

**VI. PLENARY 5: HUMAN RIGHTS OF WOMEN AND CHILDREN
17 May 2006, 1415 PM-1600 PM, Ball room A, Hilton**

**CHAIRPERSON: THE RT. HON. JUSTICE TAN SRI DATO' SITI NORMA
BINTI YAAKOB, CHIEF JUDGE OF HIGH COURT OF MALAYSIA**

REPORT OF THE CHAIRPERSON

ISSUES DISCUSSED AT PLENARY SESSION

- Violence against women and children should be eliminated.
- Reproductive and sexual health and rights include the rights of women to decide freely and responsibly on the number, spacing and timing of the children, the right of access to health care services, the right to attain the highest standard of reproductive and sexual health and the right of all to make decisions concerning reproduction. Every woman has the right to life during the process of reproduction and the right to safe pregnancy and delivery.
- Cultural identity of children to be valued and preserved.
- Equality of women in terms of rights to suffrage, education and general consensus on rights within the instruments of human rights which are not repugnant to Islam. Such rights need to be addressed and implemented.

PERTINENT POINTS/COMMENTS/SUGGESTIONS

- Maternal mortality remains high and prevalence of family planning remains low in Muslim countries. Education and awareness are the most important aspects of sexual and reproductive health including sex education for young persons to prevent unwanted pregnancies, HIV and AIDS and other adverse outcomes. Care and support for marginalized groups need to be addressed.
- Right to take part in cultural activity and respect for cultural diversity.
- One aspect on the issue of maintenance (Nafaqah) during the marriage relating to the joint responsibility of both spouses was discussed. It was suggested that under certain circumstances such as in the event of husband's illness or any form of incapacity, the wife could maintain him for that period of incapacity only.
- It was suggested that all principles enunciated under the Convention on Elimination of Discrimination Against women (CEDAW) be adopted and implemented but there was no general consensus on this.

CONCLUSIONS/RECOMMENDATIONS

- States should enact and strictly enforce laws to prohibit all forms of violence against women and children including honour killings.
- Policies and programmes with adequate resources need to be in place for comprehensive reproductive and sexual health care and services to be made available to all persons especially to women, children, adolescents and young persons. There should be more dialogues between the governments, NGO's and Muslim Clerics on

reproductive and sexual health and rights issues.

- Establishing and strengthening measures through national legislation, policies and active plans to fulfill the well being of children and to protect their rights irrespective of their cultural identities.
- As the equality of rights of women is a major concern in Islam, the equal rights for women in all fields, existing in the human rights instruments must be implemented, as long as they are not opposed to Islam.

INTRODUCTION¹

1. The Session began with an introduction to the topic by the Chairperson. This was followed by presentations on the following:

- (a) **"Human Rights of Women and Children" by Madam Suad Bint Mohammed Al-Lamki, Ministry of Legal Affairs, Sultanate of Oman;**
- (b) **"Islam in the context of the Contentious Politics of Women's Rights in Contemporary Middle Eastern and North American Societies" by Dr. Ann Elizabeth Mayer, University of Pennsylvania, USA;**
- (c) **"Towards Harmonisation of the International Human Rights of Women in Malaysia" by Dr. Zaleha Kamaruddin; and**
- (d) **A presentation by Imam Feisal Abdul Rauf, Founder and CEO of the American Society for Muslim Advancement, New York, USA**

(a) Madam Suad Bint Mohammed Al-Lamki, Ministry of Legal Affairs, Sultanate of Oman: Human Rights of Women and Children.

2. Madam Suad's paper outlined the rights of women and children in the context of Islam. She introduced her paper by stating that suppression of women and neglect and killing of children had been in practice all over the world from time immemorial. With the advent of Islam the status of a woman was raised and the rights of the child spelt out. She proceeded to give an overview of the status and rights of women as defined in the primary sources of Islam.

3. Among the points highlighted in the speech were as follows :

a) Islam gave women, civil, social, economic and political rights never previously given to a woman. In discussing women's rights in Islam, she divided her paper into four sections as follows:

- 1.Right of women in human spiritual aspect;
- 2.Right of women in economic aspect;
- 3.Right of women in the social aspect; and
- 4.Right of women in the legal and political aspect.

¹ This summary is based on the report prepared by the Rapporteurs of the MIEHRI Secretariat

1. Human Spiritual Aspect

5. Madam Suad highlighted verses from the Qu'ran which reflects the equal status of men and women. In Islam, the Muslim woman has an independent personality, equal to man in responsibilities and religious duties.

2. Economic Aspect

6. Women in Islam has the right to conduct dealings on her own behalf, she has complete control of her property and she has the right to enter into contract. In terms of financial security, a woman has guaranteed support in terms of maintenance by her protector, the daughter by her father, wife by her husband, mother by her son and sister by her brother.

7. A man's share in inheritance is twice the share of a woman as the man is financially responsible for their female dependants. A woman has the right to employment except in relation to headship of State, which is controversial, and leading prayers in a mixed congregation, of both genders. The act of leading prayers of mixed congregation is not suitable to be taken up by a woman due to the nature of performance of such Ibadah.

3. Social Aspect

8. In Islam, right to life is guaranteed. The Holy Qur'an prohibits killing of a child, for whatever reason, even an unborn fetus has a right to life. A child is guaranteed the right to education. In marriage and divorce, Islam recognises that marriage is based on mutual peace, love and compassion. A woman has the right to accept and reject marriage proposals. Consent of a woman is a prerequisite for a marriage to be valid.

9. The role of a husband and a wife in a marriage is based on the principle of mutuality and complementarity of husband and wife (*qawwamah*). The husband is responsible for maintenance, protection and overall leadership of the family within the framework of consultation with the wife.

10. Islam outlawed the inheritance of women from a deceased father to step-son. In terms of divorce, both men and women are given the right to dissolve the marriage. A woman has access to apply for divorce or dissolve marriage if this is so stipulated in her marital contract.

11. In relation to custody, the custody of young children below the age of seven is primarily given to the mother. However, the paramount consideration is always what is the best interest of the child.

12. In terms of polygamy, Islam did not outlaw polygamy, instead it regulated and restricted the practice. The man has an option to remain monogamous, the existing wife

has the right to have a stipulation in the marriage agreement that her husband would remain monogamous and the prospective bride has the right to know that the man who proposed is married and the right to reject his proposal. Other rights of women protected by Islam highlighted by the speaker is the right to chastity and safety during war.

4. Legal and Political Aspect

13. In Islam, both men and women are entitled to equality before the law and courts of law. Women also have equal rights to participate in social and political life. Cardinal rights of children in Islam as expounded by the speaker are : right to life; genetic purity to life; legitimacy and good name; breast feeding for two years; shelter, maintenance and health-care; education and training in sports and self-defense; equitable treatment regardless of gender; and right to future security.

14. Madame Suad concluded by stating that the rights of women are guaranteed by the Qu'ran and the Sunnah but are not practised fully by Muslims. Among examples given by the speaker on this view include the smaller percentage of women with careers, very few women holding leading positions and rampant child abuse. The speaker invited the participants of the Meeting to ponder and search for answers as to why this still exists today.

b) Ann Elizabeth Mayer, University of Pennsylvania, USA: Islam in the Context of the Contentious Politics of Women's Rights in Contemporary Middle Eastern and North African Societies.

15. As a speaker who was not of Islamic religion, Associate Professor Ann Elizabeth Mayer was conscious of her status as an outsider of the Islamic tradition. She felt the need to clarify where she stands as it was not her intention to teach Moslems about their religion.

16. She proceeded with her presentation on the compared perspective from different Moslem countries based on 4 basic points

- (i) the political contingency in terms of national version as to how women rights are translated by government policies. Women's roles in contemporary societies and political dynamics are constantly changing. In fact, domestic politics have great impacts on how women's rights are formulated. The speaker cited the recent changes in Morocco as the example of this instance.
- (ii) the comparison of various reservations made when the Moslem countries entered into women's conventions. The rationale for reservations made and the choice of articles in conventions for which a reservation is to be made are very different from country to country.
- (iii) the comparison of the process of interpreting the Islamic sources as the tasks are becoming democratised. There are women who are highly educated in Islamic jurisprudence who are able to turn to the Sources and re-interpret Quranic injunctions in the new understanding relating to women status. There

were debates among Moslems on the acceptance of universality of human rights.

In 1966, two major covenants were formulated in which Moslem women had actively participated in voicing the women's issues pertaining to women's status. Most who were active participants were from Moslem countries. Bedia Afnan, an Iraqi, was a strong supporter of women's equality. Moslem participants were very active in formulating these principles and the Moslem women representatives were speaking on human rights issues.

(iv) the extremely fluid situation in the decisions where Islam stands on women's status in Islam. There are ongoing contests giving impetus to the contestation and controversy of the Arab intellectuals. There was a report given on the women's status in Arab societies in 2002. In Arab societies, the women have not been given full rights and freedom. Since the report was released in 2002, the spirit of rethinking are very noticeable.

17. Associate Professor Ann Mayers Elizabeth then cited the development seen in Morocco as an example of how political change can affect the treatment of women's human rights by Islam. In 1993, Morocco had entered a reservation to CEDAW, indicating that it was bound by Islamic law and maintaining equality for women was incompatible with the principles of Islamic law. The King Muhammad VI who ascended the throne in 1999 rejected such notion. He proposed a law reform to tackle discriminatory treatment of women. King Muhammad's 2004 law reform proved that Islamic sources could be reinterpreted to accommodate major advances in women's rights. There is a widespread opinion that now Moroccan laws meets the standards of international human rights law.

18. Among the law reforms introduced in Morocco are women and men share joint responsibility for the family, the traditional obligation of a wife to obey her husband has been eliminated, women are no longer placed under the guardianship of male relatives, the minimum age for both women and men is 18, and both may obtain divorce by applying to court, improved protection of children's rights, in developing grandchildren's from maternal lineage to inherit, a change in the rules of custody and men's rights to practice polygamy is severely restricted.

19. She concluded by stating that, in the context of contemporary Muslim societies where there are debates to define the contours of women's rights and women's roles, Islam is the main basis for argument. However the implication of Islam for women's rights are read so differently by various groups of Moslems. Some recent trends point in the direction of reassertion of Moslems' support for women's human rights, treating the values of international human rights and Islamic values as essentially harmonious.

c) Dr. Zaleha Kamaruddin : Towards Harmonisation of the International Human Rights of Women in Malaysia

20. Dr. Zaleha Kamaruddin spoke on her paper entitled "Towards Harmonisation of the International Human Rights of Women in Malaysia". The areas of discussion in the paper are divided into two:

- a). An examination of the Malaysian reservations on CEDAW from the Syariah perspective; and
- b). An analysis of the standard of legal protection offered by Malaysian laws compared to international standards.

21. The speaker went on to ascertain the level of implementation of the international convention in Malaysia and what reforms would be required to give full effect to the women's rights. Due to limited time the speaker confined her talk to the following:

(a) the speaker was of the view that the protection of human rights of women is a contentious issue in the realm of international human rights law. This is evident by the fact that there is no standard agreement adopted by the international community over the protection of the human rights of women. Although there are various international instruments guaranteeing protection to women but there is no consensus to what extent the provisions are incorporated within national laws and government policies as member states to the said instruments enter reservations on various articles of the instruments upon ratification of the treaties.

(b) The speaker highlighted that Malaysia ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 5th July 1995 with reservations to the following articles of CEDAW: Article 2(f) - the obligation on State Parties to modify or abolish existing laws, regulations, customs and practices which discriminate women.

22. Article 5(a) - the obligation on State Parties to modify social and cultural patterns of conduct of men and women with a view to achieve the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped role for men and women.

23. Article 7(b) - the obligation on State Parties for women's participation in the formulation of government policy and to hold public office and perform all public functions at all levels of government. Article 9 - the obligation on State Parties to grant women equal rights with men, to acquire, change or retain their nationality. Article 16 - matters relating to marriage and family

24. In 1997, following the Beijing Conference, the Government of Malaysia reviewed its reservation to the CEDAW. As a result, reservation to articles 2 (f), 9 (1), 16 (b), 16 (c), and 16 (h) were withdrawn. Declarations were made for Article 5(a) - the provision is subject to the Shariah law on the division of inherited property.

25. Article 7 (b) - the application of the said Article shall not affect appointments to certain public offices such as Mufti, Shariah Court Judges, and Imam which in accordance with the provisions of Islamic Shariah law. Article 9, para 2 - The Government of Malaysia declared that its reservation will be reviewed if the Government amends the relevant laws relating to citizenship.

26. The speaker proceeded to give examples in her talk which rationalize the difference between human rights of woman as understood under international human rights instruments and rights of woman under the Shariah. The Shariah accords man and woman with different responsibilities and roles. The rights of man and women under Shariah are accorded based on the different roles and responsibility of man and woman under the Shariah. In that sense the right between men and women cannot be "equal". International human rights instruments however are promoting equal rights between men and women without taking into consideration the different roles and responsibilities that man and woman have in life. She was of the view that based on these differences certain articles under CEDAW may be unacceptable to Moslem countries.

d) Imam Feisal Abdul Rauf, Founder and CEO of the American Society for Muslim Advancement, New York, USA

27. The speaker's approach to the topic on human rights in Islam is by asking the following jurisprudential questions:

a. Does Islamic jurisprudence have a consistent and coherent concepts of a universal human rights doctrine? If not, how do we develop an Islamic concept of human rights doctrine that is consistent, coherent and flows philosophically from Islamic thought. The speaker quoted from Professor Muhammad Arkoun's writing that political values of human rights doctrine has an impact to develop positive change in the Moslem's world. These rights needs to be taught and defended.

b. The next relevant question for discussion on women's rights, which is the core questions underlying concept of women's rights-was the Shariah established for the believer, or was the believer established for the Shariah?

28. The speaker then proceeded to discuss the tension which existed among the Moslems jurists - those today and even in classical times - in how to regard the relationship between the canonical texts and the believing Moslems. For some scholars, the text enjoyed priority over the Moslem as the legal subject. While for a legion of jurists, starting with Caliph 'Omar till the Hambali jurist, AtTulfi Najmuddin (died in 1716H), the believer is the legal subject of the law.

29. The speaker opined that Omar's concept that 'the believer is the legal subject of the law' had culminated into the idea that the common good (*maslahah*) is the operative meta purpose of the revealed law. In all the Quranic textual ordinances and prophetic

injunctions in the area of *muamalat*, not in the area of *ibadah*, *maslahah li ibad* is the operative meta purpose. Therefore the interest of the believer stands above and before the law and not vice versa. Following this concept, Omar had suspended direct textual ordinances in favour of a decision made, arguing that core objectives of all Shariah laws, are the same, namely to avoid harm and to promote common good.

30. When the context differs from the context of the Text, the role of jurists is to identify the *maslahah* and to re coagulate it into the new context. To the speaker, religion is about human's ethics, both towards god and towards fellow human beings. Religion is not about fixing eternally, what once was or what is the common good; but it is about continuous becoming of the eternal common good.

31. The speaker then explained that the Maliki jurist, AsShatibi (died in 1338 BC) also subscribed to this view that the Shariah meta purpose of *maslahah* met the promotion of human interest (*masalih al ibad*) and asserting that laws were only instituted for the benefit of people for this world and the next. Law is only the means in achieving God's aims and intentions, the law itself holds no intrinsic values. If in occasion that the strict application of the law compromises the aims the Shariah, the law can be set aside or modified so that God's primary intentions be fulfilled.

32. The jurists therefore adduced this point from the Quran itself for even in the relationship between God and the believer, in the dimensions of religious acts of worship, the acts are never ends in themselves but means to the greater ends, namely connections and remembrance of Allah. If and when these means are performed without intended intent and content of divine remembrance, they are deemed void and ineffective.

33. All Shariah laws are instituted in protection of five subject areas namely to protect life, religion, family 'lineage, property and the intellect/mind at the three level of needs (*hajat*) or the lesser level of adornment (*tahsin*). These aims are protected by God on judgement day.

34. The speaker illustrated that all rights are protected by God, in that the rights of transgressed *ibad* cannot be forgiven by God. In Islam, rights are given not only to human but also to animals. Such rights are inalienable. The Quran and Sunnah endorse equality and reject any preferential treatment according to race, ethnicity or gender and tribalism.

35. Concluding his presentation, the speaker ended with the following jurisprudential question

"What are the eternal aspect of our faith, eternal aspect of Islamic jurisprudence and timeless *ibadah* ? How to express and re-coagulate the eternal aspect in the presence of ever changing context?"

**1. WORKING GROUP 13: VIOLENCE AGAINST WOMEN AND CHILDREN
17 May 2006, 4.10 PM-5.15PM, Venue: Ballroom A, Hilton**

CONVENOR: HON.DATO'. FAIZA BIN HAJI TAMBY CHIK, MEMBER OF THE BOARD OF DIRECTORS, INSTITUTE OF ISLAMIC UNDERSTANDING (IKIM), MALAYSIA

INTRODUCTION²

1. The Session began with a brief introduction to the topic by the Convenor as well as the proposed outcomes expected from the Working Group. These would include the following:

- (a) Identification of the pertinent issues;
- (b) Sharing of experiences and challenges of participants;
- (c) Conclusion and recommendations

2. Convenor explained that violence against women and children both violates and impairs the enjoyment of women of their human rights and fundamental freedom and are subjected to physical, psychological and sexual abuse. These cut across lines of income and culture and it is pertinent to note that low socio-economic status of women is consequence of violence against women.

3. According to the report from the platform for action by Malaysia at the Fourth World Conference of Women in Beijing, China in September 1995, Item No.9 stated "Violence against Women and Children is a manifestation of the historically unequal power relation between men and women which has led to domination and discrimination against women by men to the prevention of women full advancement."

4. Family violence is an act of violence which covers a range of behaviour perpetrated by family members, spouses, partners, former partners and household members. The Convenor's experience in Family Court (Civil and Syraiah Court), violence perpetrated can be categorized into three (3):

- (a) physical violence
- (b) sexual abuse, and
- (c) psychological abuse

5. Family violence or domestic violence is the same. Women NGO's were the first to use the term "Domestic Violence", referring to the more violent behaviour of the husband and partners towards their wives or partners. Remedies available, as far as Malaysia is concerned, in the Civil side, under the Law Reform (Marriage and Divorce) Act 1976, women can ask for divorce provided Section 64 of the Act is complied with.

²This summary is based on the report prepared by the Rapporteurs of the MIEHRI Secretariat

As far as the Syraiah law is concerned, she can ask for fasakh if the husband is too violent, wife can ask for injunction, preventing the husband from visiting the wife or the house.

6. Based on the Convenor's experiences as a judge, he thinks that there is a sufficient provision of law like Domestic Violence Act, and the Penal Code to protect from the abuse by the husband. As far as the Islamic view is concerned, the Quran Surah An Nisa' Ayat 34 and Surah 2 Ayat 223 on rape, but there is no such thing as marital rape in Islam. This is because it is not feasible to criminalize marital sex because the difficulty to prove the offence. The Burden of Proof is very high in Islam unless in the case of rape where the offender confesses. Otherwise, you need four just mens' testimony that they have clearly seen the act of penetration. My interpretation of justice in Islamic law is universal and timeless. Although the prescribed Hudud punishment in the Quran is the maximum punishment. In Civil court, no judge normally would hand over maximum punishment.

RECOMMENDATIONS

7. Professor Mehrun Siraj from Malaysia made recommendations which are:
- (a) States should enact and strictly enforce laws to prohibit all forms of violence against women and children including honour killings;
 - (b) States should ensure that laws enacted to address domestic violence provides for a choice of remedies for the victims such as counseling for the abuser and injunctions to restrain him from further abuse in addition to the penal sections; and
 - (c) State should conduct awareness-raising programmes for men about the Islamic prohibition of violence against women and children.
8. Dr. Nasir Tamara Tamimi from Indonesia made recommendation about the issue of women and children trafficking where strong measure should be taken against the trafficking of women and children.

SUMMARY AND CONCLUSION

9. Convenor summarized and highlighted the salient points raised and discussed:
- In Islam, violence against women and children is non existence
 - Recommendations by Prof. Mehrun Siraj and Nasir Tamara Tamimi are adopted.

2. WORKING GROUP 14: SEXUAL REPRODUCTIVE HEALTH
17 May 2006, 4.20PM-5.15PM, Venue: Sultan I, Le Meridien

**CONVENOR: DATUK DR. RAJ KARIM, REGIONAL DIRECTOR,
INTERNATIONAL PLANNED PARENTHOOD FEDERATION, EAST &
SOUTHEAST ASIA AND OCEANA REGION, MALAYSIA**

REPORT OF THE CONVENOR

1. Reproductive health (SRH) is “a state of complete physical, mental and social well-being in all matters relating to the reproductive system and to its functions and processes”. The definition of reproductive health was first debated in 1994 during the Cairo Plan of Action on Population and Development at the International Conference on Population and Development and adopted in 1995 at the World Health Assembly.

2. Reproductive health rights embrace certain human rights already recognized in national laws, international instruments and other human rights documents. This includes the right of women to decide freely and responsibly on the numbers, spacing and timing of their children, the right of access to healthcare services, the right to attain the highest standard of reproduction and sexual health and the right of all to make decisions concerning reproduction. Every women has the right to life during the processes of reproduction and the right to safe pregnancy and delivery. It is noted that the right of safe delivery of children by mothers is prevalent in Western countries as opposed to the situation in developing nations, especially Muslim world. In Muslim populations, maternal mortality namely women dying as a result of complications of pregnancy and childbirth at delivery, remains high.

3. All countries should strive to ensure that SRH is accessible through the primary health care system to individuals of an appropriate age which includes, among others, counseling on family planning; education on prenatal care, safe delivery and postnatal care; abortion; treatment of reproductive tract infections; sexually transmitted diseases; and other reproductive health conditions. The discussion on the prevention and treatment of cancers of the reproductive tract and sexually transmitted diseases; and responsible sexual behaviour is pertinent, especially in the prevention of unwanted pregnancies and sexually transmitted diseases such as HIV/AIDS.

4. The religious authorities need to change their mentality and attitude towards the marginalized community and must instead reach out to those in need of assistance and spiritual guidance. This is due to the fact that these marginalized community and individuals are not accessible to basic needs and education in SRH. For example, the religious clerics should not turn away from issues involving unwed pregnant women but to establish support groups to address the problems faced by these individuals.

5. It is pertinent that more dialogues between the government and religious clerics and organizations should be organized as the problems are real and cannot simply be dismissed. NGOs, on the other hand, have played an important and active role in sharing

the responsibility to set up shelters and accommodate this marginalized community.

6. There is a need to discuss the issue on assisted systems of reproduction including the ethical and legal aspects attached to it as the maternal mortality rate remains high and the prevalence of family planning is very low in Muslim countries. In this regard, education and awareness are the most important aspects of SRH. It is acknowledged that sexual education is still very much a taboo among the Muslim populations. A present, many Muslim countries have incorporated sex education into the education system such as the peer guidance system introduced in some of the Arab States which is a good model for the dissemination of information and knowledge on SRH among youths.

INTRODUCTION³

7. The Convenor began by introducing the session to the topic of Sexual Reproductive Health (SRH). By suggesting that the working group frames up its recommendations by the end of the session, the Convenor hopes that a common understanding can be reached among them. She acknowledges that the subject of SRH is a controversial, personal, sensitive and complex one. Many of the issues related to the topic are those not usually discussed in the open. She acknowledges that policies and legislation play an important role in giving life to every woman and every child.

8. The Convenor sets out to give an overview of the topic. On the topic of SRH, the mother and child are the focal point of the discussion especially in their right to live at childbirth. No woman has a right to die during the processes of reproduction and she should undergo pregnancy and delivery safely. The Convenor states that the safe delivery of children by mothers in Western countries is common but it is unfortunately not the case in developing nations, especially in the Muslim world. In Muslim populations, maternal mortality namely women dying as a result of complications of pregnancy and childbirth at delivery, is high.

9. The Convenor cites several statistics – Every year more than 500,000 women die at childbirth whereby 99 percent of them are from developing countries; and each year 68,000 women die of complications as a result of unsafe as well as illegal abortion in cases of unwanted pregnancies.

10. The Convenor informs the floor that the definition of reproductive health was first debated in 1994 in the Cairo Plan of Action on Population and Development at the International Conference on Population and Development. However, a definition was only adopted in 1995 at the World Health Assembly. Reproductive health is “a state of complete physical, mental and social well being in all matters relating to the reproductive system and to its function and processes”. It implies that people have the capability to reproduce and have freedom to decide if, how and how often to do so. Implicit in this is the right of men and women to be informed and to have access to safe, effective,

³ This summary is based on the report prepared by the Rapporteurs of the MIEHRI Secretariat

affordable, and acceptable methods of family planning of their choice, as well as methods of regulation of fertility so long as they are not against the law. Women also have the right of access to healthcare services that will enable them to safely go through pregnancy and childbirth.

11. Reproductive rights embrace certain human rights already recognized in national laws, international instruments and other human rights documents that are the product of UN consensus. The Convenor states that these rights rest on the recognition of the basic rights of women and couples to decide freely and responsibly the numbers, and pacing of their children. There also exist the right to attain the highest standard of reproduction and sexual health and the right of all to make decisions concerning reproduction that is free from discrimination, coercion and violence.

12. The Convenor states that due attention must be given to the promotion of mutually respectful gender relations. It is also important for adolescents to be able to deal with their sexuality in a responsible way.

13. The Convenor points out that all countries are called upon to strive to make reproductive health accessible through the primary health care system to individuals of an appropriate age. The broad spectrum of services offered to such individuals should include, among others, counseling on family planning; education on prenatal care, safe delivery and postnatal care; abortion; treatment of reproductive tract infections; sexually transmitted diseases; and other reproductive health conditions.

14. It is noted by the Convenor that the issue of family planning has long been debated. In this regard, great Muslim scholars have written on the benefits of family planning. Thus, the discussion on the prevention and treatment of cancers of the reproductive tract and sexually transmitted diseases; and responsible sexual behaviour is important in the context of the present session, especially in the prevention of unwanted pregnancies and sexually transmitted diseases such as HIV/AIDS.

CONCLUSION

15. The Convenor states that there exist many examples among the Muslim countries today where sex education has been incorporated into the education system. The peer guidance system introduced in some of the Arab States is a good model for the dissemination of information and knowledge on SRH among youths who may be less comfortable to reach out to older age groups.

16. The Convenor concludes the session by stating that education and awareness are the most important aspects of sexual reproductive health. She expresses her view that although the session was too brief to discuss other more pertinent issues in greater detail, the recommendations and views laid out by the participants in the session should be considered by the Meeting in the hope that the Muslim community is more aware of the realities and problems it faces and will thus act to address and expose its members to such issues.

3. WORKING GROUP 15: RIGHT TO CULTURAL IDENTITY OF CHILDREN AND TRANSGENDERED PERSONS

17 May 2006, 5.20 PM– 6.30 PM, Venue: Ballroom A, Hilton

**CONVENOR: MS. NAIMA HAIDER, ASSISTANT PROFESSOR OF LAW,
UNIVERSITY OF DHAKA, BANGLADESH.**

REPORT OF THE CONVENOR

INTRODUCTION

1. Article 27 of the Universal Declaration of Human Rights provides that “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”. The right to take part in cultural life is respectful of cultural diversity and serves as a protection against social exclusion.

2. Every culture represents a unique and irreplaceable body of values. Since each people’s traditions and forms of expression are its most effective means of demonstrating its presence in the world. The assertion of cultural identity therefore contributes to the liberation of people. Conversely, any form of domination constitutes a denial or an impairment of that identity. All cultures form part of the common heritage of mankind. The cultural identity of a person is renewed and enriched through contact with the traditions and values of others.

3. Cultural identity therefore is a treasure that vitalizes mankind’s possibility or self fulfillment by moving every people and every group to seek nature and its past to welcome contribution from outside that are compatible with us in its own characteristic and so to continue the process in its own creation.

4. Keeping in mind the cultural identity perspective of children from the Islamic point of view, we have to instill in the children the basic principles of Islamic culture and values which include tolerance, justice and participation together with peace. These principles of Islamic culture and values call for a democratic political process that maintain our common cultural identity which guaranteeing all individuals their rights and freedoms as enumerated in the United Nations (UN) Charter, European Union (EU) Charter, Warsaw Declaration, Universal Declaration of Human Rights, European Convention on Human Rights, European Charter of Fundamental Rights, UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), UN Convention on the Right of the Child (CRC), African Charter of Human Rights and the latest is the Sana’a Declaration 1999 and 2004.

INTRODUCTION⁴

5. The Convenor welcomed the experts and participants to the Working Group 15. The session began with an introduction to the topic by the Convenor as well as the proposed outcomes expected from the Working Group. These would include the following:

- (a) identification of the pertinent issues;
- (b) sharing of knowledge experiences and challenges in the particular contexts of participants; and
- (c) conclusion and recommendations.

6. The Convenor defined “cultural identity” by stating Article 27 of the Universal Declaration of Human Rights which says, “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”. The Convenor then pointed out that the right to take part in cultural life is respectful of cultural diversity and serves as a protection against social exclusion.

7. The Convenor also highlighted that every culture represents a unique and irreplaceable body of values. Since each people’s traditions and forms of expression are its most effective means of demonstrating its presence in the world. The assertion of cultural identity therefore contributes to the liberation of people. Conversely, any form of domination constitutes a denial or an impairment of that identity.

8. For example, the Asian traditions stress, on the importance of preserving their cultural heritage. Cultural identity will help individuals and communities to adapt with the economic and social changes. Besides, cultural identity also would give meaning to one’s life especially where nowadays children tend to pursue their studies overseas. The Convenor also mentioned that all cultures form part of the common heritage of mankind and the cultural identity of a person is renewed and enriched through contact with the traditions and values of others.

9. The Convenor further said that keeping in mind the cultural identity perspective of children from the Islamic point of view, we have to instill in the children the basic principles of Islamic culture and values which include tolerance, justice and participation together with peace. These principles of Islamic culture and values call for a democratic political process that maintain our common cultural identity while guaranteeing all individuals their rights and freedoms enumerated in the United Nation (UN) Charter, European Union (EU) Charter, Warsaw Declaration, Universal Declaration of Human Rights, European Convention of Human Rights, European Charter of Fundamental Rights, UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), UN Convention on the Right of the Child (CRC), African Charter of Human Rights and the latest is the Sana’a Declaration 1999 and 2004.

⁴ This summary is based on the report prepared by the Rapporteurs of the MIEHRI Secretariat

10. The Convenor stressed that in this Working Group discussion will be confined to the cultural identity of children and transposed persons within the parameter of the Islamic values.

11. Prof. Dr. Salah Abdul Badie Shalaby, Egypt; Mdm.Farahana, Malaysia; Mr. Jeffrey Chan Wah Teck, Singapore; Prof. Mehrun Siraj, Malaysia; Assoc. Prof. Dr.Khoo Boo Teong, Malaysia; Mr. Kamaluddin bin Md. Said, Malaysia; Dr.Muhammed Khalid Masud, Pakistan; Prof.Tahir Mahmood, India made their comments/questions.

SUMMARY AND CONCLUSION

12. The convenor summarized the conclusions and recommendations of the Working Group as follows:

1. Consider establishing or strengthening measures such as national, legislation, policies and active plans to fulfill and protect rights and to serve the well being of children, and national bodies or other institutions for the promotion and protection of the right of the child and his/her cultural identify.
2. To secure progressively, through national development policies and with international assistance and cooperation, full realization of economic, social and cultural rights, giving particular attention to the child's cultural identity.
3. It is also further recommended that:

Every child without exception is entitled to these basic rights and opportunities;

1. The right to receive quality care from responsible parent
2. The right to individual, national and cultural identity
3. The right to education and religious training
4. The right to special care for handicapped
5. The opportunity to enjoy these rights without regard to cultural identity, race, creed or nationality, and equitable treatment regardless of gender

**4. WORKING GROUP NO.16: EQUALITY OF WOMEN
17 May 2006, 5.00PM-6.30PM, Venue: Sultan I, Le Meridien**

**CONVENER: DR. ZEENATH SHAUKAT ALI, ST.XAVIER'S COLLEGE,
MUMBAI, INDIA**

REPORT OF THE CONVENER

ISSUES DISCUSSED AND AGREED UPON BY GENERAL CONSENSUS

1. Right to Suffrage (voting)
2. Right to Education
3. General Consensus on rights in the instruments of Human Rights, which did not oppose Islam.

PERTINENT POINTS/COMMENTS/SUGGESTIONS

1. Regarding the issue of maintenance during the marriage (nafaqah), Prof. Hashim Kamali was in the opinion that such is the responsibility of both the husband and wife. Madam Suad held the view that it is the duty of the husband alone but under certain circumstances such as illness of the husband, the wife could maintain him for that period only. It was observed that some other participants also held this view.

2. Maintenance of the divorce or death of either husband or wife was not discussed. Dr. Tahir Mahmood touched upon Muslim laws relating to non maintenance as ground for divorce as stated in the Dissolution of the Muslim Marriages Act 1939. In respect of the Convention on the Elimination of Discrimination against women (CEDAW), the different points of view emerged, whereas the small group agreed to its implementation and the larger group resisted to it. As there was no consensus as regards to CEDAW, there should be another platform to deliberate on the issue in depth.

CONCLUSION/RECOMMENDATION

3. As the equality of rights of women is a major concern of Islam and the Prophet Muhammad (PBUH) introduced new laws and reform on the subject, equal rights for women in all fields as long as it is not contrary to Islam as in the existing Human Rights instruments must be introduced and implemented.