



**sis** sisters in islam  
EMPOWERING VOICES FOR CHANGE



**musawah**  
For Equality in the Family

# **A REPORT ON MALAYSIA'S PROGRESS AND COMMITMENT TO THE SUSTAINABLE DEVELOPMENT GOAL (SDG) 5.1.1**

Prepared by Ipsos Strategy3 for SIS and Musawah

A Report on Malaysia's Progress and Commitment to the Sustainable Development Goal (SDG) 5.1.1.

First edition 2023

© Sisters in Islam & Musawah

ISBN: 978-983-2622-51-2

PRODUCTION TEAM

WRITING

Ipsos Strategy3

COPY EDITOR

Sisters in Islam & Musawah team

CONTENT EDITING

Noraida Endut, Prof. Dato' Dr.

LAYOUT DESIGN

Ipsos Strategy3

PHOTO CREDIT

Ipsos Strategy3

PUBLISHED BY

Sisters in Islam (SIS)

No. 4, Lorong 11/8E, 46200 Petaling Jaya,  
Selangor Darul Ehsan, Malaysia

Tel: +603 7960 3357 | 7960 5121 | 7960 6733

Fax: +603 7960 8737

Email: [sis@sistersinislam.org.my](mailto:sis@sistersinislam.org.my)

Website: <https://sistersinislam.org>



**A REPORT ON MALAYSIA'S  
PROGRESS AND COMMITMENT  
TO THE SUSTAINABLE  
DEVELOPMENT GOAL (SDG) 5.1.1**

Prepared by Ipsos Strategy3 for Musawah



# TABLE OF CONTENT

<b>Section 1: Executive Summary</b>	4
<b>Section 2: Introduction to this report</b>	8
2.1 Background of this report	8
2.2 Methodology used for this report	9
<b>Section 3: Malaysia's legal system in handling matters on gender equality and discrimination against women</b>	11
3.1 Overview of the legal system in Malaysia	11
3.2 Civil laws on matters of gender equality and discrimination against women	12
3.3 Syariah laws on matters of gender equality and discrimination against women	15
3.4 Government policies and initiatives on gender equality and discrimination against women	16
3.5 Overlapping jurisdiction between federal and state on gender equality and discrimination against women	19
<b>Section 4: Gaps in gender equality and discrimination against women in Malaysia</b>	20
4.1 Economic Participation and Opportunity	32
4.2 Marriage and Family	33
4.3 Violence against women	35
4.4 Insufficient granular gender based statistics from government sources	37
<b>Section 5: How States Report on the Elimination of all forms of discrimination against women</b>	28
5.1 Introduction	28
5.2 What is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)?	29
5.3 Malaysia's entry into the Convention	29
5.4 What is the Committee on the Elimination of Discrimination Against Women (the CEDAW Committee)?	30
5.5 The Structure of Nations Reporting to CEDAW	31
5.6 Malaysia's history of periodic report submission to CEDAW	33
5.7 Process of reporting to CEDAW	35
<b>Section 6: Review of Malaysia's current progress towards SDG5.1.1</b>	39
6.1 Introduction to SDG 5 - Gender Equality	39
6.2 Introduction to SDG Indicator 5.1.1 - Legal framework for gender equality and non-discrimination	40
6.3 Key questions to monitor SDG Indicator 5.1.1	41
6.4 What is the progress of Malaysia towards SDG5.1.1?	45
<b>Section 7: The Way Forward</b>	57
7.1 Recommendations for government and government agencies on the fulfilment of SDG5.1.1	58
<b>Appendix: Malaysia's legal system in handling matters on gender equality and discrimination against women</b>	62



**SECTION 1:  
EXECUTIVE SUMMARY**

## The world has made considerable progress in the movement for gender equality.

Never before have women been more empowered than now – we are seeing more women in the workforce, leadership positions, and governance. However, there is still a long way to go in the journey towards gender parity. Women are still unfairly burdened by societal expectations and are first to bear the brunt of negative socioeconomic impacts. The COVID-19 pandemic exacerbated existing inequalities – before COVID, women were nearly three times more likely to perform unpaid care work. With the closure of schools, women still bore a disproportionate share of unpaid care work (with evidence suggesting an increased amount), often while managing paid work.<sup>1</sup> Despite progress made, gender inequality persists.

In Malaysia, many policies and initiatives have been introduced over the last few years to improve and protect women's rights. Under the Twelfth Malaysia Plan, the government intends to increase labour force participation to 59% by 2025 from 55.6% in 2019.<sup>2</sup> One of the ways identified is through encouraging the participation of women, whose low participation (at 55.3%)<sup>3</sup> in the labour market is primarily attributed to family responsibilities in the workforce.<sup>4</sup> By increasing access and quality of early childhood care, education services, and affordable elderly care, these initiatives hope to encourage more women to stay employed or return to work. Additionally, Dewan Negara recently

passed the Anti-Sexual Harassment Bill in August 2022. The bill stipulates the setup of a tribunal to hear cases of sexual harassment, providing the right of redress for sexual harassment survivors and an avenue to hold their perpetrators accountable. In late 2022, the government also tabled the 2023 Budget, which recognised the role of women regardless of status. In the Budget 2023 tabled by Finance Minister Tengku Datuk Seri Zafrul Abdul Aziz in the Dewan Rakyat on 7th October 2022, the government proposed income tax exemptions on the income received from Assessment Years 2023 to 2028 to encourage women to return to work and to introduce a special training programme to enhance women's skills, identify and subsequently increase the numbers of qualified women to be appointed as board members. In addition, mothers from Bantuan Keluarga Malaysia (BKM) households who give birth in 2023 will receive a one-off cash aid of RM500 under the Cahaya Mata Keluarga Malaysia programme.<sup>5</sup>

Whilst efforts are being made to strengthen women's rights and protect women's interests in Malaysia, some trends prove that many areas need the government's attention for intervention. Cases of domestic violence have shown

<sup>1</sup> UN Women, "How COVID-19 Impacts Women and Children", 2021

<sup>2</sup> TalentCorp, "Labour Market Key Figures", <https://www.talentcorp.com.my/key-figures/key-figures>

<sup>3</sup> 12th Malaysia Plan 2021 - 2025

<sup>4</sup> Khazanah Research Institute, "Work in an Evolving Malaysia", 2020, Accessed from <https://bit.ly/3rOW1J6>

<sup>5</sup> Ministry of Finance Malaysia, "Budget 2023", Accessed 7th October 2022

a significant increase, rising by 42% from 5,260 reported cases to 7,468 cases between 2020 and 2021.<sup>6</sup> Meanwhile, the law in Malaysia does not currently criminalise marital rape,<sup>7</sup> and there is no clear plan by the government to make child marriage illegal, thus putting girls at risk of being forced into marriage. Despite progress made, gender inequality, yet again, persists.

The importance of gender equality is underlined through its inclusion as one of 17 Sustainable Development Goals (SDGs) under the 2030 Global Agenda for Sustainable Development adopted by all members of the United Nations. SDG 5 on gender equality sets the ambitious target to end all forms of discrimination against all women and girls everywhere by 2030. Progress for this target is measured through indicator 5.1.1 - whether governments and nations have added legal frameworks to promote, enforce and monitor equality and non-discrimination based on sex. This is explored in four key areas, including a) Overarching legal framework and public life, b) Violence against women, c) Employment and economic benefit d) Marriage and family.

This report is commissioned by Musawah and Sisters in Islam (SIS) as a combined effort to raise awareness of where Malaysia currently stands in its efforts to eliminate discrimination against women and to achieve gender equality in areas such as marriage, family, and workplaces. It provides an assessment of Malaysia's current progress on the current legislative system and policies that are in place to promote, enforce and promote equality and non-discrimination based on sex based on indicator 5.1.1 through 45 key

questions developed by the UN. The areas of law and questions are drawn from the international legal and policy framework on gender equality, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which has 189 States parties, and the Beijing Platform for Action.<sup>8</sup>

The report also covers many key gaps in practices of gender equality and eliminating discrimination against women, including the lack of granular gender statistics, lack of direct or indirect laws to protect women against discrimination and concerns that government authorities do not have jurisdiction in gender-related matters involving religious authorities. Based on the assessments, recommendations and way forward were suggested to advocate the government to perform a universal review of all legislations and policies on gender equality and act on areas that are severely lacking legislative protection for women.

Ultimately, this report seeks to increase awareness of Malaysia's current standing with the SDG5.1.1 indicator and to lobby for change from the government of Malaysia to realise the UNSDG goal of achieving gender equality by 2030.

<sup>6</sup> Ministry of Women, Family and Community Development

<sup>7</sup> Marital rape is not criminalised, the exception to section 375 of the Penal Code permits marital rape as long as the marriage is legally enforceable.

<sup>8</sup> United Nations, Global SDG Indicator Platform, <https://sdg.tracking-progress.org/indicator/5-1-1-legal-frameworks-that-promote-enforce-monitor-gender-equality-area-4-marriage-and-family/>, Accessed 13th September 2022

## LEGEND

<b>AGC</b>	Attorney General's Chambers
<b>BKPP</b>	Bahagian Kabinet, Perlembagaan dan Perhubungan Antara Kerajaan
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CRC</b>	Convention on the Rights of Child
<b>DOSM</b>	Department of Statistics Malaysia
<b>FC</b>	Federal Constitution
<b>ILO</b>	International Labor Organisation
<b>JAKIM</b>	Malaysian Islamic Development Department (Jabatan Kemajuan Islam Malaysia)
<b>LGBT</b>	Lesbian, gay, bisexual, transgender
<b>LFPR</b>	Labour force participation rate
<b>MDG</b>	Millenium Development Goals
<b>MGGI</b>	Malaysia Gender Gap Index
<b>MJM</b>	Cabinet Paper (Memorandum Jemaah Menteri)
<b>NGO</b>	Non-governmental organisation
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>PDRM</b>	Malaysia Royal Police Force (Polis Di Raja Malaysia)
<b>PSDSP</b>	Public Sector Digitalisation Strategic Plan 2021-2025
<b>SIS</b>	Sisters in Islam
<b>SDG</b>	Sustainable Development Goals
<b>SRHR</b>	Sexual and Reproductive Health and Rights
<b>UN</b>	United Nation
<b>UNGA</b>	United Nations General Assembly
<b>12MP</b>	Twelfth Malaysia Plan
<b>WAO</b>	Women's Aid Organisation





**SECTION 2:  
INTRODUCTION  
TO THIS REPORT**

## 2.1 | Background of this report

**Musawah ('equality' in Arabic) is a global movement for equality and justice in Muslim families.**

Musawah was launched in February 2009 at a Global Meeting in Kuala Lumpur, Malaysia, attended by over 250 people from 47 countries. They comprised NGOs, activists, scholars, legal practitioners, policymakers, grassroots women, and men worldwide.

Sisters in Islam (SIS) is a non-governmental organisation working toward advancing Muslim women's rights in Malaysia. SIS was founded in 1988 by a group of Muslim women who came together to address the injustice women face under the Syariah (Islamic law) system. Their critical reading of the Al-Quran through a hermeneutical approach opened a world of Islam for women filled with love and mercy and equality and justice.

In early 2022, Musawah and SIS envisioned this report with three objectives in mind:

1. To test the 45 questions outlined in SDG5.1.1 through legal research
2. To collect the official datasets reported around SDG5.1.1 from respective stakeholders
3. To ascertain the actual progress of Malaysia in terms of SDG5.1.1

This report aims to provide and raise awareness of where Malaysia currently stands in eliminating discrimination against women and achieving gender equality. This includes assessing Malaysia's efforts in addressing these issues and identifying key gaps and challenges to discrimination against women in the country.

Additionally, the report contains analyses of the United Nations Sustainable Development Goal (SDG) 5.1.1 framework that tracks and measures government efforts to put in place legal frameworks to promote, enforce and monitor gender equality. For this report, Malaysia's progress in adhering to SDG 5.1.1 is to be reported through a questionnaire developed by the UN to measure four areas of law including

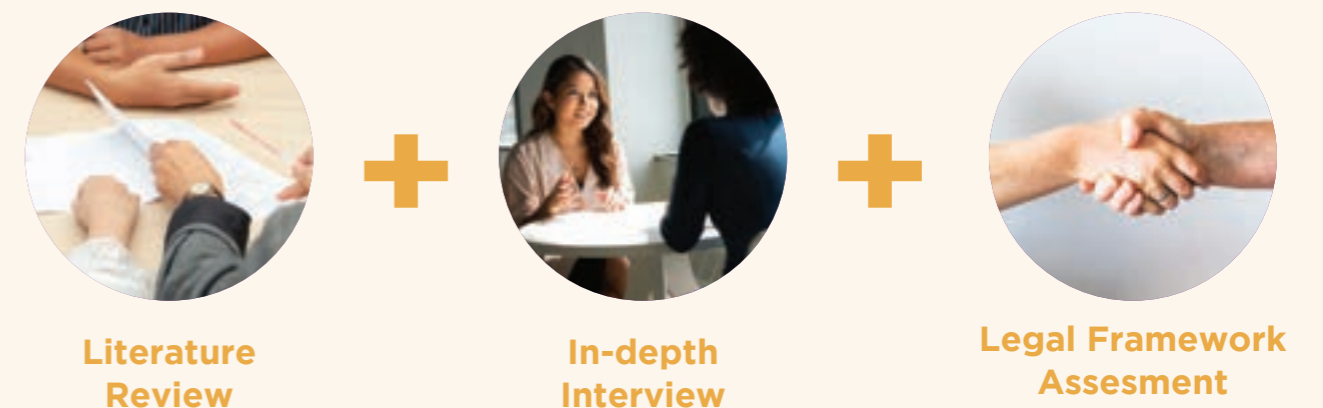
1. overarching legal frameworks and public life;
2. violence against women;
3. employment and economic benefits; and
4. marriage and family.

Above all, the report hopes to advocate for lasting changes and to support Malaysia's efforts to end discrimination against women.

## 2.2 | Methodology used for this report

The report's source of information and data is gathered from two primary sources, literature review (desk research) and primary research (in-depth interviews).

**Figure 1: Methodology used for this study**




Desk research involved conducting a thorough literature review of existing materials, including articles, previous studies, statutes, and national policies related to the development and the latest progress of SDG 5.1.1. This provided a foundational understanding of the ecosystem and progress of Malaysia in achieving SDG 5.1.1, issues and challenges, and development constraints.

To supplement the study's findings, semi-structured in-depth interview sessions were organised with relevant public sector stakeholders and NGOs that are actively involved in matters of gender equality and women's rights in Malaysia.

Musawah and Sisters in Islam commissioned IPSOS to conduct the research of which the recommendations (Chapter 7) are solely informed by the research findings.



A hand holding a wooden gavel over a sound block in a courtroom setting. The background is blurred, showing other people in a legal environment. The image is overlaid with a green graphic design consisting of a semi-circle at the top right and several overlapping leaf-like shapes at the bottom right.

**SECTION 3:  
MALAYSIA'S LEGAL  
SYSTEM IN HANDLING  
MATTERS PERTAINING TO  
GENDER EQUALITY AND  
DISCRIMINATION AGAINST  
WOMEN**

### 3.1 | Overview of the legal system in Malaysia



**Malaysia’s legal system consists of legal pluralism - there are different systems of law and courts operating within their assigned jurisdictions.**

The legal system comprises civil courts, Syariah courts and native courts in Sabah and Sarawak.

The Federal Constitution of Malaysia, as the supreme law of the land, sets the legal framework and rights of Malaysians. Jurisdiction in federal matters lies with the civil courts. On the other hand, Syariah law only applies to those professing the religion of Islam and is administered through the Syariah courts. These courts come under the jurisdiction of the state legislature and deal with matters of Islamic law, predominantly family law.

The separation between these two legal systems is further codified within Article 121(1A) of the Federal Constitution. It stipulated that the civil courts have no jurisdiction in matters that fall within the Syariah court jurisdiction. This is meant to provide a clear distinction between the jurisdiction of the two systems. Therefore, a matter can only be under the jurisdiction of the civil court or the Syariah court, but not both.<sup>9</sup>

Meanwhile, customary law is administered through the Native courts and applies to the ethnic ingenious people in Sabah and Sarawak. The main function of the Native Courts is to settle disputes between natives based on the native law or customs. While these systems of law make up the legal system in Malaysia, matters on gender equality and discrimination against women for Muslims and non-Muslims in Malaysia usually fall within civil law and Syariah law.

<sup>9</sup> Yvonne Tew, “The Malaysian Legal System: A Tale of Two Courts”, Georgetown University Law Center, 2011

**Figure 2: Legal systems in Malaysia**

Civil Law	Syariah Law	Customary Law
<ol style="list-style-type: none"> <li>1. Focuses on various legal matters pertaining to family and legal issues</li> <li>2. Applicable for both Muslims and non-Muslims in Malaysia</li> <li>3. Under the Civil Law Act, areas applicable include general matters, compensations, torts, contributory negligence, contracts, apportionment and disposal of property and other various issues</li> </ol>	<ol style="list-style-type: none"> <li>1. Valid to a few areas of law that focuses on religious beliefs, attitude and practices under the gratitude of Islam</li> <li>2. Also known as Islamic laws, and is only applicable to Muslims in Malaysia</li> <li>3. Applicable to areas such as succession, betrothal, marriage, divorce, maintenance, adoption, guardianship, trusts, Islamic religious revenue and mosques</li> </ol>	<ol style="list-style-type: none"> <li>1. Focuses on areas pertaining to customs</li> <li>2. Applicable for native in Sabah and Sarawak</li> <li>3. Applicable to areas such as breaches of native law or customs, land disputes and applications to be recognised to be part of the native communities</li> </ol>

Source: LawOfficeMalaysia, NYULawGlobal, Mondaq “The Syariah Court: Its Position Under The Malaysian Legal System”, Native Courts of Sarawak, The Native Courts Enactment 1992

### 3.2 | Civil laws on matters of gender equality and discrimination against women

Under the Federal Constitution, Article 8 (2) has prohibited gender discrimination with the stipulation in place, “there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or 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 employment”.<sup>10</sup>

Furthermore, the Federal Constitution guarantees the principle of gender equality under Article 8, Clause 1, that “all persons are equal before the law and entitled to the equal protection of the law”. Despite so, there are still laws that discriminate against Malaysian women.

<sup>10</sup> Judicial Appointments Commission, “Federal Constitution”

## Economic participation and opportunities

There is equal protection for both men and women within Malaysian laws on matters of economic participation and opportunities, except there is currently no legal mandate of equal remuneration for work of equal value. The Employment Act generally treats women and men equally but does not explicitly mandate equal pay for the same work. Similarly, it does not expressly stipulate non-discrimination in employment based on gender.

Additionally, the government has amended the Employment Act 1955 to increase maternity leave from 60 days to 98 days – in line with the International Labor Organization (ILO) standards. The same amendment also added paternity leave from three days to seven days for married male employees to manage matters related to the birth of their children.<sup>11</sup>

## Violence against women

Malaysia does have a law that specifically addresses acts of domestic violence through the Domestic Violence Act (DVA) 1994. The act is read together with the Penal Code, which outlines punishments for various offences. While Penal Code charges are not specific to domestic violence, those who commit certain Penal Code offences against a spouse may receive greater punishment compared to offences made to non-spouse. Additionally, domestic violence survivors are entitled to protection orders under the Domestic Violence Act.<sup>12</sup>

The definition of domestic violence includes the following:<sup>13</sup>

1. Intentionally / unintentionally attempting to cause/ causing the victim fear and physical injuries.
2. Causing physical injuries to the victim, knowing full well that the act in question will cause physical injuries.
3. Forcing a victim, through coercion or threats, to perform an act that includes but is not limited to sexual, to which the victim has a right to refuse.
4. Confining / Detaining / Holding a person against their will.
5. Harassment and destruction or damage of property with the intentional/unintentional purpose of causing distress and anxiety to the victim.
6. Removing / Withholding property belonging to the victim with the sole intent of causing distress and monetary loss to the victim;
7. Threatening the victim with the intent of causing the victim to fear for their safety or the safety of a third person as, well as distress;

Meanwhile, the Anti-Sexual Harassment Bill was tabled for the first reading in the Dewan Rakyat on 15 December 2021<sup>14</sup> and was subsequently passed in August 2022. The bill stipulates the setup of a tribunal to hear cases of sexual harassment, providing the right of redress for sexual harassment survivors and an avenue to hold their perpetrators accountable. If convicted, the court may direct perpetrators to issue an official apology or require them to compensate the victims. At the same time, failure to comply may result in a fine or imprisonment.<sup>15</sup> While this is a progressive step towards protecting victims of harassment, there are still gaps that will need to be addressed and have been endorsed by various NGOs in Malaysia.<sup>16</sup> These include extending sexual harassment to organisational duties, extending the definition of sexual harassment and implementing provisions on victimisation.

Additionally, the Anti-stalking bill was passed to make both virtual and physical stalking an offence under the Penal Code. Those convicted of the offence are punishable by imprisonment of up to three years, a fine or both. This is expected to provide wider protection to all Malaysians, especially women and girls, who are more vulnerable to such acts.

## Citizenship

There are different processes in conferring citizenship for children born abroad to a Malaysian father and non-citizen spouse and a Malaysian mother and a non-citizen spouse. Every child born to a Malaysian father and a non-citizen spouse abroad is entitled to citizenship under the law. This is stipulated in Article 14 (1) (b) and Part II of the Second Schedule of the Federal Constitution, which clearly states the ability of the father to confer citizenship to their children born abroad.

Meanwhile, a Malaysian woman has to apply at the relevant Malaysian consulate abroad within one year of the child's birth for the child to be registered as a citizen. This is stated under Article 15(2) of the Federal Constitution and is currently implemented through an interim administrative procedure that applies to children born overseas after 1 January 2010 to Malaysian mothers with a non-citizen spouse. While this provides an avenue for Malaysian mothers to apply for citizenship for their children, in practice, this law usually fails the mothers.

<sup>11</sup> Parliament of Malaysia, [https://parlimen.gov.my/files/billindex/pdf/2021/DR/DR%201\\_2021%20-%20bm-merged.pdf](https://parlimen.gov.my/files/billindex/pdf/2021/DR/DR%201_2021%20-%20bm-merged.pdf)

<sup>12</sup> Women's Aid Organisation (WAO), <https://wao.org.my/laws-on-domestic-violence/>, Accessed 19th September 2022

<sup>13</sup> Malaysian Administrative Modernisation and Management Planning Unit (MAMPU), Accessed 13th September 2022

<sup>14</sup> Parliament of Malaysia, <https://www.parlimen.gov.my/bills-dewan-rakyat.html?uweb=dr&>

<sup>15</sup> S. Indramalar, "It's time's up for sexual harassers in Malaysia, with Anti Sexual Harassment Bill passed", The Star, Published July 2022

<sup>16</sup> WAO, "Urgently review the anti-sexual harassment bill 2021", Published April 2022

## Marriage and family

Matters relating to marriages fall under the purview of civil law for non-Muslims, while Syariah law governs Muslim marriages. The minimum age of marriage for non-Muslims is enshrined in the constitution through the Law Reform (Marriage and Divorce) Act of 1976, which sets the legal marriage age at 18 years old for both

males and females. It also stipulates that under no circumstances can the marriage of non-Muslim girls below 16 years old be legally approved. However, girls between the ages of 16 and 18 may marry with the consent of the Chief Minister of a particular state.

### 3.3 | Syariah laws on matters of gender equality and discrimination against women

Syariah, or Islamic law, only has jurisdiction over Muslims and is limited to family law and religious matters. It falls under the purview of the state, and hence, may differ from one state to another. In general, there are four common issues surrounding women's rights in the Islamic Family Laws Act – the dissolution of marriage (*fasakh*), polygamy, matrimonial property, and custody of children (*hadhanah*).<sup>17</sup> Despite many recent cases ruling in favour of men over women, Syariah lawyers have stated that Syariah law statutes have provided good grounds for protection for women over men.<sup>18</sup> The reasoning for the recent favour in rulings was poor preparation and execution in court cases. This was particularly prevalent in marriage and divorce-related cases.

#### Marriage and family

Both men and women have equal rights to enter into a marriage with consent from both parties. When it comes to divorce, both men and women have the right to initiate a divorce in a variety of forms – *talaq* (repudiation of marriage – a sole prerogative of a husband), *khuluk* (redemption of talaq), *fasakh* or oaths.

#### Alimony and Child Support Payments

One of the biggest challenges women face in Syariah law for marriage and family is delinquency on alimony and child support payments from former husbands. According to lawyers, this process could take six months and more than a year to be resolved with no mechanism to speed up this process. This issue persists even with local governments taking action to pursue the guilty parties.<sup>19</sup>

## Marriage age

In terms of marriage, most states maintain the minimum age of marriage at 16 for girls and 18 for boys. The exceptions to this practice are the state of Selangor and Kedah – the former amended the minimum age for marriage to 18 for boys and girls<sup>20</sup> in 2018, while the latter recently

approved an amendment to state law to increase the minimum age to the same level in July 2022. Despite the minimum age requirement, Syariah law also permits the marriage of those below the minimum age, as long as they obtain permission from the Syariah court.

## Other developments

In 2010, two women were appointed as Federal Territory Syariah Subordinate Court (Hakim Mahkamah Rendah Syariah) judges in the Federal Territory Syariah Court. Several other states, namely Melaka, Perlis, Sabah, Kelantan, Pahang, Selangor, Kedah and Terengganu, have implemented similar measures by appointing several women Syariah officers as Syariah Subordinate Court Judges.<sup>21</sup>

In 2016, two women Syariah officers in Selangor were appointed as Judges of the Syariah High Court, Selangor. This appointment was the first of its kind in Malaysia and ensured that women were recognised as more than capable of taking on such a role in the Syariah courts in Malaysia.

<sup>17</sup> Md Zawawi Abu Bakar, “Permasalahan Hak Pasangan dalam Undang-undang Keluarga Islam”

<sup>18</sup> In-depth Interview with Syariah Lawyer

<sup>19</sup> Malay Mail, “FT sets up new Shariah unit to act on delinquent alimony, child support payments”, Published 2nd September 2019

<sup>20</sup> Selangor Government, <http://dewan.selangor.gov.my/sultan-selangor-setujucadangan-naikkan-had-umur-perkahwinan-kepada-18-tahun/>

<sup>21</sup> YA Noor Huda binti Roslan, Hakim Wanita di Mahkamah Shariah: Isu dan Cabaran

## 3.4 | Government policies and initiatives on gender equality and discrimination against women

### Overview of overarching gender policies

The gender equality agenda in Malaysia is a mandate of the Ministry of Women, Family and Community Development (MWFCDD), which is responsible for enforcing the legal framework for gender equality and non-discrimination against women in Malaysia.<sup>22</sup> It was formed in 2001 as a coordinator for developing women and families as part of Malaysia's commitment to the Beijing Declaration and Platform for Action adopted at the United Nations' Fourth World Conference on Women in Beijing in September 1995.

At a national level, National Women Policy aims to ensure the development and empowerment of women by mainstreaming women's interests in achieving their full potential in planning and country development to achieve gender

equality.<sup>23</sup> This is accomplished through the Women Development Action Plan (WDAP), which sets out the actions that need to be taken by relevant stakeholders across 13 sectors (e.g. economy, laws, sports, violence against women, health, education and training) to achieve the objective and the mission of the National Women Policy.

At the international level, apart from its commitment to the Beijing Declaration, Malaysia ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in July 1995. However, it has maintained reservations on Articles 9(2) and 16(1) (a), (c), (f) and (g) of CEDAW on the ground that these provisions are in contradiction to the Federal Constitution and the Syariah laws.<sup>24</sup>

<sup>22</sup> Manual on Gender Budgeting in Malaysia, Ministry of Women, Family and Community Development

<sup>23</sup> Department of Women's Development, Ministry of Women, Family and Community Development

<sup>24</sup> SUKAHAM, "Human Rights Commission of Malaysia: An Independent Report to the Committee on the Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW)", 2017

### Economic participation and opportunity

In the Twelfth Malaysia Plan (12MP), which covers the period of 2021-2025, the government has outlined its target to increase women's participation in the labour market to reach 59% by 2025.

Additionally, the Government, from the previous Budget 2022, expressed its commitment to mainstream the role of women in decision-making as well as strengthen women's leadership in the corporate world. Through the Securities Commission, the government will make it mandatory for all publicly listed companies to appoint at least one female director. It is expected to take effect from 1 September 2022 for large, capitalised companies and 1 June 2023 for other publicly listed companies. The Government has also allocated RM5 million to the Women Leadership Foundation to boost women's participation in the economic sector through, among others, young leadership training and entrepreneurship programs.

The new budget offers a great way forward in supporting the development of women in their careers and strengthening the role of women as leaders and entrepreneurs.

In late 2022, the government tabled the Budget 2023, which provided economic allocations for the development of women in Malaysia.<sup>25</sup>

They include:

1. Women are to be exempted from income tax for assessment years 2023 to 2028 to encourage them to return to work after taking a career break.
2. Securities Commission Malaysia to introduce a special training programme for women's skill levels to increase the number of women eligible to be appointed as board members.
3. RM235 million in financing will be available for women — under the Semarak-Nita BSN Scheme, Tekunita TEKUN, DanaNITA MARA, and Bank Rakyat's Biz Lady — to encourage more women to increase their business capacity and improve marketing strategies.

<sup>25</sup> Ministry of Finance Malaysia, "Budget 2023", Published 7th October 2022

## Violence against women

In the 2022 budget, the Government has also allocated RM13 million to empower Bahagian D11 Polis Diraja Malaysia, which investigates sex crimes against women and children. In addition, a community awareness program on violence against women nationwide through the WAJA (Women Anti-Crime) Squad will be

implemented with an allocation of RM10 million. In addition, to protect the welfare of more victims of domestic violence, the Government will add a One-Stop Social Support Centre (with an allocation of RM4.5 million) and work with NGOs to increase the number of Women's Special Shelters with a budget of RM10 million.<sup>26</sup>

## Marriage and Family

In 2020, the government launched a 5-year plan to handle the causes of child marriage. The National Strategy Plan in Handling the Causes of Child Marriage plan outlined 17 strategies and 58 programs to raise awareness and change perception and stigma related to underaged marriage issues. Five factors were identified to be the main causes - 1) low income and poverty, 2) lack or absence of access to reproductive sexual health education

(SRH) and parenting skills, 3) lack of access to education and low school attendance, 4) stigma and social norms towards lower marriage age being made the best option in society to solve problems, and 5) loose laws that provide for marriage applications under 18.<sup>27</sup> However, as of 2022, there is still a lack of efforts to coordinate and publish transparent underage marriage and divorce data.

## Data and statistics on women

Malaysia also took a step towards increasing the release of gender-related statistics through the publication of the Statistics on Women Empowerment in Selected Domains in 2017. It is an annual publication that presents the national gender statistics in Malaysia.

Additionally, a Data Working Committee has been formed to collect data related

to domestic violence under the Select Committee on Women and Children and Social Development.<sup>28</sup> The Data Working Committee involves the Royal Malaysia Police, NGOs, the Social Welfare Department, and the courts and it is led by MWFC, which provides a uniform template to collect data from these agencies and publish the data, which was expected to be completed in June 2022.

<sup>26</sup> <https://budget.mof.gov.my/pdf/2022/ucapan/ub22.pdf>

<sup>27</sup> Ministry of Women, Family and Community Development, "National Strategy Plan in Handling the Causes of Child Marriage", 2020

<sup>28</sup> Based on in-depth interview

## 3.5 | Overlapping jurisdiction between federal and state on gender equality and discrimination against women



The civil and Syariah courts exist to ensure that there would be a federal secular legal system in the form of the civil courts to deal with federal matters and state courts to deal with matters related to Islamic law. The states of Malaysia are given exclusive jurisdiction over the administration of Islamic law by the Federal Constitution, which states that civil courts "shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts." Despite the attempt to codify each court's specific jurisdiction, some matters such as conversion cases have raised issues related to the jurisdiction of parties.

In relation to gender equality and discrimination, some areas that involve matters that encroach into the Syariah law are out of the jurisdiction of the federal government. This is especially true for the legal marital age for Muslims, which falls under the jurisdiction of the state legislature. For Muslim marriages, most states maintain the minimum age of marriage at 16 for girls and 18 for boys but permit marriages below the minimum age as long as permission is obtained from the Syariah court. As such, the federal government's authority in raising the legal age is limited and subject to the agreement of the state governments.



**SECTION 4:  
GAPS PERTAINING TO  
GENDER EQUALITY AND  
DISCRIMINATION AGAINST  
WOMEN IN MALAYSIA**

## 4 | GAPS PERTAINING TO GENDER EQUALITY AND DISCRIMINATION AGAINST WOMEN IN MALAYSIA

**The involvement of Malaysian women in all aspects of life is growing and more visible every year.**

This is primarily due to women's advancements in education, marriage, career development and family. However, Malaysia is still not progressing enough to achieve gender parity. Factors such as the impact of the COVID-19 pandemic, inflation, rising cost of living, climate worries, legal environment and political uncertainty all contribute to the slowing progress towards equality.

The Global Gender Gap Report by the World Economic Forum released in 2022 highlighted alarming gaps for Malaysia. Overall, Malaysia was ranked 103rd out of 146 countries on the Global Gender Gap Index (GGI). Despite this being a minor improvement from 2021 (ranked 112th), the nation still trails behind many of its

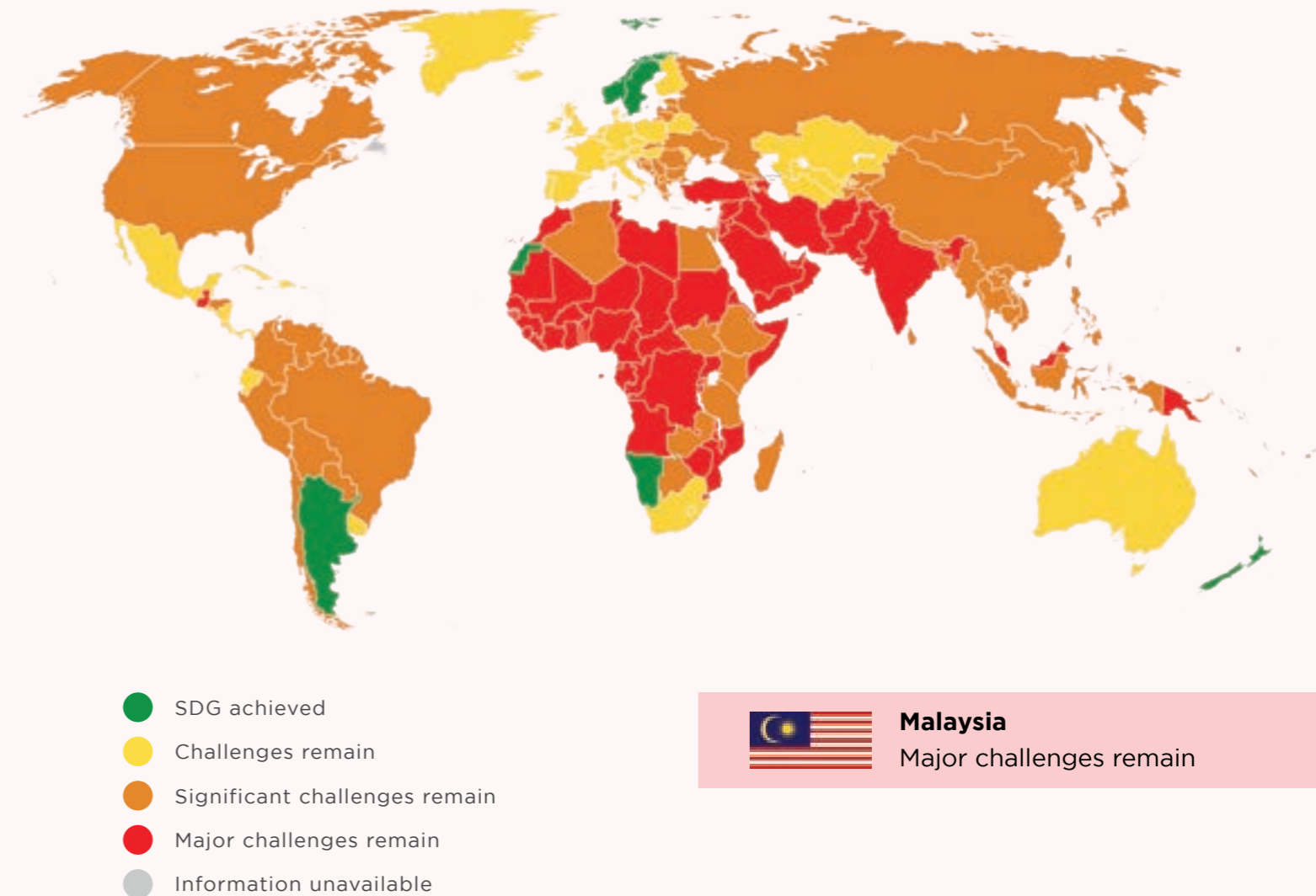
peers. Within the Asia Pacific, Malaysia was only ranked 14th out of 19 countries across all four key indicators; Economic Participation and Opportunity, Educational Attainment, Health and Survival and Political Empowerment.

At the national level, the Malaysia Gender Gap Index (produced according to the methodology of GGI using the latest data from DOSM) shows that in 2020, women underperformed men in all sub-indices, except for Educational Attainment. The Health and Survival sub-index recorded a score of 0.956,<sup>29</sup> followed by Economic Participation and Opportunity (0.738). Political empowerment recorded the lowest at 10.0 per cent (0.100). This underlines the level of inequality between men and women in Malaysia.

Meanwhile, an assessment of overall progress on SDG goals against other countries shows that Malaysia only ranks 72 among 163 countries. SDG 5 Gender Equality, in particular, is assessed as facing 'Major Challenges' in meeting the goal.

<sup>29</sup> A score of 1.0 (100%) indicates equality between men and women has been achieved

**Figure 3: Visual Representation of Malaysia's performance on SDG 5**



Source: UN Sustainable Development Report, Accessed September 2022

Our analysis from numerous in-depth interviews, literature reviews and legal research shows that there are still gaps that need to be addressed by Malaysia to achieve its goals of eliminating discrimination against women and achieving gender equality.



## 4.1 | Economic Participation and Opportunity

Women still make out a fraction of the workforce compared to men. In 2021, the female labour force participation rate was 55.5% compared to males at 80.9%.<sup>30</sup> Meanwhile, women's involvement in politics accounted for only 13.2% of elected parliamentary representatives. The proportion of women in decision-making positions in the private sector was still below the 30% minimum national target, with only 25.8% of women directors on the boards of Malaysia's top 100 publicly listed companies (PLCs).<sup>31</sup>

Efforts such as the increment of maternity leave from 60 days to 98 days have put Malaysia on par with ILO standards, demonstrating efforts by the government to provide a work-friendly environment for mothers. As such, this step is expected to provide working mothers enough time to recover and care for their newborns before they return to work. However, paternity leave was only extended from three days to seven days. This development, while an improvement, perpetuates the gender stereotype – that raising a child is the

main prerogative of a woman instead of shared responsibility between men and women. Childcare remains one of the women's biggest barriers to employment, compounded by the burden of indirect care work, such as cooking and cleaning, of which women do more than double of men.<sup>32</sup>

Additionally, despite the equal rights afforded to men and women in the constitution, application of the said right seems to apply selectively. In the case of *Beatrice Fernandez v. Sistem Penerbangan Malaysia and Anor (2005)*, the Federal Court decided that Article 8(2) only applied to public authorities and private employers had the right to terminate the employment of their pregnant employee. A similar judgement was made in *Air Asia Bhd v. Rafizah Shima Mohamed Aris (2014)*.<sup>33</sup> In this regard, gender-inclusive employment laws must be legally mandated to prevent discrimination based on gender and bodily autonomy in both the public and private sectors.

<sup>30</sup> DOSM, "Labour Force Survey Report 2021"

<sup>31</sup> 12th Malaysia Plan

<sup>32</sup> Khazanah Research Institute, "Work in an Evolving Malaysia", 2020,. Accessed from <https://bit.ly/3rOW1J6>

<sup>33</sup> Skrine, "The Pregnant Pause", Published 30th September 2014

## 4.2 | Marriage and Family

### Unequal rights to confer citizenship to overseas-born children

In a landmark decision, based on equal rights afforded by the Federal Constitution to both men and women, the High court declared that Article 14 (1) (b) and Part II of the Second Schedule of the Federal Constitution specifying conferment of citizenship to overseas-born children, the word Father must be read to include Mother. This would have allowed Malaysian mothers who married foreigners to pass Malaysian citizenship to their children, a right already granted to Malaysian fathers with non-citizen spouses. However, this decision was overturned by the Court of Appeal. Efforts to push for gender equality in Malaysia have yet again been thrown in disarray, with Malaysia facing many pushbacks in eliminating discrimination against women.

### Discrimination in the application process for citizenship for foreign-born spouses

Malaysian men and women go through different processes when applying for citizenship for their non-citizen spouses. According to Article 19 (1) of the Federal Constitution, non-citizen husbands of Malaysian women are required to seek citizenship by naturalisation. This process requires non-citizen husbands to reside in Malaysia for ten years with permanent residence status before the application. Meanwhile, non-citizen wives may acquire

citizenship by registration if the marriage is still subsisting, she has resided in Malaysia for two years preceding the application, and she is of 'good character'.<sup>35</sup> The process clearly discriminates against Malaysian women who are married to non-citizen husbands. Then the notion that men and women are equal before the law should also apply to equal treatment of their spouses before the law.

<sup>34</sup> E. Ding, "Malaysian mothers fight country's unequal citizenship laws", Al-Jazeera, <sup>35</sup> Published 3rd August 2022

Federal Constitution of Malaysia, Article 15 (1)

## Prevalence of underage marriage

Based on statistics released by the Department of Statistics Malaysia (DOSM), an average of 1,500 children are reportedly married each year as of 2018. While the practice affects both boys and girls, it disproportionately affects girls - 90% of children married in 2018 were girls.<sup>36</sup> Girls at that age are still growing and still learning the ways of life. Early marriage robs them of their childhood, impacts their physical, psychological and social well-being, and has profound short- and long-term consequences on their health and livelihood.<sup>37</sup>

Healthwise, pregnancy at that age increases the risk of complications for the child bride and the infant as the child's body is still not fully developed. At that age, child brides are unequipped to play the role of a wife - the isolation from friends and family can hurt their physical and mental well-being. Additionally, those who marry are less likely to stay in school. This would likely lead to a worsening impact on their economic situation, denying them the education and pathway to improve their economic situation.

## Figure 4: Global impact of child marriages



- Married girls are more vulnerable to domestic violence
- Many married children suffer disrupted emotional and psychological development



- Married children are less likely to remain in school, leading to a higher risk of sustained poverty



- Complications during pregnancy and childbirth are the leading cause of death for girls between ages 15 and 19
- The infant mortality rate is higher for teenage mothers

Source: Advocacy Brief: Towards Ending Child Marriage in Malaysia, Unicef 2020

<sup>36</sup> Unicef, "Advocacy Brief: Towards Ending Child Marriage in Malaysia", 2020

<sup>37</sup> Dr A. Ponnupillai, Dr P. Shanmuganathan, "Child marriage and its health consequences", The Sun Daily, Published 13th April 2022

Despite the negative impacts on girls, the government still has no plans to ban child marriages,<sup>38</sup> opting to focus its efforts on reducing the occurrence of child marriages through the implementation of the National Strategic Plan in Handling the Causes of Child Marriage (2020 to 2025). While advocacy is important, addressing this issue requires a multi-pronged approach - exceptions present through the law provide a loophole that can undermine efforts to reduce the occurrence of child marriages. Increasing the nationwide minimum age to marry at 18 not only safeguards the children from entering marriage before they can fully comprehend the magnitude of the situation but also enables Malaysia to fulfil its international commitments to CEDAW and SDG 5.

## 4.3 | Violence against women

### Domestic Violence

According to World Health Organization (WHO), domestic or intimate partner violence is the most common form of violence experienced by women globally. Domestic violence refers to any act of direct or indirect violence or abuse used by someone within the domestic sphere to exercise power and control over another. It can include but is not limited to physical, sexual, psychological, verbal, emotional, and financial abuse.<sup>39</sup> In 2021, there was a 42% increase in domestic violence cases in Malaysia compared to 2020.<sup>40</sup> The movement control order brought by the COVID-19 pandemic is thought to have contributed to the increase in cases as people lost their livelihoods and were forced to stay home.

The DVA applies to spouses, former spouses, children, family members and differently-abled individuals living as family members. However, this act does not cover a woman who is unmarried or is in an intimate partnership. This leaves some women vulnerable and without adequate protection from the law. For example, abused intimate partners are often stigmatised and receive less attention and assistance, largely because they are not legally married.<sup>41</sup> This is an area of the law that the government should address to ensure equal protection for all women.

<sup>38</sup> K. Ayamany, "Women's Ministry says no plans to ban child marriages, better to change society's attitudes through public education", Malaymail, Published 22nd March 2022

<sup>39</sup> All Women's Action Society (AWAM), "Domestic Violence," AWAM, Accessed 21st September 2022

<sup>40</sup> A. Povera, "42pc spike in domestic violence cases last year", New Straits Times, Published 10th March 2022

<sup>41</sup> SUKHAM, "Human Rights Commission of Malaysia: An Independent Report to The Committee on the Convention on The Elimination of All Forms of Discrimination Against Women", Published in 2017

## Sexual harassment

The passing of the Anti-sexual harassment bill has provided an avenue for sexual harassment survivors to hold their perpetrators accountable. However, clauses stipulated in the bill have several gaps that various women's rights organisations highlighted.<sup>42</sup>

The bill defines sexual harassment as “any unwanted conduct of a sexual nature, in any form, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is reasonably offensive or humiliating or is a threat to his well-being”. However, the definition ignores that sexual harassment can occur through a hostile, offensive or intimidating environment and not directed at any specific individual. Besides, the absence of clauses mandating organisational duty releases organisations from any accountability and responsibility in preventing sexual harassment from occurring in the first place.

Lastly, the bill lacks provisions to protect the complainant. For example, the complainant might face retaliation for reporting to their supervisor for sexual

harassment at work. This can discourage survivors from coming forward and scare them into compliance. As the bill is enforced in phases, the government needs to ensure that these concerns are considered to maximise protection for women under the current bill and in subsequent related regulations.

Incidents such as the usage of sexist remarks by members of Parliament (MPs)<sup>43</sup> go to show the need for such protection for women. Allowing those members to get away with only a warning does not seem to reduce the frequency of the occurrence and sets a disappointing precedent whereby perpetrators are not held accountable for their actions. Having a hostile environment and one that favours men discourages women from participating in such professions – only 13.2% of parliament members were women. As elected representatives by the rakyat and those in charge of developing and drafting such protections for the rakyat, these principles based on equality must also be embodied by the MPs and reflected in their behaviour.

<sup>42</sup> WAO, “Urgently review the Anti-Sexual Harassment Bill 2021”, Published April 2022

<sup>43</sup> M. Carvalho, T. Tan, R. Vethasalam, “Uproar in Parliament after MP calls out lawmakers ‘prone’ to making sexist remarks”, The Star, Published 19th July 2022

<sup>44</sup> 12th Malaysia Plan

## Marital rape

Currently, Malaysia does not have specific legislation on marital rape, even though the criminal act of rape is clearly defined in the Penal Code. Section 375 of the Penal Code explicitly exempts husbands (who performed forced sexual intercourse against their wives) from the offence as long as the marriage is legally enforceable.

Section 375A in the Penal Code was introduced to provide some protection to wives. It provides accountability to the husband by preventing them from causing hurt or the fear of death to their wife to have sexual intercourse with her. However, this amendment is problematic as the offence criminalises the harm or fear of harm to the wife in the lead-up to

sex, rather than the act of rape itself, and carries a much lower sentence compared to rape.<sup>45</sup> Rape can also happen without hurt or fear of hurt – for example, through intoxication. Consequentially, married women are left vulnerable to rape by their partners.

Additionally, under section 375(g) of the Penal Code (Act 574), sexual intercourse with a girl who is less than 16 years of age is a criminal offence of statutory rape. Since marital rape is not criminalised in Malaysia, child marriages can essentially circumvent statutory rape laws. These legal loopholes must be addressed to provide better protection to women and girls.

## 4.4 | Insufficient granular gender-based statistics from government sources

In general, Malaysia faces challenges in capturing and reporting on sex-disaggregated data. As of 2020, at least 45 agencies (e.g. Ministry of Women, Family and Community Development, Ministry of Human Resources, MIDA) collect data related to gender issues, but most of these data are not published.<sup>46</sup>

While DOSM provides some breakdown of data based on gender (e.g. population breakdown, labour force, education level participation rate), the data is still insufficient to get a full picture of women's

progress in Malaysia. For example, the Salaries & Wages Survey Report is an annual report published by DOSM that presents the principal statistics of salaries and wages of Malaysians.<sup>47</sup> While there is a breakdown in statistics on gender, these are just broad-based statistics such as mean salary by gender with a breakdown by strata (Urban vs Rural). However, if this data were broken down further by profession, sector, state and area, there would be an opportunity to cross analyse the gaps in detail to understand the areas lacking for women in the labour force.

<sup>45</sup> All Women's Action Society (AWAM), “Legal Remedies,” AWAM, Last modified November 8, 2020, <http://www.awam.org.my/2020/09/09/legal-information>.


<sup>46</sup> Based on in-depth interviews conducted

<sup>47</sup> DOSM, “Salaries & Wages Survey Repo

Granular data will be the key to advancing the country's gender equality agenda. Without sex-disaggregated data, analysis is difficult, and the gender-responsive budgeting approach that is an important component of the gender mainstreaming agenda is also difficult to implement. As a way forward, many other types of statistics can be published to increase the transparency of the state of women in Malaysia. Among these include:

1. Percentage of the population (disseminated by gender) with healthcare
2. Primary and secondary education completion rates for girls and boys
3. Percentage of seats held by women and minorities in the national parliament and/or sub-national elected office according to their respective share of the population
4. Overall domestic violence cases and breakdown by type of offence
5. Number of child marriages





**SECTION 5:  
HOW STATES REPORT  
ON THE ELIMINATION  
OF ALL FORMS OF  
DISCRIMINATION AGAINST  
WOMEN**

## 5.1 | Introduction

**This chapter explores Malaysia’s commitment to being part of CEDAW, which is important because the participation and representation of the nation in this convention can be observed as upholding transparency and accountability. Whilst this does not correlate with or directly influence the achievement of targets and indicators of SDG5, the nation’s accountability and obligations can be observed and measured through a transparent reporting process.**

## 5.2 | What is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)?

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly in December 1979 and was officially an international treaty in September 1981. In its initial inception, only twelve countries were ratified and a decade later, more than one hundred nations were a part of the convention.

Under the convention, discrimination against women is defined as “...any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field<sup>48</sup>.” Nations ratified and committed to the convention must undertake measures within their respective jurisdictions.

<sup>48</sup> UN.org, “Convention on the Elimination of All Forms of Discrimination against Women”

These include: To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;

1. To establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
2. To eliminate all acts of discrimination against women by persons, organisations or enterprises.

Being part of this convention sets a basis for realising equality between men and women through equal access and opportunities in various areas such as political and public life, education, health and employment.

## 5.3 | Malaysia’s entry into the Convention

On the 5th of July 1995, Malaysia officially acceded to the Convention on the Elimination of All Forms of Discrimination against Women. As a part of the commitment to the Convention, Malaysia would be reviewed every four years by the UN with reservations to Article 2(f), 5(a), 7(b), 9 and 16. In February 1998, the country withdrew its reservations

with respect to Articles 2(f), 9(1), 16(1)(b), 16(1)(d), 16(1)(e) and 16(1)(h). In 2010, Malaysia withdrew its reservations to Article 5(a), 7(b) and Article 16(2) while maintaining its reservation to Articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g) on the consideration that these Articles conflicted with the Federal Constitution and Islamic Law (Syariah).

Each of the articles that Malaysia has reservations about due to conflicts with the Federal Constitution and Syariah law includes:

1. (2): States Parties shall grant women equal rights with men concerning the nationality of their children.
2. 16: States Parties shall 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:
  - (1)(a): The same right to enter into marriage;
  - (1)(c): The same rights and responsibilities during marriage and at its dissolution
  - 1)(f): The same rights and responsibilities concerning guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases, the interests of the children shall be paramount;
  - (1)(g): The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

## 5.4 | What is the Committee on the Elimination of Discrimination Against Women (the CEDAW Committee)?

The Committee on the Elimination of Discrimination against Women (the CEDAW Committee) is the body of independent experts that monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The committee was established in 1979 and comprised 23 independent experts from various regions, including Europe, Africa, Asia, and Oceania.<sup>49</sup>

States that ratify to CEDAW must legally fulfil the following:

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Eliminate all forms of discrimination against women in all areas of life.</li> <li>2. Ensure women’s full development and advancement so that they can exercise and enjoy their human rights and fundamental freedoms in the same way as men; and</li> <li>3. Allow the CEDAW Committee to scrutinise their efforts to implement the treaty by reporting to the body at regular intervals.</li> </ol> | <p>Per the Protocols to the Convention, the Committee is mandated to:</p> <ol style="list-style-type: none"> <li>1. Receive communications from individuals or groups of individuals submitting claims of violations of rights protected under the Convention to the Committee and</li> <li>2. Initiate inquiries into situations of grave or systematic violations of women’s rights. These procedures are optional and are only available where the State concerned has accepted them.</li> </ol> |
|---|---|

The CEDAW treaty is a channel to assist women worldwide in bringing change in their lives. The Committee also holds days of general discussion and formulates general recommendations; these are suggestions and clarifications directed to States that concern articles or themes in the Conventions.

These particular focus areas of violence, poverty, and lack of legal protections, along with the denial of inheritance, property rights, and access to credit. Such efforts have led to the development of women’s rights and the adoption of laws on gender equality in various countries such as Botswana, Japan, China, Sri Lanka, Tanzania, Costa Rica, Mongolia, Rwanda, Turkey, Nepal, South Africa, South Korea, Burkina Faso, Panama, Canada, Ukraine, and Moldova.<sup>50</sup>

<sup>49</sup> OHCHR.org, “Introduction to CEDAW”

<sup>50</sup> OHCHR.org, “The work of the committee”

## 5.5 | The Structure of Nations Reporting to CEDAW

The CEDAW committee oversees the implementation of the Convention on Elimination of All Forms of Discrimination Against Women through several key channels. These include collecting of State reports, individual complaints, inter-State complaints, inquiry requests, and preparing general recommendations, statements, and general discussions.

**Figure 5: Reporting Process to the CEDAW Committee**



Source: CEDAW

Each State Party will initially submit a State report upon admission into the CEDAW Convention. Then, each party will submit a periodic report every four years or whenever requested by CEDAW. Each of these state reports is structured no more than 70 pages. The periodic report must consist of a common core document, which lists general information about the reporting State, a framework for protecting human rights, and information on non-discrimination and equality.

Upon receiving the reports from the States, the CEDAW committee will host Country Report Task Forces, which identify in advance the questions that will constitute the principal focus of the dialogue with the representatives of the reporting State. The Report Task Force consists of four to six members that will consider numerous factors such as culture, geographical distribution, and other relevant factors for the vetting of the report. The next step will be to host a dialogue with the State representatives to address observations from the report.

The CEDAW reporting is a process where countries regularly submit reports to the Committee on the Elimination of Discrimination Against Women (CEDAW) on how the rights of women are being implemented in each respective country. These comprehensive reports are submitted a year after States have acceded to the International Covenant on Human Rights. Thereafter, reports are submitted periodically whenever the CEDAW Committee requests them.<sup>51 52</sup>

CEDAW uses a simplified reporting procedure where the pre-working session groups send State parties a list of issues for reporting. The reports provide a detailed outline of key legislations, measures and developments to address key areas highlighted in eliminating discrimination against women.

---

## 5.6 | Malaysia's history of periodic report submission to CEDAW

Since it acceded to CEDAW in 1995, Malaysia has submitted three periodic reports to the CEDAW Committee.

Almost ten years later, Malaysia submitted a combined report of the initial and second periodic reports on 12th April 2004. The fifth periodic report was submitted and published on the 18th of March 2018 and combined with the third, fourth and fifth reports. This report focused on 16 key articles on eliminating discrimination against women.

Malaysia's latest periodic report submission to CEDAW was published on the 25th of April 2022 and covers Malaysia's progress

from 2017 to 2021. This was the sixth periodic report that was submitted. The previous submission, the fifth periodic report, was submitted and published on the 18th of March 2018 and focused on 16 key articles on policies and steps taken towards eliminating discrimination against women.

The latest comprehensive submission also touched on 16 key articles on discrimination against women by reporting the current state of legislation for each article discussed.<sup>54</sup>

<sup>51</sup> OHCHR.org, "Committee on the Elimination of Discrimination Against Women"

International Justice Resource Center,

<sup>52</sup> "Committee on the Elimination of Discrimination Against Women"

These included the following:

1. Legislations protecting against discrimination against women
2. Measures to eliminate discrimination
3. The development and advancement of women
4. Acceleration of equality between men and women
5. Gender stereotyping
6. Trafficking and exploitation against
7. Participation in political and public life
8. International representation and participation
9. Nationality and citizenship
10. Education
11. Employment
12. Equality in access to healthcare
13. Social and economic benefits
14. Rural women's welfare
15. Equality before the law and civil matters (targeted groups such as women migrant workers, refugees, asylum seekers, stateless women, LGBT community, women human rights defenders and foreign wives)
16. Equality in marriage and family law

The report also highlighted the various initiatives, policies, projects, and programmes launched by Malaysia in the last few years that promoted the advancement of women. These included examples such as social inclusion and empowerment of women in the Eleventh Malaysia Plan and the publication of the Statistics on Women Empowerment in Selected Domains.

<sup>53</sup> OHCHR Malaysia CEDAW Submission: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download)

<sup>54</sup> OHCHR.org



The most noticeable gap from Malaysia's latest submission to CEDAW is the lack of clarity on future policies for underage marriage and the lack of addressing the issue of marital rape, where the action only is taken if the perpetrator causes physical harm to the victim, thus rendering it unactionable until it is classified as a criminal case.<sup>55</sup> Despite so, according

to MWFCDC, Malaysia has been making progress in fine-tuning its domestic policies with the provisions of the Convention despite the many challenges faced, such as recovering from the global pandemic in 2020 and 2021. This includes measures taken to prevent violence against women, improve women's status, and to support women during the Covid-19 pandemic.

Some of the key measures that have been highlighted include:

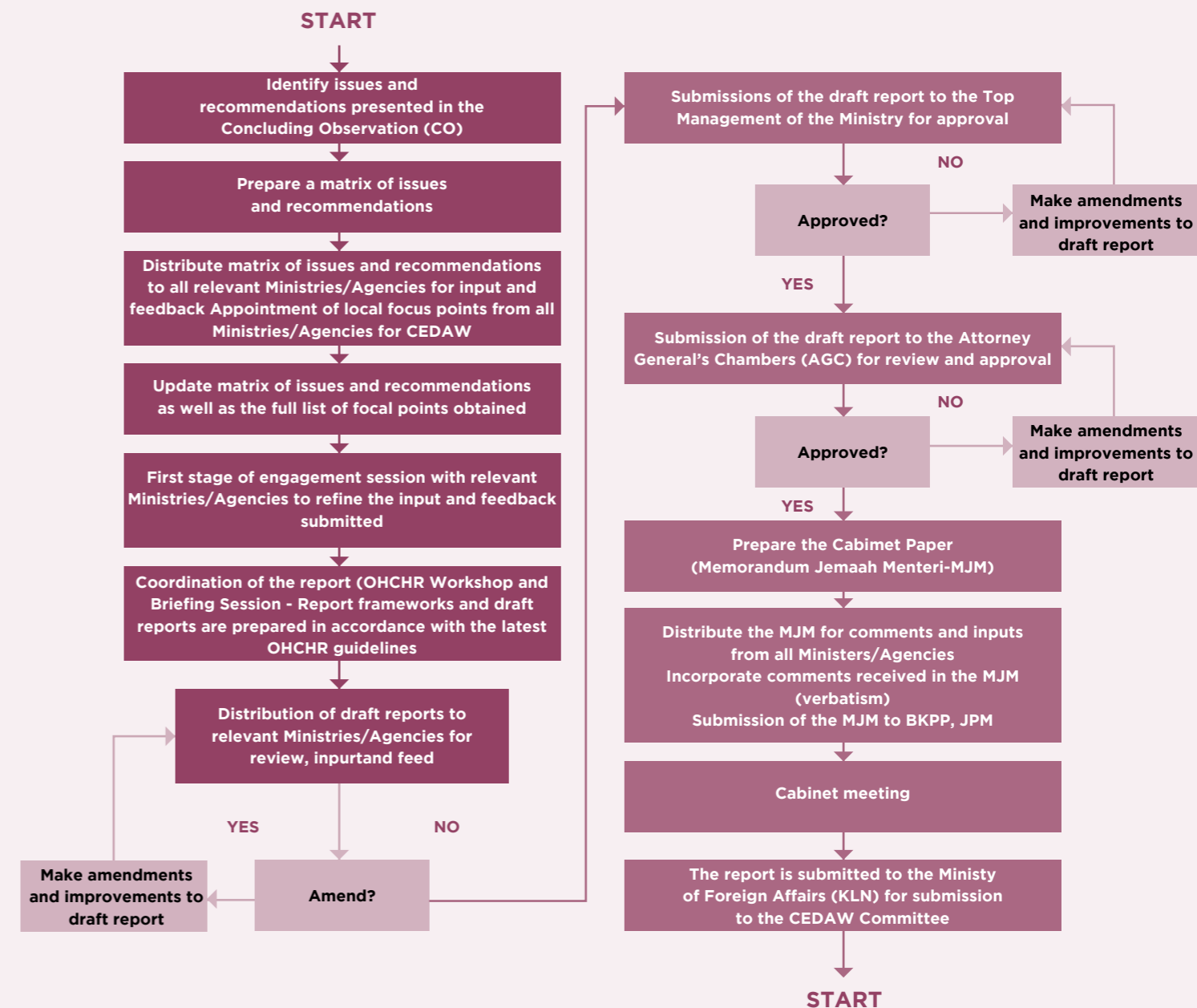
1. Working on the Anti-Discrimination Against Women Bill, which includes the definition of non-discrimination against women.
2. Digitalisation efforts of Malaysian Public Service through the Public Sector Digitalisation Strategic Plan (PSPSA) 2021-2025 showcases commitment towards a digital economy. It empowers social inclusion for all citizens regardless of their economic, social and political status, including women, who could access necessities without discrimination and prejudice.
3. In 2018, the Ministry of Women, Family and Community Development partnered with the United Nations Development Programme in the "Strengthening and Enhancing the Inclusiveness of Women Towards an Equitable Society in the Eleventh Plan Project". This is also in line with MWFCDC's Strategic Plan 2021-2025, which contains eight main thrusts on plans to empower women and strengthen the family institution, protect and develop children, improve and create a more conducive environment for the elderly, empower persons with disabilities (PWDs), develop and increase the resilience of special groups, boost the country's visibility internationally and improve the efficiency and effectiveness of public service delivery.
4. Malaysian NGOs also identified the lack of data on domestic violence as a key barrier to evidence-based policymaking. In October 2021, three working committees were established under the Domestic Violence Committee, namely the Advocacy and Capacity Building Working Committee, Protection Working Committee and Data Working Committee to further strengthen the coordination of efforts to combat gender-based violence against women and ensure the services provided are more targeted and accessible to the public. The Data Working Committee is responsible for collecting, coordinating and circulating integrated national data on domestic violence to ensure holistic and accurate national reporting on this issue.

<sup>55</sup> UM Law Review, "Marital Rape: What You Need To Know"

## 5.7 | Process of reporting to CEDAW

Malaysia's internal procedure for reporting to CEDAW is led by The Ministry of Women, Family and Community Development through a structured process. This is shown in the figure below

**Figure 6: Preparation of the CEDAW reporting by MWFCDC**



Source: MWFCDC

The preparation of the report itself goes through several structured phases that involve various stakeholders, including Ministries and government agencies.

Before submission to the CEDAW committee, the report goes through several review processes, including Ministries, Agencies, Attorney General's Chambers, and the Malaysian Cabinet. The submission goes through several phases of gathering feedback and making amendments. Before submission, the report is presented to the Cabinet of Malaysia, including the Prime Minister's department. The report is submitted to CEDAW by Malaysia's Ministry of Foreign Affairs.

The CEDAW committee reviews the periodic reports submitted by the state parties. The Committee intends to consider a report to consist of constructive dialogue with the representatives of the reporting state to improve the situation. Consequently, the presence of representatives of the reporting states is not only permitted but necessary for examining their respective

country reports. It begins with identifying issues and recommendations presented in the concluding observations. All treaty bodies request State parties to provide information in their periodic report on implementing the recommendations contained in previous concluding observations.

Some treaty bodies (Human Rights Committee, Committee Against Torture, Committee for the Elimination of Racial Discrimination, Committee for the Elimination of Discrimination Against Women, and Committee on Enforced Disappearances) have implemented written follow-up procedures to observe the implementation of some of their recommendations that they consider urgent, priority, or protective and adaptable within one or two years.

States parties must report to the Committee on the steps they took to implement the "follow-up recommendations" within one year (or two years in the case of CEDAW), per follow-up procedures.

<sup>56</sup> MWFC





**SECTION 6:  
REVIEW OF MALAYSIA'S  
CURRENT PROGRESS FOR  
SDG5.1.1**

## This section provides a holistic review of Malaysia's current progress regarding adhering to SDG5.1.1.

For this section, we will look at the background of the SDG5 indicator, its key components and questions that would determine where nations stand in four key areas. Finally, we will also look at Malaysia's current progress towards SDG5.1.1.

While the SDGs are not legally binding, governments are expected to take ownership and establish national frameworks for achieving the 17 Goals. Countries have the primary responsibility for follow-up and review of the progress made in implementing the Goals, which will require quality, accessible and timely data collection.

The review for SDG5.1.1 is important

because it will conduct a stocktake on where Malaysia stands in efforts to eliminate discrimination against women and achieve gender equality. The only mechanism in place to review Malaysia's progress lies with the nation's reporting to CEDAW. This, however, doesn't structurally review components of discrimination against women in its regard but provides an overview of steps taken to address key issues that the UN has identified. Therefore, the next few sections will compile Malaysia's current legal frameworks and policies that currently are in place within four areas - overarching legal frameworks and public life; violence against women; employment and economic benefits; and marriage and family.

## 6.1 | Malaysia's history of periodic report submission to CEDAW

Sustainable Development Goal 5 is the fifth of the seventeen SDG goals that the United Nations established in 2015. The primary goal of SDG 5 is to achieve gender equality and empower all women and girls. Within SDG5, the UN has defined nine targets and 11 indicators. These targets include:

1. End all forms of discrimination against all women and girls everywhere.
2. Eliminate all forms of violence against all women and girls in public and private spheres, including trafficking and sexual and other types of exploitation.
3. Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.
4. Recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.
5. Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life.
6. Ensure universal access to sexual and reproductive health and reproductive rights as agreed under the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences.
7. Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance, and natural resources, in accordance with national laws.
8. Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women.
9. Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

Eleven key indicators are established under the nine key targets within SDG5. Most key targets have a total of 2 indicators that are assigned. For this report, the indicator that will be focused on is SDG5.1.1: Whether legal frameworks are in place to promote, enforce and monitor equality and non-discrimination based on sex.

## 6.2 | Introduction to SDG Indicator 5.1.1 - Legal framework for gender equality and non-discrimination

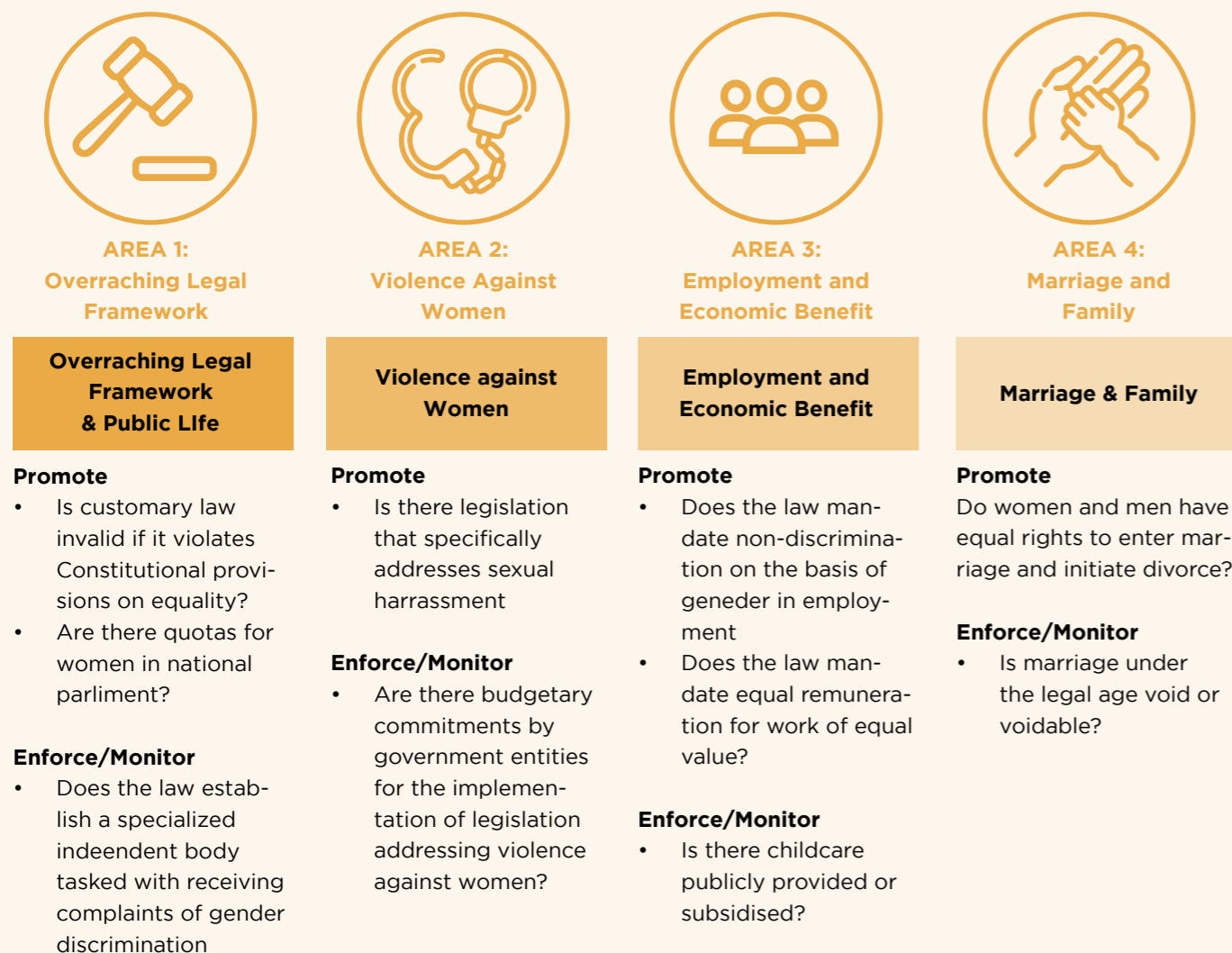
The 5.1.1 indicator measures whether governments and nations have added legal frameworks to promote, enforce and monitor equality and non-discrimination based on sex. The legal framework would also establish women's rights and provide strong foundations to eliminate discrimination against women. Removing discriminatory laws and putting in place legal frameworks that advance gender equality are prerequisites to ending discrimination against women and achieving gender equality

The 5.1.1 indicator will be crucial in accelerating progress by tracking the removal of discriminatory laws and the adoption of legal frameworks that promote, enforce, and monitor gender equality.

In monitoring gender equality, 45 key questions were developed across four key areas that holistically measure how nations have adopted legal frameworks for eliminating discrimination against women. The questions were developed between July and December 2016 and were officially presented to the Inter-agency and Expert Group on Sustainable Development Goal Indicators (IAEG-SDGs) in 2018. The goals of the 45 developed questions were to understand the implementation progress over time. Every two years, the UN statistics agency will review and post the overall standing for the four key areas for all nations under its purview. This is calculated based on the overall area of law that addresses each question.

Primary sources of information relevant to indicator 5.1.1 are legislation and policy/action plans.

**Figure 7: Key Areas of SDG 5.1.1**



## 6.3 | Introduction to SDG Indicator 5.1.1 – Legal framework for gender equality and non-discrimination

Within the SDG 5.1.1 framework, a list of questions was established to “measure” a nation’s progress towards this indicator. The goal of these questions was to understand the progress of implementation. Currently, there are no nations that have fully adhered to all forty-five questions.

### Area 1: Overarching legal frameworks and public life

#### Promote

1. If customary law is a valid source of law under the constitution, is it invalid if it violates constitutional provisions on equality or non-discrimination?
2. If personal law is a valid source of law under the constitution, is it invalid if it violates constitutional provisions on equality or non-discrimination?
3. Is there a discrimination law that prohibits both direct and indirect discrimination against women?
4. Do women and men enjoy equal rights and access to hold public and political office (legislature, executive, judiciary)?
5. Are there quotas for women (reserved seats) in, or quotas for women in candidate lists for, national parliament?
6. Do women and men have equal rights to confer citizenship to their spouses and their children?

#### Enforce and monitor

1. Does the law establish a specialised independent body tasked with receiving complaints of discrimination based on gender (e.g., national human rights institution, women’s commission, ombudsperson)?
2. Is legal aid mandated in criminal matters?
3. Is legal aid mandated in civil/family matters?
4. Does a woman’s testimony carry the same evidentiary weight in court as a man’s?
5. Are there laws that explicitly require the production and/or dissemination of gender statistics?
6. Are there sanctions for noncompliance with mandated candidate list quotas or incentives for political parties to field women candidates in national parliamentary elections?

## Area 2: Violence against women

### Promote

1. Is there legislation on domestic violence that includes physical violence?
2. Is there legislation on domestic violence that includes sexual violence? Is there legislation on domestic violence that includes psychological/emotional violence?
3. Is there legislation on domestic violence that includes financial/economic violence?
4. Have provisions exempting perpetrators from facing charges for rape if the perpetrator marries the victim after the crime has been removed, or never existed in legislation?
5. Have provisions reducing penalties in cases of so-called honour crimes been removed, or never existed in legislation?
6. Are laws on rape based on lack of consent, without requiring proof of physical force or penetration?
7. Does legislation explicitly criminalise marital rape or does legislation entitle a woman to file a complaint for rape against her husband or partner?
8. Is there legislation that specifically addresses sexual harassment?

### Enforce and monitor

1. Are there budgetary commitments provided for by government entities for the implementation of legislation addressing violence against women by creating an obligation on government to provide budget or allocation of funding for the implementation of relevant programmes or activities?
2. Are there budgetary commitments provided for by government entities for the implementation of legislation addressing violence against women by allocating a specific budget, funding and/or incentives to support non-governmental organisations for activities to address violence against women?
3. Is there is a national action plan or policy to address violence against women that is overseen by a national mechanism with the mandate to monitor and review implementation?

## Area 3: Employment and economic benefits]

### Promote

1. Does the law mandate non-discrimination on the basis of gender in employment?
2. Does the law mandate equal remuneration for work of equal value?
3. Can women work in jobs deemed hazardous, arduous or morally inappropriate in the

same way as men?

4. Are women able to work in the same industries as men?
5. Are women able to perform the same tasks as men?
6. Does the law allow women to work the same night hours as men?
7. Does the law provide for maternity or parental leave available to mothers in accordance with the ILO standards?
8. Does the law provide for paid paternity or parental leave available to fathers or partners?

### Enforce and monitor

1. Is there a public entity that can receive complaints on gender discrimination in employment?
2. Is childcare publicly provided or subsidised?

## Area 4: Marriage and family

### Promote

1. Is the minimum age of marriage at least 18, with no legal exceptions, for both women and men?
2. Do women and men have equal rights to enter marriage (i.e., consent) and initiate divorce?
3. Do women and men have equal rights to be the legal guardian of their children during and after marriage?
4. Do women and men have equal rights to be recognised as head of household or head of a family?
5. Do women and men have equal rights to choose where to live?
6. Do women and men have equal rights to choose a profession?
7. Do women and men have equal rights to obtain an identity card?
8. Do women and men have equal rights to apply for passports?
9. Do women and men have equal rights to own, access and control marital property including upon divorce?

### Enforce and monitor

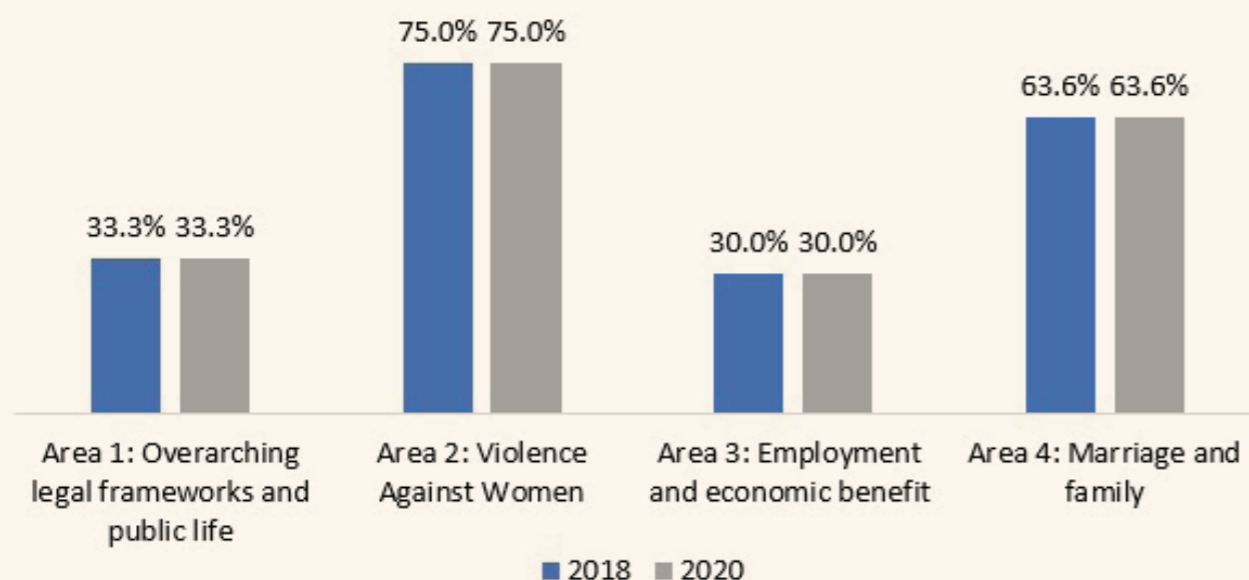
1. Is marriage under the legal age void or voidable?
2. Are there dedicated and specialised family courts?

## 6.4 | What is the progress of Malaysia towards SDG5.1.1?

Within this section, we will explore Malaysia's current standing for the 45 questions on the 5.1.1 indicator to fully understand the gaps in legislation and policies in tackling discrimination against women and achieving gender equality. Despite having this framework in place within the UN since 2018, Malaysia has yet to fully utilise this to track its progress in achieving gender equality. To date, there are no published data to gauge Malaysia's progress in this.

In all four areas, Malaysia has yet to achieve full adherence to SDG5.1.1 with the lowest progress being in areas such as Overarching legal frameworks and public life and Employment and economic benefit. However, it is disappointing that between 2018 and 2020, there was completely no progress. This is shown in the chart below.

**Figure 8: Malaysia's overall progress of SDG 5.1.1 based on a percentage per area of law**



The lack of action from Malaysia to progress on the SDG 5.1.1 framework is alarming. While the government has echoed efforts to drive gender equality, many key areas are not set in stone within the legislative framework and through policies.

The table below provides a deep-dive summary of the legal framework and policies in place to tackle each of the forty-five questions within the SDG5.1.1 framework. Each question is provided with an answer for the current situation in Malaysia and key legal frameworks and/or policies that address the key area.

**Figure 9: Summary of Malaysia's Sustainable Development Goals - Indicator 5.1.1 Standing**

AREA 1: OVERARCHING LEGAL FRAMEWORKS AND PUBLIC LIFE	PROMOTE	OVERALL FINDINGS
1. If customary law is a valid source of law under the constitution, is it invalid if it violates constitutional provisions on equality or non-discrimination?	NO	The Federal Constitution (FC) of Malaysia is the supreme law of the land which guarantees the fundamental freedom and rights of all Malaysians through the principles of equality and non-discrimination as well as a fair and equal treatment before the law
2. If personal law is a valid source of law under the constitution, is it invalid if it violates constitutional provisions on equality or non-discrimination?	NO	Under Article 8(1) of the Malaysian Federal Constitution, all Malaysian citizens are equal before the law and entitled to equal protection of the law. Article 8(2) further stipulates that discrimination on the grounds of gender against citizens is not allowed. However, Article 8(5)(a) allows for the enactment of laws to regulate personal laws. Article 75(1) states that in the event of inconsistencies between federal and state laws, the federal law shall prevail, and the State law shall, to the extent of the inconsistency, be void.
3. Is there a discrimination law that prohibits both direct and indirect discrimination against women?	NO	Except for the limited protection afforded under the Malaysian Federal Constitution, under Article 8, no anti-discrimination law is in place that deals with discrimination against any group. It follows that there is also no anti-discrimination law that prohibits discrimination against women.
4. Do women and men enjoy equal rights and access to hold public and political office (legislature, executive, judiciary)?	YES	Under Article 8(2) of the Malaysian Federal Constitution, women and men should enjoy equal rights and access to hold public and political office. There is no overt, explicit, or legal discrimination against the participation of Malaysian women in the public and political sectors. Nevertheless, there have been no vigorous or sustained measures to ensure women are as visible as men in political office.
5. Are there quotas for women (reserved seats) in, or quotas for women in candidate lists, for national parliament?	NO	There is no law for reserved seats for women or quotas for women in candidate lists for the national parliament.

6. Do women and men have equal rights to confer citizenship to their spouses and their children?		Women do not have automatic conferment of citizenship to their spouses or children as compared to men under the Malaysian Federal Constitution.  A Malaysian mother may apply for her child to be registered as a citizen under Article 15(2) of the Constitution. The Malaysian government has enhanced the implementation of Article 15(2) by way of an interim administrative procedure that was implemented on 1 June 2010 and applies to children born overseas after 1 January 2010 to Malaysian mothers who are married to non-Malaysians. The Malaysian mother can make an application at the respective Malaysian Consulate within a year from the date of the child's birth. This administrative procedure further reinforces the equal rights of women in determining the citizenship status of children.
<b>Enforce &amp; monitor</b>		
7. Does the law establish a specialised independent body tasked with receiving complaints of discrimination based on gender (e.g., national human rights institution, women's commission, ombudsperson)?	<b>NO</b>	Malaysian National Human Rights Institution (SUHAKAM) has a department that receives complaints regarding any violations of human rights in Malaysia (Complaints and Monitoring Division), including gender-based discrimination. To date, there is no specialised independent body tasked with receiving complaints about gender-based discrimination.
8. Is legal aid mandated in criminal matters?	<b>YES</b>	Under the Legal Aid Act 1971, the government, through its Legal Aid Department (LAD), is mandated to provide various legal aid services (free and subsidised), including litigation and mediation on select civil, criminal and Syariah matters, targeting the lower-income groups in the country.
9. Is legal aid mandated in civil/family matters?	<b>YES</b>	Under the Legal Aid Act 1971, the government, through its Legal Aid Department (LAD), is mandated to provide various legal aid services (free and subsidised), including litigation and mediation on select civil, criminal and Syariah matters, targeting the lower-income groups in the country.
10. Does a woman's testimony carry the same evidentiary weight in court as a man's?	<b>YES</b>	Only in the secular civil court, whereby the evidentiary weight of a woman's testimony is the same as a man's. <sup>57</sup> However, in the Syariah court, a woman's evidentiary weight is half that of a man's. <sup>58,JP</sup>

11. Are there laws that explicitly require the production and/or dissemination of gender statistics?	<b>NO</b>	No relevant laws. In Malaysia's Eleventh Plan, the government announced the collection of gender-disaggregated data by various ministries and agencies would be improved to support the planning, monitoring and evaluation of programmes. The Plan, however, has no mention of such statistics.
12. Are there sanctions for noncompliance with mandated candidate list quotas or incentives for political parties to field women candidates in national parliamentary elections?	<b>NO</b>	There are currently no sanctions for noncompliance or incentives in the existing legal framework.
<b>AREA 2: VIOLENCE AGAINST WOMEN</b>		
<b>Promote</b>		
13. Is there legislation on domestic violence that includes physical violence?	<b>YES</b>	Yes, the Domestic Violence Act 1994 recognises physical violence as a type of domestic violence, read together with Penal Code.
14. Is there legislation on domestic violence that includes sexual violence?	<b>YES</b>	Yes, the Domestic Violence Act 1994, read together with Penal Code.
15. Is there legislation on domestic violence that includes psychological/emotional violence?	<b>YES</b>	Yes, the Domestic Violence Act 1994, read together with Penal Code.
16. Is there legislation on domestic violence that includes financial/economic violence?	<b>YES</b>	Yes, the Domestic Violence Act 1994, read together with Penal Code.
<b>OVERALL FINDINGS</b>		

<sup>57</sup> Women, Business And, The Law - Data for 1970-2020, 2021, <https://datacatalog.worldbank.org/search/dataset/0038489/Women-Business-and-the-Law>

<sup>58</sup> Section 86 of the Shariah Court Evidence (Federal Territories) Act 1997



17. Have provisions exempting perpetrators from facing charges for rape if the perpetrator marries the victim after the crime has been removed, or never existed in legislation?	<b>NO</b>	There are no provisions in the law to exempt a perpetrator from rape charges if the perpetrator marries the victim.  Pursuant to section 375(g) of the Penal Code (Act 574), sexual intercourse with a girl who is less than 16 years of age is a criminal offence of statutory rape. However, marital rape is not criminalised in Malaysia. Thus, child marriages in Malaysia have the effect of circumventing statutory rape laws.  Honour crimes are not covered by Malaysian legislation.
18. Have provisions reducing penalties in cases of so-called honour crimes been removed, or never existed in legislation?	<b>NO</b>	
19. Are laws on rape based on lack of consent without requiring proof of physical force or penetration?	<b>NO</b>	In Malaysia, the Prosecution has to prove two ingredients of the crime before a rape crime can be established - the lack of consent or lack of will on the part of the alleged victim and the act of penile penetration into the vagina. While the absence of a woman's consent amounts to rape, the absence of a man's consent does not amount to rape.
20. Does legislation explicitly criminalise marital rape, or does legislation entitle a woman to file a complaint for rape against her husband or partner?	<b>NO</b>	No. Marital rape is not criminalised; the exception to section 375 of the Penal Code permits marital rape as long as the marriage is legally enforceable.
21. Is there legislation that specifically addresses sexual harassment?	<b>NO</b>	There are no specific legislations in Malaysia that addresses sexual harassment. However, in December 2021, the Malaysian Parliament tabled an Anti-Sexual Harassment Bill 2021 at the Dewan Rakyat (the lower house) for its first reading. The second reading will be held later in 2022 and may have added stipulations while it is under review. The Anti-Sexual Harassment Bill will address and prioritise the rights and well-being of victims of sexual harassment.
<b>Enforce &amp; monitor</b>		

22. Are there budgetary commitments provided for by government entities for the implementation of legislation addressing violence against women by creating an obligation on the government to provide a budget or allocation of funding for the implementation of relevant programmes or activities?	<b>YES</b>	Yes, within Budget 2022, there were these allocations made:  1. RM13 million to D11 of the Malaysia Royal Police Force, which is the Special Crimes Unit: Investigation on Women, Children, and Sexual crimes 2. RM10 million was allocated to increasing shelter services 3. RM4.5 million allocated to One Stop Social Support Centres 4. RM10 million to the Waja Squad, a group of over 30,000 volunteers under the Ministry of Women, Family and Community Development, which aims to empower the community through psychosocial activities and increase awareness against criminal issues, especially those affecting women. <sup>61</sup>  The Treasury Special Assistance (BKP) is a Government Financial Assistance distributed to Non-Governmental Organisations (NGOs) for the implementation of the Ministry of Women, Family and Community Development (MWFCD) programs. Government financial assistance is offered to encourage non-governmental organisations (NGOs) to participate in social programmes and services. This is in addition to the services already given by the government as a partner of the MWFCD in providing the best welfare services to the community in need.  There is a list of programs eligible for consideration, which must be in line with the priority areas set for the MWFCD target group development program. Additionally, interested NGOs must adhere to selected criteria set by the ministry.  Among the priority areas for Women's Development programs are Nur Bahagia (dealing with Violence Against Women) and gender sensitisation.  Currently, there is no cohesive or comprehensive national action plan to address violence against women that is overseen by a national mechanism. There is a Domestic Violence Committee established in 2019, <sup>62</sup> which serves as a forum for several government bodies and 4 CSOs to discuss issues related to domestic violence, which meets twice a year, and has spawned three smaller working committees in 2021, each with a specific focus (Advocacy and capacity building, shelters, and data). <sup>63</sup>
23. Are there budgetary commitments provided by government entities for the implementation of legislation addressing violence against women by allocating a specific budget, funding and/or incentives to support non-governmental organisations for activities to address violence against women?	<b>YES</b>	
24. Is there a national action plan or policy to address violence against women that is overseen by a national mechanism with the mandate to monitor and review implementation?	<b>NO</b>	

<sup>61</sup> WAJA squad successfully assisted 826 victims of violence: Rina, The Sun Daily Mail, 23 October 2021, <https://www.thesundaily.my/home/waja-squad-successfully-assisted-826-victims-of-violence-rina-EC8488633>

<sup>62</sup> 12th Malaysia Plan 2021-2025 - A prosperous, inclusive, sustainable Malaysia, 2021, p.195, Available for download: <http://rmkei2.epu.gov.my/>

<sup>63</sup> Advocate information - Women's Aid Organisation

AREA 3: EMPLOYMENT AND ECONOMIC BENEFITS		OVERALL FINDINGS
25. Does the law mandate non-discrimination on the basis of gender in employment?	<b>YES</b>	This only applies to the extent that the employer is within the public sector. Article 8(1) of the Malaysian Federal Constitution mandates that every Malaysian is equal before the law and entitled to equal protection. Article 8(2) explicitly prohibits discrimination based on gender.
26. Does the law mandate equal remuneration for work of equal value?	<b>NO</b>	There is currently no legal mandate of equal remuneration for work of equal value. The Employment Act generally treats women and men equally but does not explicitly mandate equal pay for the same work. Similarly, it does not explicitly stipulate non-discrimination in employment based on gender.
27. Can women work in jobs deemed hazardous, arduous or morally inappropriate in the same way as men?	<b>YES</b>	Subject to the coming into force of the Employment (Amendment) Bill 2021 (D.R 1/2021) <sup>64</sup> - currently, section 34 of the Employment Act of 1955 stipulated that women who are doing industrial or agricultural undertakings are prohibited from working at night, while section 35 prohibits women from doing underground work.
28. Are women able to work in the same industries as men?	<b>YES</b>	Upon the removal of sections 34 and 35 of the Employment Act 1955, women are deemed able to work in the same industries as men.
29. Are women able to perform the same tasks as men?	<b>YES</b>	There is no legal prohibition in place states otherwise.
30. Does the law allow women to work the same night hours as men?	<b>YES</b>	Subject to the coming into force of the Employment (Amendment) Bill 2021 (D.R 1/2021) - currently, section 34 of the Employment Act of 1955 stipulated that women who are doing industrial or agricultural undertakings are prohibited from working at night, while section 35 prohibits women from doing underground work.
31. Does the law provide for maternity or parental leave available to mothers in accordance with the ILO standards?	<b>YES</b>	Subject to the coming into force of the Employment (Amendment) Bill 2021 (D.R 1/2021). The 2021 Bill stipulates that women will <sup>65</sup> be entitled to 98 days of paid maternity leave, which aligns with ILO standards.

<sup>64</sup> 2021 Proposed Amendments to the Employment Act tabled in Parliament, Donovan & Ho, 2021, <https://dnh.com.my/2021-proposed-amendments-to-the-employment-act-tabled-in-parliament/>

<sup>65</sup> Malaysia: Employment (Amendment) Bill 2021 - Key Amendments to the Employment Act, Brian Chia, Priyanka Sivantah, Han Yang Quek and Wei Sin Bong, 2022, <https://www.globalcompliancencews.com/2022/04/20/malaysia-employment-amendment-bill-2021-key-amendments-to-the-employment-act-1955-06092022/>#:~:text=On%2030%20March%202022%2C%20the,t0%20when%20this%20might%20happen

32. Does the law provide for paid paternity or parental leave available to fathers or partners?	<b>YES</b>	Subject to the coming into force of the Employment (Amendment) Bill 2021 (D.R 1/2021). By virtue of the 2021 Bill, from 3 days of paid paternity leave, the Lower House has increased the leave to 7 days in respect of each confinement, up to a maximum of 5 confinements (regardless of the number of spouses).  Previously, while some companies offered paid paternity leave as part of their policy, such entitlements do not tend to be significant and are usually between the range of 1-3 days and require new fathers to take unpaid leave or to use annual leave for additional time off. This Bill will benefit fathers in the private sector. Malaysian civil servants fare slightly better as paternity leave entitlements can range from 7 to 14 days.
<b>Enforce &amp; monitor</b>		Any type of discrimination relating to employment can be made to: - i) human resources ii) tribunal iii) courts iv) national human rights institution.
33. Is there a public entity that can receive complaints on gender discrimination in employment?	<b>YES</b>	With the Employment (Amendment) Bill 2021 (D.R 1/2021), The Director-General of Human Resources is empowered to inquire into disputes relating to discrimination in employment. Failure to comply with any order made is an offence.  Childcare is publicly subsidised for both the public and private sectors.
34. Is childcare publicly provided or subsidised?	<b>YES</b>	Childcare in Malaysia is required to be registered (Section 2 of the Child Care Centre Act 1984 (Act 308)). Following that, any person operating or taking part in the management of a Child Care Centre which has not been registered shall be guilty of an offence (sub-clause 1 and 2 of Section 6). Out of the four categories of CCC, the Community-based Child Care Centre receives aid from the Federal Government or State Government. <sup>66</sup>
<b>AREA 4: MARRIAGE AND FAMILY</b>		<b>OVERALL FINDINGS</b>
<b>Promote</b>		

<sup>66</sup> MyGovernment, "Registered Child Care Center", Accessed from: <https://www.malaysia.gov.my/portal/content/31020>

<p>35. Is the minimum age of marriage at least 18, with no legal exceptions, for both women and men?</p>	<p><b>NO</b></p>	<p>For Muslim marriages, certain states (Selangor and Kedah) have lifted their minimum age of marriage to 18 for both girls and boys, with exceptions. The other States maintain their minimum age of marriage to 16 for girls and 18 for boys, where the age can be lowered provided the Syariah judge permits. Only recently did the Standards Operating Procedures (SOPs) for an underage marriage application was introduced in the form of Syariah Chief Judge circular to States who maintain their legal age of marriage. The SOP functions as guidelines for judges when they preside over such cases.</p> <p>For non-Muslim marriages, the minimum age of marriage for both girls and boys is 18. However, girls may marry at the age of 16 with the consent of the Chief Minister of a particular state. The Law Reform (Marriage and Divorce) Act of 1976 stipulates that under no circumstances can the marriage of non-Muslim girls below 16 years old be legally approved. Further to that, parties below the age of 21 require the written consent of a parent or guardian before they can get married.”</p> <p>In terms of divorce, for non-Muslims, under civil law, women have the same rights as men to initiate divorce. The LRA provides that couples may seek a divorce and determine the terms of the divorce by mutual consent. Divorce can also be obtained because the marriage has irretrievably broken down in situations of adultery, behaviours that prevent one of the parties from being reasonably expected to live with the other, continuous desertion for a period of at least two years or proof that the parties have lived apart for at least two years.</p> <p>For Muslims, under the IFLA, a man can unilaterally divorce his wife, and the wife cannot without a court process. Although men and women have equal rights to initiate divorce, the process is more complex for women. The Syariah Court can order a divorce and permit a husband to pronounce a talaq (repudiation of marriage) without cause in court; but the Syariah courts also recognise talaq uttered outside of court. Women cannot pronounce the talaq; therefore, their divorce initiation must go through the court process whereby they have to deduce evidence and appoint a legal representative. They can divorce their husbands on grounds based on the prescribed ta'lik, which consists of failure to provide financial maintenance, absence of the husband for a period that exceeds four months or on the grounds of violence against the wife. As such, it is still subject to long, arduous legal recourse in court.</p>
<p>36. Do women and men have equal rights to enter marriage (i.e., consent) and initiate divorce?</p>	<p><b>YES AND NO</b></p>	<p>For Muslims, under the IFLA, a man can unilaterally divorce his wife, and the wife cannot without a court process. Although men and women have equal rights to initiate divorce, the process is more complex for women. The Syariah Court can order a divorce and permit a husband to pronounce a talaq (repudiation of marriage) without cause in court; but the Syariah courts also recognise talaq uttered outside of court. Women cannot pronounce the talaq; therefore, their divorce initiation must go through the court process whereby they have to deduce evidence and appoint a legal representative. They can divorce their husbands on grounds based on the prescribed ta'lik, which consists of failure to provide financial maintenance, absence of the husband for a period that exceeds four months or on the grounds of violence against the wife. As such, it is still subject to long, arduous legal recourse in court.</p>

<p>37. Do women and men have equal rights to be the legal guardian of their children during and after marriage?</p>	<p><b>YES AND NO</b></p>	<p>For Muslims, under the IFLA, only men have guardianship over children, even though custody might be with the mother. Moreover, there are no conditions where a man can lose guardianship of his children, while the law provides conditions under which a woman can lose the physical custody of her children.</p> <p>Under civil law that applies to non-Muslims, parental authority and guardianship have been granted equally to both spouses since the Guardianship of Infants Act amendment in 1999. Previously, fathers were recognised as the sole legal guardians of a child's person and property.</p> <p>There are no legal provisions that indicate otherwise or explicitly affirm the role. However, both civil and Syariah laws reinforce stereotypical roles of men and women in the household.</p> <p>Women are often expected to play a disproportionate role within the household due to traditional gender roles. Even when they work full-time, they take care of most of the cooking, house cleaning and childcare at home.</p> <p>There are no legal provisions that indicate otherwise.</p> <p>There are no legal provisions that indicate otherwise.</p>
<p>38. Do women and men have equal rights to be recognised as head of household or head of family?</p>	<p><b>YES</b></p>	<p>Regulation 3 of the National Registration Regulations 1990 (Amendment 2007) states that a Malaysian child who has reached the age of 12 must register for an identity card. <sup>67</sup></p> <p>Trans women and men are not allowed to change their gender marker on their identity cards and birth certificates, except with Court's order. <sup>68 69</sup> This is based on a directive from the National Registration Department (NRD Order No. 9/2007) that the court in <i>Kristie Chan v. Ketua Pengarah Jabatan Pendaftaran Negara [2013] 4 CLJ 627</i> cited.</p>
<p>39. Do women and men have equal rights to choose where to live? 40. Do women and men have equal rights to choose a profession?</p>	<p><b>YES</b> <b>YES</b></p>	<p>Regulation 3 of the National Registration Regulations 1990 (Amendment 2007) states that a Malaysian child who has reached the age of 12 must register for an identity card. <sup>67</sup></p> <p>Trans women and men are not allowed to change their gender marker on their identity cards and birth certificates, except with Court's order. <sup>68 69</sup> This is based on a directive from the National Registration Department (NRD Order No. 9/2007) that the court in <i>Kristie Chan v. Ketua Pengarah Jabatan Pendaftaran Negara [2013] 4 CLJ 627</i> cited.</p>
<p>41. Do women and men have equal rights to obtain an identity card?</p>	<p><b>YES</b></p>	<p>Regulation 3 of the National Registration Regulations 1990 (Amendment 2007) states that a Malaysian child who has reached the age of 12 must register for an identity card. <sup>67</sup></p> <p>Trans women and men are not allowed to change their gender marker on their identity cards and birth certificates, except with Court's order. <sup>68 69</sup> This is based on a directive from the National Registration Department (NRD Order No. 9/2007) that the court in <i>Kristie Chan v. Ketua Pengarah Jabatan Pendaftaran Negara [2013] 4 CLJ 627</i> cited.</p>

<sup>67</sup> MyGovernment Website, "Identity Card Application", Accessed from: <https://www.malaysia.gov.my/portal/content/28868>

<sup>68</sup> High Court Decision Qn Change Of Name & Gender Marker, Justice for Sisters, 2016, <https://justiceforsisters.wordpress.com/2016/08/24/must-read-high-court-decision-on-change-of-name-gender-marker/>

<sup>69</sup> Legal Gender Recognition in Malaysia: A Legal & Policy Review in the Context of Human Rights, Asia Pacific Transgender Network, SEED Malaysia. 2017 (Bangkok: APTN, 2017).

42. Do women and men have equal rights to apply for passports?	<b>YES</b>	Yes. Malaysians, regardless of gender, above the age of 18 can apply for a passport. <sup>70</sup>
43. Do women and men have equal rights to own, access and control marital property including upon divorce?	<b>YES AND NO</b>	<p>No for Muslims, as it is not automatic with several conditions that need to be met.</p> <p>Section 71 of IFLA stipulates that a divorced woman is entitled to stay in the home where she used to live when she was married for so long as the husband is not able to get other suitable accommodations for her. This right will cease if any of the circumstances under sub-clause (2) is triggered.</p> <p>They are:</p> <ul style="list-style-type: none"> <li>(a) if the period of 'iddah has expired; or</li> <li>(b) if the period of guardianship of the children has expired; or</li> <li>(c) if the woman has remarried; or</li> <li>(d) if the woman has been guilty of open lewdness (fahisyah);</li> </ul> <p>For non-Muslims, the following principles apply: 1) The ultimate power resides in the court to order the division of matrimonial assets and maintenance. 2) The court is statutorily bound to consider the factors set out in the Law Reform (Marriage and Divorce) Act (LRA) 1976. 3) In relation to the division of matrimonial assets, these factors do not include a provision allowing the court discretion to consider any agreements between the parties.</p> <p>If the marriage is terminated by divorce or judicial separation, Section 76 of the LRA empowers the court to pool the assets of the spouses acquired during the marriage and make a just and equitable division of the community property. The Court retains its unfettered discretion to decide on property division post-divorce. However, agreements on maintenance can be referred to the courts, which retain the power to vary such agreements under Sections 80 and 84 of the LRA, notwithstanding provisions to the contrary in such agreements.</p>

<sup>70</sup> Immigration Department of Malaysia, "Malaysian International Passport", Malaysian International Passport, Accessed from: <https://www.imi.gov.my/portal2017/index.php/en/main-services/passport/malaysian-international-passport.html>

<b>Enforce &amp; monitor</b>		
44. Is marriage under the legal age void or voidable?	<b>NO</b>	Marriage under the legal age is not void provided that they have obtained the permission of a Syariah judge (for Muslim applicants) or the permission of a Chief Minister (for non-Muslim applicants).
45. Are there dedicated and specialised family courts?	<b>YES AND NO</b>	<p>No, for Muslims, family disputes are heard in the Syariah courts. There are no specialised family courts.</p> <p>Yes, for non-Muslims, family disputes are heard by the civil courts. Applications with the dissolution of marriage and its ancillary issues are dealt with by the High Court. There are two specific High Courts referred to as Family Courts to hear family disputes, one in Kuala Lumpur and the other in Shah Alam.</p>

The findings above showcase that Malaysia is still very far behind in terms of legal and policy development to address many key areas that concern the welfare of women in various areas of life. The government of Malaysia needs to do more to reduce this gap. In a poll by UCSI, 72% of Malaysians have experienced or witnessed gender inequality.<sup>71</sup> More needs to be done to ensure that the rights of women are kept protected in households, schools, and workplaces. The next section provides a way forward through the recommendations of initiatives and action plans to address this key issue. We explore the government to take heed in ensuring that these actions can be put into practice.

<sup>57</sup> TheEdge, "Gender Inequality in Malaysia", Published 17th August 2022



**SECTION 7:  
THE WAY FORWARD TO  
ELIMINATE DISCRIMINATION  
AGAINST WOMEN AND TO  
ACHIEVE GENDER EQUALITY**

## 7 | The Way Forward

The findings of this report have provided a picture of Malaysia's current progress with SDG 5.1.1. On an overall level, progress has been made to eliminate discrimination and achieve gender parity. For example, Malaysia Gender Gap Index (MGGI) scored 71.4 per cent in 2020, up from 70.9 per cent in 2019.<sup>72</sup> However, an assessment of the progress of the other neighbouring nations such as Singapore, New Zealand, and the Philippines, revealed that Malaysia is still behind. Much more needs to be done and many key areas still need to be addressed before Malaysia can achieve the targets outlined in the 2030 Agenda for Sustainable Development.

In line with the United Nation's SDG5.1.1 and fulfilment of CEDAW, we recommend stronger awareness and a call to action on the issues and gaps in discrimination against women in Malaysia. We advocate for the government, through MWFC and its sub-agencies, to take on a bigger and more commanding role in progressively ensuring that future actions, policies, and roadmaps will continue to protect women's rights and eliminate discrimination against women. This includes reviewing any reservations that are currently hindering or decelerating its commitment to eliminate discrimination against women.

Additionally, we also recommend the government, through its various ministries, agencies, and GLCs, take on an exemplary

role in implementing gender equality practices and position stronger emphasis on policies that can promote gender equality and eliminate discrimination against women. To start, we advocate for the formation of a framework that would focus on addressing the issues, challenges, and gaps in the four areas within SDG5.1.1 – mainly, Overarching legal frameworks, Violence against women, Employment and Economic benefits, and Marriage and family.

The next section provides recommendations on the way forward for Malaysia to progress and meet the UN 2030 Agenda for Sustainable Development as well as to take actionable steps toward eliminating discrimination against women.

<sup>72</sup> DOSM, "Statistics on Women Empowerment in Selected Domains, Malaysia, 2021"

## 7.1 | Recommendations for government and government agencies on the fulfilment of SDG5.1.1

### 1. Incorporate other guarantees in place to protect the rights of girls as some areas such as underage marriage are not enforced by law

#### The way forward

There have been a lot of efforts by the government to raise awareness and educate society on underage marriages. Whilst underage marriage isn't permitted for non-Muslims, this varies from state to state for the Islamic Family Law. As such, the government has openly admitted that it has no plans to ban child marriage completely.

Further efforts can be made to protect underage girls' rights in various areas, such as educational opportunities. This includes accompanying court orders for underage marriages to protect a girl's rights to have an education and a career. This can be accomplished by adding conditions for girls to be able to complete secondary and tertiary education and start a career of their choice.

### 2. Improve transparency on gender-based statistics across many areas that provide meaningful evidence of the progress of women's rights in Malaysia

#### The way forward

Availability of data is the key factor that forms the foundation for understanding the current state of an issue and its progression over time. While gender-disseminated data is available to some extent in Malaysia, there is a lack of granularity in the information that is being reported across publicly available platforms. This is important in identifying patterns and trends across both genders since they behave and react differently towards intervention and prevention strategies.

This can be improved by providing additional layers of information for gender-disseminated data. For example, data that is broken down further by location, age, race, and disabilities can provide additional depth of data analysis to identify key areas of concern that require improvement. Additionally, more granular data on labour force participation and participation in politics should also be published.

As a way forward, many other types of statistics can also be published to increase the transparency of gender-based statistics. Among these include:

1. Percentage of population (disseminated by gender) with healthcare
2. Primary and secondary education completion rates for girls and boys
3. Percentage of seats held by women and minorities in the national parliament and/or sub-national elected office according to their respective share of the population
4. Overall domestic violence cases and breakdown by type of offence
5. Number of child marriages

### **3. Collaborate with women NGOs who deal directly with on-the-ground issues relating to discrimination against women in Malaysia**

#### **The way forward**

Currently, in Malaysia, NGOs are being consulted and adopted into working policy councils such as the JKRT (Jawatankuasa Keganasan Rumah Tangga) and Jawatankuasa Kerja Data. This council comprises ministries, government agencies and NGOs that are involved in matters relating to women's welfare and empowerment.

Whilst NGOs are primarily engaged in a consultancy role, they should be given a bigger voice when it comes to matters relating to policy enactment. Their vast resources and knowledge should be leveraged by the government to understand granular issues and challenges faced by women in Malaysia.

As such, strengthening NGOs with a prominent role, such as becoming a voting member of government policies, can provide a more progressive way forward to tackle the various issues and challenges faced by women in Malaysia. Other key steps that the government can take to empower NGOs include providing additional funding, providing resources and training and working closely with them on publishing more granular gender-based statistics.

### **4. Adopt stronger principles on eliminating discrimination against women at ministry or agency level to set the benchmark for the nation**

#### **The way forward**

A key finding that was raised throughout the study is that standards on gender equality at workplaces are not prioritised or adopted within government ministries and agencies. Moving forward, ministries and government agencies in Malaysia should implement internal policies such as equal pay, equal opportunities for promotions and career progression, positioning more women in leading managerial roles, inclusive incentives,

and equitable benefits for pregnancies. The impact of these initiatives would provide an exemplary guideline for many organisations in both the public and private sectors to follow. This itself will eventually transform the culture within organisations to ensure that practices of gender equality are always at the forefront.

### **5. Make changes to legislation to recognise areas such as marital rape as an offense as it is not currently protected under the law**

#### **The way forward**

Marital rape in Malaysia has not been recognised as a crime (*Marital rape is not criminalised, the exception to section 375 of the Penal Code permits marital rape if the marriage is legally enforceable*).<sup>73</sup> Meanwhile, statistics from WAO have showcased that the number of domestic violence cases has increased in the last decade.<sup>74</sup>

To ensure that Malaysia is on track to meet the UN 2030 Sustainable Development goal, the government should consider amending legislation on marital rape as a criminal offence.

Additionally, there should also be a universal review of all laws and gaps highlighted in this report on gender-based issues.

### **6. Encourage religious bodies to adopt contemporary perspectives on the position of women in matters relating to family and society**


#### **The way forward**

The government should encourage religious authorities in Malaysia to adopt a contemporary perspective in interpreting religion for modern life and to separate the influence of patriarchal culture in religious life. This would open the door for *ijtihad* (independent reasoning by scholars) to re-evaluate the position and the greater role of women in society.

For Malaysia to move forward, constructive dialogues need to take place between religious bodies, lawmakers, women NGOs and organisations that are championing women's rights and gender equality in Malaysia. These sessions would provide a platform to build ideas on improving the current legal framework on matters relating to gender equality and eliminating discrimination against women.

<sup>73</sup> Legal Research

<sup>74</sup> WAO, "<https://wao.org.my/domestic-violence-statistics/>"

A stack of several books is shown in a close-up, slightly blurred perspective. The books are stacked vertically, with their spines and pages visible. The background is dark, and there are several large, overlapping, semi-transparent maroon shapes that create a modern, abstract design. The text is positioned on the left side of the image, overlaid on a dark maroon shape.

**APPENDIX:  
MALAYSIA'S LEGAL  
SYSTEM IN HANDLING  
MATTERS PERTAINING TO  
GENDER EQUALITY AND  
DISCRIMINATION AGAINST  
WOMEN**



# Area 1: Overarching legal frameworks and public life

## Promote

### 1. If customary law is a valid source of law under the constitution, is it invalid if it violates constitutional provisions on equality or non-discrimination?

**Answer: No**

#### Legal Findings

The Federal Constitution (FC) of Malaysia is the supreme law of the land which guarantees the fundamental freedom and rights of all Malaysians through the principles of equality and non-discrimination as well as a fair and equal treatment before the law

### 2. If personal law is a valid source of law under the constitution, is it invalid if it violates constitutional provisions on equality or non-discrimination?

**Answer: No**

#### Legal Findings

Under Article 8(1) of the Malaysian Federal Constitution, all Malaysian citizens are equal before the law and entitled to equal protection of the law. Article 8(2) further stipulates that discrimination on the grounds of gender against citizens is not allowed. However, Article 8(5)(a) allows for the enactment of laws to regulate personal laws. Article 75(1) states that in the event of inconsistencies between federal and state laws, the federal law shall prevail, and the State law shall, to the extent of the inconsistency, be void.

### 3. Is there a discrimination law that prohibits both direct and indirect discrimination against women?

**Answer: No**

#### Legal Findings

Except for the limited protection afforded under the Malaysian Federal Constitution, under Article 8, no anti-discrimination law is in place that deals with discrimination against any group. It follows that there is also no anti-discrimination law that prohibits discrimination against women.

## Supporting Findings

The Joint Action Group for Gender Equality has advocated for the drafting and tabling of a Gender Equality Act.<sup>75</sup> In 2019, the government assembled a special task force to discuss the Bill with all interested parties.<sup>76</sup> However, little progress has been made after the

February 2020 change of government.

The DVA and Anti-SH Bill/ Act are statutes that prevent indirect discrimination (VAW is a form of gender discrimination by virtue of GR19 and 35 of CEDAW).

### 4. Do women and men enjoy equal rights and access to hold public and political office (legislature, executive, judiciary)?

**Answer: Yes**

#### Legal Findings

Under Article 8(2) of the Malaysian Federal Constitution, women and men should enjoy equal rights and access to public and political office.

There is no overt, explicit, or legal discrimination against the participation of Malaysian women in the public and political sectors. Nevertheless, there have been no vigorous or sustained measures to ensure women are as visible as men in political office.

#### Supporting Findings

In practice, women encounter many more barriers than men in terms of access (rooted in a lack of substantive equality), resulting in lower women's participation rates at the legislature, executive, and judiciary levels.

compared to male, 87%. The civil court judges fare better, with 35% female judges on average.

Participation rates of women across Parliamentary, Ministerial, and State-elected representative positions rarely exceed 15%.<sup>77</sup> Based on the statistics from 2018 to 2020, the number of female Syariah judges is at an average of 12%,

In the recent 2022 budget announcement,<sup>78</sup> the Ministry of Women, Family and Community Development (MWFCDD) received an allocation that mandates the appointment of at least one female director for publicly listed companies to increase women's involvement at the decision-making level.

<sup>75</sup> A Policy Brief on "Main elements of JAG's proposed Gender Equality Act for Malaysia", 2017, <https://wao.org.my/wp-content/>

<sup>76</sup> DPM: Gender Equality Bill still being drafted, 2020, <https://www.nst.com.my/news/nation/2020/02/564655/dpm-gender-equality-bill-still-being-drafted> uploads/2018/11/JAG-Policy-Brief-May-2017-Main-Elements-of-GEA.pdf

<sup>77</sup> Exact numbers: 16.1% of Ministerial, 14.9% of Parliamentary, and, on average, 11.4% of State-elected representative positions. Source: Global Gender Gap Report and Wikipedia

<sup>78</sup> Supply/Development Expenditure for Ministry of Women, Children and Society Development (MWCD), 2022, <https://budget.mof.gov.my/pdf/2022/perbelanjaan/BP.48.pdf> (text in Bahasa Malaysia)

## 5. Are there quotas for women (reserved seats) in, or quotas for women in candidate lists for, national parliament?

**Answer: No**

### Legal Findings

There is no law for reserved seats for women or quotas for women in candidate lists for the national parliament

### Supporting Findings

In terms of policy, the Tenth Malaysia Plan (2011-2015) declares that the Government will “increase its efforts to achieve a quota of at least 30 per cent of women in decision-making positions over the Plan period.”

The Eleventh Malaysia Plan extended the 30 per cent target to 2020. As part of Focus Area B, Strategy B3 will empower the community to increase inclusivity by addressing community needs. In boosting the female labour participation rate to 59 per cent by 2020, several steps will be taken to capitalise on women’s skills at all levels, create more chances for women to participate in the economy, and increase

the female labour participation rate. Under the same strategic heading, initiatives to increase the number of women in decision-making positions would be enhanced. In addition, the collection of gender-disaggregated data by various ministries and agencies would be enhanced to facilitate programme planning, monitoring, and evaluation.

Currently, only Penang state has initiated a programme called the Top-Up Women-Only Additional Seats (TWOAS) to secure at least 30 per cent of women’s representation in their state legislative assembly. They just published a White Paper on this initiative.<sup>79</sup>

## 6. Do women and men have equal rights to confer citizenship to their spouses and their children?

**Answer: No**

### Legal Findings

Women do not have automatic conferment of citizenship to their spouses or children as compared to men under the Malaysian Federal Constitution.

A Malaysian mother may apply for her

child to be registered as a citizen under Article 15(2) of the Constitution. The Malaysian government has enhanced the implementation of Article 15(2) by way of an interim administrative procedure that was

<sup>79</sup> White Paper - Top-up Women-Only Additional Seats (TWOAS), Introducing ‘Non-Constituency Supplementary Members’ for the Penang State Legislative Assembly, 2021, <https://pwdc.org.my/wp-content/uploads/2021/11/TWOAS-White-Paper-Eng.pdf>

implemented on 1 June 2010 and applies to children born overseas after 1 January 2010 to Malaysian mothers who are married to non-Malaysians. Applications can be made by the Malaysian mother at

the respective Malaysian Consulate within a year from the date of the child’s birth. This administrative procedure further reinforces the equal rights of women in determining the citizenship status of children.

## Enforce & Monitor

## 7. Does the law establish a specialised independent body tasked with receiving complaints of discrimination based on gender (e.g., national human rights institution, women’s commission, ombudsperson)?

**Answer: No**

### Legal Findings

Malaysian National Human Rights Institution (SUHAKAM) has a department that receives complaints regarding any violations of human rights in Malaysia (Complaints and Monitoring Division),

including gender-based discrimination. To date, there is no specialised independent body tasked with receiving complaints about gender-based discrimination.

## 8. Is legal aid mandated in criminal matters?

**Answer: Yes**

### Legal Findings

The Legal Aid Department (LAD) is mandated by the Legal Aid Act of 1971 to provide different legal aid services (free and subsidised), including litigation and mediation on specific civil, criminal, and Syariah cases, to lower-income groups in the country.

The following criminal situations qualify for legal aid:<sup>80</sup>

1. All criminal proceedings in which the accused is not being represented by counsel pleads guilty to the charge or charges and wishes to make a plea in mitigation in respect thereof.
2. Criminal prosecutions pursuant to the Child Act of 2001 (Act 611)
3. Criminal proceedings under the Minor Offences Act of 1955 [Act 336].

The 22 branches<sup>81</sup> of LADs are now supported by annual government allocations of RM9 million, with each branch getting approximately RM400,000 annually.

Despite this, the Legal Aid Department's means test is frequently criticised for its limited scope, determining eligibility based on a person's net pay without considering their obligations, dependents, and/or cost of living.<sup>82</sup> In addition, this free or subsidised service is exclusive to Malaysian citizens.<sup>83</sup>

In 1982, the Malaysian Bar Council also founded the Legal Aid Center (LAC), a legal aid programme. The LAC provides legal counsel, representation, and intervention in certain civil and criminal situations for marginalised, disadvantaged, and underprivileged individuals. The KL Legal Aid Centre includes programmes that solely offer counsel on Syariah-related concerns (including Syariah criminal offences) and Penal Code violations.

The National Legal Aid Foundation (NLAF), created in 2011, provides free legal representation to all Malaysians (regardless of their ability to pay) at the police station, during remand hearings, and when they are charged in court.

In cases involving hearings, however, a means test will be used, and only individuals whose annual income does not exceed RM36,000 will be eligible for legal aid.

Other than a set of norms controlling the legal profession, such as the Legal Profession Act of 1976, there are no such regulations governing the provision of pro bono legal services in Malaysia. The Legal Aid Centre, established by the LPA, is the leading non-profit provider of pro bono legal services in Malaysia, with authority to define its own rules. Advocates and solicitors typically provide pro bono services through legal aid centres around the nation or by enforcing an internal policy inside their law business. In Malaysia, the law imposes no obligation to conduct pro bono work.<sup>84</sup>

<sup>80</sup> Pro Bono Practices and Opportunities in Malaysia, 2019, <https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-malaysia-3.pdf>

<sup>81</sup> Legal Aid Department, 2021, "Branches." Accessed from <https://bit.ly/2V9L7SA>

<sup>82</sup> Budget 2022: A Resilient National Recovery for Women Recommendations to empower women and families across employment, livelihoods, and healthcare in a post pandemic society, 2021, [https://wao.org.my/wp-content/uploads/2021/09/Budget-2022\\_A-Resilient-National-Recovery-for-Women.pdf](https://wao.org.my/wp-content/uploads/2021/09/Budget-2022_A-Resilient-National-Recovery-for-Women.pdf)

<sup>83</sup> Ibid

<sup>84</sup> Pro Bono Practices and Opportunities in Malaysia, 2019, <https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-malaysia-3.pdf>

## 9. Is legal aid mandated in civil/family matters?

**Answer: Yes**

### Legal Findings

Yes, please see the response to question number 8.

Following the Third Schedule of the 1971 Act, one of the functions of the Legal Aid Department is to provide legal counsel during Syariah procedures.

For Syariah cases, the proceedings for which a Syariah lawyer can provide legal

aid counsel in a Syariah court are limited to the following: -

1. relating to betrothal (damages), maintenance, custody, divorce, marital debt, *mutaah* and matrimonial assets (*harta sepencarian*).
2. relating to gifts inter vivos (*hibah*) and will.

For Syariah hearings, each state's LAC has a unique approach. Kuala Lumpur's State Bar LAC programme provides legal advice for Syariah processes, such as:

1. Application for divorce
2. Fasakh (divorce through pronouncement by the court and based on specific grounds) and other related matters
3. Proceeding for the Wife to Obey (*Kembali Taat*)
4. Divorce pronouncement
5. Maintenance
6. Matrimonial Property Claims

In the meantime, the Selangor Bar LAC identifies Syariah proceedings as one of its areas of help and establishes additional financial eligibility requirements.<sup>85</sup>

## 10. Does a woman's testimony carry the same evidentiary weight in court as a man's?

**Answer: Yes**

### Legal Findings

In the secular civil court, the evidentiary weight of a woman's testimony is the same as a man's.<sup>86</sup> However, in the Syariah

court, a woman's evidentiary weight is half of that of a man.<sup>87</sup>

<sup>85</sup> Selangor Bar Legal Aid Centre, [https://www.selangorbar.org/page\\_dtl.php?id=680](https://www.selangorbar.org/page_dtl.php?id=680)

<sup>86</sup> Women, Business And The Law - Data for 1970-2020, 2021, <https://datacatalog.worldbank.org/search/dataset/0038489/Women--Business-and-the-Law>

<sup>87</sup> Section 86 of the Syariah Court Evidence (Federal Territories) Act 1997

## 11. Are there laws that explicitly require the production and/or dissemination of gender statistics?

**Answer: No**

### Legal Findings

In Malaysia, there are no laws that explicitly mandate the collection and/or publishing of gender statistics.

### Supporting Findings

In Malaysia's Eleventh Plan, the government announced that the collection of sex-disaggregated data by various ministries and agencies would be enhanced to support programme planning, monitoring, and evaluation. However, the Plan does not refer to such statistics.

The Department of Statistics Malaysia (DOSM) received RM15 million from the additional RM100 million budget allocation<sup>88</sup> to increase the availability of statistics for more inclusive, targeted, and comprehensive government programmes. That includes gender-based statistics in the interest of Gender-Responsive Budgeting.

## 12. Are there sanctions for noncompliance with mandated candidate list quotas, or incentives for political parties to field women candidates in national parliamentary elections?

**Answer: No**

### Legal Findings

No sanctions for non-compliance nor incentives in the existing legal framework.

### Supporting Findings

In the 14th General Election (GE14), there were 239 more women than in the 13th General Election (GE13), a 10.24 per cent increase. Seventy-two women, or 10.48% of the 687 candidates representing various political parties in Parliamentary seats, as opposed to 56 women in GE13. The State Assembly nominations for GE14

had 167 women (10.15 per cent) out of 1646 candidates, compared to 112 women candidates in GE13.<sup>89</sup>

Currently, around 14 per cent of the Dewan Rakyat is female, as Malaysia has just 33 female legislators. In addition, only five women are now among the 31 ministers.

## Area 2: Violence against women

### Promote

## 13. Is there legislation on domestic violence that includes physical violence?

**Answer: Yes**

### Legal Findings

The Domestic Violence Act 1994 recognises physical violence as a type of domestic violence, read together with the Penal Code.

The definition of domestic violence in Section 2 (a) and (b) includes acts of physical violence as one type of domestic violence.

### Supporting Findings

In 2021, there were more domestic violence cases in Malaysia than in 2020. Last year, 7,468 cases of domestic violence were reported to the police and for which they

opened investigations. Compared to the 5,260 crimes reported to the police in 2020, this is a 42% rise.<sup>90</sup>

<sup>88</sup> Additional RM100 mil to be allocated for improving govt financial management – Tengku Zafrul, [https://www.dosm.gov.my/v1/uploads/files/5\\_Gallery/2\\_Media/4\\_Stats%40media/1\\_General%20News/2021/11%20Nov/19%20Nov%20-%20General%205%20-%20the%20edge%20markets.pdf](https://www.dosm.gov.my/v1/uploads/files/5_Gallery/2_Media/4_Stats%40media/1_General%20News/2021/11%20Nov/19%20Nov%20-%20General%205%20-%20the%20edge%20markets.pdf)

<sup>89</sup> <https://www.MWFCD.gov.my/MWFCD/uploads/files/KenyataanMedia/SIARAN%20MEDIA%202018/KENYATAAN%20MEDIA%20PRESTASI%20PARTI%20POLITIK%20DAN%20CALON%20WANITA%20DALAM%20PILIHAN%20RAYA%20UMUM%20KE-14%20PEMERHATIAN%20AWAL%20MWFCD.pdf>

<sup>90</sup> <https://www.MWFCD.gov.my/MWFCD/uploads/files/Dokumen/Jawapan%20Dewan%20Rakyat/Jawab%20Lisan%20Dewan%20Rakyat%209%20Mac%202022.pdf>

## 14. Is there legislation on domestic violence that includes sexual violence?

### Answer: Yes

#### Legal Findings

Yes, the Domestic Violence Act 1994, read together with the Penal Code.

Section 2 (c) of the DVA stipulates: compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;

However, section 375 of the Penal Code explicitly exempts husbands (who rape their wives) from the offence.<sup>91</sup> The Exception states:

—Sexual intercourse by a man with his wife in a marriage which is valid under any written law for the time being in force, or is recognised in Malaysia as valid, is not rape.

That notwithstanding, section 375A<sup>92</sup> of the Penal Code was enacted to prevent husbands from causing hurt or the fear of death to their wives to have sexual intercourse with her, but this is inadequate because:

1. The punishment in Section 375A (up to 5 years imprisonment) is more lenient compared to rape (up to 20 years).
2. Section 375A does not recognise rape but rather a husband causing “hurt or fear of hurt or death”. But rape can happen without hurt or fear of hurt – for example, through intoxication or other forms of coercion.
3. The exception to Section 375 sends the wrong message – that sexual assault within marriage is not serious

## 15. Is there legislation on domestic violence that includes psychological/emotional violence?

### Answer: Yes

#### Legal Findings

Yes, the Domestic Violence Act 1994, read together with the Penal Code.

Section 2, under the definition of domestic violence (f) of the DVA, includes acts of psychological/emotional as one type of domestic violence.

<sup>91</sup> A policy brief - Marriage Not a License to Rape Delete the Exception in Penal Code Section 375, 2018, <https://wao.org.my/wp-content/uploads/2018/11/WAO-Policy-Brief-2018-1-Marital-Rape.pdf>

<sup>92</sup> Section 375 Exception, Explanations and Section 375A Malaysian Penal Code -Legitimising Rape within Marriage: A Call for Reform, 42 (2) JMCLM Usharani Balasingam & Johan Shamsuddin Hj Sabaruddin

## 16. Is there legislation on domestic violence that includes psychological/emotional violence?

### Answer: Yes

#### Legal Findings

Yes, the Domestic Violence Act 1994, read together with the Penal Code.

Section 2, under the definition of domestic

violence in the Domestic Violence (Amendment Act) 2017, includes the act of economic violence as one type of domestic violence.

## 17. Have provisions exempting perpetrators from facing charges for rape if the perpetrator marries the victim after the crime been removed, or never existed in legislation?

### Answer: No

#### Legal Findings

There are no provisions in the law to exempt a perpetrator from rape charges if the perpetrator marries the victim. Under section 375(g) of the Penal Code (Act 574), sexual intercourse with a girl who is less than 16 years of age is a criminal offence of statutory rape.

As marital rape is not recognised as a crime, child marriage in Malaysia has the effect of circumventing statutory rape laws.<sup>93</sup> In particular, a disturbing pattern has arisen where perpetrators of statutory rape have married their victims to avoid criminal proceedings.

One such reported case in 2013<sup>94</sup> involved the rape of a 13-year-old girl by a 40-year-old restaurant manager who later approached the Syariah Court seeking approval to marry the survivor. The Syariah Court had no objection to the marriage, which drew objections from

civil society organisations, the media, and the wider public. Due to the overwhelming pressure and attention, charges were brought against the perpetrator. Although he was found guilty of raping the girl and then bribing her father to consent to marriage, the marriage was still legal.

In 2016, a lower court dismissed the rape charge against a 21-year-old man after the judge was informed that the man had married the 14-year-old girl he was alleged to have raped. After intervention by the High Court, the case was then fixed for trial the following year, and the man was sentenced.<sup>95</sup>

The reliance on the discretion of a Syariah judge and the Chief Minister in considering underage marriage applications opens up for abuse, as it is seen as a mere procedural process. This is a concern not without basis.

Malaysia estimates that 1500 children marry every year (as of 2018).<sup>96</sup> An estimated 1856 <sup>97</sup> children were married in the year 2018 alone, where 83% of them were Muslim children

Between January and September 2020,<sup>98</sup> the Women, Family, and Community Development Ministry reported that the Syariah Judiciary Department Malaysia (JKSM) records for Muslim couples revealed 520 applications for underage marriages, with Sarawak recording the highest number of such cases (83), followed by Kelantan (80), and Sabah (63).

The introduction of Standard Operating Procedures (SOPs)<sup>99</sup> for Syariah courts to comply with when receiving underage marriage applications, effective in 2018, should be strictly followed by the Syariah courts. The SOP requires written reports from the Welfare Department (social

report), Health Department (health report) and a police report if relevant.

In the Sexual Offences against Children Act 2017,<sup>100</sup> individuals found guilty of committing physical, sexual acts on children (both boys and girls), including touching a child's body, could be jailed for up to 20 years and are also liable to be whipped.

Incidentally, because marital rape is not recognised in a marriage, a perpetrator who marries their victim could have his charge dropped, or discharged, as marriage can be used in the legal defence or a considered factor in the mitigation stage.

While Malaysia does not explicitly have a "marry-your-rapist" law, marital rape is not criminalised in Malaysia. Therefore there is a loophole such that a rapist can marry their victims to avoid rape charges.<sup>[15]</sup>

<sup>93</sup> Marrying Your Rapist in Malaysia - Men Try to Avoid Rape Charges Through Forced Child Marriage, 2017, <https://www.hrw.org/news/2017/01/26/marrying-your-rapist-malaysia>

<sup>94</sup> "Marriage cannot negate rape charge, says lawyer", The Star, 29 November 2013, <http://www.thestar.com.my/news/nation/2013/11/29/marriage-cannot-negate-rape-charge-says-lawyer/>

<sup>95</sup> Liz Gooch, "Malaysia's child brides", Al-Jazeera, 13 August 2016, <http://www.aljazeera.com/indepth/features/2016/08/malaysia-child-brides-160810123204474.html>

<sup>96</sup> Based on 2007-2017 statistics from the Ministry of Women, Family and Community Development, Malaysia (MWFCD).

<sup>97</sup> This is an estimated number as not all child marriages are recorded.

<sup>98</sup> "Ministry: 543 child marriages, including applications, in Malaysia from Jan-Sept 2020", The Malay Mail, 4 December 2020, <https://www.malaymail.com/news/malaysia/2020/12/04/ministry-543-child-marriages-including-applications-in-malaysia-from-jan-se/1928716>

<sup>99</sup> "Underage marriage among Muslims sees slight drop after new SOPs [NSTTV]", New Straits Times, 16 December 2021, <https://www.nst.com.my/news/nation/2021/12/754831/underage-marriage-among-muslims-sees-slight-drop-after-new-sops-nsttv>

<sup>100</sup> See Section 14. Physical sexual assault on a child, <https://lom.agc.gov.my/act-detail.php?type=principal&lang=BI&act=792>

## 18. Have provisions reducing penalties in cases of so-called honour crimes been removed, or never existed in legislation?

**Answer: No**

### Legal Findings

Honour crimes never existed in Malaysian legislation.

There are also no known cases of honour crimes in Malaysia, and therefore, this has

not been considered for the legislation. Any honour crimes committed will be treated as a criminal case.

## 19. Are laws on rape based on lack of consent, without requiring proof of physical force or penetration?

**Answer: No**

### Legal Findings

In Malaysia, the Prosecution has to prove two ingredients of the crime before a rape crime can be established - the lack of consent or lack of will on the part of the alleged victim and the act of penile penetration into the vagina. <sup>101</sup> While the absence of a women's consent amounts to rape, the absence of a man's consent does not amount to rape.

However, in the case of statutory rape, the element of lack of consent is readily established owing to the lack of capacity of a woman under the age of 16 to consent. This has been established by the court in statutory rape cases of *PP v Mohd Musa [2013] 8 MLJ 466*; *PP V Abdul Malek Abdullah [2013] 8 MLJ 251*, and *PP v Mohd Malek Ridzuan [2014] 1 MLJ 363*. In these cases, the accused persons were sentenced to between 8 to 14 years of

imprisonment. This shows that consent given by underage girls is invalid and renders the accused guilty of the offence of rape.

Laws on rape are premised on the lack of consent or where the consent is not freely given or given without all the relevant facts available to the women. <sup>102</sup>

It is still a rule of law that the testimony of a sexual offence complainant is corroborated by an independent witness such as medical evidence or any other evidence. That further suggests that the medical examination of the victim forms an important part of the investigation. The injuries that are suggestive of resistance offered by the victim or an attack by the rapist will provide strong corroborative evidence.

## 20. Does legislation explicitly criminalise marital rape or does legislation entitle a woman to file a complaint for rape against her husband or partner?

**Answer: No**

### Legal Findings

Marital rape is not criminalised; the exception to section 375 of the Penal Code permits marital rape as long as the marriage is legally enforceable.

A woman who (a) living separately from her husband under a decree of judicial separation or a decree nisi not made absolute; or (b) who has obtained an injunction restraining her husband from having sexual intercourse with her shall be deemed not to be his wife for this section, and a Muslim woman living separately from her husband during the period of 'iddah, shall be deemed not to be his wife for this section.<sup>103</sup>

Section 375A in the Penal Code was introduced to provide some protection to wives. However, this amendment is problematic as the offence criminalises the harm or fear of harm to the wife in the lead-up to sex, rather than the act of rape itself, and carries a much lower sentence compared to rape.<sup>104</sup> For further discussion, please refer to the answer to Question no 14.

A woman can file a complaint of sexual violence against her husband according to the Domestic Violence Act. A woman who is unmarried or is in an intimate partnership, however, is not offered the same protection by the DVA 1994.

<sup>101</sup> See Section 375 of the Malaysian Penal Code

<sup>102</sup> Laws on Rape and Sexual Assault, Women's Aid Organisation, <https://wao.org.my/laws-on-rape-and-sexual-assault/>

<sup>103</sup> See Explanation to Section 375 of the Penal Code, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61339/117909/F1085941047/MYS61339%202015.pdf>

<sup>104</sup> All Women's Action Society (AWAM), "Legal Remedies," AWAM, Last modified November 8, 2020, <http://www.awam.org.my/2020/09/09/legal-information>.

## 21. Is there legislation that specifically addresses sexual harassment?

**Answer: No**

### Legal Findings

There are no specific legislations in Malaysia that addresses sexual harassment. However, in December 2021, the Malaysian Parliament tabled an Anti-Sexual Harassment Bill 2021 at the Dewan Rakyat (the lower house) for its first reading. The second reading will be

held later in 2022 and may have added stipulations while it is under review.

Anti-Sexual Harassment Bill will address and prioritise the rights and well-being of victims of sexual harassment.

### Enforce & monitor

## 22. Are there budgetary commitments provided for by government entities for the implementation of legislation addressing violence against women by creating an obligation on government to provide budget or allocation of funding for the implementation of relevant programmes or activities?

**Answer: Yes**

### Supporting Findings

Yes, within Budget 2022, there were these allocations made:<sup>105</sup>

1. RM13 million to D11 of the Malaysia Royal Police Force, which is the special crimes unit investigating women, children, and sexual crimes
2. RM10 million was allocated to increase shelter services
3. RM4.5 million allocated to One Stop Social Support Centres

4. RM10 million to the Waja Squad, a group of over 30,000 volunteers under the Ministry of Women, Family and Community Development, which aims to empower the community through psychosocial activities and increase awareness against criminal issues, especially those affecting women.<sup>106</sup>

Despite the budget allocation for the year 2022, a more structured budgeting allocation is yet to be implemented. A pilot project launched in 2003 to incorporate gender-sensitive budgets into the national budgeting system has yet to be implemented as a government policy.<sup>107 108</sup>

The MWFCDC undertook an initiative in 2011 to introduce gender-sensitive budgeting. As a result, the MWFCDC and the Ministry of Finance jointly conducted a capacity-building initiative in 2013 on mainstreaming gender in planning and budgeting systems using results-based approaches.<sup>109</sup>

The Government stated in its Third to Fifth Periodic Report to the CEDAW Committee that the 2006 Gender Budgeting Analysis is currently being updated based on the new Outcome Based Budgeting System was introduced in 2012. However, no

information has been made available as to how this is being operationalised across ministries or whether it is at all.

In the government's Replies to List of Issues 2017, it was stated that the MWFCDC and the United Nations Development Program (UNDP) had undertaken a joint project to strengthen the implementation and monitoring of gender mainstreaming under the Eleventh Malaysian Plan, by reviewing the effectiveness of the National Policy on Women and the National Action Plan on the Advancement of Women.<sup>110</sup> At the state level, Penang Women's Development Centre (PWDC), funded by the Penang State Government, was established to promote gender mainstreaming via the Gender Responsive and Participatory Budgeting (GRP) and Gender Inclusiveness Policy.<sup>111</sup>

<sup>105</sup> Budget 2022 Measures, p.11, <https://budget.mof.gov.my/pdf/2022/ucapan/touchpoints-en.pdf>

<sup>106</sup> WAJA squad successfully assisted 826 victims of violence: Rina, 2021, <https://www.thesundaily.my/home/waja-squad-successfully-assisted-826-victims-of-violence-rina-EC8488633>

<sup>107</sup> Ministry of Women, Family, Children and Society Development, Gender Budgeting in Malaysia, 2005, [https://www.MWFCDC.gov.my/MWFCDC/uploads/files/Muat%20Turun/Gender\\_Budget\\_Advocacy\(1\).pdf](https://www.MWFCDC.gov.my/MWFCDC/uploads/files/Muat%20Turun/Gender_Budget_Advocacy(1).pdf)

<sup>108</sup> Ministry of Women, Family, Children and Society Development, Manual On Gender Budgeting In Malaysia, 2005, [https://www.MWFCDC.gov.my/MWFCDC/uploads/files/Muat%20Turun/Gender\\_Manual\\_Eng\\_May06\(1\).pdf](https://www.MWFCDC.gov.my/MWFCDC/uploads/files/Muat%20Turun/Gender_Manual_Eng_May06(1).pdf)

<sup>109</sup> Asia Pacific Community of Practice on Managing for Development Results & Asia Development Bank, 2013, Delivering Results and Gender: Promoting Women's Empowerment through Gender Responsive Budgeting in Malaysia. Available at: <https://bit.ly/2jz1gKI>

<sup>110</sup> The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia, 2019, p.133, <https://wao.org.my/publications/the-status-of-womens-human-rights/>

<sup>111</sup> Penang Women Development Centre, Gender Inclusiveness, <https://pwdc.org.my/gender-inclusiveness/>

## 23. Are there budgetary commitments provided for by government entities for the implementation of legislation addressing violence against women by allocating a specific budget, funding and/or incentives to support non-governmental organisations for activities to address violence against women?

### Answer: Yes

#### Legal Findings

Treasury Special Assistance (BKP)<sup>112</sup> is a Government Financial Assistance distributed to Non-Governmental Organisations (NGOs) to implement Women, Family and Community Development programs.

Government financial assistance is offered to encourage non-governmental organisations (NGOs) to participate in social programmes and services, in addition to the services already given by the government, as a partner of the Ministry in providing the best welfare services to the community in need.

There is a list of programs eligible for consideration, where they must be in line with the priority areas that have been set for the MWFCDC target group development

program. Additionally, interested NGOs must adhere to selected criteria set by the ministry.

Among the priority areas for Women's Development programs are Nur Bahagia (dealing with Violence Against Women) and gender sensitisation. There is no data available to assess the impact of such activities.

The Pusat Perkhidmatan Wanita (PPW)/ (WCC) Seberang has been funded by the Penang State Government under the State Executive Council for Women and Family Development (now known as Social Development & Non-Islamic Religious Affairs) since 2009. PPW provides counselling services, legal advice and court support to victims of domestic violence and sexual assault.<sup>113</sup>

<sup>112</sup> Jabatan Kebajikan Masyarakat, Bantuan Khas Perbendaharaan (BKP), <https://www.jkm.gov.my/jkm/index.php?r=portal/full&id=SVdockQrUCs5aFQ3bTY0dktKWnhDQT09>

<sup>113</sup> Women's Centre for Change (WCC), [https://www.wccpenang.org/01important/reports/Rev\\_WCC-Seberang-PPW-10th-Anniversary-Report.pdf](https://www.wccpenang.org/01important/reports/Rev_WCC-Seberang-PPW-10th-Anniversary-Report.pdf)



## 24. Is there is a national action plan or policy to address violence against women that is overseen by a national mechanism with the mandate to monitor and review implementation?

**Answer: No**

### Supporting Findings

Malaysia has its own National Women Policy and National Women Action Plan 2009. The National Women Policy is a continuation of the same policy launched in 1989, which was drafted based on the Federal Constitution, National Pillars principles and National Social Policy. The National Women Policy uphold the non-discriminatory principle based on gender as stated in the Federal Constitution, Convention on the Elimination of Discrimination against Women (CEDAW), Convention on Rights of Child (CRC), Beijing Declaration and Plan of Action, Millennium Development Goals (MDGs), Putrajaya Declaration and Non-Aligned Movement Putrajaya Declaration.

There is a National Women Policy and Women Development Action Plan (WDAP) covering 13 areas affecting women, including violence against women. One of the strategies includes “Review current laws and regulations and enact new laws and regulations to ensure non-discrimination based on gender, protection, safety, women’s rights and

dignity are protected and to take actions so that the enforcement of the laws is effective”.<sup>114</sup>

Many of the stated goals of the National Policy on Women and the associated National Action Plan have not been achieved.<sup>115</sup> The National Policy and Action Plan do not link targets with specific and comprehensive strategies, methods, timeframes, or responsible agencies. There is also a lack of indicators for the monitoring of specific actions.

Currently, there is no cohesive or comprehensive national action plan to address violence against women that is overseen by a national mechanism. There is a Domestic Violence Committee, which serves as a forum for several government bodies and 4 CSOs to discuss issues related to domestic violence, which meets twice a year, and has spawned three smaller working committees in 2021, each with a specific focus (Advocacy and capacity building, shelters, and data).<sup>116</sup>

<sup>114</sup> Department of Women’s Development, <https://www.jpw.gov.my/en/54-about-jpw/government-policy/1244-national-women-s-policy-and-women-s-development-action-plan-2>

<sup>115</sup> The Status of Women’s Human Rights: 24 Years of CEDAW in Malaysia, 2019, p.133, <https://wao.org.my/publications/the-status-of-womens-human-rights/>

<sup>116</sup> Advocate information - Women’s Aid Organisation

## Area 3: Employment and Economic Benefits

### Promote

## 25. Does the law mandate non-discrimination on the basis of gender in employment?

**Answer: Yes**

### Legal Findings

Article 8(1) of the Malaysian Federal Constitution mandates that everyone is equal before the law and entitled to equal protection of the law. Article 8(2) explicitly prohibits discrimination based on gender.

When the courts interpreted Article 8(2) of the Federal Constitution by putting the obligation of non-discriminatory treatment upon public authority, private entities like companies are not subject to the same obligation. Any government department cannot discriminate based on gender, as decided in the case of Noorfadilla Ahmad Saikin v Chayed bin Basiron & Ors. In this case, the court held that the act of not appointing a woman as a temporary teacher based on her pregnancy is a discriminatory treatment contrary to the protection provided under Article 8(2) of the Federal Constitution.

Unfortunately, a few decided cases held that companies (private entities) are not bound by the same obligation as a public authority. In other words, companies can discriminate based on gender, as held in Airasia Berhad v Rafizah Shima Mohamad Aris dan Beatrice a/p AT Fernandez v Sistem Penerbangan Malaysia & Ors. It was decided in the case of Beatrice, and

consistent with practice in many common-law countries, the provisions of CEDAW have no binding effect unless Parliament expressly incorporates them into domestic law.

At the domestic legislation level, in the specific Act governing employment matters, i.e. the Employment Act 1955, which is applicable throughout Peninsular Malaysia, there is no positive provision that prohibits discrimination based on gender. A proposal from the NGO for the Employment (Amendment) Bill 2021 (D.R 1/2021) was to include this portion under Section 2 of the definition of discrimination. This proposal was omitted; the Bill was tabled for its first reading on 25 October 2021. In March 2022,<sup>117</sup> the proposed amendment bill was passed; it is still subject to the Royal Assent before it becomes enforceable. Among the significant changes to the Act are succinctly provided for by the Women’s Aid Organisation.<sup>118</sup> The definition and grounds of discrimination are not stipulated in the Bill. Further to that, the proposed amendment limits the Bill to exclude job seekers. This means that individuals who experience discrimination during recruitment will remain unprotected.<sup>119</sup>

## 26. Does the law mandate equal remuneration for work of equal value?

**Answer: No**

### Legal Findings

There is currently no legal mandate of equal remuneration for work of equal value. The Employment Act generally treats women and men equally but does not explicitly mandate equal pay for the same work. Similarly, it does not explicitly stipulate non-discrimination in employment based on gender.

### Supporting Findings

According to the Salaries & Wages Survey Report, Malaysia, 2020, the median monthly salaries & wages for male employees were RM2,093, while the median value for female employees was RM2,019 (2019: RM2,370).<sup>120</sup> Despite so, statistical gaps include further data breakdowns by profession, area, and sector. This would provide a more holistic picture of the distribution of wages in Malaysia based on gender.

## 27. Can women work in jobs deemed hazardous, arduous or morally inappropriate in the same way as men?

**Answer: Yes**

### Legal Findings

Subject to the coming into force of the 2021 Bill. Previously, section 34 of the Employment Act of 1955 stipulated that women who are doing industrial or agricultural undertakings are prohibited from working at night, while section 35 prohibits women from doing underground work. Now, under the Employment (Amendment) Bill 2021, which is still enforceable, the restrictions are removed.<sup>121</sup>

<sup>117</sup> Dewan Negara passes Employment (Amendment) Bill 2021, 2022, <https://www.malaymail.com/news/malaysia/2022/03/30/dewan-negara-passes-employment-amendment-bill-2021/2050536>

<sup>118</sup> Employment Act Amendments – Progress but Gaps Remain, 2022, <https://wao.org.my/employment-act-amendments-progress-but-gaps-remain/>

<sup>119</sup> All Women's Action Movement (AWAM), Employment Act: Anti-Discrimination Provisions Must Extend to Job Seekers and Include Disability Status, 2020, <https://www.awam.org.my/2021/05/10/employment-act-anti-discrimination-provisions-must-extend-to-job-seekers-and-include-disability-status/>

<sup>120</sup> Salaries & Wages Survey Report, Malaysia, 2020

<sup>121</sup> 2021 Proposed Amendments to the Employment Act tabled in Parliament, 2021, <https://dnh.com.my/2021-proposed-amendments-to-the-employment-act-tabled-in-parliament/>

## 28. Are women able to work in the same industries as men?

**Answer: Yes**

### Legal Findings

Upon the removal of sections 34 and 35 of the Employment Act 1955, women are deemed able to work in the same industries as men.

### Supporting Findings

A study done in December 2020<sup>122</sup> on the Malaysian civil service revealed that gender prejudices are still prominent during the recruitment process, particularly for technical and administrative positions. Women are viewed as more qualified and capable of administrative and desk work. In contrast, male candidates are favoured for tasks requiring technical expertise and tougher working circumstances, such as shift work and on-site employment.

<sup>122</sup> Gender Discrimination In Employment Practices: A Case Study Of The Malaysian Civil Service, Syaza Shukri, Rabi'ah Aminudin, Norhaslinda Jamaudin & Nur azzura Mohamad Diah, 2020, [https://www.researchgate.net/publication/348035451\\_GENDER\\_DISCRIMINATION\\_IN\\_EMPLOYMENT\\_PRACTICES\\_A\\_CASE\\_STUDY\\_OF\\_THE\\_MALAYSIAN\\_CIVIL\\_SERVICE?enrichId=rgreq-f22d1878989f2b4fc5ffaba13d585100-XXX&enrichSource=Y292ZXJQYWdIOzM0ODAzNTQ1MTtBUzo5NzQ3MzMyOTAwMDAzODVAMTYwOTQwNTkzNDkzNg%3D%3D&el=1\\_x\\_2&\\_esc=publicationCoverPdf](https://www.researchgate.net/publication/348035451_GENDER_DISCRIMINATION_IN_EMPLOYMENT_PRACTICES_A_CASE_STUDY_OF_THE_MALAYSIAN_CIVIL_SERVICE?enrichId=rgreq-f22d1878989f2b4fc5ffaba13d585100-XXX&enrichSource=Y292ZXJQYWdIOzM0ODAzNTQ1MTtBUzo5NzQ3MzMyOTAwMDAzODVAMTYwOTQwNTkzNDkzNg%3D%3D&el=1_x_2&_esc=publicationCoverPdf)

## 29. Are women able to perform the same tasks as men?

**Answer: Yes**

### Legal Findings

Yes. No legal prohibition is in place that states otherwise.

### Supporting Findings

Although the lack of systemic and institutionalised gender discrimination practices, the December 2020 study<sup>123</sup> reveals that gender stereotypes influence decision-makers at the level of promotion due to the notion that men have superior leadership abilities compared to women. The conventional gender role that males are the main breadwinners for their families has also resulted in a preference for promoting men.

The traditional gender roles associated with society significantly inhibit women's advancement in their careers in public service, according to a recurring topic of this study. It is noticed that strong gender stereotypes have led to unconscious gender prejudice, exhibited in attitudes and beliefs that men's and women's abilities in the workplace depend on their gender.

---

## 30. Does the law allow women to work the same night hours as men?

**Answer: Yes**

### Legal Findings

Subject to the coming into force of the 2021 Bill. Previously, section 34 of the Employment Act of 1955 stipulated that women who are doing industrial or agricultural undertakings are prohibited

from working at night, while section 35 prohibits women from doing underground work. Now, under the Employment (Amendment) Bill 2021, which is still enforceable, the restrictions are removed.<sup>124</sup>

<sup>123</sup> Ibid

<sup>124</sup> 021 Proposed Amendments to the Employment Act tabled in Parliament, 2021, <https://dnh.com.my/2021-proposed-amendments-to-the-employment-act-tabled-in-parliament/>

## 31. Does the law provide for maternity or parental leave available to mothers in accordance with the ILO standards?

**Answer: Yes**

### Legal Findings

Subject to the coming into force of the 2021 Bill. Previously, section 34 of the Employment Act of 1955 stipulated that women who are doing industrial or agricultural undertakings are prohibited from working at night, while section 35 prohibits women from doing underground work. Now, under the Employment (Amendment) Bill 2021, which is still enforceable, the restrictions are removed.

According to the Employment (Amendment) Bill 2021, women will be entitled to 98 days of paid maternity leave, which is in line with the ILO standards.

Additionally, pregnant women are now protected from termination during maternity leave and on the grounds of pregnancy. The burden of proving that the termination is not on the grounds of pregnancy or illness arising out of pregnancy shall rest on the employer.<sup>125</sup>

The Employment Act exists to protect low-income earners in Malaysia (RM2,000 and below). The concern for Women's Rights Groups is the deletion of Section 44A from the Act. Section 44A made maternity leave and other maternity protections available to all female employees regardless of their salary. With the repeal of S44A, the Employment Act's maternity leave provisions will no longer apply to women earning more than RM2,000 per month, as stated in Schedule 1 of the Act.<sup>126</sup>

Deputy Human Resources Minister Awang Hashim stated in introducing the bill that S. 44A was repealed "to extend the entire Employment Act to all employees, including those earning more than RM2,000," which will be accomplished through a ministerial order currently in the drafting stage.

---

## 32. Does the law provide for paid paternity or parental leave available to fathers or partners?

**Answer: Yes**

<sup>125</sup> 2021 Proposed Amendments to the Employment Act tabled in Parliament, 2021, <https://dnh.com.my/2021-proposed-amendments-to-the-employment-act-tabled-in-parliament/>

<sup>126</sup> Rebirth of maternity rules - but why abort S44A?, 2022, <https://www.thestar.com.my/opinion/letters/2022/03/23/rebirth-of-maternity-rules---but-why-abort-s44a#:~:text=Section%2044A%20made%20maternity%20leave,Schedule%201%20of%20the%20Act.>

## Legal Findings

Under the Employment (Amendment) Bill 2021, from 3 days of paid paternity leave, the Lower House has increased the leave to 7 days in respect of each confinement, up to a maximum of 5 confinements (regardless of the number of spouses).

Previously, while some companies offered paid paternity leave as part of their policy,

such entitlements do not tend to be significant and are usually between the range of 1-3 days and require new fathers to take unpaid leave or to use annual leave for additional time off. This Bill will benefit fathers in the private sector. Malaysian civil servants fare slightly better as paternity leave entitlements can range from 7 to 14 days.

## Enfore and Monitor

### 33. Is there a public entity that can receive complaints on gender discrimination in employment?

#### Answer: Yes

#### Legal Findings

Any type of discrimination relating to employment can be made to the:-

1. Human Resources
2. Tribunal
3. Courts
4. National Human Rights Institution.

With the new Bill, The Director General of the Human Rights Minister is empowered to inquire into disputes relating to discrimination in employment. Failure to comply with any order made is an offence. However, concerns raised by the Women's Aid Organisation (WAO) are as follows<sup>127</sup> and are also shared by employment lawyers:

There is no clear definition of what entails or amounts to discrimination in employment and what are the protected traits; the Bill does not prohibit discrimination - employers can be penalised for failing to comply with the Director General's order following an investigation. But the employer will not be penalised for the discrimination itself; the Bill also does not include protection against discrimination for job-seekers. This means employers can continue to discriminate against persons looking for jobs - whether based on gender, race, religion, disability, or another status; and the powers of the Director General are not spelt out clearly in making orders relating to a discrimination complaint.<sup>128</sup>

<sup>127</sup> Employment Act Amendments - Progress but Gaps Remain, 2022, <https://wao.org.my/employment-act-amendments-progress-but-gaps-remain/>

<sup>128</sup> Long awaited changes to the Employment Act 1955, 2021, <https://www.zicolaw.com/resources/alerts/long-awaited-changes-to-the-employment-act-1955/>

### 34. Is childcare publicly provided or subsidised?

#### Answer: Yes

#### Legal Findings

Childcare in Malaysia is required to be registered (Section 2 of the Child Care Centre Act 1984 (Act 308)). Following that, any person operating or taking part in the management of a Child Care Centre which has not been registered shall be guilty of an offence (sub-clause 1 and 2 of Section 6). Out of the four categories of CCC, the Community-based Child Care Centre receives aid from the Federal Government or State Government.<sup>129</sup>

For the public sector, from the recent Budget 2022 announcement, a total of RM30 million is allocated to provide daycare centres in government buildings, especially public hospitals and universities.<sup>130</sup>

Meanwhile, for private sectors, double deduction on expenditure incurred for the provision and maintenance of child-care centres at the workplace; double deduction on child care allowance given to employees (employees exempted from tax up to RM2,400/year);<sup>131</sup> Industrial Building Allowance at 10% annually for buildings used as child care centres; and tax relief for parents amounted to RM1,000 who send their child aged 0 -

6 year to registered Child Care Center or Pre-School. Employers that provide childcare centres are entitled to tax relief as well.<sup>132</sup> Further, for public sector child-care centres, a subsidy of RM180 per month for each child who is sent to any registered child-care centre in the public sector workplace for civil servants whose monthly household income is below RM5,000; Meanwhile, for the Private sector, a subsidy of RM250 per month for each child who is sent to private registered child care centre for parents with per capita income below RM500 (urban), RM400 (suburban) and RM300 (rural).

The 2022 budget allocates RM30 million for the establishment of TASKA in Government buildings, in particular public and private hospitals and universities. The Prime Minister emphasised making it mandatory for childcare centres to be established in all government offices. The directive applies to all federal government agencies, state governments and statutory bodies before it is extended to the private sector.<sup>133</sup>

<sup>129</sup> MyGovernment, Registered Child Care Center, <https://www.malaysia.gov.my/portal/content/31020>

<sup>130</sup> Relief for payment of daycare and kindergarten fees ,2021, <https://www.nst.com.my/news/nation/2021/10/740959/relief-payment-daycare-and-kindergarten-fees>

<sup>131</sup> 2021/2022 Malaysian Tax Booklet, Pricewaterhouse Coopers, <https://www.pwc.com/my/en/publications/mtb/employment-income-tax.html>

<sup>132</sup> Tax Incentives For Employers Who Provide Child Care Centres, 2016, [https://phl.hasil.gov.my/pdf/pdfam/PR\\_5\\_2016.pdf](https://phl.hasil.gov.my/pdf/pdfam/PR_5_2016.pdf)

<sup>133</sup> Childcare centres in govt offices to be made mandatory, says PM,2022, <https://www.freemalaysiatoday.com/category/nation/2022/05/01/childcare-centres-in-govt-offices-to-be-made-mandatory-says-pm/>

The subsidy or provision for childcare typically takes the form of tax relief. For instance,

1. In 2020, as part of economic relief packages during the pandemic, a small childcare subsidy of RM800 for three months was introduced, along with tax relief provisions for childcare increasing to RM3,000 from RM2,000.<sup>134</sup>
2. Tax relief provisions for childcare have only been provided for working mothers for up to RM3,000 per year in Budget 2022.<sup>135</sup>
3. Throughout the pandemic, government-approved childcare centres were given allocations to become COVID-SOP-friendly, which likely modestly reduced childcare cost burdens passed to parents.<sup>136 137</sup>

The government has recently been urged to review the childcare fee subsidy conditions to be commensurate with the minimum wage rate.<sup>138</sup>

<sup>134</sup> Salary Subsidy Programme Extended; Childcare Subsidy And Financial Aid For Vulnerable Groups Introduced, 2020, <https://ringgitplus.com/en/blog/personal-finance-news/penjana-salary-subsidy-programme-extended-childcare-subsidy-and-financial-aid-for-vulnerable-groups-introduced.html>

<sup>135</sup> Relief for payment of daycare and kindergarten fees, 2021, <https://www.nst.com.my/news/nation/2021/10/740959/relief-payment-daycare-and-kindergarten-fees>

<sup>136</sup> Salary Subsidy Programme Extended; Childcare Subsidy And Financial Aid For Vulnerable Groups Introduced, 2020, <https://ringgitplus.com/en/blog/personal-finance-news/penjana-salary-subsidy-programme-extended-childcare-subsidy-and-financial-aid-for-vulnerable-groups-introduced.html>

<sup>137</sup> PM: Govt allocates RM100 m under PEMULIH to support Malaysia's art, creative industry, 2021, [malaymail.com/news/malaysia/2021/06/28/pm-govt-allocates-rm100m-under-pemulih-to-support-malaysias-arts-creative-i/1985634](http://malaymail.com/news/malaysia/2021/06/28/pm-govt-allocates-rm100m-under-pemulih-to-support-malaysias-arts-creative-i/1985634)

<sup>138</sup> Govt urged to review child care fee subsidy conditions, 2022, <https://www.thesundaily.my/local/govt-urged-to-review-child-care-fee-subsidy-conditions-IF8465183>

## Area 4: Marriage and Family

### Promote

#### 35. Is the minimum age of marriage at least 18, with no legal exceptions, for both women and men?

#### Answer: No

#### Legal Findings

No. For Muslim marriages, certain State (Selangor and Kedah) has lifted their minimum age of marriage to 18 for both girls and boys, with exceptions. The other States maintain their minimum age of marriage to 16 for girls and 18 for boys,<sup>139</sup> where the age can be lowered provided the Syariah judge permits. Only recently did the Standards Operating Procedures (SOPs)<sup>140</sup> for an underage marriage application introduced in the form of a Syariah Chief Judge circular to States that maintain their legal age of marriage. The SOP functions as guidelines for judges when they preside over such cases. The considerations include the interests of children from health, education and socioeconomic aspects. Following the underage marriage SOP, the JKSM issued additional Practice Directions:

1. No. 4/2019, issued on 23 December 2019, the Syariah High Court has the jurisdiction to hear and adjudicate child marriage applications.<sup>141</sup>

2. No. 2/2020, 40 issued on 21 December 2020 on the pre-trial forms to be used by the Social Welfare officer to report on the social/morals of the prospective child bride/groom for underage marriage applications.<sup>142</sup>

Despite the SOP, the exception to going below 18 years of age remains. The success of the SOP in curbing child marriage remains to be seen. It was reported a drop in permitted child marriage applications in court after the SOP was introduced.<sup>143</sup>

For non-Muslim marriages, the minimum age of marriage for both girls and boys is 18. However, girls may marry at the age of 16 with the consent of the Chief Minister of a particular state. The Law Reform (Marriage and Divorce) Act of 1976 stipulates that under no circumstances can the marriage of non-Muslim girls below 16 years old be legally approved. Further to that, parties below the age of 21 require the written consent of a parent or guardian before they can get married.

## Supporting Findings

The Ministry of Women established a National Action Plan to Address the Causes of Child Marriage<sup>144</sup> in January 2020. The Plan outlined 17 strategies that involved 61 ministries, agencies, governmental agencies, non-profit organisations, and international organisations. From 2020 to 2025, the Plan was intended to address

the causes of child marriage through policy changes, legal review, and the execution of awareness-raising initiatives and activities. Despite the NAP, the current Minister reportedly stated that the government has no immediate plans to ban child marriage.<sup>145</sup>

<sup>139</sup> Section 8 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>140</sup> Instruction Of The Chief Syarie Judge Of The State Of Melaka No.1 Year 2018 - Application For Permission To Marry A Minor, [https://www.mahsyariahmelaka.gov.my/msnmfiles/Pekeliling\\_ArahanKHS/2018/Arahan%20KHS%20MSNM%20Bil.1-2018.pdf](https://www.mahsyariahmelaka.gov.my/msnmfiles/Pekeliling_ArahanKHS/2018/Arahan%20KHS%20MSNM%20Bil.1-2018.pdf) (Original Text in Bahasa Malaysia)

Instruction Of The Chief Syarie Judge Of The State Of Melaka No.1 Year 2018 - Application For Permission To Marry A Minor, [https://www.mahsyariahmelaka.gov.my/msnmfiles/Pekeliling\\_ArahanKHS/2018/Arahan%20KHS%20MSNM%20Bil.1-2018.pdf](https://www.mahsyariahmelaka.gov.my/msnmfiles/Pekeliling_ArahanKHS/2018/Arahan%20KHS%20MSNM%20Bil.1-2018.pdf) (Original Text in Bahasa Malaysia)

<sup>141</sup> Practice Direction No. 4/2019, "The court hearing and adjudicating cases of child marriage applications",

<http://bsktransit.jksm.gov.my/aa/uploads/4Tahun2019.pdf> (Original text in Bahasa Malaysia)

<sup>142</sup> Practice Direction No. 2/2020, "Format and application of the social/moral report form for the social welfare department for underage marriage application",

<sup>143</sup> "Underage marriage among Muslims sees slight drop after new SOPs [NSTTV]", New Straits Times, 16 December 2021,

<https://www.nst.com.my/news/nation/2021/12/754831/underage-marriage-among-muslims-sees-slight-drop-after-new-sops-nsttv>

<http://bsktransit.jksm.gov.my/aa/uploads/aa22020.pdf> (Original text in Bahasa Malaysia)

<sup>144</sup> National Strategy Plan In Handling The Causes Of Child Marriage, Ministry of Women and Community Development, 2020, <https://www.MWFCD.gov.my/MWFCD/uploads/files/Dokumen/Pelan%20Strategi%20Perkahwinan%20Bawah%20Umur/BUKU%20PELAN.pdf>

<sup>145</sup> Rina: No plans to ban child marriages, 2022, <https://www.thesundaily.my/local/rina-no-plans-to-ban-child-marriages-DB8982014>

## 36. Do women and men have equal rights to enter marriage (i.e., consent) and initiate divorce?

### Answer: Yes and No

#### Legal Findings

Both men and women have equal rights to enter into marriage, whereby consent of both parties is required. Under civil law, full free consent of both partners shall be given, and no threats or force shall be used to compel an individual to marry against their will. When it comes to Muslims, the IFLA stipulates that marriages shall not be recognised without the free consent of both partners but also of the Wali, the woman's guardian, who is often male.<sup>147</sup> The Penal Code guarantees that whoever kidnaps or abducts a woman with the intent to compel her to marry any person against her will, will be punished with imprisonment for a term which may extend to ten years and will be liable to a fine (Penal Code, 366). Similarly, Section 37(a) of IFLA makes it an offence to use force or threat to compel a person to marry.<sup>147</sup>

In terms of divorce, under civil law, women have the same rights as men to initiate divorce. The LRA provides that couples may seek a divorce and determine the terms of the divorce by mutual consent. Divorce can also be obtained because the marriage has irretrievably broken down

in situations of adultery, behaviours that prevent one of the parties from being reasonably expected to live with the other, continuous desertion for at least two years or proof that the parties have lived apart for at least two years.

For Muslims, under the IFLA, although both men and women have equal rights to initiate divorce, the process is more complex for women. The Syariah Court can order a divorce and permit a husband to pronounce a talaq (repudiation of marriage) in court, but the Syariah courts also recognise talaq uttered outside of court. Women cannot pronounce the talaq; therefore, their divorce initiation must go through the court process. Whereby they must deduce evidence and appoint a legal representative. They can divorce their husbands on grounds based on the prescribed *ta'lik*, which consists of the failure to provide financial maintenance, absence of the husband for a period that exceeds four months or on the grounds of violence against the wife. As such, it is still subject to long, arduous legal recourse in court.

<sup>146</sup> Section 13 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>147</sup> Section 37(a) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

### 37. Do women and men have equal rights to be the legal guardian of their children during and after marriage?

**Answer: Yes and No**

#### Legal Findings

As it pertains to the legal guardianship of children, Muslims and non-Muslims are subject to different obligations.

For Muslims, under the IFLA, while women are deemed to be more suitable to be granted custody of their children but only Muslim men have guardianship over their children, whether they are in his custody or the custody of any other person. The Islamic Family Law (Federal Territories) 1984 distinguished between guardianship and custody.

Under civil law that applies to non-Muslims, parental authority and guardianship have been granted equally to both spouses since the amendment of the Guardianship

of Infants Act in 1999. Previously, fathers were recognised as the sole legal guardians of a child's person and property.

The question of which parent has the legal rights to custody and guardianship over legitimate children in Malaysia is governed by the Guardianship of Infants Act 1961 and the Law Reform (Marriage and Divorce) Act 1976. Section 5, Guardianship of Infants Act 1961 spells out that both parents have equal rights over their children.

In the event of a divorce, the Court is empowered to award custody and guardianship to either parent or both, as seen in Section 89(1) Law Reform (Marriage and Divorce) Act 1976.

### 38. Do women and men have equal rights to be recognised as head of household or head of family?

**Answer: Yes**

#### Legal Findings

There are no legal provisions that indicate otherwise or explicitly affirm the role.

#### Supporting Findings

Both civil and Syariah laws promote stereotypes about the roles of men and women at home.

Based on traditional gender roles, women

are expected to play a bigger role than men in household management. Even if a woman works full-time, she will still be responsible for house chores like cooking, cleaning the house and taking care of the children.

### 39. Do women and men have equal rights to choose where to live?

**Answer: Yes**

#### Legal Findings

There are no legal provisions that indicate otherwise.

### 40. Do women and men have equal rights to choose a profession?

**Answer: Yes**

#### Legal Findings

There are no legal provisions that indicate otherwise.

### 41. Do women and men have equal rights to obtain an identity card?

**Answer: Yes**

#### Legal Findings

Regulation 3 of the National Registration Regulations 1990 (Amendment 2007) requires a Malaysian child who reaches the age of 12 to register for an identity card.<sup>148</sup>

Trans women and men are not allowed to change their gender marker on their identity card and their birth certificate, except with Court's order.

### 42. Do women and men have equal rights to apply for passports?

**Answer: Yes**

#### Legal Findings

Yes. Malaysians, regardless of gender, above the age of 18 can apply for a passport.<sup>149</sup>

<sup>148</sup> MyGovernment Website, Identity Card Application, <https://www.malaysia.gov.my/portal/content/28868>

<sup>149</sup> Immigration Department of Malaysia, <https://www.imi.gov.my/portal2017/index.php/en/main-services/passport/malaysian-international-passport.html>

### 43. Do women and men have equal rights to own, access and control marital property including upon divorce?

#### Answer: Yes and No

##### Legal Findings

Generally, for Muslims, upon divorce, a woman may be entitled to (i) financial maintenance during the waiting period after the divorce (*idah*); (ii) accommodation; (iii) a consolatory gift (*mutaah*); and (iv) a share of the matrimonial assets (*harta sepencarian*).

Under IFLA, a woman may be entitled to financial maintenance (*nafkah*) during the waiting period after the divorce (*idah*) unless she has been deemed disobedient (*nusyuz*). The maintenance amount is dependent on the means and needs of the parties. The *idah* period is generally three months.

A woman loses her right to financial maintenance during the *idah* period if she is found to be disobedient (*nusyuz*). She also loses her right to financial maintenance that may have been mutually agreed upon between her and her former husband when she remarries.

Section 71 of IFLA stipulates that a divorced woman is entitled to stay in the home where she used to live when she was married for so long as the husband is not able to get other suitable accommodations for her. This right will cease if any of the circumstances under sub-clause (2) is triggered.

They are:

1. if the period of *idah* has expired; or
2. if the period of guardianship of the children has expired; or
3. if the woman has remarried; or
4. if the woman has been guilty of open lewdness (*fahisyah*);

Then, the husband may make an application to the court for a return of the home to him.

Section 56 of IFLA provides that upon divorce, in addition to a maintenance payment, a woman who has been divorced without just cause by her husband may apply to the court for a consolatory gift (*mutaah*). The amount of *mutaah* compensation is dependent on what the court considers fair and *per Hukum Syarak*.

A married woman retains her rights to her dowry or gifts on the dissolution of her marriage, according to Section 57 of IFLA.

Section 122 of IFLA mandates the Syariah Court, after granting a divorce, to order any assets acquired by the parties during the marriage (*harta sepencarian*) either through their joint efforts or by the sole efforts of one party to the marriage to be divided between them or any such assets to be sold and the proceeds of any such sale to be divided between the parties.

Following a divorce, a father is responsible for the financial maintenance of his children. If the mother is the custodian, he is obligated to pay her maintenance to cover the expenses of his children. Both daughters and sons are entitled to maintenance until they are 18, but the court may extend the maintenance period as it thinks reasonable to enable them to pursue further or higher education or training.

For non-Muslims, the following principles apply:

1. The ultimate power resides in the court to order the division of matrimonial assets and maintenance.
2. The court is statutorily bound to consider the factors set out in the Law Reform (Marriage and Divorce) Act 1976.
3. With the division of matrimonial assets, these factors do not include a provision allowing the court discretion to consider any agreements between the parties.

If the marriage is terminated by divorce or judicial separation, section 76 of the LRA empowers the court to pool the assets of the spouses acquired during the marriage and make a just and equitable division of the community property. The Court retains its unfettered discretion to decide on property division post-divorce. However, maintenance agreements can be referred to the courts, which retain the power to vary such agreements.



## Enforce and Monitor

### 44. Is marriage under the legal age void or voidable?

**Answer: No**

#### Legal Findings

Marriage under the legal age is allowed if an application is made and it obtains the permission of a Syariah judge (for Muslim applicants) or the permission of a Chief Minister (for non-Muslim applicants).

---


### 45. Are there dedicated and specialised family courts?

**Answer: Yes and No**

#### Legal Findings

For Muslims, family disputes are heard in the Syariah courts. No family court specialisation.

For non-Muslims, family disputes are heard by the civil courts. Applications concerning the dissolution of marriage and its ancillary issues are dealt with by the High Court. There are two specific High Courts in Kuala Lumpur and Shah Alam, referred to as Family Courts, to hear family disputes.



Any part of this publication may be copied, reproduced, adapted, stored in a retrieval system or transmitted in any form or by any means to meet local needs, without permission from Sisters in Islam and Musawah, provided that there is no intention of gaining material profits and that all copies, reproductions, adaptations and translations through mechanical, electrical or electronic means acknowledge Sisters in Islam and Musawah as the source. A copy of any reproduction, adaptation or translation should be sent to Sisters in Islam and Musawah. In cases of commercial usage, both organisations must be contacted for permission.

Sisters in Islam (SIS) is a civil society organisation which believes that Islam upholds Equality, Justice, Freedom, and Dignity. SIS is made up of Muslim women and men working on women's rights within the frameworks of Islam and universal human rights, taking into account the lived realities of women on the ground. Since its official establishment in 1998, SIS has successfully created a public voice and a public space that enable Muslims to engage with their faith in the struggle for justice, human rights, and democracy in the 21st century.

Facebook: Sisters In Islam

Twitter: @SistersInIslam

Instagram: sistersinislam.my

TikTok: SistersinIslam.my

Youtube: youtube.com/SistersInIslamMYS

Musawah is a global movement for equality and justice in the Muslim family. Musawah was launched in February 2009 at a Global Meeting in Kuala Lumpur, Malaysia, attended by over 250 women and men from some 50 countries in Africa, Asia, Europe, the Middle East, North America and the Pacific. Musawah holds the vision of a world where EQUALITY, NON-DISCRIMINATION, JUSTICE, and DIGNITY are the basis of all human relations.

Facebook: @musawahmovement

Instagram: @musawahmovement

Twitter: @musawahmovement

Youtube: @musawah

Email: [musawah@musawah.org](mailto:musawah@musawah.org)

Website: [www.musawah.org](http://www.musawah.org)

ISBN 978-983-2622-51-2



9789832622512

