

**BRUNEI<sup>1</sup>**  
**OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES**  
(Updated as at 28 June 2022)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncoded? If codified, what are</i></p>	<p>Brunei's Constitution does not contain any equality guarantees nor does it contain any other human rights.<sup>3</sup> In addition, Brunei has been in a 'perpetual' state of emergency since 1962 affecting the codification of laws.<sup>4</sup> The Bruneian Islamic Family Law Act (BIFLA, previously the Islamic Family Law Order 2000)<sup>5</sup> is the main codified law that governs matters relating to marriage and family relations of the Muslim majority population in Brunei. If there is a gap in BIFLA in</p>	<p>Case law suggests that when deciding on matters regarding marriage and family relations, judges tend to draw on a number of sources to justify their ruling. These include:</p> <p>(i) the relevant codified family laws;</p> <p>(ii) court precedence both from within Brunei and other similar</p>	<p>Brunei is a reluctant ratifier of international human rights conventions at best. In the case of CEDAW, it has made the following reservations:<sup>14</sup></p> <ul style="list-style-type: none"> <li>• A general reservation on "those provisions of CEDAW that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam.";</li> </ul>		<p>According to the 2019 Human Development Index (HDI) Brunei ranked 47 and had the same ranking for the 2019 Gender Inequality Index (GII).<sup>17</sup></p>

<sup>1</sup> This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Brunei country table, we would also like to thank Cassandra Rasmussen from Harvard Law School, and Dr. Kerstin Steiner for their inputs in its preparation. This table was last updated on 28 June 2022 as part of the Campaign for Justice in Muslim Family Laws by Dr Kerstin Steiner

<sup>3</sup> Brunei's Constitution (1959), [http://www.agc.gov.bn/AGC%20Images/LOB/cons\\_doc/dokumen-dokumen\\_perlembagaan\\_2008.pdf](http://www.agc.gov.bn/AGC%20Images/LOB/cons_doc/dokumen-dokumen_perlembagaan_2008.pdf)

<sup>4</sup> In Bruneian legal terminology, "Orders" are legislation instituted by the Sultan under his emergency powers in Section 83(3) of the Constitution, while "Acts" are those enacted through normal processes involving the Legislative Council. The intention is that the Emergency Orders will be eventually promulgated as Acts overtime yet Acts are also frequently replaced by Orders.

<sup>5</sup> Islamic Family Law Act (2000), Chapter 217, rev ed. 2012, [https://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](https://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>14</sup> United Nations Treaty Collection Website, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-8&chapter=4&clang=en)

<sup>17</sup> United Nation Development Program, Human Development Reports <https://hdr.undp.org/en/countries/profiles/BRN>

In the previous compilation (2016), Brunei was ranked 30 for the UNDP Human Development Index with no ranking for the UNDP Gender Inequality Index.

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<p><i>the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary</i></p>	<p>regard to a particular issue in the personal status of Muslims, section 144 BIFLA states that the rules of any Muslim sect which the court considers valid (<i>Hukum Syara'</i>) apply.<sup>6</sup> Article 3 of the Constitution declares Islam in accordance with the rules of Shafi'i jurisprudence (<i>fiqh</i>) as the official religion of the State.<sup>7</sup> This preference for Shafi'i jurisprudence is also reflected in Section 43(1) of the Religious Council and Kadis Courts Act.<sup>8</sup> BIFLA does not explicitly mention anything about the marital framework unlike for instance the Married Women Act which states that 'the husband and the wife shall be mutually bound to cooperate with each other in safeguarding the interests of the union and in</p>	<p>legal jurisdictions in Southeast Asia such as Malaysia; (iii) religious sources, particularly As-Syarabini's <i>Mughni Al-Muhtaj</i>; and (iv) customary norms.<sup>13</sup></p>	<p>and</p> <ul style="list-style-type: none"> <li>• Specific reservations on Articles 9(2) and 29(1).</li> </ul> <p>Brunei provided an initial and second periodic report (CEDAW/C/BRN/1-2) in 2013. In this report, the Bruneian government reported that:<sup>15</sup></p> <ul style="list-style-type: none"> <li>• There is no clear definition of "discrimination of women." For practical purposes, it may be interpreted to mean treating women differently to men to the detriment of women. While recognising that there may be customary and traditional practices that distinct the role of</li> </ul>		

<sup>6</sup> Section 144 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>7</sup> Article 3 of Brunei's Constitution (1959), [http://www.agc.gov.bn/AGC%20Images/LOB/cons\\_doc/dokumen-dokumen\\_perlembagaan\\_2008.pdf](http://www.agc.gov.bn/AGC%20Images/LOB/cons_doc/dokumen-dokumen_perlembagaan_2008.pdf)

<sup>8</sup> Section 43(1) of the Religious Council and Kadis Courts Act (1955), <http://www.agc.gov.bn/AGC%20Images/LOB/pdf/Cap.77.pdf>; Kerstin Steiner, "Comparative Law in Syariah Courts: A Case Study of Singapore, Malaysia and Brunei", in *Comparative Law before the Courts*, eds Mads Adenas and Duncan Fairgrieve, (Oxford: Oxford University Press, 2015), p. 601

<sup>13</sup> Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 464-493.

<sup>15</sup> Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), paras. 1.1, 15.1.1, 16.2.9, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

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<p><i>caregiver?</i></p> <p><u>Applicable CEDAW Provisions and CEDAW General Recommendations (GR)</u><sup>2</sup></p> <p>Article 16(1)(c) CEDAW Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>caring and providing for the children.<sup>9</sup></p> <p>Instead it has an implicit marital framework based on the premises of what can be called 'reciprocal' or 'complementary' rights (as opposed to 'equal' rights) between the two spouses.<sup>10</sup> A wife is expected to obey her husband and is return assured maintenance and protection by her husband. Thus:</p> <ul style="list-style-type: none"> <li>based on Section 61(1) BIFLA, a husband is obligated to pay his wife maintenance; in return under section 61(2) BIFLA, the wife is obligated to obey the lawful wishes and demands of her husband or risk losing her maintenance. A wife is deemed disobedient (<i>nusyuz</i>) if, without valid reason, she: (i) withholds her association with her</li> </ul>		<p>women and men, the Bruneian government takes a positive approach towards to address discrimination including by providing equal access to education, economic resources and employment;</p> <ul style="list-style-type: none"> <li>Women are accorded the same legal status as men in civil matters. They have the same rights to enter into contracts, administer property and receive equal treatment in courts</li> <li>With regard to Muslim women, according to the Syariah Courts Act, Muslim women have equal rights to appear before the Court, to sue,</li> </ul>		

**Commented [1]:** The problem is that the GR reference as such is imprecise. I revised it and made it legally correct.

**Commented [2]:** The same rights and responsibilities during marriage and at its dissolution

<sup>2</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendations (GR) available at <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>*

<sup>9</sup> Section 4(1) Married Woman Act (1999), Chapter 190, rev.ed. 214 [https://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap190.pdf](https://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap190.pdf)

<sup>10</sup> Section 199 of the Syariah Penal Code Order (2013) makes it a criminal offence if a person instigates a married Muslim to neglect his or her duties, [http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette\\_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf). See also Tim Lindsey and Kerstin Steiner, "Islam, the Monarchy and Criminal Law in Brunei: The Syariah Penal Code Order, 2013", (Griffith Law Review, 2017)

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	<p>husband; (ii) leaves her husband's home against his wishes; or (iii) refuses to move with him to another home or place.<sup>11</sup></p> <ul style="list-style-type: none"> <li>Section 129 BIFLA penalises a husband who fails to give proper justice to his wife; in return</li> <li>Section 130 BIFLA penalises a wife who wilfully disobeys an order of her husband.</li> </ul> <p>Marriage and family relations of Brunei's non-Muslim minority communities are governed by laws relating to civil marriages or their own laws and customs.<sup>12</sup></p>		<p>be sued, give evidence and be treated equally with men in all legal proceedings of the Courts and tribunals.<sup>16</sup> Islam gives equal rights to women to conclude contracts and administer property and to move freely within the limits prescribed by <i>Shari'ah</i>; and</p> <ul style="list-style-type: none"> <li>To further promote awareness of the rights of Muslim women, compulsory pre-marital courses are conducted to make them aware of their rights including the</li> </ul>		

<sup>11</sup> Section 199 of the Syariah Penal Code Order (2013) makes it a criminal offence to entice a married Muslim woman to leave her matrimonial home. Indeed preventing a Muslim married couple of cohabitation is also deemed an offence under section 200 of the Syariah Penal Code Order (2013), [http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette\\_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf). See also Tim Lindsey and Kerstin Steiner, "Islam, the Monarchy and Criminal Law in Brunei: The Syariah Penal Code Order, 2013", (Griffith Law Review, 2017)

<sup>12</sup> For instance, the Marriage Act (1948), Chapter 76, rev ed. 2013, [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap076.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap076.pdf); Chinese Marriage Act (1955), Chapter 126, rev. ed. 2012, [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap126.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap126.pdf); and Married Woman Act (1999), Chapter 190, rev.ed. 214 [https://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap190.pdf](https://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap190.pdf).

<sup>16</sup> There are however codified limitations for the equal treatment of the genders when giving evidence. Section 106 of the Syariah Courts Evidence Order (2001) prescribes the number of witnesses required to prove an offence, and authorises the substitution a single male Muslim witness by two female Muslim witnesses, except in certain circumstances where no substitution is allowed, [http://www.agc.gov.bn/AGC%20Images/LOB/Order/MNOP/Syariah%20Courts%20Evidence%20Order.%202001%20\(S%2063\).pdf](http://www.agc.gov.bn/AGC%20Images/LOB/Order/MNOP/Syariah%20Courts%20Evidence%20Order.%202001%20(S%2063).pdf). See Tim Lindsey and Kerstin

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			obligation for the husband to provide maintenance ( <i>nafkah</i> ) for children and to retain their own family name. In addition, Ministry of Religious Affairs (MORA) conducts annual programmes to disseminate information on the rights of Muslim women.		
<p><b>Minimum and equal legal age for marriage</b></p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there</i></p>	<p>The minimum marriage age differs depending on the applicable law based on ethnicity and/ or religion.</p> <ul style="list-style-type: none"> <li>• The Marriage Act provides that the minimum age is 14 years.<sup>18</sup></li> <li>• The Chinese Marriage Act states that a female must be at least 15, and is silent on the minimum age for a male.<sup>19</sup></li> </ul>		<p>The Government of Brunei in its 2015 report to the Committee on the Rights of the Child informed that "there are no plans to increase the minimum age of marriage."<sup>21</sup></p>		<p>According to the 2020 Statistical Yearbook, in 2020</p> <ul style="list-style-type: none"> <li>• there were 4 brides under the age of 15. That is 0.1% of total brides; and</li> <li>• 14 (1.96 %) grooms and 220 brides (6%) at the age of 15-19.<sup>22</sup></li> </ul>

Steiner, "Islam, the Monarchy and Criminal Law in Brunei: The Syariah Penal Code Order, 2013", (Griffith Law Review, 2017), for the relevance to the new Syariah Penal Code Order.

<sup>18</sup> Section 3 Marriage Act (1948), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap076.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap076.pdf).

<sup>19</sup> Section 3 Chinese Marriage Act (1955), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap126.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap126.pdf).

<sup>21</sup> Brunei State Party Report, U.N. Doc. CRC/C/BRN/2-3 (2015), para. 66, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx#sthash.cDNPOz37.dpuf>

<sup>22</sup> Brunei Department of Statistics, 'Brunei Darussalam Statistical Yearbook 2020', Table 1.21 Marriages by Age Group of Grooms and Brides, [https://deps.mofe.gov.bn/DEPD%20Documents%20Library/DOS/BDSYB/BDSYB\\_2020/BDSYB%202020%20Final.pdf](https://deps.mofe.gov.bn/DEPD%20Documents%20Library/DOS/BDSYB/BDSYB_2020/BDSYB%202020%20Final.pdf)

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<p><i>equality in the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW and CEDAW GR Provisions</u> Article 16(2) Paras. 36-39 GR21</p>	<ul style="list-style-type: none"> <li>The BIFLA does not expressly provide for a minimum legal age for marriage.<sup>20</sup></li> </ul>				<p>In 2020, the median age for first marriage was 27.1 years for males and 25.6 years for females.<sup>23</sup></p>
<p><b>Women's consent to marriage</b></p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in</i></p>	<p>Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, <i>ijbar</i> marriages are prohibited.</p> <p>While the consent of both spouses is needed to enter into a marriage, it is important to acknowledge that a woman also requires the consent of a <i>wali</i> to enter into the marriage to enter into marriage are not equal. Section 8(3) BIFLA</p>		<p>The Government of Brunei in its 2013 report to the CEDAW Committee reiterated that Muslim women have the same right as men to choose a spouse with free consent. It is an offence for any person to use any force, threat or deception to compel a person to marry against his/her will unless force, threat or deception is permitted under Islamic</p>	<p>Muslim marriages must be solemnised by a state appointed official who is authorised to conduct the solemnisation of Muslim marriages (<i>jurunikah</i>). The <i>jurunikah</i> will only solemnise a marriage after both the prospective bride and her <i>wali</i> have consented to the</p>	

<sup>20</sup> Brunei State Party Report, U.N. Doc. CRC/C/BRN/2-3 (2015), para. 65, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx#sthash.cDNPOz37.dpuf>

<sup>23</sup> Brunei Department of Statistics, "Vital Statistics 2020, p. 7, [https://deps.mofe.gov.bn/DEPD%20Documents%20Library/DOS/VS/RPT\\_2020.pdf](https://deps.mofe.gov.bn/DEPD%20Documents%20Library/DOS/VS/RPT_2020.pdf)

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<p><i>the contract that ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW and CEDAW GR Provisions</u></p> <p>Article 16(1)(b) CEDAW Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>provides that a marital guardian (<i>wali</i>) may only solemnise the marriage of a prospective bride after she has given her consent.<sup>24</sup></p> <p>Section 12 BIFLA provides that a marriage is void and cannot be officially registered unless both parties to the marriage have consented to it.<sup>25</sup></p> <p>Section 13(2)(b) BIFLA provides that a divorced woman, once she has passed the waiting period after a divorce (<i>iddah</i>) must give "clear consent" to remarry.<sup>26</sup></p> <p>Section 35(a) BIFLA makes it an offence for any person to use any force, threat, or deception to compel a person to marry against his or her will.<sup>27</sup></p>		<p>law.<sup>28</sup></p>	<p>marriage.<sup>29</sup></p> <p>The mandatory registration of marriages is provided for in Section 24 BIFLA. Non-registration of a marriage does not necessarily invalidate the marriage. However, the failure to register a marriage is an offence.<sup>30</sup></p> <p>The <i>Ta'liq</i> Certificate is a document containing the vows expressed by a husband after solemnisation of the marriage. A breach of one or more of the vows may give rise to a wife's entitlement to seek a divorce. The <i>ta'liq</i> may be a standard one or</p>	

<sup>24</sup> Section 8(3) of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>25</sup> Section 12 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>26</sup> Section 13(2)(b) of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>27</sup> Section 35(a) of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>28</sup> Section 35 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>29</sup> Section 8(4) of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>30</sup> Sections 24, 32, 125, 139 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)



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				<p>otherwise.<sup>31</sup></p> <p>Upon registration of a marriage, the Registrar of Muslim Marriages, Divorces, Annulments and <i>Ruju'</i> (Registrar) will issue copies of the following three documents in a form prescribed by law to both spouses: (i) Marriage Certificate; Marriage Card; and <i>Ta'liq</i> Certificate.<sup>32</sup></p> <p>In 2022, Brunei initiated an online registration system for marriages, however that system is operating under the Registry of Civil Marriages and is thus only available for civil, and therefore not marriages by Muslims, Hindus, Buddhists, Dayaks and other persons governed by</p>	

<sup>31</sup> Sections 2, 21(1) of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>32</sup> Sections 21, 22 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)



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				their own laws or customs of marriages.	
<p><b>Women's capacity to enter into marriage</b></p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW and CEDAW GR</u></p>	<p>Regardless of her age, a prospective bride requires the consent of a marital guardian (<i>wali</i>) to enter into marriage. The guardian must be a Muslim and a male relative of the prospective bride (<i>wali nasab</i>).<sup>33</sup></p> <p>A <i>jurunikah</i> who has been authorised to give away a woman in marriage may solemnise the marriage of a woman who does not have a <i>wali nasab</i>.</p> <p>In addition, if the prospective bride's <i>wali</i> opposes the marriage, she may seek the authorisation of a judge to get married. The judge may authorise the marriage after determining that the <i>wali</i> has refused consent without reasonable grounds.<sup>34</sup></p>			<p>Both spouses may mutually agree to stipulate conditions of their marriage in the <i>ta'liq</i>. The <i>ta'liq</i> provisions must be registered by the Registrar in the Marriage Register.<sup>35</sup></p>	

<sup>33</sup> Sections 2, 12 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>34</sup> Sections 8(7), 12(b) of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>35</sup> Section 21 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

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<b>Provisions</b> Articles 16(1)(a), 16(1)(b) CEDAW Paras. 15-16 GR21 Para. 34 GR29					
<b>Polygamous marriages</b>  <i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a</i>	<p>Section 23 BIFLA allows a man to enter into a polygamous marriage provided a successful application for a written permission by a judge was made while Section 13(1) BIFLA prohibits a woman from marrying more than man.</p> <p>An application for permission must be accompanied by a declaration by the man stating: (i) the grounds on which the proposed marriage is claimed to be just and necessary; (ii) his present income, particulars of his commitments and ascertainable financial obligations and liabilities; (iii) the number of his dependants including persons who would be his dependants as a result of the proposed marriage; and (iv) whether the consent or views of the existing wife have</p>		<p>The Sultan and two of his brothers had polygamous marriages thus arguably unofficially endorsing this practise.</p>	<p>Section 23(4) BIFLA makes it mandatory for the polygamous marriage to be solemnised and registered in accordance with the procedure set out with regard to a marriage.<sup>37</sup></p> <p>Section 23(1) BIFLA provides that a man may officially register the polygamous marriage which was entered into without a judge's permission subject to a penalty (fine, imprisonment or both) under Section 123 BIFLA.<sup>38</sup></p>	

<sup>37</sup> Sections 23(2), 23(3) of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>38</sup> Sections 23(1), 123 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</p> <p>Applicable CEDAW and CEDAW GR Provisions Para. 14 GR21 Para. 34 GR29</p>	<p>been obtained or not regarding the proposed marriage. The judge may grant permission if he is satisfied that the application would be approved in accordance with <i>Hukum Syara</i>.<sup>36</sup></p>				
<p><b>Divorce rights</b></p> <p>Is there equal right to divorce between women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms</p>	<p>BIFLA provides for four main reasons for divorce: (i) unilateral repudiation (<i>talaq</i>); (ii) conditional divorce (<i>tal'iq</i>); (iii) judicial divorce (<i>fasakh</i>); and (iv) redemptive divorce (<i>cerai tebus talāq or khul'</i>). The marriage may also be annulled.<sup>39</sup> The mandatory registration of a divorce is provided for in</p>	<p>On the ratification of pronouncements of <i>talāq</i> outside the court:<sup>46</sup></p> <ul style="list-style-type: none"> <li>In the case of <i>Yusrin bin Jurah v Hj Mariani binti Ketua Juurulaki Awang Hj Abdul Rahman @ Duraman</i>, the court</li> </ul>	<p>The Government of Brunei in its 2013 report to the CEDAW Committee explained that a Muslim woman may dissolve her marriage on various grounds such as: (i) conflicts between the spouses (<i>syiqaq</i>); (ii) causing violence to a wife (<i>dharar syari'e</i>); (iii) non-</p>	<p>The registration of divorce is mandatory, a standard procedure must be followed (e.g. a divorce cannot be registered without a final court order) and a divorce certificate will be issued to both parties.<sup>50</sup></p>	<p>Syariah Court officials have been considering the divorce rate in Brunei has been persistently high in recent years<sup>52</sup></p> <ul style="list-style-type: none"> <li>2016: 550 cases</li> <li>2017: 610 cases</li> </ul>

<sup>36</sup> Sections 23(2), 23(3) of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)  
One of the restrictions in place is that a man shall not have two wives at a time if the wives are related to each other by *nasab*, affinity or *sesusuan* and where the relationship is of a type that if either of them had been a man rendering a marriage between them void in accordance with Islamic law, section 9 (4) BIFLA.

<sup>39</sup> Sections 40-51 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>46</sup> Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 464-468

<sup>50</sup> Sections 54-56 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>52</sup> Chief Syar'ie Judge Pehin Orang Kaya Paduka Seri Utama Dato Paduka Seri Setia Ustaz Haji Awang Salim bin Haji Besar as cited in See Azlan Othman, "Divorce cases on the rise in Brunei" Borneo Bulletin 10 June 2021, <https://www.thestar.com.my/aseanplus/aseanplus-news/2021/06/11/divorce-rates-persistently-high-in-sultanate>

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><i>of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is</i></p>	<p>BIFLA. The failure to register a divorce is an offence.<sup>40</sup> There are different divorce mechanisms and grounds available for the husband and wife.</p> <p>A husband may unilaterally repudiate the marriage, which must generally be effectuated in court. A husband may pronounce <i>talaq</i> outside the court and without the permission of the court. However:<sup>41</sup></p> <ul style="list-style-type: none"> <li>• Section 55 of BIFLA provides that he is required to report the pronouncement of the <i>talāq</i> to the Court within seven days of the pronouncement; and</li> <li>• Section 124 makes it an offence for a man to</li> </ul>	<p>stated that the five elements of a valid pronouncement of <i>talāq</i> are: (i) the presence of the person pronouncing the <i>talāq</i> (the husband); (ii) the phrase used; (iii) the intention i.e. whether the <i>talāq</i> was pronounced voluntarily; (iv) the authority to pronounce the <i>talāq</i>; (v) the subject of the <i>talāq</i> (the wife). It is noteworthy that in this case neither party produced witnesses to the purported <i>talāq</i>. The court found that all five elements of the <i>talāq</i> was met in this</p>	<p>compliance of matrimonial requirements (<i>fasakh</i>); and (iv) giving right of divorce to woman in marriage contract (<i>tal'iq</i>).<sup>49</sup></p>	<p>In regard to <i>ruju</i>, reconciliation between a husband and wife after a revocable divorce, that is a <i>talaq raj'ie</i> and within an 'iddah period the husband can pronounce a reconciliation but requires the consent by his former wife. If she does not consent for reasons permissible under Islamic law, the court will not order conjugal relations but refer the matter to Family Advice Service Officer.<sup>51</sup></p>	<ul style="list-style-type: none"> <li>• 2018:522 cases</li> <li>• 2019:624 cases</li> <li>• 2020: 583 cases<sup>53</sup></li> </ul>

<sup>40</sup> Sections 54-55, 124-125, 139 of the Islamic Family Law Act (2001), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>41</sup> Sections 41-42, 55, 124 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>49</sup> Brunei State Party Report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 16.2.4, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>51</sup> Section 52 (8) of the Islamic Family Law Act (2001), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>53</sup> Brunei Department of Statistics, 'Brunei Darussalam Statistical Yearbook 2020', Table 1.22 Divorce by Type of Marriage and District, [https://deps.mofe.gov.bn/DEPD%20Documents%20Library/DOS/BDSYB/BDSYB\\_2020/BDSYB%202020%20Final.pdf](https://deps.mofe.gov.bn/DEPD%20Documents%20Library/DOS/BDSYB/BDSYB_2020/BDSYB%202020%20Final.pdf)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><i>it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW and CEDAW GR Provisions</u> Article 16(1)(c) CEDAW Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>divorce his wife by pronouncement of <i>talāq</i> in any form outside the court and without the court's permission and prescribes a penalty (fine, imprisonment or both) for the offence.</p> <p>A married woman may, if entitled to a divorce pursuant to the terms of her <i>ta'liq</i> certificate made upon a marriage, apply to the Court to pronounce that such divorce has taken place. The Court must, before pronouncing the divorce, examine the application and make an inquiry as to the validity of the divorce. If the court is satisfied that the divorce is valid in accordance with Islamic law, it must pronounce and record such divorce.<sup>42</sup></p> <p>A wife's valid grounds for seeking a judicial divorce by way of <i>fasakh</i> include her husband's: (i) prolonged absence for more than one year; (ii) detention for a year or</p>	<p>case and ratified the divorce;</p> <ul style="list-style-type: none"> <li>In the case of <i>Serjan Roslan bin Hj Matzinin v Dayangku Rosidah binti Pengiran Omar</i>, the husband claimed that he could not remember pronouncing <i>talāq</i> outside the court. At the time of his purported pronouncement of <i>talāq</i>, he was so angry that he had lost awareness and was not in control of his actions. After reiterating the conditions that would render the pronouncement of <i>talāq</i> invalid (insanity, duress, etc.), the court held that: (i) being angry in itself does not</li> </ul>			

<sup>42</sup> Section 45 of the Islamic Family Law Act (2001), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	<p>more; (iii) failure to provide maintenance for more than four months; (iv) imprisonment of more than three years when a wife may seek divorce after one year; (v) failure to perform marital obligations for over a year; (vi) impotence of which the wife was not aware; at time of marriage and (vii) incurable or severe physical or mental illness provided certain conditions are met.<sup>43</sup></p> <p>In addition, a wife may seek judicial divorce by way of:<sup>44</sup></p> <ul style="list-style-type: none"> <li>• <i>Syiqaq</i> if she has been mistreated or assaulted by her husband, or if he has caused harm to her body, modesty, or property by words or actions. If the wife's claim is proven and reconciliation between the spouses is impossible, the court will grant a divorce. If her claim is not proven and she insists on her claim, the couple will be required to undergo a reconciliation</li> </ul>	<p>render the pronouncement of <i>talāq</i> invalid; (ii) only in very cases would anger be so severe that it invalidates the pronouncement of <i>talāq</i> because the person is analogous to an insane person; and (iii) the burden of proof is on the person making the claim that the pronouncement of <i>talāq</i> is invalid because it was said in a state of anger (in this case the husband). The court found that the husband had failed to meet the burden of proof and ratified the divorce;</p> <ul style="list-style-type: none"> <li>• In the case of <i>Mohd bin Asgar v Maria Pacsa binti Abdullah</i>,</li> </ul>			

<sup>43</sup> Section 46 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>44</sup> Sections 43-44 of the Islamic Family Law Act (2001), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	<p>process. If after at least three rounds of reconciliation and two different panels of two arbitrators (<i>hakam</i>) each have failed, the court will grant a divorce; or</p> <ul style="list-style-type: none"> <li>• <i>Dharar Syar'ie</i> if her husband: (i) habitually assaults her or makes her life unbearable through cruelty; (ii) associates with "women of evil repute," or leads and "infamous life"; (iii) attempts to force her to lead an immoral life; (iv) disposes of her property or denies her from exercising legal rights over it; (v) prohibits her religious practice; or (vi) does not treat her equally with other wives in the event her husband is in a polygamous marriage.</li> </ul> <p>A wife may seek redemptive divorce (<i>ceras tebus talāq</i> or <i>khul'</i>), whereby she is granted</p>	<p>the wife (a Philippine national) denied that a divorce had taken place. On the other hand, the husband (a Bruneian) claimed that he had divorced her over the telephone while she was back in the Philippines. The court found that all five elements of the valid pronouncement of <i>talāq</i> were met and ratified the divorce.</p> <p>On <i>ta'liq</i>:<sup>47</sup></p> <ul style="list-style-type: none"> <li>• In the case of <i>Hjh Siti Tiewa binti Awh Hj Iring v Hj Reduan bin Lalal</i>, the couple had married in Malaysia and subsequently registered their marriage in Brunei. The husband then</li> </ul>			

<sup>47</sup> Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 486-492



Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	<p>a divorce in exchange for a mutually-agreed compensation to be paid to the husband. If both parties are unable to reach a mutual agreement on the amount of compensation to be paid by the wife, the court may assess the amount in accordance with <i>Hukum Syara'</i>, having regard to the status and financial means of the spouses, and to the dower (<i>mas kahwin</i> or <i>mahr</i>). Once the amount of compensation has been fixed and the husband still refuses to the divorce, the court will grant the divorce.<sup>45</sup></p>	<p>left the wife to return to Malaysia and the wife filed for divorce. The husband failed to appear in court for the hearing of the divorce case. The husband had pronounced a <i>ta'liq</i> at the time of marriage that if he leaves his wife and do not provide for her or if he does not have intercourse with her for four months or if he commits a wrong on his wife's body or soul or honour or property and his wife lodges a complaint with a <i>Shari'ah</i> judge who finds that the complaint valid, he will be deemed to have pronounced <i>talāq</i> upon her. Although the wife had applied for</p>			

<sup>45</sup> Section 48 of the Islamic Family Law Act (2001), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
		<p>divorce on the basis that the husband had failed to provide her with maintenance for more the four months, the court examined the different elements of <i>ta'liq</i> and determine that all had been satisfied. The court proceeded to grant a <i>ta'liq</i> divorce;</p> <ul style="list-style-type: none"> <li>• In the case of <i>Noor Aini binti Hj. Adam v Hj. Mohd. Idris bin Hj. Mohd Yusof</i>, the wife applied for a <i>ta'liq</i> divorce on the ground of unpaid maintenance. The court held that there were three elements to the <i>ta'liq</i>: (i) the husband had left the wife for more than four months without hi or a representative providing</li> </ul>			

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
		<p>maintenance; (ii) the wife had complained to the judge; and (iii) the wife had sworn that she was not disobedient (<i>nusyuz</i>). The court found that all elements of the <i>talīq</i> was met and granted a divorce;</p> <ul style="list-style-type: none"> <li>• In the case of <i>Siti R[...] binti Hj. M[...] v M[...] A[...] bin I[...]</i>, the husband had pronounced a <i>ta'liq</i> that if he hits his wife with a blow that causes harm and is not appropriate and she reports the incident to the judge and asks for a divorce, then if the report is upheld, she will ultimately be divorced. The court held that the wife bore the burden of proving that her husband had in fact</li> </ul>			

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
		<p>harm her. The wife produced a photo taken at the police station the day the abuse occurred showing her right eye swollen and red and also a doctor's report at the Accident and Emergency Department of the hospital confirming her injuries. The court found that all elements of the <i>ta'liq</i> was met and granted the divorce.</p> <p>On judicial divorce:<sup>48</sup></p> <ul style="list-style-type: none"> <li>• In the case of <i>Ahjasiah binti Hj. Anpal v Samsudin bin Osman</i>, the wife filed for divorce on the basis that her husband had failed to financially provide for her. The husband</li> </ul>			

<sup>48</sup> Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 482-485

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
		<p>in turn claimed that his wife was disobedient (<i>nusyuz</i>). After examining the evidence provided by both parties, the court found that the husband had failed to provide his wife with maintenance and that he has also failed to prove any of his allegations that his wife was disobedient (<i>nusyuz</i>), which was a “serious matter”;</p> <ul style="list-style-type: none"> <li>• In the case of <i>Serbanun binti Mumin v Mat Jani bin Sulaiman</i>, another case where a wife filed for divorce on the basis that her husband had failed to financially provide for her, the court proceeded to hear the case despite the</li> </ul>			

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
		absence of the husband. The court considered the evidence provided by the wife and also required her to swear an oath that the evidence she provided was the trust as the husband was not present. The wife swore the oath and the court granted the divorce.			
<p><b>Women's financial rights after divorce</b></p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets?</i></p>	<p>Generally, upon divorce, a woman may be entitled to: (i) financial maintenance during the waiting period after the divorce (<i>iddah</i>); (ii) a consolatory gift (<i>mut'ah</i>); and (iii) a share of the matrimonial assets (<i>harta sepencarian</i>).</p> <p>Under the BIFLA, a woman may be entitled to financial maintenance during the waiting period after the divorce (<i>iddah</i>). The maintenance amount is dependent on the</p>	<p>In the case of <i>Azlan bin Idris v Nur' Ainaa binti Abdullah gindi a. Carthinee Anna</i>,<sup>64</sup> the husband had asked the court to ratify his pronouncement of <i>talāq</i>. After undergoing mediation, the husband agreed to pay the wife financial maintenance during the three months <i>iddah</i> waiting period. The court ratified the</p>	<p>The Government of Brunei in its 2013 report to the CEDAW Committee confirmed that upon divorce, a Muslim woman is entitled to: (i) dowry (<i>mahr</i>); (ii) a consolatory gift (<i>mut'ah</i>); (iii) maintenance during the three-month <i>iddah</i> period; (iv) a share in the matrimonial property on the basis of the joint matrimonial property (<i>harta sepencarian</i>).<sup>66</sup></p>		

<sup>64</sup> Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 469-470.

<sup>66</sup> Brunei State Party Report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 16.2.4, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><i>What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p>Applicable CEDAW</p>	<p>means and needs of the parties. The <i>iddah</i> period is generally three months.<sup>54</sup></p> <p>A woman loses her right to financial maintenance during the <i>iddah</i> period if she is found to be disobedient (<i>nusyuz</i>). She also loses her right to financial maintenance that may have been mutually agreed upon between her and her former husband when she remarries.<sup>55</sup></p> <p>Section 57 BIFLA provides that upon divorce, in addition to maintenance a woman may apply to the court for a consolatory gift (<i>mut'ah</i>). The amount of <i>mut'ah</i> compensation is dependent on what the court considers fair and just in accordance with <i>Hukum Syara</i>.<sup>56</sup></p> <p>Section 59 BIFLA mandates the court, after granting a divorce, to order any assets</p>	<p>agreement despite the fact that wife was not entitled by law to the maintenance. The court: (i) opined that while it was not compulsory (<i>wajib</i>) for the husband to provide financial maintenance, the court nevertheless thought it was necessary (<i>harus</i>). It also considered it a fair compromise as the wife had not claimed <i>mut'ah</i> compensation and the husband had agreed to pay the financial maintenance.</p> <p>In the case of <i>Pg Hj M[...] bin Pg. Hj. [...] v Dayang H [...] binti Hj A[...]</i><sup>65</sup> the couple could not agree on the amount of financial maintenance during the <i>iddah</i> period and the <i>mu'tah</i></p>			

<sup>54</sup> Sections 57, 67, 72 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf); Brunei State Party Report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 16.2.4, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>55</sup> Section 67 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>56</sup> Section 57 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>65</sup> Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 470-473



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	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><u>and CEDAW GR Provisions</u> Articles 16(1)(c), 16(1)(h) CEDAW Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p>acquired by the parties during the marriage (<i>harta sepencarian</i>) 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.<sup>57</sup></p> <p>Where the assets were acquired by the joint efforts of the parties, in accordance with Section 59(2) BIFLA, the court must have regard to: (i) the extent of the contributions made by each party by way of money, property or labour towards acquiring the assets; (ii) any debts owed by either party that were contracted for their joint benefit; and (iii) the needs of any minor children of the marriage. Subject to these considerations, the Court shall order equal division.<sup>58</sup></p> <p>Where the assets were acquired by the sole efforts of one party to the marriage, in</p>	<p>compensation due to the wife. They also could not agree on the amount of child maintenance. The husband: (i) was prepared to pay a lower amount of financial maintenance during the <i>iddah</i> period but the wife demanded more; (ii) had refused to pay <i>mut'ah</i> compensation to his wife stating that he had provided for her during their marriage and that should be sufficient; and (iii) was prepared to pay a lower amount of child maintenance but the former wife demanded more. The court held that: (i) the amount suggested by the husband was appropriate based on his financial means at current times (and not at the time of the marriage.); (ii) <i>mu'tah</i></p>			

<sup>57</sup> Section 59 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)  
<sup>58</sup> Section 59(2) of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	<p>accordance with Section 59(4), the court must have regard to: (i) the extent of the contributions made by the party who did not acquire the assets, to the welfare of the family by looking after the home or family; and (ii) the needs of any minor children of the marriage. Subject to these two considerations, the court may divide the assets or the proceeds of sale in such proportions that the Court thinks reasonable, but in any case the party by whose efforts the assets were acquired must receive a greater proportion of the assets.<sup>59</sup></p> <p>Section 59(5) of BIFLA defines assets acquired during a marriage to include assets owned before the marriage by one party that have been substantially improved during the marriage by the other party or by their joint efforts.<sup>60</sup></p> <p>Section 60 of BILFA provides that upon divorce, a woman or man may apply to the court for</p>	<p>was obligatory for God-fearing husbands to pay to their ex-wives and in determining the amount to be paid, the court is to use its discretion based on the husband's means, the character of the wife, the status or standing of the couple in the community and the duration of the marriage; (iii) a father has a duty to pay a custodian mother maintenance for the children. Referring to a similar Malaysian case that cited the principle that "no mother shall be made to suffer harm on account of her child, nor any father on account of his", the court held that the amount a father is obligated to pay a custodian mother depended on the father's means and proceeded to agree</p>			

<sup>59</sup> Section 59(4) of the Islamic Family Law Act (2000), [http://www.aqc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.aqc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>60</sup> Section 59(5) of the Islamic Family Law Act (2000), [http://www.aqc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.aqc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	<p>an order against her former husband or his former wife, as the case may be, relating to a division of assets jointly acquired by them during their marriage.<sup>61</sup></p> <p>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.<sup>62</sup></p> <p>The court may order the attachment of the earnings of a former husband/father for the payment of court-ordered maintenance if it thinks reasonable to do so. The former husband/husband and his employer are legally obliged to follow the</p>	<p>with the amount suggested by the father in this case. The court also held that some of the claims made by the mother in this case such as insurance for the children and “snack food” were not obligatory child maintenance to be paid by the father and advised the mother to pay the eldest child’s school fees “in an alternative form”.</p>			

<sup>61</sup> Section 60 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>62</sup> Sections 75, 76(3), 82 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	requirements of the attachment of earnings order. <sup>63</sup>				
<p><b>Custody of Children</b></p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW and CEDAW GR Provisions</u></p> <p>Articles 16(1)(d), 16(1)(f) CEDAW Paras. 19-20 GR21</p>	<p>A mother has priority right over the custody of her children until they can differentiate a matter (<i>mumaiyiz</i>). Thereafter, the child is entitled to choose to live with the mother or father, unless the court orders otherwise.<sup>67</sup></p> <p>Despite a mother's priority right over the custody of her children, courts have to decide custody cases based on the welfare of the child. When making a determination, the court must have regard to: (i) the wishes of the parents of the child; and (ii) the wishes of the child where the child is of an age where she or he is able to express hers or his own opinion.<sup>68</sup></p> <p>A mother loses custody of her child if she: (i) marries a man who is not related to the child but the regains custody when</p>	<p>In the case of <i>Pg Hj M[...] bin Pg. Hj. [...] v Dayang H [...] binti Hj A[...]</i>,<sup>71</sup> the court held that a mother has priority right over her children who has not attained the age of discernment (<i>mumaiyiz</i>) during her marriage and after a divorce unless she loses this right as a result of one of the conditions stated by law. The court also added that based on <i>fiqh</i>, children usually become <i>mumaiyyaz</i> at seven or eight. As the eldest of the three children in this case was five, the court awarded the mother custody of the children as the father had not succeeded in</p>	<p>The Government of Brunei in its 2013 report to the CEDAW Committee confirmed that: (i) a mother has priority right over the custody of her children if she fulfils the conditions and qualifications imposed by law; and (ii) the child is entitled to choose to live with either parent once the child reaches the age when she or he is capable of differentiating a matter.<sup>72</sup></p>		

<sup>63</sup> Sections 84-87 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>67</sup> Sections 88(1), 91(2) of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>68</sup> Section 93 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf);

<sup>71</sup> Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 470-471

<sup>72</sup> Brunei State Party Report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 16.2.5, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	<p>she divorces; (ii) is of bad conduct in a gross and open manner; (iii) changes her place of residence (with the exception of the mother's birth place) with the intention of preventing the father from exercising the necessary supervision over the child; (iv) becomes an apostate; or (v) neglects or abuses the child.<sup>69</sup></p> <p>A court is mandated to grant the custodian the right to decide all questions relating to the welfare, guidance, upbringing and education of the child subject to whatever conditions that the court thinks fit to impose. These conditions may include: (i) conditions relating to the place of residence of the child and the manner of the child's education; (ii) provision for the child to be in the temporary care and control of a person other than the custodian; (iii) provision for the child to visit the non-custodian parent or any other member of the family as the court thinks reasonable; (iv) provision for the non-</p>	<p>establishing that the mother fell under any of the conditions stated by law that would lead to her losing her priority right to custody of the children. The father was given visitation rights for the youngest child and was allowed to take the eldest two home overnight from 5 p.m. to 8 p.m. the day following the visit.</p>			

<sup>69</sup> Section 90 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf);

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	custodian parent to have access to the child at such times and such frequency as the court thinks reasonable; or (v) prohibition of the custodian to take the child outside Brunei. <sup>70</sup>				
<b>Guardianship of Children</b>  <i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i>  <u>Applicable CEDAW and CEDAW GR Provisions</u> Articles 16(1)(d), 16(1)(f) CEDAW Paras. 19-20 GR21	BIFLA does not provide the same rights to women and men as guardians of children giving clear preference in matters of guardianship to the male lineage.  A father has priority right over the guardianship of his children followed by the paternal grandfather, the executors of the father or grandfather, the executors of their executors and finally a <i>Shari'ah</i> judge or a person entrusted by a <i>Shari'ah</i> judge. <sup>73</sup>  A mother may only be appointed as guardian of her children by the court in the absence of any other guardian as specifically stipulated by law. In such case, the court				

**Commented [3]:** Please cite the reference for this statement. Or does this statement act as an introduction to the next paragraph (that has the citation needed). If it is then we leave it as it is.

<sup>70</sup> Section 94 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf);

<sup>73</sup> Section 95 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf).

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	may also appoint a joint guardian. <sup>74</sup>				
<p><b>Family Planning</b></p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW and CEDAW GR Provisions</u> Articles 16(1)(e), 12 CEDAW Paras. 21-23 GR21</p>	Abortion is prohibited under the Penal Code <sup>75</sup> and the Syariah Penal Code. <sup>76</sup> The Penal Code though provides for the exception in case it was necessary to save the pregnant woman's life. <sup>77</sup>		<p>The Government of Brunei in its 2013 report to the CEDAW explained that the term "birth spacing" is preferable to "family planning" and "birth spacing" services are available in both public and private hospitals and clinics, with guidance on birth spacing being provided by medical practitioners on a one-to-one basis.<sup>78</sup></p> <p>It also provided an overview of the free 'birth spacing' services available at the public health facilities which is available to all female citizen and permanent residents in Brunei. The service</p>		According to the WHO, there is no data available in regard to Sexual and Reproductive Health and Rights (SRHR) care and education. <sup>80</sup> The fertility rate in Brunei has been declining over the past decades to 1.8 in 2020. <sup>81</sup>

<sup>74</sup> Sections 97-99 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf).

<sup>75</sup> Sections 312-316 of the Penal Code (1952), [https://www.unodc.org/ldb/pdf/Brunei\\_Penal\\_Code\\_1951\\_Full\\_text.pdf](https://www.unodc.org/ldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf).

<sup>76</sup> Sections 158-164 of the Syariah Penal Code (2013),

[http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette\\_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf)

<sup>77</sup> Section 312 of the Penal Code (1952), [https://www.unodc.org/ldb/pdf/Brunei\\_Penal\\_Code\\_1951\\_Full\\_text.pdf](https://www.unodc.org/ldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf).

<sup>78</sup> Brunei State Party Report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 12.12.3, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>80</sup> WHO Report on Brunei Sexual and Reproductive Health and Rights (2021) <https://apps.who.int/iris/bitstream/handle/10665/349307/WHO-SRH-21.45-eng.pdf>

<sup>81</sup> World Bank, Fertility Rate (Total Births per woman), Brunei Darussalam, <https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?locations=BN>



Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
			provides access to 5 different types of contraception: (1) combined oral contraceptive pill; (2) progestogen pill; (3) injectable progestogen; (4) intrauterine device (IUCD); and (5) tubal ligation. The first 4 contraception methods mentioned above do not require spousal consent. Tubal ligation requires consents as the procedure is irreversible. As such it is standard procedure for doctors to acquire spousal consent before undergoing tubal ligation. <sup>79</sup>		
<b>Personal rights of spouses</b>  <i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the</i>	Brunei's Constitution does not contain any guarantees on personal freedoms (travel, movement, etc.) as well as the right to work. <sup>82</sup>  The BIFLA potentially restricts the personal rights of a Muslim				The participation of women in the workforce had been increasingly steadily until it peaked in 2017 at 42.9% of the total workforce being female. It declined to

<sup>79</sup> List of issues and questions in relation to the combined initial and second periodic reports of Brunei Darussalam, U.N. Doc. CEDAW/C/BRN/Q/1-2/Add.1, para 49-51, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsmPYo5NfAsNvhO7uZb6iXOQfuEN2i9znqJLS%2F7GU2tqsk9YRh9K7mbl d4VdJc0V1Fn2yodZhN3OUsR6AYlxzYa2mOa5QaNYyIWy5JNNg8kZengq7oU0S8tLxzmarlGRfQ%3D%3D>

<sup>82</sup> Brunei's Constitution (1959), [http://www.aqc.gov.bn/AGC%20Images/LOB/cons\\_doc/dokumen-dokumen\\_perlembagaan\\_2008.pdf](http://www.aqc.gov.bn/AGC%20Images/LOB/cons_doc/dokumen-dokumen_perlembagaan_2008.pdf)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><i>house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW and CEDAW GR Provisions</u> Article 16(1)(g) CEDAW Para. 24 GR21 Para. 34 GR29</p>	<p>wife as a result of the maintenance-for-obedience legal framework provided for under the law.<sup>83</sup> Thus:</p> <ul style="list-style-type: none"> <li>Section 61 of BIFLA has the effect of generally obligating a wife to obey her husband, including ensuring: (i) his conjugal rights are met; (ii) she does not leave the marital home against the husband's wishes;<sup>84</sup> or (iii) she moves with the husband to another home or place in accordance with his wishes. Otherwise she risk losing her maintenance.</li> <li>Section 130 subjects a wife who wilfully disobeys an order of her husband to a</li> </ul>				<p>40.8%<sup>85</sup> which means that about 57.8% of women aged 15 years and older are employed<sup>86</sup> in 2021. In regard to education, there is hardly a gender gap as about 70.7% of men and 69.5% of women attained secondary education. Yet there appears to still be the gender wage gap that was already pointed out by the CEDAW Committee in 2014.<sup>87</sup> In 2017, the GNI (Gross National Income) was on average PPP\$ 63,965, for a male it was PPP\$ 72,835</p>

<sup>83</sup> Sections 61, 130 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf).

<sup>84</sup> Section 201 of the Syariah Penal Code Order (2013) makes it a criminal offence to entice a woman to leave her marital home, [http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette\\_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf). See also Tim Lindsey and Kerstin Steiner, "Islam, the Monarchy and Criminal Law in Brunei: The Syariah Penal Code Order, 2013", (Griffith Law Review, 2017)

<sup>85</sup> World Bank "Labour Force, female (% of total labor force) – Brunei Darussalam", <https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS?locations=BN>

<sup>86</sup> UNDP "Human Development Reports: Brunei", <https://hdr.undp.org/en/countries/profiles/BRN>

<sup>87</sup> OECD, "Brunei" SIGI (2019), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPFPRiCAqhKb7yhsmpY05NfAsNvhO7uZb6iXOQfuEN2i9znqJLS%2F7GU2tqsk9YRh9K7rmbld4VdJc0V1Fn2yodZhN3OU5R6AYlxzYa2mOa5QaNYyIWy5JNNg8kZengq7oU0S8tLxzmarlGRfQ%3D%3D>

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	fine of up to 500 Bruneian dollars for her first offence and up to 1000 Bruneian dollars for her second and subsequent offence.				while it was only PPP\$ 54,386. <sup>88</sup>  •
<b>Inheritance rights</b>  <i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon</i>	In inheritance matters, the Syariah Civil Court Act <sup>89</sup> confers jurisdiction to the Syariah High Court on matters concerning division of and inheritance of property, testate or intestate; as well as determination of persons entitled to all or any part of the estate of a deceased Muslim and the parts thereof which such persons are respectively entitled to. <sup>90</sup> The BIFLA does not provide for any substantive codification of the rules on inheritance which means that the general rule of section 144 BIFLA comes into place. <sup>91</sup> This provision allows for general Islamic rules to being applied		The Government of Brunei in its 2013 report to the CEDAW Committee explained that Muslim women are entitled to their inheritance rights, although generally, their share of the estate are not equal to that of men. The general rule, however, is not an absolute one because: <sup>93</sup>  • There is nothing to preclude beneficiaries from mutually agreeing to equal shares of the estate; and  • <i>Shari'ah</i> encourages the making a will or gift in		

<sup>88</sup> UNDP "Human Development Reports: Brunei", <https://hdr.undp.org/en/countries/profiles/BRN>

<sup>89</sup> Syariah Courts Act (2000), Chapter 184, rev.ed. 2011, [https://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap184.pdf](https://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap184.pdf)

<sup>90</sup> Article 15(b) (viii) and (ix) Syariah Courts Act (2000), [https://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap184.pdf](https://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap184.pdf)

<sup>91</sup> Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>93</sup> Brunei State Party Report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 16.2.7, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><i>the death of their father?</i></p> <p><u>Applicable CEDAW and CEDAW GR Provisions</u> Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>in the absence of specific provisions. Generally, inheritance rights between women and men are unequal with a woman being entitled to half the share of a man.<sup>92</sup></p>		<p>favour of women.</p>		
<p><b>Violence against women in the family</b></p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that</i></p>	<p>Brunei has not adopted specific legislation to criminalise acts of domestic violence. However, the BIFLA contains provisions on "<i>dharar Syarie</i>" that are specifically applicable to domestic violence.</p> <p>Section 60A of BIFLA defines <i>dharar Syarie</i>' as the commission of any of the following acts:<sup>94</sup></p> <ul style="list-style-type: none"> <li>• wilfully or knowingly causing, or attempting to cause, a family member in fear of</li> </ul>		<p>The Government of Brunei in its 2013 report to the CEDAW Committee explained that:<sup>102</sup></p> <ul style="list-style-type: none"> <li>• Provisions in BIFLA relating to <i>dharar Syarie</i>' were added to the law in order to explicitly define domestic violence and better protect domestic violence victims; and</li> <li>• The Department of Community Development (DCD) run</li> </ul>		<p>Official data available on domestic violence in Brunei is difficult to obtain.<sup>103</sup> Initiatives have been made to collect more data but it is not available yet.<sup>104</sup></p> <p>In its National Report to the HR Council Working Group on the Universal Periodic Review, 6<sup>th</sup> session in 2009, Brunei acknowledged the need "to further educate women on</p>

<sup>92</sup> Nadjma Yassari, "Intestate Succession in Islamic Countries", in *Comparative Succession Law: Vol. II: Intestate Succession*, eds. Kenneth Reid, Marius de Waal, Reinhard Zimmermann, (Oxford: Oxford University Press, 2015), p. 424

<sup>94</sup> Section 60A of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>102</sup> Brunei State Party Report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), paras 3.7.1-3.7.5, 4.1, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>103</sup> See <https://evaw-global-database.unwomen.org/en/countries/asia/brunei-darussalam?formofviolence=b51b5bac425b470883736a3245b7cbe6>

<sup>104</sup> in March 2022 the Women Graduates' Association of Brunei Darussalam (WGA or PSW) launched a survey on 'Violence Against Women' in order to commemorate International Women's Day, see "Violence against women survey launched", *Borneo Bulletin*, 10 March 2022.

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><i>recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW and CEDAW GR Provisions</u> GRs 12 &amp; 19 Para. 40 GR21</p>	<p>hurt;causing hurt to a family member by such act which is known or ought to have been known would result in hurt;compelling the family member by force or threat to engage in any conduct or act from which she or he has a right to abstain;</p> <ul style="list-style-type: none"> <li>wrongfully confining or restraining a family member against her or his will;</li> <li>continual harassment with intent to cause distress, annoyance or humiliation, or knowing that it is likely to cause distress, annoyance or humiliation, to a family member; or</li> <li>causing destruction, damage or loss of property of a family</li> </ul>		<p>shelter homes for victims of domestic violence while other government agencies and NGOs provide other support services for the victims, including counselling services for both victims and perpetrators.</p>		<p>their rights with regard to domestic violence, especially on accessibility to counselling and other forms of assistance and to enhance public awareness and unacceptability of such act.<sup>105</sup> Several initiatives<sup>106</sup> and events<sup>107</sup> have included such an educational massage.</p> <p>The Community Development Department (JAPEM) at the Ministry of Culture, Youth and Sports (MCYS) is reported to have</p>

<sup>105</sup> Brunei State Party Report, 1<sup>st</sup> UPR Cycle, U.N. Doc A/HRC/WG.6/6/BRN/1, [https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session6/BN/A\\_HRC\\_WG6\\_6\\_BRN\\_1\\_E.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session6/BN/A_HRC_WG6_6_BRN_1_E.pdf)

<sup>106</sup> Ta'dil As-Suluk is a virtual programme aimed to safeguard the students' welfare by providing insights on rights of personal protection for victims of abuse and sexual crimes of domestic violence, and address social ills and is organised by the Islamic Legal Unit in collaboration with the Religious Enforcement Division and the Islamic Studies Department, Ministry of Religious Affairs. Azlan Othman, "Programme highlights offences under Syariah law", *Borneo Bulletin*, 20 March 2022.

<sup>107</sup> See for instance (1) Post-marriage course organised by the Syariah Affairs Department, Ministry of Religious Affairs through the Family Counselling Service Division, Azlan Othman, "Raising issues of misunderstanding in marriages" *Borneo Bulletin*, 22 December 2021, <https://borneobulletin.com.bn/raising-issues-of-misunderstanding-in-marriages/>; or (2) Mawar Association organised a virtual domestic violence awareness programme 'Marriage: Reality and Practical Tips' in conjunction with the International Day for the Elimination of Violence against Women 2021, "Domestic violence in the spotlight" *Borneo Bulletin*, 8 December 2021.

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	<p>member, or causing financial loss to a family member.</p> <p>Sections 60B and 60C BIFLA mandate a court to issue a protection order or expedited protection order restraining a perpetrator of <i>dharar Syar'ie</i> from approaching the family member concerned after being satisfied that <i>dharar Syar'ie</i> has been committed or is likely to be committed by the person against the family member concerned and that it is necessary for the protection of the family member.<sup>95</sup></p> <p>Section 60D BIFLA mandates the court to attach a power of arrest to a protection order or expedited protection order.<sup>96</sup></p> <p>Section 60E BIFLA mandates a court to award compensation to a victim of <i>dharar Syarie</i>'</p>				<p>stated that per annum between 20-32 cases of domestic violence were reported between 2018-2020.<sup>108</sup></p> <p>This number is most likely too low as it has been a long standing issue that victims of domestic violence refrain from reporting the abuse to the relevant authorities for fear of bringing shame to the family and the community.<sup>109</sup></p> <p>Indications are that 95% of victims of reported domestic violence are women.<sup>110</sup></p> <p>Brunei was</p>

<sup>95</sup> Sections 60B, 60C of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>96</sup> Section 60D of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>108</sup> Azlan Othman, Family issues to the fore, Borneo Bulletin 17 June 2021

<sup>109</sup> Rokiah Mahmud, "Talk sheds light on abuse, domestic violence", Borneo Bulletin, 7 November 2019, <https://borneobulletin.com.bn/talk-sheds-light-abuse-domestic-violence/> Azlan Othman, "Victims urged to report cases of domestic violence", Borneo Bulletin, 3 October 2014, <http://borneobulletin.com.bn/victims-urged-report-cases-domestic-violence/>

<sup>110</sup> Rizal Faisal, "Break the silence against domestic violence" Borneo Bulletin, 30 September 2020, <https://borneobulletin.com.bn/break-the-silence-against-domestic-violence/>

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	<p>who has suffered personal injuries, destruction or damage to property, loss of property or financial loss as a result of the <i>dharar Syarie</i>.<sup>97</sup></p> <p>Section 128 BIFLA makes it an offence for husbands and wives to ill-treat each other.<sup>98</sup></p> <p>Apart from the BIFLA, the Penal Code also contains some general prohibitions that are applicable to domestic violence. For instance, the Penal Code criminalises: (i) acts that intentionally cause hurt or grievous hurt; (ii) acts that insult the modesty of a woman; and (iii) rape.<sup>99</sup></p> <p>The Penal Code does not specifically criminalise marital rape unlike rape which is a criminal offense and is punishable of up to 30 years of imprisonment and whipping.<sup>100</sup></p>				<p>questioned on the issue of marital rape with the UN High Commissioner for Human Rights pointing out “ensuring that women have full autonomy over their bodies is the first crucial step towards achieving substantive equality between women and men.”<sup>111</sup></p> <p>The Attorney General’s chamber responded that there were no plans to amend the rape laws. Adding that police had confirmed that there was no investigation occurs for reported allegations of spousal rape.<sup>112</sup></p>

<sup>97</sup> Sections 60E of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>98</sup> Sections 128 of the Islamic Family Law Act (2000), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap217.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf)

<sup>99</sup> Sections 319-338,354-355, 375, 509 of the Penal Code (1952), [https://www.unodc.org/tldb/pdf/Brunei\\_Penal\\_Code\\_1951\\_Full\\_text.pdf](https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf)

<sup>100</sup> Section 376 Section 375 of the Penal Code (1952), [https://www.unodc.org/tldb/pdf/Brunei\\_Penal\\_Code\\_1951\\_Full\\_text.pdf](https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf)

<sup>111</sup> Committee on the Elimination of Discrimination Against Women, “General Recommendation on Women’s Access to Justice,” 23 July 2015, [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_33\\_7767\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf)

<sup>112</sup> Zareena Amiruddin, “Marital rape: Are Women in Brunei protected from it?” *Brunei Times*, 13 August 2010.



Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	This legal definition of rape does not include marital rape and a wife cannot file a complaint unless the wife is under 13. <sup>101</sup>				
<p><b>Nationality rights</b></p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW and CEDAW GR Provisions</u> Article 9 CEDAW Para. 6 GR21</p>	<p>There are different rules for the spouse of a Bruneian national to acquire Bruneian citizenship according to the Brunei Nationality Act.</p> <ul style="list-style-type: none"> <li>• A Bruneian man may pass his nationality to his non-Bruneian wife, provided she makes an application, takes the prescribed oath and is of good character.<sup>113</sup></li> <li>• A Bruneian woman cannot confer her nationality to her foreign husband. The foreign husband of a Bruneian woman may acquire Bruneian nationality through the general process provided that he: (i) has resided in Brunei for at least 15 years; (ii) of good character; and</li> </ul>		<p>The Government of Brunei in its 2013 report to the CEDAW Committee stated that women have equal citizenship rights as men.<sup>117</sup></p> <p>Brunei has a reservation to Article 9(2) of CEDAW because it has a policy of single nationality and does not recognise dual nationality. This has specific consequences for the equal rights</p> <ul style="list-style-type: none"> <li>• Marriage of a Bruneian woman to a foreign spouse does not automatically affect the nationality of the woman because: (i) her Bruneian citizenship is</li> </ul>		<p>Under the Brunei Nationality Act, female citizens can thus not automatically confer their nationality to the non-Bruneian spouse or their children eventhough the same restrictions do not apply to men. This has been pointed out in several review processes, most recently in the 3<sup>rd</sup> Cycle of the UPR in 2019.<sup>118</sup> Furthermore, the CEDAW Committee and the CRC Committee recommended a review of the Brunei Nationality Act “to</p>

<sup>101</sup> Section 375 of the Penal Code (1952), [https://www.unodc.org/tldb/pdf/Brunei\\_Penal\\_Code\\_1951\\_Full\\_text.pdf](https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf)

<sup>113</sup> Section 5(6) of the Brunei Nationality Act (1962), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap015.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf)

<sup>117</sup> Brunei State Party Report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), paras. 9.1-9.3, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>118</sup> Brunei 3rd UPR Cycle 2019, Summary of Stakeholders Submission to Brunei, U.N. Doc. A/HRC/WG.6/33/BRN/3 , <https://documents.un.org/prod/ods.nsf/home.xsp>

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
	<p>(iii) has good knowledge of the Malay language.<sup>114</sup></p> <p>There are also different rules for conferring nationality on children</p> <ul style="list-style-type: none"> <li>• A Bruneian father passes his citizenship to his children wherever they are born.<sup>115</sup></li> <li>• A Bruneian mother may make an application in a prescribed manner for her minor child to be a Bruneian citizenship. Such application may be approved if it meets “such special circumstances” as the Bruneian Sultan thinks fit.<sup>116</sup></li> </ul>		<p>not affected by her husband’s nationality, thereby rendering her stateless; and (ii) the nationality of her foreign husband is not forced upon the wife</p> <ul style="list-style-type: none"> <li>• children of Bruneian women may either be registered as Bruneian or the nationality of the father.</li> </ul>		<p>ensure that Bruneian women can transfer nationality automatically to their children and spouses”.<sup>119</sup> Without this the spouses and children cannot own, inherit or acquire property. Potentially stateless children and spouses without PR cannot access numerous government services and may be unable to access legal justice.<sup>120</sup></p>

<sup>114</sup> Sections 5(1)-5(5) of the Brunei Nationality Act (1962), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap015.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf)

<sup>115</sup> Section 4 of the Brunei Nationality Act (1962), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap015.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf)

<sup>116</sup> Section 6 of the Brunei Nationality Act (1962), [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap015.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf)

<sup>119</sup> See UNHCR, Global Action Plan to End Statelessness, 4 November 2014, Action 4, available at: <http://www.refworld.org/docid/545b47d64.html>.

<sup>120</sup> Oral Statement for the 3rd Cycle UPR 2019, Pre-Session on Brunei “Global Campaign for Equal Nationality Rights Statement at the Pre-session to the UPR of Brunei”, [https://www.upr-info.org/sites/default/files/document/brunei\\_darussalam/session\\_33\\_-\\_may\\_2019/1\\_global\\_campaign\\_for\\_equal\\_nationality\\_rights\\_stmt.pdf](https://www.upr-info.org/sites/default/files/document/brunei_darussalam/session_33_-_may_2019/1_global_campaign_for_equal_nationality_rights_stmt.pdf)

**ACCESS TO JUSTICE (please include sources to information as much as possible)**

SYSTEM	PROCEDURES	CHALLENGES FOR WOMEN	GOOD PRACTICES IN COURT SYSTEM
<p>How are Muslim family law (i.e. marriage and family related) cases administered in your country? (E.g. Do you have a Quazi/Kadhi court system, family courts or civil courts?)</p> <p>How many courthouses/court rooms around the country that administer Muslim family law cases?</p> <p>If civil or Kadhi courts - what cases are handled by what courts?</p> <p>How many Muslim family law-related judges? Are there women working within the court system as judges/marriage registrars etc?</p> <p>Do lawyers represent clients?</p> <p>Brunei's legal system is technically based on the English Common Law like in neighbouring Southeast Asian countries with a parallel legal system for Muslims. There are however significant differences in how this plural legal system is operating and how the civil legal system is interacting with the Syariah Legal System.<sup>121</sup></p>	<p>Are the procedures pertaining to family matters (e.g. divorce, maintenance etc) are defined in the family law and/or are there guidelines/policies available for judges/Kadhis?</p> <p>In general practice do judges/Kadhis follow procedures?</p> <p>How much judicial discretion do judges/Kadhis have over marriage and family matters?</p> <p>Are there appeal processes?</p> <p>On the decision making process, judges are deciding cases as loyal servants of the state with clear preference given to acts etc as expressions of the will of the Sultan and Common Law</p>	<p>What are some key challenges that Muslim women face in accessing justice on family law matters?</p> <p>(E.g. lack of accessibility, costly, bad procedures, delayed processes, gender insensitive judges, etc?)</p> <p>The key challenges for accessing justice in the Syariah Courts are linked to the restricted resources that are available.</p> <p>There are various forms of legal aid available in Brunei which appear to be run by various organisations.</p> <p>The Brunei Council on Social Welfare (MKM) offers legal aid based on a means and merit test for cases in the Syariah legal system. On the means component the calculated income of a household must be below BND400 and there must be merit to a case.<sup>124</sup></p> <p>The Law Society of Brunei also seems to be running legal aid on and off with the clinic established in 2010 but then</p>	<p>Are there any good practices, procedures or policies that you would like to share pertaining to how courts in your country deal with family law cases?</p> <p>(E.g. prioritising certain types of cases, timely delivery of decisions, clear procedure, etc)</p> <p>In 2018, Brunei adopted a sulh process for cases involving child custody, wife and child maintenance fee, and other Syariah claims filed together and intended to be heard in one proceeding with early records indicating that it has been proven quite successful in resolving cases and backlogs.<sup>128</sup></p>

<sup>121</sup> There are different ways in which the perceived dichotomy between religious and non-religious legal systems can be labelled. Sometimes the civil legal system is referred to as non-religious legal system or secular legal system. Both labels would however be incorrect in the Bruneian context due to the status of Islam as being one of the pillars of the MIB ("Melayu Islam Beraja" "Malay Muslim Monarchy") ideology, which explicitly equates sovereignty and political legitimacy with the Sultanate, Islam and Malay identity.

<sup>124</sup> Hakim Hayat, Legal Advice and Advisory Clinic resumes tomorrow, Borneo Bulletin, 31 July 2018

<sup>128</sup> Lyna Mohamad, Syariah Courts hold annual gathering, Borneo Bulletin, 27 January 2019

<p>The Syariah legal system comprises jurisdiction over Islamic criminal law and also Islamic family law as laid down in the BIFLA. The Syariah Courts Act of 2000<sup>122</sup> effectively introduced a three-tier Islamic court system. This consists of the Syariah Subordinate Courts, the Syariah High Court and the Syariah Appeal Court.</p> <p>The Syariah Subordinate Courts are given jurisdiction over cases 'where the amount or value of the subject-matter in dispute does not exceed B\$500,000 or is not capable of estimation in terms of money', Section 16(1)(b) Syariah Courts Act. One important consequence of the Syariah Subordinate Courts having jurisdiction over civil matters where the subject matter 'is not capable of estimation in terms of money' is that it thus becomes the court of first instance for all Muslim divorce cases.</p> <p>In its civil jurisdiction, the Syariah Courts Act of 2000, section 15(b) provides that the Syariah High Court has the power to hear and make decisions on any matter involving</p> <ul style="list-style-type: none"> <li>• betrothal, marriage, divorce (including talak, khuluk, fasak, cerai taklik, li'an and ila) or any matrimonial matter;</li> </ul>	<p>legal method being applied.<sup>123</sup></p> <p>The Syariah Appeal Court has 'jurisdiction to hear and determine any appeal against any decision made by the Syariah High Court in the exercise of its original jurisdiction', section 20(1) Syariah Courts Act of 2000. This means that parties to cases that began in the Syariah High Court may apply for leave to appeal to the Syariah Appeal Court, just as parties to Syariah Subordinate Court cases may appeal to the Syariah High Court.</p> <p>Parties who began their case in the Syariah Subordinate Court and then appealed to the Syariah High Court may also be granted leave to appeal again to the Syariah Appeal Court, section 20(2). Appeals may, however, be brought only on questions of</p>	<p>only running for a year and being reconstituted in 2018.<sup>125</sup> It however seems to have not been operating again in recent years.<sup>126</sup> One of the reason for the limited aid might be found in the limited number of lawyers practising in Brunei with limited number of lawyers practising in either the civil or the Syariah legal system.<sup>127</sup></p>	
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<sup>122</sup> Syariah Courts Act, cap 184, of 2000, <https://www.agc.gov.bn/AGC%20Images/LOB/pdf/Chp.184.pdf>

<sup>123</sup> Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), p 461.

<sup>125</sup> Fadley Faisal, Fair throws light on legal aid, Boneo Bulletin, 23 October 2018.

<sup>126</sup> Compare the event list of the society, available at <https://www.bruneilawsociety.com>

<sup>127</sup> Compare Kerstin Steiner, "Brunei" in Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration, edited by Human Rights Resource Center (HRRRC) 2016 <http://hrrca.org/wp-content/uploads/2016/06/Update-on-the-Rule-of-Law-for-Human-Rights.pdf>

<ul style="list-style-type: none"> <li>● any division of, or claim to, any property arising out of any of the foregoing matters;</li> <li>● maintenance of dependants; legitimacy, guardianship or custody of infants;</li> <li>● division of, or claims to harta sepencarian (joint matrimonial property);</li> <li>● wills or gifts made maradalmaut by a deceased Muslim;</li> <li>● gifts inter vivos (or settlement) made without adequate monetary consideration or value by a Muslim;</li> <li>● wakaf or nazar (charitable bequests);</li> <li>● division and inheritance of property, testate or intestate; determination of persons entitled to all or any part of the estate of a deceased Muslim or the parts thereof to which such persons are entitled; or other matters in respect of which jurisdiction is conferred by any written law.</li> </ul>	<p>law and the question to be determined must be deemed to be in the 'public interest' by the Syariah Appeal Court, section (20(2).</p>		
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