



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2008)¹: MALAYSIA

THE ELIMINATION OF DISCRIMINATION IN RESPECT OF EMPLOYMENT AND OCCUPATION (DISC)

REPORTING	Fulfillment of Government's reporting obligations	YES, since the start of the Annual Review (AR) in 2000. But no change reports under the 2007 and 2008 ARs.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Malaysian Employers' Federation (MEF) and the Malaysian Trades Union Congress (MTUC) through consultations and communication of government's reports.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2007 AR: Observations by the Malaysian Employers' Federation (MEF)	
	Workers' organizations	2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU) (late observation for the 2006 AR).	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Malaysia ratified in 1997 the Equal Remuneration Convention, 1951 (No. 100) (C.100).
		Ratification intention	NIL
	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Constitution	<p>YES 2007 AR: According to the ICFTU: In 2001, the Malaysian Parliament has approved a constitutional amendment outlawing sexual discrimination.</p> <p>The 1957 Malaysian Federal Constitution amended in 1963 clearly prohibits inclusion in any law provisions that would appear discriminatory in respect of employment and occupation. Article 8 of this text defines non-discrimination as «no discrimination against citizens on the ground only of religion, race and descent, place of birth or gender except as expressly authorised by the Constitution». This indicates that all persons are equal before the law and entitled to the equal protection of the law. The Federal Constitution, Article 136, also states that all persons whatever race, in the same grade in the service of the Federation shall, subject to the terms and conditions of their employment, be treated impartially. Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the grounds only of religion, race, descent or place of birth, in any law, or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or</p>

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: information provided by the Government under the Declaration Annual Review, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention, please see: www.ilo.org/ilolex

			employment.
		Policy, legislation and/or regulations	Policy: 2000-2002 ARs: The Government stated that its objectives were as follows: (i) ensure industrial harmony; (ii) create a favourable investment climate; (iii) enhance employment opportunities for all; and (iv) promote the economic development of the country.
		Basic legal provisions	(i) the Constitution (Articles 8 and 136); the Employment Act 1955 (section 60 L 1-4); and (ii) the Industrial Relation Act (section 17).
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Grounds of discrimination	2003-2005 ARs: According to the Government: Discrimination in respect of employment and occupation is prohibited on grounds of race/colour, sex, religion, political opinion, national extraction and social origin.
		Judicial decisions	2007 AR: According to the ICFTU: A ruling by the Federal Court of Malaysia which rejected a Malaysian Airlines (MAS) stewardess' application against a discrimination retirement age, has raised doubts about the newly imposed constitutional safeguard. Furthermore, statistical information provided by the government shows that only six women in comparison with 297 men, receive earnings above 5001 RM in the State Administrative service.
	Exercise of the principle and right	Special attention to particular situations	According to the Government: Women.
		Information/Data collection and dissemination	NIL
	Prevention/Monitoring, enforcement and sanctions mechanisms	2003-2005: According to Government: The labour Department plays a monitoring/inspection, enforcement and defence role for the realization of the PR.	
	Involvement of the social partners	2006 AR: According to the Government: The spirit of tripartism is being implemented between the Government, employers' and workers' organisation through the formulation of and the development of industrial relations. 2003- 2005 ARs: According to the Government: The employers' and workers' organizations have been involved in the development and implementation of governmental measures in relation to the PR, in particular in the elaboration of amendments of national labour policies and laws. In this respect, national labour policies and amendments to labour legislations are elaborated after consultations with the social partners, in particular within the National Labour Advisory Council.	
	Promotional activities	Institutions to promote equality	According to the Government: The Department of Labour.
		Other activities	2006 AR: According to the Government: the Ministry of Women, Family and Community Development, Malaysia formulates the National Policy Women to address gender inequality in employment and increase female participation in the labour force. 2003-2005ARs: According to the Government: The Ministry of Human Resources organizes labour education programmes to create awareness among employers and to enforce the legal provisions in relation to the PR.
	Special initiatives/Progress	NIL	

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	2007 AR: According to the Malaysian Employers' Federation (MEF): In practice there is no discrimination in remuneration based on gender or other criteria. The employers pay equal remuneration for work of equal value to all employees. Some private sector employers implement payment based on performance of the individual employee and/or company. Objective performance criteria are established by employers to determine performance of individual employees.
		Workers' organizations	2007 AR: According to the ICFTU: A ruling by the Federal Court of Malaysia which rejected a Malaysian Airlines (MAS) stewardess' application against a discrimination retirement age, has raised doubts about the newly imposed constitutional safeguard. Furthermore, statistical information provided by the government shows that only six women in comparison with 297 men, receive earnings above 5001 RM in the State Administrative service.
	According to the Government	NIL	
TECHNICAL COOPERATION	Request	2007 AR: According to the Malaysian Employers' Federation (MEF): ILO should review the convention to incorporate the elements of performance/productivity linked to wages.	
	Offer	ILO (technical assistance in the labour law review process).	
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	2008 AR: The IDEAs noted that Malaysia (and another country) had not yet expressed their intentions concerning ratification of C. 111 (Cf. Paragraph 67 of the 2008 Annual Review Introduction – ILO: GB.301/3).		
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL		