www.wccpenang.org/r_sex_h_05a.htm).