

MALAYSIA

1. Discriminatory family code

Family relations in Malaysia are governed by a combination of civil, customary (Adat) and Syariah (Islamic) law;¹ and a dual legal system governs Muslim and non-Muslim personal laws separately, with Article 121(1A) of the Federal Constitution preventing civil courts from hearing matters relevant to the Syariah Courts or involving Muslim parties (and vice versa). Muslim religious issues are controlled by the individual 13 States in Malaysia, although recent attempts have been made to standardize the laws with the Islamic Family Law (Federal Territories) Act passed in parliament in 1995 (although it does not apply in all States). At the time of its passing the then Prime Minister acknowledged the concerns of women's rights groups that women's rights may be curtailed under the federal law and stated that further amendments may be made to the law to remove the discriminatory elements.² In July 2010, the government announced the appointment of the first two female Syariah Court judges. However, since the announcement, there has been question over whether these female judges can oversee divorce and marriage cases.³

The (civil) Law Reform (Marriage and Divorce) Act states that all marriages shall be based upon mutual consent. However, the Islamic Family Law stipulates that marriages are not fully recognised without the consent of the "wali", the woman's guardian, who is always male. Using force or threat to compel a woman to marry against her will or to prevent her from contracting a valid marriage once she attained the age of 16 is an offence punishable with a fine or imprisonment.⁴

The minimum **legal age for marriage** under the (civil) Law Reform (Marriage and Divorce) Act is 18 years.⁵ However, women who have reached the age of 16 may marry if prior permission from the Chief Minister of the relevant State has been obtained. For Muslims, both men and women are also bound by the limitation of minimum age of marriage, with an exception that permits Muslim girls and boys below these ages to marry with the Syariah Court's consent.⁶

Concerning **early marriage**, The United Nations reports, based on 2012 data, that 6.1% of girls between 15 and 19 years of age were married, divorced or widowed, compared to 5.1% of boys in the same age range. In 1980, 10% of girls aged between 15 and 19 were married, divorced or widowed, which indicates that societal acceptance of early marriage has declined in recent

¹ CEDAW (2004), p.105

² NGO-CEDAW (2012), p.169

³ NGO-CEDAW (2012), p.28

⁴ CEDAW (2004), p.106

⁵ Law Reform (Marriage and Divorce) Act 1976

⁶ Islamic Family Law (Federal Territories) Act 1984, Section 8

decades.⁷ However, this may not represent the full extent of early marriage, since obtaining accurate data is difficult due to under-reporting and unregistered/unofficial customary marriages.⁸

In 1999, Malaysia amended the Guardianship of Infants Act, thereby granting **parental authority** equally to both spouses.⁹ Previously, fathers were recognised as the sole legal guardians of a child's person and property. However, this law is only applicable to non-Muslims in Malaysia. Syariah law only recognises the rights of men to be guardians.¹⁰ Although, at the federal level, the Government issued a directive to address the issue of equal guardianship rights to Muslim mothers in 2000, allowing mothers to sign all documents related to their children.¹¹

In the event of **divorce**, the civil law presumes that a child under seven is best cared for by his or her mother. Islamic law generally considers mothers to be best able to care for children under the age of seven, after which time custody reverts to fathers.¹² Even where a Muslim woman is granted custody of her child under seven, the father remains the legal guardian. Guardianship of children devolves to a series of males on the death of the father, but not to the mother.¹³

Islamic law outlines detailed and complex calculations of **inheritance** shares. Women may inherit from their father, mother, husband or children and, under certain conditions, from other family members. The general rule is that the share of a man is double that of a woman in the same degree of relationship.¹⁴

More

Polygamy is illegal for non-Muslims under the Law Reform (Marriage and Divorce) Act, but legal for Muslims. Islamic law allows Muslim men to take as many as four wives, with the court's permission.¹⁵ Originally, the proposed polygamous marriage had to be shown to be "just and necessary", however the Islamic Family Law (Federal Territories) (Amendment) Act 2005 changed this to "just or necessary".¹⁶ NGOs consider this change to have reduced the husband's burden of proof to justify a polygamous marriage in court.¹⁷ A study of 1,500 men, women and children on the impact of polygamy conducted by the Sisters in Islam group in 2009 found that men stand to benefit more in fulfilling their needs and desires from polygamous marriages than women. Of the respondents, 65% of the husbands interviewed would recommend polygamy as a family institution. However, only 25% of first wives and about 50% of second wives held this view.¹⁸

⁷ United Nations Department of Economic and Social Affairs, Population Division (2012)

⁸ Childs Rights Coalition Malaysia (2013), p.1

⁹ Guardianship of Infants Act 1961, Section 5

¹⁰ Islamic Family Law (Federal Territories) Act 1984, Section 88 of

¹¹ CEDAW (2004), p.114

¹² CEDAW (2004), p.114

¹³ Islamic Family Law (Federal Territories) Act 1984, Section 88

¹⁴ NGO-CEDAW (2012), p.181

¹⁵ CEDAW (2004), p.108

¹⁶ Islamic Family Law (Federal Territories) (Amendment) Act 2005, Section 23

¹⁷ NGO-CEDAW (2012), p. 169

¹⁸ Women Living Under Muslim Laws (n.d.)

With regards to **divorce**, the Human Rights Council found in 2013 that recent years have seen a “roll-back” in rights related to marriage and its dissolution, especially for Muslim women.¹⁹ Several NGOs have reported that the 2005 amendments to the Islamic Family Law allowed men in certain circumstances to divorce their wives without reason or court permission, effectively circumventing the requirement for woman’s right to *muta’ah* (financial compensation) and division of matrimonial assets and the children’s right to maintenance.²⁰ Additionally, the fact that Muslim religious issues are controlled by the individual 13 States and Federal Territory has resulted in discrepancies between the Muslim Family Laws in each state, which has in turn allowed men to ‘shop around’ to find the most suitable laws to suit them.²¹ In practice, NGOs have also noted that women in Malaysia continue to face problems in obtaining maintenance from their former husbands.²² The Family Law (Federal Territories) Act provides that if a divorced woman is disobedient (*nusyuz*), she will not receive maintenance.²³

There is a conflict of civil and sharia jurisdictions whereby a non-converting spouse loses her rights if her estranged husband converts to Islam. There is a conflict between civil and syariah codes governing family laws.²⁴

2. Restricted physical integrity

Domestic violence is prohibited under the Domestic Violence Act and the Penal Code, which was amended in 2011 to expand the definition of the offence to include “psychological abuse, including emotional injury”. The law is designed to grant both civil and criminal remedies for the survivors, including the provision of protection orders, and anyone who wilfully contravenes such an order by using violence against a protected person may be punished by imprisonment of up to one year and a maximum fine of 2,000 ringgit.²⁵ The Domestic Violence Act was deliberately attached to the penal code so that domestic violence is a crime and not a family matter. However, the law is still weak in some important areas, including: a lack of recognition of stalking and intimidation; the limited purview of the Act to assist women outside of marriage relationships; and a failure to recognise domestic violence as an offence under the Penal Code (instead being charged under the ‘hurt’ provisions in the Penal Code).²⁶ Moreover, the law’s implementation reportedly remains poor. For example, obtaining an Interim Protection Order against a perpetrator may take anywhere between 24 hours and 3 months.²⁷

The government reported in 2004 that it is also an offence under the Islamic Family Law for a husband who ill-treated his own wife either mentally, emotionally or physically. Syariah law provides that any person who ill-treats his wife commits an offence and is liable to be punished

¹⁹ COMANGO (2013)

²⁰ Sisters of Islam (2011)

²¹ HDR (2010), p.121

²² NGO-CEDAW (2012), p.174

²³ Islamic Family Law (Federal Territories) Act 1984, Section 65

²⁴ Joint Action Group for Gender Equality (JAG) (2007)

²⁵ Domestic Violence Act 1994, Section 18

²⁶ NGO-CEDAW (2012), p.198

²⁷ NGO-CEDAW (2012), p138

with a fine or with imprisonment not exceeding six months or both.²⁸ However, NGOs report that conviction rates remain low and traditional perceptions of a wife as the property of her husband underpins a social acceptance of violence within Muslim communities that leads to under-reporting.²⁹

The Ministry of Health has established a system of One-Stop Crisis Centres (OSCC) in all major hospitals to handle survivors of violence and sexual assault and provide multi-sectorial victim support services. As of 2012, there were OSCC services in 102 government hospitals nationwide.³⁰ In a 2011 report by UN Women, the Malaysian OSCC model was held to be “extremely successful in combining clinical therapeutic response with secondary preventive measures.”³¹ In addition, the Islamic Religions Department has set up temporary shelters for Muslim survivors of domestic violence throughout Malaysia. They also provide legal and counselling services to their clients, although there is no statistical data on their effectiveness.³²

In practice, intimate partner violence continues to be a problem in Malaysia, which, according to Amnesty International, may be attributed to social attitudes that tended to regard domestic violence “as a private matter, with the police and courts appearing unwilling to take action against those who may have assaulted their spouses or other relatives within the home.”³³ According to the US State Department, domestic violence cases reported to the police from 2000 to 2012 indicated a steady trend, from 3,468 in 2000 to 3,488 in 2012.³⁴ However, this is thought to represent only a fraction of actual incidents. One shelter that provides services for abused women reported that in 2012 only 31 of the 133 women it provided shelter to (23%) made police reports while staying at the refuge.³⁵ It is also reported that many women in Malaysia are not aware of the law, which prevents them from seeking protection.³⁶ According to a representative of the police, even when domestic violence cases were reported, almost 80% ended up with a request of withdrawal by the victims of violence.³⁷

In 2005, marital rape was also reported as a concern for women’s organisations. Statistics gathered by NGOs indicate that in the years 2000-2002, 52% of women who had been subjected to domestic violence had been forced into sex by their husbands.³⁸

The Penal Code provides that **rape** is punishable by a prison term of up to 30 years, caning, and a fine. A 2006 amendment to the Penal Code criminalizes potential or actual physical harm within marriage, but falls short of criminalizing marital rape.³⁹ In addition, an earlier exception still remains in the Code, which provides that “[s]exual intercourse by a man with his own wife

²⁸ CEDAW (2004), p.117

²⁹ NGO-CEDAW (2012), p.195

³⁰ NGO-CEDAW (2012), p.138

³¹ UN Women (2011), p.47

³² UNAFEI (2006), p.120

³³ Amnesty International (2005)

³⁴ WAO (2012), p.7

³⁵ WAO (2012), p.7

³⁶ UNAFEI (2006), p.118

³⁷ UNAFEI (2006), p. 120

³⁸ National Council of Women’s Organisations (2005), p.141

³⁹ Penal Code, amended 2006, Article 375A: NGO-CEDAW (2012), p.35

by a marriage which is valid under any written law for the time being in force, or is recognized in Malaysia as valid, is not rape.”⁴⁰ In the Penal Code, rape with an object is not considered rape – but rather an “unnatural offence”, a fact that has been criticized by women’s civil society groups.⁴¹ The courts may also decide the minimum jail term for a man convicted of statutory rape of a girl aged 16 years or less;⁴² and prohibits a person in authority from using his position to intimidate a subordinate into having sexual relations.⁴³

Exact figures on all forms of sexual and gender-based violence are difficult to obtain; however, the US State Department reports that in 2011, rape victims lodged 3,301 police reports, compared with 3,595 in 2010; although the police did not publicly report the number charged, convicted, and punished on rape charges.⁴⁴

In 2011, employment legislation was amended to include provisions relating to **sexual harassment**.⁴⁵ However, the law has been criticized for containing several weaknesses that prevent it from adequately addressing the problem, including: the fact it allows the employer to decide on whether or not an inquiry should be conducted,⁴⁶ and does not provide for compensation or an apology to victims of sexual harassment, but rather gives the victim the option to resign with payment in lieu of notice, and termination of benefits and indemnity.⁴⁷ No reliable figures exist on the nature and extent of sexual harassment in Malaysia.

There is no clear picture of the prevalence of **female genital mutilation** (FGM) in Malaysia. In April 2009, a national fatwa was declared on female circumcision, stating that it is obligatory for Muslim women to undergo circumcision unless it will result in some form of harm to the woman.⁴⁸ This fatwa has not been gazetted in any state of Malaysia so it is not considered as having the force of law.⁴⁹ However, the US State Department cites several recent studies that indicate that the practice is gaining in popularity.⁵⁰

More

Trafficking is reported to be a serious problem in Malaysia, with a significant number of young foreign women recruited ostensibly for legal work in Malaysian restaurants and hotels, but subsequently coerced into the commercial sex trade.⁵¹ The country is primarily a destination for trafficked women and girls from Burma, Mongolia, the People's Republic of China, Indonesia, Cambodia, Thailand, the Philippines, and Vietnam. However, recently there have been reports of women from Ugandan Nigeria, Ghana, Zimbabwe, and Macau, being trafficked for forced

⁴⁰ Penal Code Amended 2006, Section 375A

⁴¹ Penal Code Amended 2006, Section 377CA

⁴² Penal Code, Amended 2006, Section 375

⁴³ Penal Code, Amended 2006, Section 375

⁴⁴ US State Department (2013)

⁴⁵ NGO-CEDAW (2012), p.19

⁴⁶ Employment (Amendment) Act 2011, Section 81B (3)

⁴⁷ NGO-CEDAW (2012), p.127

⁴⁸ Department of Islamic Development Malaysia (n.d)

⁴⁹ NGO-CEDAW (2012), p.140

⁵⁰ US State Department (2013)

⁵¹ US State Department (2013b)

prostitution.⁵² In July 2007, the Anti-Trafficking in Persons Act (ATIP Act) was approved and came into force in February 2008. This law stipulates penalties for trafficking, outlines the functions of the Council for Anti-Trafficking in Persons and the way in which victims of trafficking are to be protected.⁵³

However, despite a strong legal framework, the Government of Malaysia does not fully comply with the minimum standards for the elimination of trafficking.⁵⁴ Women's NGOs have noted that laws relating to the trafficking of persons do not adequately cover the protection and care of victims, including a failure to provide reparations. Additionally, the US State Department reports that the government continued to consign victims to substandard detention facilities and to deny them basic freedoms, or access to NGOs that could provide services.⁵⁵ In 2012 the Government reportedly certified 444 victims of trafficking and convicted only 11 sex trafficking offenders; an increase from 2011.⁵⁶

The National Fatwa Council has declared a series of fatwas aimed at limiting the rights of women to bodily integrity. There is a fatwa making it obligatory for girl children to undergo circumcision; a fatwa against '*pengkids*' (a term referring to Malay women who appear masculine); and a fatwa against women who shave their heads.⁵⁷ Additionally, the Joint Action Group for Gender Equality reports that the Johor Religious Department has whipped 24 women between April 2013 and June 2013 and sentenced another 22 women to the same fate for allegedly committing crimes, including having sex outside of wedlock.⁵⁸

With respect to women's reproductive integrity, **abortion** in Malaysia is permitted to save a woman's life and to preserve a woman's physical and mental health.⁵⁹ In practice however, NGOs have reported that medical staff are reluctant to provide the service, due to either social attitudes or an ignorance of the law.⁶⁰ In terms of attitudes towards abortion, a national fertility and family survey found that 71% of the women surveyed endorsed abortion on the grounds of rape or incest; 54% endorsed it if the woman was unmarried, 52% for health reasons and 34.5% for economic and social reasons.⁶¹ According to a 2010 survey, the modern contraceptive prevalence rate for married women aged 15-49 was 32.3%.⁶² Abortion is illegal in Malaysia, except where the continuance of the pregnancy poses a risk of injury to her mental and physical health. Laws and medical guidelines in Malaysia require the consent of the husband of a married Muslim woman to carry out an abortion.⁶³ However, in practice, access is limited. In a joint

⁵² US State Department (2013b)

⁵³ Laws of Malaysia Act 670 Anti-Trafficking in Persons Act 2007, available at: <http://www.hsph.harvard.edu/population/trafficking/malaysia.traf.07.pdf>

⁵⁴ US State Department (2013b)

⁵⁵ US State Department (2013b)

⁵⁶ US State Department (2013b)

⁵⁷ NGO-CEDAW (2012), p.16

⁵⁸ JAG (2013)

⁵⁹ UN (2011)

⁶⁰ NGO-CEDAW (2012), p.136

⁶¹ United Nations Population Division (2002)

⁶² UN (2012)

⁶³ FRHAM (2013), p.4

submission to the United Nations Human Rights Council, several sexual health NGOs reported that most sexual and reproductive health services, including family planning, were not generally available in government facilities to unmarried women; and that young Muslim women did not generally utilize these services.⁶⁴

3. Son bias

The Central Intelligence Agency (CIA) reports that Malaysia has a male/female **sex ratio** at birth of 1.07 and of 1.06 for the working age population (15-64 years old).⁶⁵

There is no evidence to suggest that Malaysia is a country of concern in relation to **missing women**.

More

With respect to access to education, UNICEF reports that Malaysia has reached gender parity in primary education enrolments, with secondary enrolments favouring girls with 71% enrolment, as opposed to 65% for boys; these figures suggest that there is no preferential treatment of sons with respect to education.⁶⁶

4. Restricted resources and assets

Women in Malaysia have equal rights to **own and inherit land** under the Constitution and land legislation. However, Muslim women's right to own and inherit land is regulated by Syariah law. With the amendment of the civil Land (Group Settlement Areas) Act, a wife or ex-wife is entitled to co-own the developed land under the Federal Land Development Authority scheme. Data from the 1992 Smallholder Census indicates that there were 420,193 rubber smallholders in that year. 30.5% were female smallholders with an average holding of 1.65 hectares as compared to male smallholders with 2.02 hectares.⁶⁷

Under civil law, male and female children are entitled to equal shares of any inheritance.⁶⁸ However, this law only applies to non-Muslims. In the Islamic system of succession and inheritance, the parents, spouse and offspring will all get different proportions of the inheritance. The general rule is that the share of a man is double that of a woman in the same degree of relationship.⁶⁹

The Constitution also gives men and women equal **access to non-land assets**. In the administration of property, Malaysian law recognises the right of a man and a woman to hold separate properties even if they are married to each other. Any assets acquired during the marriage are considered joint property and, as such, divided in the event of divorce although it is not clear whether this is an equal division. Under Islamic law, in case of divorce or death of the husband, the wife can claim a third of the value of the land acquired during the marriage.

⁶⁴ FRHAM (2013), p.3

⁶⁵ CIA (2013)

⁶⁶ UNICEF (2013)

⁶⁷ CEDAW (2004), p.98

⁶⁸ Distribution Act, No. 300, 1958, revised in 1983, Section 6

⁶⁹ FAO (n.d.)

The court may increase a divorced wife's share of land to one-half, depending upon the nature of the work done by her on the property⁷⁰; although women's groups have noted that woman's domestic contributions are rarely valued at the same level as a man's financial contributions.⁷¹ After divorce, women have only a limited right to remain in the marital home, which may be rescinded in a number of circumstances, including "open lewdness".⁷²

The Banking and Financial Institution Act 1989 and other related banking and financial legislation do not discriminate on the basis of gender. Malaysian women have the legal right to **access to financial services**, including bank loans.⁷³ The government has introduced a number of schemes, including micro-credit schemes, to improve women's access to credit, particularly in rural areas.⁷⁴ According to the World Bank, in 2011 5.2% of women used a bank for business purposes, versus 7.8 of men; 10.3% of women obtained loans from a financial institution, as compared to 12.1 men; while 1.5% of women, and 2.8% of men obtained a loan from a private lender.⁷⁵ A National Plan of Action for the Advancement of Women (2009–2014) serves as a general guideline in the implementation of programmes for the integration of women in development.⁷⁶

5. Restricted civil liberties

Legally, women have freedom of movement and **access to public space**, but locally imposed restrictions based on Sharia apply in certain areas. For example, the area of Kelantan has introduced a gender segregation policy in supermarkets, swimming pools, cinemas and other entertainment outlets.⁷⁷ NGOs have raised numerous concerns regarding women's freedom of access to public space in Malaysia.⁷⁸

While there appears to be an active women's movement in Malaysia, particularly groups focused on gender discrimination under Islamic law and practice, women's organisations report that women's rights NGOs face many challenges in carrying out their objectives and projects as they are subject to repressive and restrictive laws that exist in the country and continue to curtail freedom of speech, association and movement, despite constitutional protections in these areas.⁷⁹ For example, it was reported that leaders of several of the women's NGOs, who joined a coalition for clean and fair elections in Malaysia in 2011, were subject to threats and public denunciation.⁸⁰

With respect to women's participation in political life, women in Malaysia have the same rights as men to vote in all elections, to be elected and to participate in the political and public

⁷⁰ Islamic Family Law (Federal Territories) Act 1984, Section 52

⁷¹ NGO-CEDAW (2012), p.179

⁷² Islamic Family Law (Federal Territories) Act 1984, Section 71

⁷³ CEDAW (2004), p.86

⁷⁴ CEDAW (2004), p.97

⁷⁵ World Bank (n.d).

⁷⁶ HRC (2013), p.9

⁷⁷ National Council of Women's Organisations (2005), p.30

⁷⁸ Shadow Report Group (2005) p.49-53; NGO-CEDAW

⁷⁹ National Council of Women's Organisations (2005), p.46

⁸⁰ NGO-CEDAW (2012), p.10

life.⁸¹ However, this has not translated into equal political representation, with prominent NGOs reporting that the continued under-representation of women in politics and decision-making positions and the lack of success of plans attempting to address this.⁸² There is no **quota** for women at the national or sub-national levels. In 2004 the Government announced a policy of having women occupy 30% of decision-making positions in the public sector.⁸³ However, while the government reports that proactive implementation of this policy has seen the percentage of women holding decision-making positions in the public sector increased to 31.7% in 2012 from 18.8% in 2004;⁸⁴ this figure has been disputed by local NGOs, who estimate the figure to be closer to 20%.⁸⁵ Women's organisations report that, in general, the structures of most political parties are not conducive to women's involvement, as women's participation and movement within the party is generally restricted to the women's wings.⁸⁶ In 2010, women comprised 25.7% of the Senate, and made up only 8% of the Members of the 13 State Legislative Assemblies and 7.1% of Cabinet Ministers.⁸⁷ The representation of women in village committees is low.⁸⁸ It is estimated that women made up 4.8% of Local Council Presidents, and 1% of Village Committee Chairs.⁸⁹

More

In 2011, the Government announced a policy of at least 30% women in decision-making positions in the corporate sector. The policy aims to increase the number of women holding executive and non-executive director positions (excluding alternate director positions) and board positions in companies listed in the Malaysia Stock Exchange to 30% by 2016.⁹⁰

With respect to women's participation in paid work, the Employment Act provides for 60 days of paid **maternity leave** for private sector workers;⁹¹ and in October 2011, the Government improved maternity leave for civil servants by providing fully paid maternity leave for 90 days, subject to a total of 300 days leave throughout tenure of service.⁹² Employees who do not receive monthly wages during their maternity leave are also entitled to maternity allowance from their employer for up to five surviving children.⁹³ The law provides that no employee may be dismissed from her employment while on maternity leave⁹⁴, and a 2011 landmark High Court decision has confirmed that it is unconstitutional to deny employment due to pregnancy.⁹⁵ However, labour protections, including maternity benefits, do not apply to

⁸¹ CEDAW (2004), p.32

⁸² NGO-CEDAW (2012), p.101

⁸³ HRC (2013), p.9

⁸⁴ HRC (2013), p.9

⁸⁵ NGO-CEDAW (2012)

⁸⁶ National Council of Women's Organisations (2005), p.40

⁸⁷ NGO-CEDAW (2012), p.103

⁸⁸ NGO-CEDAW (2012), p.20

⁸⁹ NGO-CEDAW (2012), p.152

⁹⁰ HRC (2013), p.9

⁹¹ Employment Act 1955, Section 37(1)(a) and (b)

⁹² HRC (2013), p.10

⁹³ Employment Act 1955, Sections 37, 38, 39, and 40

⁹⁴ Employment Act 1955, Section 37

⁹⁵ Noorfadilla bt Ahmad Saikin v Chayed bin Basirun & Ors [2012] 1 MLJ 832

domestic workers or those in subcontracted production.⁹⁶ The Employment Act 1955 discriminates against domestic workers in relation to a number of rights, including the right to maternity benefits, rest days, limited hours of work, holidays, as well as termination, layoff and retirement benefits.⁹⁷ As the vast majority of domestic workers are women, these practices amount to indirect discrimination against women.⁹⁸

Under the Federal Constitution, only Malaysian fathers are able to automatically confer their **citizenship** to their children, mothers must apply for citizenship for their children.⁹⁹

⁹⁶ NGO-CEDAW (2012), p. 160

⁹⁷ Employment Act 1955, Part IX

⁹⁸ COMANGO (2013), p.17

⁹⁹ NGO-CEDAW (2012), p.18

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