

**MALAYSIA<sup>1</sup>**  
**OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES**  
(Updated as at 22 February 2022)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Equality of spouses in marriage (Andi)</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 uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens</i></p>	<p>Article 8 of the Constitution provides for equality before the law and prohibits discrimination on several basis, including gender.<sup>2</sup></p> <p>Article 8(5) of the Constitution allows for different personal laws based on religious belief.<sup>3</sup></p> <p>Article 121(1A) of the Constitution empowers the <i>Shari'ah</i> courts with jurisdiction to hear matters within the Constitutional limits</p>		<p>Malaysia has the following reservations to CEDAW:<sup>11</sup></p> <ul style="list-style-type: none"> <li>Articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g). These reservations are made on the basis of the State party's general declaration that its accession to CEDAW is "subject to the understanding that the</li> </ul>	<p>Lack of clarity in terms of procedure or process for <i>nusyuz</i> applications in the <i>Shari'ah</i> courts, and lack of legal definition in the IFLA.</p> <p>No specific form available in the Act for an application to file <i>nusyuz</i>.</p>	<p>According to the 2016 UNDP Human Development Report, Malaysia ranked 59 on both the UNDP Human Development Index and the UNDP Gender Inequality Index.<sup>18</sup></p> <p>According to Sisters-in-Islam,<sup>19</sup> The IFLA has been</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 Malaysia country table, we would also like to thank Sisters in Islam (SIS), Malaysia and Cassandra Rasmussen from Harvard Law School, and for their inputs in its preparation.

<sup>2</sup> Article 8 of Malaysia's Constitution (1957) p. 23, [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20\(Reprint%202020\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20(Reprint%202020).pdf)

<sup>3</sup> Article 8(5) of Malaysia's Constitution (1957), p. 23, [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20\(Reprint%202020\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20(Reprint%202020).pdf)

<sup>11</sup> United Nations Treaty Collection Website, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en)

<sup>18</sup> UNDP, "Human Development Report 2016", Table 5, pp. 214-217, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)

<sup>19</sup> Sisters-in-Islam, "Press Statement on 100 Years of International Women's Day", 7 March 2011, <http://www.sistersinislam.org.my/print.php?news.785>

<p><i>irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncoded, 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 caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>(Paragraph 1 of the List II (State List) of the Ninth Schedule) (“ the State List”), that includes matters of marriage, divorce, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, among others.<sup>4</sup></p> <p>It follows, any matters pursuant to the State List will be adjudicated before the <i>Shari’ah</i> courts.</p> <p>The laws that govern matters regarding marriage and family relations of the majority Muslim population in Malaysia vary between the different states in Malaysia.<sup>5</sup> The Government of Malaysia has developed a “model</p>		<p>provisions of the Convention do not conflict with the provisions of the Islamic <i>Shari’ah</i> law and the Federal Constitution of Malaysia;<sup>12</sup> and</p> <ul style="list-style-type: none"> <li>Article 11. This reservation was made “as a reference to the prohibition of discrimination on the basis of equality between men and women only.”</li> </ul> <p>The Government of Malaysia in its 2016</p>	<p>Therefore the fallback is on the general provisions under 2 different Acts,<sup>15</sup> where application of <i>nusyuz</i> is made using summons.</p> <p>At the moment, an application for <i>nusyuz</i> is allowed to be made in addition to a main application and must not be made separately<sup>16</sup> through filing of summons.<sup>17</sup> The</p>	<p>amended to make it gender-neutral. On the one hand, men have been accorded with more rights. Such enhanced rights include:</p> <ul style="list-style-type: none"> <li>Reducing the husband’s burden of proof to justify a polygamous marriage. The husband need only provide proof that such a marriage was either “just or necessary” as opposed to “just</li> </ul>
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<sup>4</sup> Article 121(1A), List II (State List) of Ninth Schedule of Malaysia’s Constitution (1957), pp. 112 and 198, [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20\(Reprint%202020\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20(Reprint%202020).pdf)

<sup>5</sup> Article 74(2), List II (State List) of Ninth Schedule of Malaysia’s Constitution (1957), pp. 72 and 198, [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20\(Reprint%202020\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20(Reprint%202020).pdf). There are 13 states in Malaysia namely Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Perak, Perlis, Pulau Pinang, Selangor, Terengganu, Sarawak and Sabah and three Federal Territories, namely, Kuala Lumpur, Labuan and Putrajaya

<sup>12</sup> Malaysia reiterated this position in the February, 2018 Malaysia CEDAW Review in Geneva, “Press Release : Malaysia Successfully Presented Reports On The Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW), Feb 2018,

[https://www.kpwkm.gov.my/kpwkm/uploads/files/KenyataanMedia/SIARAN%20MEDIA%202018/PRESS%20RELEASE\\_CEDAW.pdf](https://www.kpwkm.gov.my/kpwkm/uploads/files/KenyataanMedia/SIARAN%20MEDIA%202018/PRESS%20RELEASE_CEDAW.pdf)

<sup>15</sup> Section 47 of the Administration of Islamic Law (Federal Territories) Act 1993 that states the jurisdiction of a Subordinate *Shari’ah* court, and the Syariah Court Civil Procedure (Federal Territories) Act 1998.

<sup>16</sup> Practice Direction No. 11/ 2001, “Nusyuz case”, <http://bsktransit.iksm.gov.my/aa/uploads/112001.pdf> (original text in Bahasa Malaysia)

<sup>17</sup> Section 7 of the Syariah Court Civil Procedure (Federal Territories) Act 1998, [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/ae4e7086ef3b802f48256816000874dc?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/ae4e7086ef3b802f48256816000874dc?OpenDocument)

	<p>law” entitled the Islamic Family Law (Federal Territories) Act (IFLA).<sup>6</sup> IFLA applies to the three federal territories of Kuala Lumpur, Putrajaya and Labuan. The different states in Malaysia may adopt IFLA either in its entirety or with modification.<sup>7</sup></p> <p>According to Section 134A of IFLA, in the absence of codified laws that sufficiently address a particular matter of personal status of Muslims, <i>Hukum Syarak</i> applies. <i>Hukum Syarak</i> is defined by Section 2 of IFLA as “<i>Hukum Syarak</i> according to the <i>Mazhab</i> Shafie, or according to one of the <i>Mazhab</i> Maliki, Hanafi or Hanbali.”<sup>8</sup></p> <p>Despite the equality guarantee under Article 8 of the Constitution, the IFLA provides for a marital framework based on ‘reciprocal’ or ‘complementary’ rights (as opposed to ‘equal’ rights)</p>		<p>report to the CEDAW Committee explained that:<sup>13</sup></p> <ul style="list-style-type: none"> <li>• Malaysia maintains two parallel family legal systems - one based on <i>Shari’ah</i> and the other on English common law; and</li> <li>• <i>Shari’ah</i> laws are purely state matters under the Constitution. The Malaysian government is currently seeking to accomplish uniformity of <i>Shari’ah</i> laws throughout the country in order to advance the rights of women. This includes developing model laws and procedures that guarantee the rights of women. For instance,</li> </ul>	<p>practice in most <i>Shari’ah</i> Courts across Malaysia, is to file a summons with Statement of Claim stipulating the allegations of <i>nusyuz</i> against the wife.</p> <p>Alternatively, a husband can proceed with an application to Court for an order for the wife to obey (<i>perintah kembali taat</i>) and return to her matrimonial home, if she leaves the house without permission. When the wife disobeys the court order, she can be</p>	<p>and necessary” as was the case in the past; and</p> <ul style="list-style-type: none"> <li>• Providing husbands with the ability to freeze the assets of their wives or stop them from disposing their property for the purposes of division of matrimonial assets (<i>harta sepencarian</i>),</li> </ul> <p>On the other, there was no corresponding enhancement in the rights of women, thus placing women in a more vulnerable position than in the past. For instance,</p>
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<sup>6</sup> Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf) as amended by the Islamic Family Law (Federal Territories) (Amendment Act) (2006), [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_acta\\_lib.nsf/4b314f2676577d0d4825762c0005a316/97477af38dc616ea4825763300281d0a?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_acta_lib.nsf/4b314f2676577d0d4825762c0005a316/97477af38dc616ea4825763300281d0a?OpenDocument)

<sup>7</sup> Pascale Fournier et al, “En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia”, (Amsterdam Law Forum, 3:2, 2011), p. 107, <http://amsterdamlawforum.org/article/viewFile/213/405>

<sup>8</sup> Sections 2, 134A of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>13</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/3-5 (2016), paras. 25-29, 183, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>between the two spouses, whereby in return for maintenance and protection from her husband, a wife is expected to obey him. Thus:<sup>9</sup></p> <ul style="list-style-type: none"> <li>• Based on Section 59(1) of IFLA, a husband is obligated to pay his wife maintenance;</li> <li>• Based on Section 59(2) of IFLA, the wife is obligated to obey the lawful wishes or commands 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 husband; (ii) leaves her husband's home against his wishes; or (iii) refuses to move with him to another home or place;</li> <li>• No similar provision is found in the IFLA to deem a husband <i>nusyuz</i> in the event he disobeys his obligations under the <i>Hukum Syarak</i>.</li> <li>• <i>Nusyuz</i> is only mentioned within the provision relating to</li> </ul>		<p>legal provisions relating to reciprocal actions to allow the enforcement of warrants, summons, orders or judgments made in one state in other states in Malaysia have been introduced in most states within Malaysia.</p> <ul style="list-style-type: none"> <li>• This provision allows a woman to enforce their rights based on the judgement of a <i>Shari'ah</i> court in any state, thereby making it relatively more difficult for husbands to avoid their court-ordered obligations in terms of maintenance, etc. In addition, the Syariah Court Evidence, Syariah Criminal Procedures and Syariah Court Civil Procedure which are</li> </ul>	<p>punished for contempt of court, and the husband can proceed to file for a summons to convict her of <i>nusyuz</i> in Court.</p> <p>Pursuant to Section 59(3) of IFLA, a wife's <i>nusyuz</i> status can cease when she repents and obeys the lawful wishes and commands of her husband.</p> <p>However there is no clear procedure or process to determine the cessation of a wife's <i>nusyuz</i> status in Court.</p>	<p>despite the increase in the financial rights of men as a result of amendments that were made to IFLA, a woman's right to maintenance remains restrictive in that she must obey her husband or risk losing her financial maintenance.</p> <p>Husbands are afforded with expansive rights to initiate <i>nusyuz</i> proceedings against the wife either under civil proceedings (through the Court) or criminal proceedings (through the State's Prosecution Department).<sup>20</sup> On one hand, he can file a <i>nusyuz</i> application in the</p>
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<sup>9</sup> Sections 59, 128-129 of the Islamic Family Law (Federal Territory) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>20</sup> "Pensabitan Nusyuz Isteri di Mahkamah Rendah Syariah Ipoh Perak (Translated as: Conviction of *Nusyuz* of Wife in the Syariah Subordinate Court of Ipoh Perak)", Amir Fariz bin Che Man, Zaini bin Nasohah, dan Fasahah binti Haji Abu Mansor, *Journal of Human Development and Communication Volume 3 (Special Issue)*, 2014 [27-46]

	<p>wife's maintenance. No specific definition provided in the Act.</p> <ul style="list-style-type: none"> <li>• Section 127 of IFLA penalises a husband who ill-treats his wife or cheats his wife of her property;</li> <li>• Section 128 of IFLA penalises a husband who fails to give proper justice to his wife; and</li> <li>• Section 129 of IFLA penalises a wife who willfully disobeys an order of her husband.</li> </ul> <p>Marriage and family relations of Malaysia's non-Muslim minority communities are mainly governed by the Law Reform (Marriage and Divorce) Act (LRA).<sup>10</sup> The LRA exclusively recognises civil marriages. It is a federal law and applies equally to all states in Malaysia.</p>		<p>uniform and applicable in different states have standardised the procedures in the <i>Shari'ah</i> courts.</p> <p>In addition, the Malaysian government reiterated its position that its reservations on specific paragraphs of Article 16 have to be maintained because the understanding of the principle of "equality" as expounded in Article 16 has to be considered within the realm of the <i>Shari'ah</i> which guarantees complementary rights and responsibilities between spouses in order to preserve the sacred bond of matrimony. Nevertheless, there have been instances where <i>Shari'ah</i> matters are discussed at length in areas that are not prescribed in depth in the primary sources of</p>		<p><i>Shari'ah</i> civil court in addition to a main application<sup>21</sup> e.g. divorce. The consequence upon a <i>nusyuz</i> conviction is the wife will be denied maintenance. On the other hand, husbands can initiate criminal prosecution against the wife by lodging a complaint to the Prosecution Division of the Islamic Religious Department. An investigation under criminal proceedings will trigger Section 129 IFLA as the matrimonial penalty provision. The consequence upon a <i>nusyuz</i> conviction is the wife can be monetarily penalised.</p>
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<sup>10</sup> Law Reform (Marriage and Divorce) Act (1976), <https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20164.pdf>

<sup>21</sup> Practice Direction No. 11/ 2001, "Nusyuz case", <http://bsktransit.jksm.gov.my/aa/uploads/112001.pdf> (original text in Bahasa Malaysia)

	<b>Legislative Framework</b>	<b>Case Law</b>	<b>Policy</b>	<b>Procedure</b>	<b>Practice</b>
<p><b>Minimum and equal legal age for marriage (<i>Andi</i>)</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 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>Child marriage is permissible in the Malaysian legal framework; in the civil law, the customary law and the <i>Shari'ah</i> law.<sup>22</sup></p> <p>The minimum legal age for marriage is 16 for females and 18 for males as per Section 8 of IFLA. However, Section 8 also provides that a <i>Shari'ah</i> judge may grant written permission for the marriage of persons under the stipulated ages "in certain circumstances."<sup>23</sup></p> <p>IFLA does not stipulate an absolute minimum age below</p>		<p>Islamic law. In this regard, the concept of <i>siasah shar'iyah</i> or public policy is used and has been used in marriage.<sup>14</sup></p> <p>Cabinet ministers continue to have different positions on the issue:</p> <p>In 2014, the Fatwa Committee of Malaysia's National Council of Islamic Religious Affairs published a religious ruling (<i>fatwa</i>) declaring that child marriage was not obligatory and was not a "healthy" practice.<sup>30</sup></p> <p>In January 2020, a National Action Plan in Handling the Causes of</p>	<p>The verification of the age of the prospective bride and groom is usually done prior to the marriage when the couple submit their marriage application to the marriage registrar.<sup>34</sup></p> <p>Court procedures in ascertaining consent of the child are</p>	<p>Various sources suggest that child marriage is a relatively common practice in Malaysia:</p> <ul style="list-style-type: none"> <li>• According to the Ministry of Women, Family and Community Development between 2010 and 2015, a total of 9,061 children below their respective legal minimum age for</li> </ul>

<sup>14</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/3-5 (2016), paras. 183-184, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>22</sup> "Child Marriage in Malaysia (Working paper) for UNICEF", Prof Dato' Noor Aziah Mohd Awal, Mohd Al Adib Samuri, *Universiti Kebangsaan Malaysia*, (2018) pp. 46 to 47, <https://www.unicef.org/malaysia/media/711/file/Child%20marriage%20in%20Malaysia.pdf>

<sup>23</sup> Section 8 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>30</sup> Girls Not Brides, "Malaysia", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/malaysia/>

<sup>34</sup> Information obtained from Malaysian advocate, February 2017

<p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>which a marriage may not be authorised.</p> <p>Further, it is an offence which is punishable with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment for any person who uses any force or threat -</p> <p>(b) to prevent a man who has attained the age of eighteen years or a woman who has attained the age of sixteen years from contracting a valid marriage.<sup>24</sup></p> <p>In 2018, the Selangor Legislative Assembly passed an amendment to amend Section 8<sup>25</sup> of the Islamic Family Law (Selangor) Enactment 2003 (IFLS) to</p>		<p>Child Marriage<sup>31</sup> was launched by the Ministry of Women. The Plan detailed out 17 strategies involving 61 ministries, agencies, state agencies, Non-profit Organisations and International Bodies. From 2020 to 2025, the Plan was to address the causes of child marriage through policy changes, legislative improvements and the implementation of awareness programmes and activities.</p> <p>The abrupt change of government from the Pakatan Harapan administration to Perikatan Nasional may</p>	<p>inconsistent.<sup>35</sup></p> <p>However in 2018, the Malaysian <i>Shari'ah</i> Judiciary Department (JKSM) has created Guidelines or Standard Operating Procedure (SOP)<sup>36</sup> to tighten the approval of applications for underage marriage by a <i>Shari'ah</i> judge.<sup>37</sup></p> <p>The guidelines were issued</p>	<p>marriage tied the knot; of the 9,601 children, 69% (or 6,286) were Muslim children (Muslim males below 18 and females below 16). During the same period, <i>Shari'ah</i> court records indicate that Muslim child marriages increased by 4% from 981 cases in 2010 to 1,025 in 2015, although between 2013 and 2015, Muslim child marriage fell by 6%, from</p>
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<sup>24</sup> Section 37 of the Islamic Family Law (Federal Territories) Act (1984), [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_act\\_lib.nsf/b3ac9c218c8efdc4482568310022d8b3/d50d8d5b1effb09482569810025f121?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_act_lib.nsf/b3ac9c218c8efdc4482568310022d8b3/d50d8d5b1effb09482569810025f121?OpenDocument)

<sup>25</sup> Section 8 of the Islamic Family Law (Selangor) Enactment 2003 (IFLS) stipulates the minimum age of marriage is 16 for females and 18 for males with exception, a marriage can be allowed provided a *Shari'ah* Judge has granted permission in writing in certain circumstances.

<sup>31</sup> Executive Summary National Strategy Plan In Handling The Causes Of Child Marriage, Ministry of Women and Community Development, 16 January 2020, <https://www.kpwkm.gov.my/kpwkm/uploads/files/Dokumen/Pelan%20Strategi%20Perkahwinan%20Bawah%20Umur/EXECUTIVE%20SUMMARY.pdf>

<sup>35</sup> Information obtained from Malaysian advocate, February 2017

<sup>36</sup> Instruction Of The Chief Syarie Judge Of The State Of Melaka No.1 Year 2018 - Application For Permission To Marry A Minor, [https://www.mahsyariahmelaka.gov.my/msnmfiles/Pekeliiling\\_ArahanKHS/2018/Arahan%20KHS%20MSNM%20Bil.1-2018.pdf](https://www.mahsyariahmelaka.gov.my/msnmfiles/Pekeliiling_ArahanKHS/2018/Arahan%20KHS%20MSNM%20Bil.1-2018.pdf) (Original Text in Bahasa Malaysia)

<sup>37</sup> Written Answer of YAB Dato' Seri Dr. Wan Azizah Dr. Wan Ismail, the Deputy Prime Minister & the Minister of Women, Family and Community Development: Fourteenth Session, First Term, First Meeting (Original text in Bahasa Malaysia), 19 May 2016, p. 12, [https://www.kpwkm.gov.my/kpwkm/uploads/files/Dokumen/Jawapan%20Dewan%20Negara/27%20Ogos%202018%20\(Gabung\).pdf](https://www.kpwkm.gov.my/kpwkm/uploads/files/Dokumen/Jawapan%20Dewan%20Negara/27%20Ogos%202018%20(Gabung).pdf)

	<p>increase the minimum age of marriage for females and males in Selangor to 18 and another enactment to facilitate the court process,<sup>26</sup> with exceptions the minimum age can be lowered in conformity to strict guidelines through an application in court, outlined in a newly inserted section 8A.<sup>27</sup></p> <p>As <i>Shari'ah</i> law is under the purview of each States in Malaysia, the amendment made to Selangor state is only applicable to females and males in the said state. This set as an example to encourage other states to amend their Islamic</p>		<p>have impacted on the implementation of the National Action Plan.</p> <p>Despite the reiteration of Malaysia's commitment to address child marriage by the new Minister of MWFCD at the United Nations International Children's Fund (Unicef)'s Advocacy Brief online launch in 2021,<sup>32</sup> in December<sup>33</sup> the Islamic Religious Affairs minister Idris Ahmad, said the government will not raise the legal marriage age for Muslim women from 16 to</p>	<p>through a circular letter, which essentially a practice direction, of the director-general/ Chief <i>Shari'ah</i> Judge of the <i>Shari'ah</i> Judiciary Department which had come into effect on September 28, 2018.<sup>38</sup></p> <p>The considerations include, the interests of</p>	<p>1,090 in 2013 to 1,025 in 2015;<sup>41</sup></p> <ul style="list-style-type: none"> <li>• Malaysia estimates 1500 children marry every year (as of 2018).<sup>42</sup> An estimated 1856<sup>43</sup> children were married in year 2018 alone, where 83% of them are Muslim children.<sup>44</sup></li> <li>• Between January and September 2020, the Women, Family,</li> </ul>
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<sup>26</sup> "Selangor Raises Minimum Age of Marriage from 16 to 18", *The Sun Daily*, 6 September 2018

<https://www.thesundaily.my/archive/selangor-raises-minimum-age-marriage-16-18-YUARCH576572>

<sup>27</sup> Section 8A of the Islamic Family Law (Selangor) (Amendment) Enactment (2018),

<https://jakess.gov.my/pdf/ENAKMEN/Enakmen-enakmen%20negeri%20Selangor/Enakmen%20Keluarga/RUU%20UNDANG-UNDANG%20KELUARGA%20ISLAM%20%28NEGERI%20SELANGOR%29%20%28PINDAAN%29%202018.pdf>

<sup>32</sup> Malaysia committed to addressing child marriage, says Rina Harun", *The Malay Mail*, 9 March 2021,

<https://www.malaymail.com/news/malaysia/2021/03/09/malaysia-committed-to-addressing-child-marriage-says-rina-harun/1956223>

<sup>33</sup> "Legal marriage age for Muslim women to stay at 16, says government", *Free Malaysia Today*, December 16, 2021

<https://www.freemalaysiatoday.com/category/nation/2021/12/16/legal-marrying-age-for-muslim-women-to-stay-at-16-says-govt/>

<sup>38</sup> "Underage marriage among Muslims sees slight drop after new SOPs [NSTTV]", *New Straits Times*, 16 December 2021,

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

<sup>41</sup> Malaysian Parliament, "Official Statement of the House of Representatives: Thirteenth Session, Fourth Term, Second Meeting" (original text in Bahasa Malaysia), 19 May 2016, p. 17, <http://www.parlimen.gov.my/files/hindex/pdf/DR-19052016.pdf>

<sup>42</sup> Based on 2007-2017 statistics from the Ministry of Women, Family and Community Development, Malaysia (MWFCD).

<sup>43</sup> This is an estimated number as not all child marriages are recorded.

<sup>44</sup> "Ending child marriage - Advocacy campaign 2021", <https://www.unicef.org/malaysia/ending-child-marriage>



	<p>Family Laws.</p> <p>Section 27 of IFLA provides that it is the duty of every person to report a potentially void or illegal marriage to the Registrar.<sup>28</sup></p> <p>Section 52(1)(g) entitles a wife who was given in marriage by her father or paternal grandfather (<i>wali Mujbir</i>) before she attained the age of puberty (<i>baligh</i>) to seek divorce if she repudiated the marriage before attaining 18 and the marriage has not been consummated.<sup>29</sup></p>		<p>18, after taking into consideration the feedback and views of the state governments. This was in response to a question posed in Parliament during Question Time.</p> <p>He said additionally, that the <i>Shari'ah</i> Judiciary Department had introduced a strict Standard of Procedures (SOP) to review underage marriage applications.</p>	<p>children from health, education and socioeconomic aspects.</p> <p>Following the underage marriage SOP, the JKSM issued additional Practice Directions:</p> <p>i) No. 4/2019 issued on 23 December 2019, the <i>Shari'ah</i> High Court is has the jurisdiction to hear and adjudicate on child marriage applications.<sup>39</sup></p> <p>ii) No. 2/2020,<sup>40</sup> issued on 21</p>	<p>and Community Development Ministry reported that the Syariah Judiciary Department Malaysia (JKSM) records for Muslim couples revealed 520 applications for underage marriages, with Sarawak recording the highest number of such cases (83), followed by Kelantan (80), and Sabah (80). (63 cases).<sup>45</sup></p> <ul style="list-style-type: none"> <li>• In 2021, the Minister of Religious Affairs stated that there</li> </ul>
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<sup>28</sup> Section 27 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>29</sup> Section 52(1)(g) of the Islamic Family Law (Federal Territories) Act (1984), [http://www2.esyariah.gov.my/esyariah/mal/portaly1/enakmen2011/Eng\\_acta\\_lib.nsf/1f6766512d9936a348256aa300143ae8/ead91b822eb80a2a48257634000583c1?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portaly1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/ead91b822eb80a2a48257634000583c1?OpenDocument)

<sup>39</sup> Practice Direction No. 4/2019, "The court hearing and adjudicating cases of child marriage applications", <http://bsktransit.jksm.gov.my/aa/uploads/4Tahun2019.pdf> (Original text in Bahasa Malaysia)

<sup>40</sup> Practice Direction No. 2/2020, "Format and application of the social/moral report form for the social welfare department for underage marriage application", <http://bsktransit.jksm.gov.my/aa/uploads/aa22020.pdf> (Original text in Bahasa Malaysia)

<sup>45</sup> "Ministry: 543 child marriages, including applications, in Malaysia from Jan-Sept 2020", *The Malay Mail*, 4 December 2020, <https://www.malaymail.com/news/malaysia/2020/12/04/ministry-543-child-marriages-including-applications-in-malaysia-from-jan-se/1928716>

				<p>December 2020, on the pre-trial forms to be used by the Social Welfare officer to report on the social/moral of the prospective child bride/groom for underage marriage applications.</p>	<p>has been a modest decline in the approval of underage marriage petitions among Muslims since the revised Standard Operating Procedure (SOP) for such applications was implemented. According to him, 2,098 Muslim underage marriage applications were authorised between September 1, 2018 and October 31, 2021. This is less than the 2,885 approvals for minor marriage petitions registered countrywide from September 1, 2015 to August 31, 2018.<sup>46</sup></p>
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<sup>46</sup> “Underage marriage among Muslims sees slight drop after new SOPs [NSTTV]”, *New Straits Times*, 16 December 2021, <https://www.nst.com.my/news/nation/2021/12/754831/underage-marriage-among-muslims-sees-slight-drop-after-new-sops-nsttv>

					<ul style="list-style-type: none"> <li>• Earlier that year, in March 2021, the SUHAKAM Children's Commissioner reported based on the statistics from JKSM, only 692 underage marriage applications were submitted in 2020, of which 451 were allowed. The decrease in approvals is attributable to the SOP's requirement that a <i>Shar'iah</i> judge must obtain medical and social reports while examining every application.<sup>47</sup></li> <li>• According to Malaysia's Millennium Development Goals Report</li> </ul>
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<sup>47</sup> "Child marriages down, says data – but are the numbers true?", *Free Malaysia Today*, 9 March 2021, <https://www.freemalaysiatoday.com/category/nation/2021/03/09/child-marriages-down-says-data-but-are-the-numbers-true/>

					<p>2015, the 2010 Malaysian Population Census indicates that child marriages among women in Malaysia have increased by 55% in absolute terms and by 0.2 percentage points in relative terms between 2000 and 2010. The 2000 Population Census reported that 53,261 of married women in Malaysia were aged 15-19, constituting 1.2% of all married women. In addition, about 6,800 girls below 15 were recorded as married. The 2010 Population Census report indicates that 82,382 of married women in Malaysia were aged 15-19,</p>
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					<p>constituting 1.4% of all married women in Malaysia while 73,428 of married men in Malaysia were aged 15-19, constituting 1.2% of all married men in Malaysia. No data was available for girls below 15 who were married;<sup>48</sup></p> <ul style="list-style-type: none"> <li>• According to a media report, about 16,000 girls aged below 15 were married in 2010;<sup>49</sup> and</li> <li>• According to information on the ground, anecdotal evidence suggests that there may be a large number of unregistered marriages that</li> </ul>
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<sup>48</sup> Malaysian Economic Planning Unit and United Nations Malaysia, "Millennium Development Goals Report: Malaysia 2015", p. 94. Report can be downloaded here: <https://www.my.undp.org/content/malaysia/en/home/library/mdg/malaysia-millennium-development-goals-2015-report-.html>

<sup>49</sup> "16,000 girls below 15 are married", *The Star*, 10 October 2010, <http://www.thestar.com.my/news/nation/2010/10/10/16000-girls-below-15-are-married/>

					<p>involve underage children.<sup>50</sup></p> <p>According to the UNICEF , According to UN World Marriage Data 2015, the average age of first marriage among Malaysian females rose from 25.1 in 2000 to 25.7 in 2010 while the average age of first marriage among Malaysian males fell from 28.6 in 2000 to 28.0 in 2010.<sup>51</sup></p> <p>Media reports that document the adverse impact of child marriages often lead to national debates on the need or otherwise to increase the legal minimum age for marriage.<sup>52</sup> For</p>
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<sup>50</sup> Information obtained from Malaysian advocate, February 2017

<sup>51</sup> United Nations Population Division, "World Marriage Data 2015", <https://esa.un.org/ffps/Index.html#/maritalStatusData>

<sup>52</sup> Dr Muzaffar Shah Mallow, "Protecting Children from Underage Marriages", *New Straits Times*, 17 March 2017, <http://www.nst.com.my/news/2017/03/221605/protecting-children-underage-marriages>

					<p>instance:</p> <ul style="list-style-type: none"> <li>• In 2016, a lower court dismissed the rape charge against a 21-year-old man after the judge was informed that the man had married the 14-year-old girl he was alleged to have raped. A higher court has since ruled that the man must face trial;<sup>53</sup></li> <li>• In 2013, a 12-year-old girl was married off to her 19-year-old alleged rapist. Initially, the girl's father filed a police report on the alleged rape, but withdrew it and agreed to have the girl marry the alleged rapist after days</li> </ul>
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<sup>53</sup> Liz Gooch, "Malaysia's child brides", *Al-Jazeera*, 13 August 2016, <http://www.aljazeera.com/indepth/features/2016/08/malaysia-child-brides-160810123204474.html>

					<p>of begging from the parents of the alleged rapist. During her marriage, the girl was allegedly abused by her in-laws, beaten, and regularly denied food. Her in-laws also purportedly broke their promise to allow the girl to continue schooling after the marriage,<sup>54</sup></p> <ul style="list-style-type: none"> <li>• Also in 2013, a 13-year-old girl was married off to her 40-year-old alleged rapist in an effort to withdraw a rape case against the 40-year-old man. In this case, however, the rape case against man proceeded in</li> </ul>
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<sup>54</sup> “Dad: I agreed to teen daughter’s marriage because she has been raped”, *The Star*, 29 November 2013, <http://www.thestar.com.my/news/nation/2013/11/29/i-had-no-choice-then-says-father-of-teen-girl-dad-i-agreed-to-the-marriage-because-she-had-been-rape/>



				<p>court;<sup>55</sup> and</p> <ul style="list-style-type: none"> <li>• In 2010, an 11-year-old girl was found semi-conscious in a mosque. She was married off to a 41 year old man by her father.<sup>56</sup></li> </ul> <p>According to Girls Not Bride child marriages are largely driven by culture and tradition. They are also more common among rural and indigenous communities.<sup>57</sup></p> <p>The apparent differing views on the acceptability of child marriages at the policy level is also reflected in the ongoing debate on the issue among</p>
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<sup>55</sup> “Marriage cannot negate rape charge, says lawyer”, *The Star*, 29 November 2013, <http://www.thestar.com.my/news/nation/2013/11/29/marriage-cannot-negate-rape-charge-says-lawyer/>

<sup>56</sup> “Girl, 11, married to husband, 41, found semi-conscious”, *The Star*, 13 March 2010, <http://www.thestar.com.my/news/nation/2010/03/13/girl-11-married-to-husband-41-found-semiconscious/>

<sup>57</sup> Girls Not Brides, “Malaysia”, *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/malaysia/>

					<p>civil society groups:</p> <ul style="list-style-type: none"> <li>• Conservative Muslim groups have opposed prohibiting child marriage on grounds that include banning of child marriages would lead to a rise in premarital sex because children too have sexual urges;<sup>58</sup></li> <li>• Moderate Muslim voices from among the <i>Shari'ah</i> court and civil society, however, have urged for the law to be amended to raise the minimum age for marriage in the interests of children.<sup>59</sup></li> </ul>
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<sup>58</sup> Mayuri Mei Lin, "PAS MP suggests child marriage the answer for lustful teens", *The Malay Mail Online*, 6 April 2016, <http://www.themalaymailonline.com/malaysia/article/pas-mp-suggests-child-marriage-the-answer-for-lustful-teens>

<sup>59</sup> Lim May Lee, "Amend syariah law, curb child marriages", *The Star*, 9 October 2016, <http://www.thestar.com.my/news/nation/2016/10/09/amend-syariah-law-curb-child-marriages-standardise-marriage-laws-and-set-minimum-age-to-18-years-say/>

	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Women's consent to marriage (Andi)</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 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 Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</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>Section 13 of IFLA provides that a marriage cannot be recognised or registered without the consent of both parties to marriage.<sup>60</sup></p> <p>Section 37(a) of IFLA makes it an offense to use force or threat to compel a person to marry.<sup>61</sup></p> <p>Section 52(1)(j) entitles a wife who did not consent to the marriage or her consent was not valid, whether in consequence of duress, mistake, unsoundness of mind or any other circumstances recognised by <i>Hukum Syarak</i> to seek divorce.<sup>62</sup></p>		<p>The Government of Malaysia in its 2004 report to the CEDAW Committee asserted that:<sup>66</sup></p> <ul style="list-style-type: none"> <li>Forced marriage is not an accepted practice in Malaysia. From the Islamic point of view, the right of women to marry must be protected in order to secure justice in the intended marriage;</li> <li>Muslim women were accorded the right to choose husbands of the same standing (<i>kufu'</i>) as her. The rationale for <i>kufu'</i> is to ensure compatibility and suitability between</li> </ul>	<p>Prospective brides are required to sign a consent form prior to the solemnisation of the marriage.<sup>67</sup></p> <p>There is a standardised marriage contract. The marriage contract is known as the <i>ta'liq</i> Certificate.</p> <p>The <i>ta'liq</i> Certificate is a document containing the promises expressed by a husband after solemnisation of the marriage. A</p>	<p>There are media reports of forced marriages:</p> <ul style="list-style-type: none"> <li>In 2010, an 11-year-old girl was found semi-conscious at a mosque. She was allegedly forced to marry a 41-year old man by her father. She "was clueless and too young to take the role of a wife physically and mentally" and was found "in a state of depression";<sup>71</sup></li> <li>Also in 2010, a 10-year-old girl</li> </ul>

<sup>60</sup> Section 13 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>61</sup> Section 37(a) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>62</sup> Section 52(1)(j) of the Islamic Family Law (Federal Territories) Act (1984), [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_acta\\_lib.nsf/1f6766512d9936a348256aa300143ae8/ead91b822eb80a2a48257634000583c1?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/ead91b822eb80a2a48257634000583c1?OpenDocument)

<sup>66</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), para. 391-393, 398, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>67</sup> Information obtained from Malaysian Advocate, February 2017

<sup>71</sup> Bernama, "Underage marriages: A holy or unholy matrimony?" *Free Malaysia Today*, 7 February 2011, <http://www.freemalaysiatoday.com/category/leisure/2011/02/07/underage-marriages-a-holy-or-unholy-matrimony>.

	<p>Under Section 366 of the Penal Code, it is a crime to kidnap a woman with the intent to compel or force her into marriage.<sup>63</sup></p> <p>Between 2003 and 2005, the Islamic Family Laws of different states were amended, banning marriage by force (<i>ijbar</i>).<sup>64</sup></p> <p>The mandatory registration of marriages is provided for in Section 25 of IFLA. Non-registration of a marriage does not necessarily invalidate the marriage. However, the failure to register a marriage is an offence.<sup>65</sup></p> <p>Section 22 of IFLA permits entry of other <i>ta'liq</i> (in addition to the standard <i>ta'liq</i>) immediately after the solemnization of a marriage.</p>		<p>the parties and consequently to avoid problems in the intended marriage. <i>Kufu'</i> involves matters such as morality, education, religion, race and standing in society. Thus, when a woman is forced to marry a man of inferior <i>kufu'</i> to her by her <i>wali mujbir</i> (her father or paternal grandfather), she may reject or ask for the marriage to be annulled;</p> <ul style="list-style-type: none"> <li>• When applying for official permission to marry, the prospective groom must supply details such as his marriage status, occupation and salary, which must be</li> </ul>	<p>breach of one or more of the promises may give rise to a wife's entitlement to seek a divorce. The <i>ta'liq</i> may be a standard one or otherwise.<sup>68</sup></p> <p>The standard <i>ta'liq</i> provision states that where the husband abandons the wife for four consecutive months, willingly or forcefully, and he or his representative does not provide maintenance to his wife when she has been faithful, or where he inflicts any bodily harm</p>	<p>was allegedly forced to marry her father's friend who was in his 30s in an illegal marriage solemnisation ceremony. The girl escaped with the apparent help of a sweeper in the hotel she was brought to after the marriage ceremony.<sup>72</sup></p> <p>Sisters in Islam, through its Telenisa helpline has been advocating for additional <i>ta'liq</i> to the standard <i>ta'liq</i> provision provided for by the States, to encourage women to enhance and</p>
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<sup>63</sup> Section 366 of the Penal Code (1976), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61339/117909/F-833274986/MYS61339%202018.pdf>

<sup>64</sup> Musawah, "Thematic Report on Muslim Family Law: The Gambia", *Submission to the CEDAW Committee for the 61st Session*, 2015, p. 7, <http://www.musawah.org/sites/default/files/MusawahThematicReportGambia61.pdf>

<sup>65</sup> Sections 25, 34, 125 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>68</sup> Sections 2, 22(1) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>72</sup> Izatun Shari, Lee Yuk Peng and A. Raman, "10-year-old girl forced to marry father's friend", 12 March 2010, <http://www.thestar.com.my/news/nation/2010/03/12/10yearold-girl-forced-to-marry-fathers-friend/>

			<p>confirmed by his employer.</p>	<p>on the wife and she complains to the <i>Shari'ah</i> Courts and the Courts accepts One Malaysian Ringgit from her on the husband's behalf, she is henceforth at that moment divorced with <i>talaq khul'</i>.<sup>69</sup></p> <p>Upon registration of a marriage and the payment of the prescribed fee, the Registrar of Muslim Marriages, Divorces and <i>Ruju'</i> (Registrar) will issue copies of the following two documents in a form prescribed by law to both spouses: (i) Marriage Certificate; (ii) <i>Ta'liq</i> Certificate.<sup>70</sup></p>	<p>protect their rights as wives.<sup>73</sup></p>
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<sup>69</sup> Information obtained from Malaysian Advocate, February 2017

<sup>70</sup> Sections 21, 22 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>73</sup> Telenisa, "Bolehkah buat *Ta'liq* Tambahan Selepas Berkahwin?" (Translated to: Can I add an additional *Ta'liq* after marriage?), 12 April 2018, <https://www.facebook.com/telenisa.sis/posts/1660475747371502/>

	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<b>Women's capacity to enter into marriage (Ireeny)</b>	<u>Wali</u> Regardless of her age, a	<u>Wali</u> The fathers in		<u>Wali</u> The bride may get	<u>Wali</u>

<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 Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>	<p>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 (father, followed by the paternal grandfather, full-brothers, half-brothers, sons of full brothers, sons of half-brothers, paternal uncles and male cousins).<sup>74</sup></p> <p>A judge may act as guardian and appoint a person to act as Wali Raja/Wali Hakim in the absence of a stipulated male relative (<i>wali nasab</i>). 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 sufficient reason.<sup>75</sup></p> <p>The judge will then appoint Wali Raja/Wali Hakim for the bride as a guardian for her to enter into marriage.</p>	<p>the cases of <i>Saad bin Syafie v Sarimah binti Saad &amp; Seorang Lagi</i>,<sup>78</sup> and <i>Hussin v Saayah &amp; Mat Hassan</i>,<sup>79</sup> filed for the annulment of the marriage of their daughters who eloped to be married in Thailand.</p>		<p>the judge's authorization through an application for Wali Raja/ Wali Hakim in Syariah court. This application is compulsory prior entering into a marriage for the bride, in the following events;</p> <p>i) bride's wali has refused consent without sufficient reason</p> <p>ii) bride's wali disappears and is nowhere to be found.</p> <p>iii) bride's wali was not around and was not involved throughout the bride's life.</p>	<p>Women on the ground have voiced out complaints on the excessively complicated bureaucracy for application of Wali Raja/Wali Hakim.</p> <p>Women have been asked by court staff to go over and beyond in search of their father or other male relatives before brides get to submit their application. They were asked to make an application for search in the registry of death at the National Registration Department. If the status from the registry shows that the bride's father or male relatives are</p>
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<sup>74</sup> Sections 7, 13 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf); Information obtained from Malaysian Advocate, February 2017

<sup>75</sup> Section 13 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>78</sup> [1992] 9 JH (2) 204

<sup>79</sup> [1980] 7 JH 35

	<p>Section 37 of IFLA makes it an offense to use force or threat to prevent a man who has attained the age of 18 or a woman who has attained the age of 16 from contracting a valid marriage.<sup>76</sup></p>			<p>iv) the bride is a convertee (<i>mualaf</i>) and has no male muslim relatives.</p> <p>v) the bride is a child born out of wedlock</p> <p>vi) the bride has no living or existing male relatives to be her wali.</p>	<p>still alive - the bride then would have to advertise the search in newspapers and wait for the wali to respond.</p> <p>In some scenarios where the wali was found, the wali still refused to consent to be her guardian. Others were forced to negotiate paying a sum of money to their wali, just to get consent.</p> <p>While most of the women complain that they had to face, confront and beg their wali who were their abusers and/or has been absent from their life to agree to become the guardian for her, as it is a very difficult and painful process.</p>
	<p><u>Ta'liq</u></p>			<p><u>Ta'liq</u></p>	<p><u>Ta'liq</u></p>

<sup>76</sup> Section 37 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)



	<p>Pursuant to Section 22(1) of IFLA, promises expressed by a husband after solemnisation of the marriage (<i>ta'liq</i>) may be in “the prescribed or other <i>ta'liq</i> of the marriage.”<sup>77</sup></p> <p>In the same section, it also states the Registrar’s power to register additional Ta’liq; “Immediately after the solemnization of a marriage, the Registrar shall enter the prescribed particulars and the prescribed or other ta’liq of the marriage in the Marriage Register”.</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. This can be done both before and during the marriage.<sup>80</sup></p> <p>The Marriage Registrar has the power to register both the standard <i>ta'liq</i> provisions and also any other additional <i>ta'liq</i> provisions.</p>	<p>According to information on the ground women are now becoming more aware of their rights to include additional provisions to their <i>Ta'liq</i>.<sup>81</sup></p> <p>The 2 (two) most common additional provisions demanded by women are;</p> <ol style="list-style-type: none"> <li>1) The husband shall not enter into a polygamous marriage without the wife’s knowledge and consent; and</li> <li>2) The husband shall not hinder the wife’s right to continue her education or to work.</li> </ol>
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<sup>77</sup> Section 22(1) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>80</sup> Section 22 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf); Information obtained from Malaysian Advocate, February 2017

<sup>81</sup> Information obtained from Malaysian advocate, December 2021

					<p>Women have come out to say that most of the time when they approached The Registrar or the staff to register their additional ta'liq, their requests were ridiculed and denied.</p> <p>Even after the bride and groom agreed to the additional provisions, the Marriage Registrar refused to include the additional provisions in their Ta'liq and only remained with the standard provisions. The Registrar will suggest other complicated procedures for this to be done - needs to get approval and registration from the Syariah court, etc. Whereas, there are no such procedures under the law for such application to be done first prior to</p>
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					the registration of additional ta'liq and it is clear under the law for the Registrar to register any other additional provisions agreed by both parties; bride and groom.
<p><b>Polygamous marriages (Ireeny)</b></p> <p><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)</i></p>	<p>A Muslim man may marry up to four wives at one time.</p> <p>Section 14(1) of IFLA prohibits women from marrying multiple men.<sup>82</sup></p> <p>Section 23(1) of IFLA prohibits a man from entering into a polygamous marriage except with the written permission of a court; although Section 23(1A) also provides that if the polygamous marriage is valid under <i>Hukum Syarak</i>, the court may order the marriage to be</p>	<p>In <i>Aisyah bt Abdul Raof v Wan Mohd Yusof</i>,<sup>93</sup> the court granted the husband permission to enter into a second marriage on the basis that the husband was able to provide for his current and future wives.</p>	<p>The Government of Malaysia in its 2016 report to the CEDAW Committee informed that:<sup>95</sup></p> <ul style="list-style-type: none"> <li>• <i>Shari'ah</i> allows Muslim men to have four wives but requires the men to be just to all the wives;</li> <li>• Section 23 of IFLA was amended to protect a woman</li> </ul>	<p>The signatures of the existing wife or wives is (are) required for a man to enter into a polygamous marriage.<sup>96</sup></p> <p>Similar to a monogamous marriage, the non-registration of a polygamous marriage does not necessarily</p>	<p>Early 2021, reports of polygamy scams/syndicates surfaces<sup>99</sup>. These scams include forgery of signatures, fraud of facts/information, and abuse of power. And also men who hire certain parties (agents) to handle the marriage</p>

<sup>82</sup> Section 14(1) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>93</sup> [1991] 7 JH 152

<sup>95</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/3-5 (2016), paras. 25, 183, 186, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>96</sup> Information obtained from Malaysian advocate, February 2017

<sup>99</sup> TheVibesDotCom, 3 January 2021 <https://www.thevibes.com/articles/news/12162/secretive-men-give-rise-to-polygamy-scams-counsellor-says>

<p><i>recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>officially registered subject to a penalty under Section 123.<sup>83</sup></p> <p>An application for permission must be accompanied by an oath (<i>iqrar</i>) by the man stating: (i) the grounds on which the proposed marriage is claimed to be just or 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 been obtained or not regarding the proposed marriage.<sup>84</sup></p>	<p>In <i>Sharif bin Jamaludin v Kuning bt Kassim</i>,<sup>94</sup> the husband applied for permission to marry a second wife. The existing wife contested and stated that she would like to be divorced. However, her husband did not want to divorce her. The wife also asked for a fixed monthly</p>	<p>whose husband contracts a polygamous marriage. The amended provision imposes a condition for the man who wishes to contract another marriage to obtain the court's written permission prior to the marriage;</p> <ul style="list-style-type: none"> <li>• The <i>Shari'ah</i> Courts have been accorded the power to determine what would be deemed just for the wife and will consider collaborative evidence such as the</li> </ul>	<p>invalid the marriage. However, apart from it being an offence not to officially register a marriage, it is important to officially register polygamous marriages. Otherwise, not only will the wife of the unregistered marriage risk being deprived of her rights in the event of the divorce or upon her husband's death, the status</p>	<p>process instead of going through the standard operating procedure. Most often than not, eloping to Thailand is one of the way couples would resort to have a polygamous marriage.</p> <p>Recent news report<sup>100</sup> November 2021 states that over 300 couples in Malaysia are eloping to Thailand to marry under packages</p>
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<sup>83</sup> Sections 23(1), 23(1A) of the Islamic Family Law (Federal Territories) Act (1984), [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_acta\\_lib.nsf/1f6766512d9936a348256aa300143ae8/35c19dde03c64581482576340003acc1?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/35c19dde03c64581482576340003acc1?OpenDocument)

<sup>84</sup> Section 23(3) of the Islamic Family Law (Federal Territories) Act (1984), [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_acta\\_lib.nsf/1f6766512d9936a348256aa300143ae8/35c19dde03c64581482576340003acc1?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/35c19dde03c64581482576340003acc1?OpenDocument)

<sup>94</sup> [1999] 15 JH (2) 73

<sup>100</sup> Utusan Malaysia, "Nikah Siam kembali 'rancak', ejen kumpul 300 pasangan" 22 November 2021, <https://www.utusan.com.my/terkini/2021/11/nikah-siam-kembali-rancak/>

	<p>The court may grant permission if it is satisfied that: (i) the propose marriage is just or necessary, having regard to the sterility, physical infirmity, physical unfitness for the conjugal relations, wilful avoidance of an order for restitution of conjugal rights or insanity of the existing wife or wives; (ii) the husband has the financial means to support all his wives and dependants, including those who would be his dependants as a result of the proposed marriage; (iii) the husband would be able to accord equal treatment to all his wives as required by <i>Hukum Syarak</i>; and (iv) the proposed marriage would not cause harm (<i>darar syarie</i>) to the existing wife or wives.<sup>85</sup> To assist the court in the inquiry, the court must summon the</p>	<p>maintenance. The court allowed the husband to marry a second wife and the existing wife was granted the fixed monthly maintenance.</p>	<p>man's occupation, earnings as well as seeking medical reports for cases of infertility;</p> <ul style="list-style-type: none"> <li>• Upon application by any party to the marriage, the <i>Shari'ah</i> Court has the power to: (i) require a the husband to pay maintenance to his existing wife or wives; and (ii) order for the division of assets acquired during the marriage by their joint efforts or sole efforts of the husband, as the husband were to enter into a polygamous</li> </ul>	<p>and rights of the children from the unregistered marriage may also be affected.<sup>97</sup></p> <p>In response to the polygamy scams and syndicates Mufti Perlis, Datuk Seri Dr Mohd Asri Zainul Abidin has taken the approach to further simplify polygamy procedures in Perlis and has denied that such matter is problematic to family institutions<sup>98</sup>.</p>	<p>offered by syndicate agents.</p> <p>Couples are able to escape/skip the required procedure to ask permission from Shari'ah court for a polygamous marriage.</p> <p>After eloping to Thailand, they would only have to face the repercussions of paying up to RM1,000 of fine, when they register their marriage in Malaysia. Which most couples are willing to pay, in order to keep the</p>
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<sup>85</sup> Section 23(4) of the Islamic Family Law (Federal Territories) Act (1984), [http://www2.esyariah.gov.my/esyariah/mal/portals/1/enakmen2011/Eng\\_acta\\_lib.nsf/1f6766512d9936a348256aa300143ae8/35c19dde03c64581482576340003acc1?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portals/1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/35c19dde03c64581482576340003acc1?OpenDocument)

<sup>97</sup> Sections 25, 34, 125 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf); Information obtained from Malaysian advocate, February 2017

<sup>98</sup> Sinar Harian, 'Memudahkan poligami merupakan perkara lebih baik' (Translated to: Facilitating polygamy is a better thing) 6 January 2021 <http://www.sinarharian.com.my/article/117852/KHAS/Wacana/Memudahkan-poligami-merupakan-perkara-yang-lebih-baik>

	<p>husband's existing wife or wives, the woman to be wedded, the <i>wali</i> of the woman to be wedded and any other person who, in the opinion of the court, may provide information relating to the proposed marriage.<sup>86</sup></p> <p>Section 23(5) of IFLA provides that a copy of the husband's application for permission to enter into a polygamous marriage together with the <i>iqrar</i> is required to be served together with a summons for the existing wife or wives to appear in court on each existing wife.<sup>87</sup></p> <p>Husbands do not need the permission of their first wife or wives prior to the polygamous marriage, the wife/wives will be notified to merely give her opinion or point of view</p>		<p>marriage. This has proven an advantage for a woman since prior to this amendment the application for the division of assets acquired during the marriage could only be made after the dissolution of a marriage or after the death of the husband or the wife. The application could also be made even if the polygamous marriage was solemnised contrary to the provision of law.</p>		<p>polygamous marriage a secret from the knowledge of their first wife and family<sup>101</sup>. There are couples resorting to not registering their marriage, for the same reason. This practice has been on-going for years before the pandemic and still currently in practice.</p> <p>Sisters-in-Islam Telenisa Statistics &amp; Findings in 2020 reports the rise of polygamy as a cause for divorce in 2020 was due to wives finding</p>
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<sup>86</sup> Section 23(4) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>87</sup> Section 23(5) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>101</sup> Sinar Harian, "Banyak kes scam poligami babit suami umur 40 tahun ke atas" (Translated to: Many cases of polygamy scams involve husbands aged 40 and above) 7 January 2021 <https://www.sinarharian.com.my/article/117903/BERITA/Wawancara/Banyak-kes-scam-poligami-babit-suami-umur-40-tahun-ke-atas>

	<p>regarding her husband's application to court for a polygamous marriage<sup>88</sup>. Hence, wife/wives permission is not a legal consideration in order to approve or reject polygamous marriage application.</p> <p>Section 23(8) 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>89</sup></p> <p>Upon granting permission for a husband to enter into a polygamous marriage or upon ordering the registration of the polygamous marriage, Sections 23(9) and 73(1)(e) of IFLA mandates a court, on application by any party to the marriage, to: (i) require the husband to pay maintenance to his existing wife or wives; (ii)</p>				<p>out that they had unknowingly been in a polygamous marriage for years, without their consent or knowledge. The wives would only learn of the matter either through messages from the other party, or from finding belongings or documents of the husband that hinted to the matter.</p> <p>According to the Minister in charge of Religious Affairs, based on the records of the <i>Shari'ah</i> Courts across Malaysia, 8,808 cases of</p>
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<sup>88</sup> Sinar Harian "Suami boleh berpoligami walau isteri tak setuju" (Translated to: Husbands can enter into polygamy even if the wife does not agree") 8 January 2021 <https://www.sinarharian.com.my/article/118135/KHAS/Wacana/Suami-boleh-berpoligami-walau-isteri-tak-setuju>

<sup>89</sup> Section 23(8) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

	<p>order the division between the parties to the marriage of any assets acquired by them during the marring by their joint efforts or the sale of any such assets and the division of the proceeds of the sale; or (iii) require the husband to pay maintenance for any child of his.<sup>90</sup></p> <p>Section 123 makes it an offence for a man to enter into a polygamous marriage without the written permission of a court.<sup>91</sup></p> <p>Temporary marriages are not recognised by the law.<sup>92</sup></p>				<p>applications by husbands who were eligible and capable were given permission to enter into polygamous marriages between 2010 and 2016.<sup>102</sup></p> <p>A 2010 survey report on polygamous marriage by Sisters-in-Islam showed that:<sup>103</sup></p> <ul style="list-style-type: none"> <li>• 35% of first wives were of the view that polygamous husbands were not able to</li> </ul>
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<sup>90</sup> Sections 23(9), 73(1)(e) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>91</sup> Section 123 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>92</sup> Information obtained from Malaysian advocate, February 2017

<sup>102</sup> Malay Mail Online, "Over 8.000 polygamy applications given green lights since 2010, Putrajaya reveals", *Malay Mail Online*, 20 March 2017, <http://www.themalaymailonline.com/malaysia/article/over-8000-polygamy-applications-given-green-light-since-2010-putrajaya-reve>

<sup>103</sup> Information obtained from Malaysian advocate, February 2017; Ding Jo-Ann, "The impact of polygamy in Malaysia", *The Nut Graph*, 21 July 2010, <http://www.thenutgraph.com/the-impact-of-polygamy-in-malaysia/>



					<p>afford the additional burden of having another wife and family, resulting in the first wife having to seek employment for additional income;</p> <ul style="list-style-type: none"> <li>• 60% of the children of first wives said that they were disappointed when they found out about their fathers' polygamous marriage;</li> <li>• It is not uncommon for courts not to inquire as to the financial capacity of the man seeking to enter into a</li> </ul>
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					<p>polygamous marriage; and</p> <ul style="list-style-type: none"> <li>• 40% of polygamous marriages did not go through court application and 60% of wives were not interviewed prior to the Court granting the permission to marry.</li> </ul>
<p><b>Divorce rights</b></p> <p><i>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 of divorce be sought only through the courts? Are the grounds for divorce the same for the husband</i></p>	<p>IFLA provides for four different mechanisms for divorce: (i) unilateral repudiation (<i>talaq</i>); (ii) conditional divorce (<i>cerai tal'iq</i>); (iii) judicial divorce; and (iv) redemptive divorce (<i>cerai tebus talaq</i> or <i>khul'</i>). The marriage may also be annulled.<sup>104</sup></p> <p>A husband may unilaterally repudiate the marriage, which must generally be effectuated in</p>	<p>In <i>Talib bin Salleh v Sepiah</i>,<sup>111</sup> the wife filed for divorce on the ground that she was treated badly. She agreed to withdraw the action when her husband</p>	<p>The Government of Malaysia in its 2004 report to the CEDAW Committee explained that:<sup>114</sup></p> <ul style="list-style-type: none"> <li>• Under the Islamic Family Law Enactments of all states, the <i>Shari'ah</i> Court can make an order relating to</li> </ul>	<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</p>	

<sup>104</sup> Sections 47, 49, 50, 50A, 52 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>111</sup> [1979] 1 JH 84

<sup>114</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), paras. 419-426, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<p><i>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 it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>court and after undergoing a reconciliation process. A husband may pronounce <i>talaq</i> outside the court and without the permission of the court. However:<sup>105</sup></p> <ul style="list-style-type: none"> <li>• Section 55A of IFLA 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 divorce his wife by pronouncement of <i>talaq</i> in any form outside the court and without the court's permission and prescribes a penalty (fine, imprisonment or both) for the offence.</li> </ul> <p>A married woman may, if entitled to a divorce pursuant to the terms of her <i>ta'liq</i> certificate made upon 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</p>	<p>promised to treat her justly. However, her husband continued to neglect her and she applied for divorce under <i>khul'</i>. Her husband refused to consent to the divorce and they agreed to a reconciliation process. The divorce was granted in the end.</p> <p>In <i>Aisny v Hj Fahro Razi</i>,<sup>112</sup> the husband neglected to provide maintenance to his wife for more than four months. The wife applied for a divorce by <i>ta'liq</i> and was granted</p>	<p>divorce by allowing a husband to pronounce a <i>talāq</i> (repudiation of marriage);</p> <ul style="list-style-type: none"> <li>• A woman may file a divorce petition in court for <i>fasakh</i>, <i>khul'</i> and <i>ta'liq</i>. The court after hearing the application may order the husband to pronounce <i>talāq</i>.</li> <li>• A Muslim wife can divorce her husband on grounds based on the prescribed <i>ta'liq</i> (a promise expressed by the husband after solemnisation of marriage) or on grounds of failure to maintain the wife, the absence of the husband for more than four months or violence against the wife;</li> <li>• Under IFLA, if the husband wishes to</li> </ul>	<p>parties.<sup>115</sup></p>	
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<sup>105</sup> Section 47, 55A, 124 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>112</sup> [1990] 7 JH 216

<sup>115</sup> Sections 54, 55 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

	<p>divorce. If the court is satisfied that the divorce is valid in accordance with <i>Hukum Syarak</i>, it must confirm and record such divorce and send one certified copy of the record to the marriage registrar.<sup>106</sup></p> <p>Valid grounds for seeking a judicial divorce by a wife include a husband's: (i) wilful refusal to consummate the marriage after four months of marriage; (ii) failure to provide maintenance for more than three months; (iii) insanity, for a period of two years or suffering from leprosy, vitiligo or venereal disease in a communicable form; (iv) impotence of which the wife was not aware; (v) prolonged absence for more than one year; and (vi) imprisonment of more than three years (wife may seek divorce after one year); (vii) failure to perform, without reasonable cause, his marital obligations (<i>nafkah batin</i>) for more than one year; (viii) accusation under oath of adultery by wife (<i>lian</i>).<sup>107</sup></p>	<p>a divorce.</p> <p>In <i>Fakhariah v Johari</i>,<sup>113</sup> the husband refused to provide his wife with financial maintenance because she left their marital home to pursue her studies in the US without his consent. The wife applied for divorce by way of <i>ta'liq</i> on the ground that her husband had failed to provide her with financial maintenance during the marriage. The lower court dismissed the wife's application for divorce. However, the</p>	<p><i>ruju'</i> (resume conjugal relationship) with his divorced wife, the re-cohabitation must take place by mutual consent and without force.</p>		
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<sup>106</sup> Section 50 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>107</sup> Sections 50A, 52 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>113</sup> [1992] 9 JH 69; Raihanah Abdullah et. al, "Financial support for women under Islamic family law in Bangladesh and Malaysia", (Asian Journal of Women's Studies, 21:4, 2015), p. 372, [https://www.researchgate.net/publication/287405779\\_Financial\\_support\\_for\\_women\\_under\\_Islamic\\_Family\\_Law\\_in\\_Bangladesh\\_and\\_Malaysia](https://www.researchgate.net/publication/287405779_Financial_support_for_women_under_Islamic_Family_Law_in_Bangladesh_and_Malaysia)

	<p>In addition, a wife may seek divorce on the basis that her husband treats her with cruelty which include the following treatment: (i) habitually assaults her or makes her life miserable by cruelty of conduct; (ii) associates with women of ill repute or leads what, according to <i>Hukum Syarak</i>, is an infamous life; (iii) attempts to force her to lead an immoral life; (iv) disposes her property or prevents her from exercising her legal rights over it; (v) obstruct her in the observance of her religious obligations or practice; or (vi) if he has more wives than one, does not treat her equitably in accordance with <i>Hukum Syarak</i>.<sup>108</sup></p> <p>A wife may seek redemptive divorce (<i>ceras tebus talāq</i> or <i>khul'</i>), whereby she is granted 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</p>	<p>appeal court allowed her appeal and permitted the divorce by way of <i>ta'liq</i>.</p>			
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<sup>108</sup> Section 52 (h) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

	<p><i>Hukum Syarak</i>, having regard to the status and financial means of the spouses. Once the amount of compensation has been fixed and the husband still refuses to the divorce, the couple will have to undergo a reconciliation process in accordance with Section 47 of IFLA. If the husband still refuses to the divorce, the couple will then undergo an arbitration process pursuant to Section 48 of IFLA. It is only after the conclusion of the arbitration process will the wife be granted a divorce.<sup>109</sup></p> <p>The mandatory registration of a divorce is provided for in Section 54 of IFLA.<sup>110</sup></p>				
	<b>Legislative Framework</b>	<b>Case Law</b>	<b>Policy</b>	<b>Procedure</b>	<b>Practice</b>
<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</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) accomodation; (iii) a consolatory gift (<i>mut'ah</i>); and (iv) a share of the matrimonial assets</p>	<p>The amount of maintenance and compensation differs from case-to-case; it depends on the financial situation</p>	<p>The Government of Malaysia in its 2004 report to the CEDAW Committee explained that a divorced Muslim woman may be entitled to:<sup>130</sup></p>		<p>According to information on the ground:<sup>133</sup></p> <ul style="list-style-type: none"> <li>• Much still needs to be done to increase the</li> </ul>

<sup>109</sup> Sections 47, 48, 49 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>110</sup> Section 55 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>130</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), paras. 431-435, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>133</sup> Information obtained from Malaysian Advocate, February 2017

<p>woman's role as wife and mother recognised as contribution to the acquisition of assets? 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?</p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p>(<i>harta sepencarian</i>).</p> <p>Under IFLA, a woman may be entitled to financial maintenance during the waiting period after the divorce (<i>iddah</i>) unless she has been deemed disobedient (<i>nusyuz</i>). The maintenance amount is dependent on the means and needs of the parties. The <i>iddah</i> period is generally three months.<sup>116</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>117</sup></p> <p>Section 71 of IFLA stipulates that a divorced woman is entitled to stay in the home where she used</p>	<p>of the family.<sup>125</sup></p> <p>In <i>Noor Bee v Ahmad Sanusi</i>,<sup>126</sup> the court took into consideration the wife's sacrifices during the marriage and granted her <i>mut'ah</i> compensation.</p> <p>In <i>Rokiah v Mohamed Idris</i>,<sup>127</sup> the former wife claimed for a piece of land in Kuala Lumpur, shares and money in banks as <i>harta sepencarian</i> from her husband.</p>	<ul style="list-style-type: none"> <li>• Reasonable maintenance from her former husband during the <i>iddah</i> period (approximately a period of three months.);</li> <li>• <i>Mut'ah</i> or conciliatory gift if the woman has been divorced without just cause by her husband. <i>Mut'ah</i> is payable by the former husband in order to console the former wife and to remove any appearance of accusation or shame that may arise from the divorce. It is also to enable her to face the financial difficulties caused by separation from her former</li> </ul>		<p>awareness of women on their financial rights after divorce; 31% of clients of Sisters-In-Islam's legal helpline, <i>Telenisa</i>, seek information on issues related to maintenance for wife and children;</p> <ul style="list-style-type: none"> <li>• In light of the rising cost of living in Malaysia,<sup>134</sup> court-ordered maintenance for children while under the custody of the mother are usually inadequate or inconsistent. In certain cases,</li> </ul>
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<sup>116</sup> Sections 59(1), 61, 65(1) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf); Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), para. 431, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>117</sup> Section 65 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>125</sup> Information obtained from Malaysian Advocate, February 2017

<sup>126</sup> [1978] 1 JH (2) 63

<sup>127</sup> Aida Othman, "Shari'ah Matrimonial Rights in Malaysia", ZICO, PowerPoint Presentation

<sup>134</sup> Bernama, "Rising cost of living a major concern for Malaysians, *New Straits Times*, 18 October 2016, <http://www.nst.com.my/news/2016/10/181174/rising-cost-living-major-concern-malaysians>

	<p>to live when she was married, for so long as the husband is not able to get other suitable accommodation for her. This right will cease if any of the circumstances under sub-clause (2) is triggered.</p> <p>They are:</p> <p>(a) if the period of <i>'iddah</i> has expired; or</p> <p>(b) if the period of guardianship of the children has expired; or</p> <p>(c) if the woman has remarried; or</p> <p>(d) if the woman has been guilty of open lewdness (<i>fahisyah</i>);</p> <p>Then, the husband may make an application to court for a return of the home to him.</p> <p>Section 56 of IFLA provides that upon divorce, in addition to maintenance a woman who has been divorced without just cause by her husband may apply to the court for a consolatory gift (<i>mut'ah</i>). The amount of <i>mut'ah</i> compensation is dependent on</p>	<p>The court took into account the indirect contribution of the wife in looking after the household, the husband and the children for the period of over 35 years of the marriage. She was granted one-third of the properties.</p> <p>In <i>Hanipah binti Mohd Nor lwn. Baharom bin Aman @Abd Rahman</i>,<sup>128</sup> the woman and man had married in 1969 and divorced in 2003. The former wife claimed half share of two pieces of land (one of which houses the matrimonial</p>	<p>husband. The amount of <i>mut'ah</i> is normally agreed upon by both parties but where no agreement can be reached, it will be fixed by the judge. In doing so, the judge will consider the financial position and circumstances of the former wife as well as the family's financial and social standing; and</p> <ul style="list-style-type: none"> <li>• <i>Harta sepencarian</i>, which means property jointly acquired by both husband and wife during the subsistence of marriage. The distribution of property among Muslims in Malaysia is strongly influenced by the Malay customs. As such, a woman's contribution in the form of money or in kind will be recognised as a basis for her claim</li> </ul>		<p>child maintenance may be as low as 200 Malaysian ringgit per month per child.<sup>135</sup></p>
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<sup>128</sup> Aida Othman, "Shari'ah Matrimonial Rights in Malaysia", ZICO, PowerPoint Presentation

<sup>135</sup> Information obtained from Malaysian advocate, February 2017



	<p>what the court considers fair and just in accordance with <i>Hukum Syarak</i>.<sup>118</sup></p> <p>A married woman retains her rights to her dowry or gifts on the dissolution of her marriage, pursuant to Section 57 of IFLA.</p> <p>Section 122 of IFLA mandates the <i>Shari'ah</i> Court, after granting a divorce, to order any assets 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>119</sup></p> <p>Where the assets were acquired by the joint efforts of the parties, in accordance with Section 122(2), 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</p>	<p>home) as <i>harta sepencarian</i>. The court divided the lands together with the house equally between the former spouses. The court considered that the assets were acquired jointly between both of them during their participation in a government-led land development scheme upon finding that the former wife had developed the lands together with her former husband and their children.</p> <p>In <i>Mohd Najib bin Md Nasir v Mastura bt</i></p>	<p>towards the jointly acquired property.</p> <p>In addition, the Malaysian government explained that:<sup>131</sup></p> <ul style="list-style-type: none"> <li>• In case of divorce or the death of the husband, the wife may claim a third of the value of the land acquired during the marriage. A former wife's right to claim her share of land stands even if it is proved that she was divorced for adultery. The court may increase a former wife's share of land to one-half, depending upon the nature of the work done by her on the property;</li> <li>• Under <i>Shari'ah</i>, the man is required to pay maintenance for his children during</li> </ul>		
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<sup>118</sup> Section 56 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>119</sup> Section 122 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>131</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), paras. 436, 447, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>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 should be inclined to order equal division of the assets.<sup>120</sup></p> <p>Where the assets were acquired by the sole efforts of one party to the marriage, in accordance with Section 122(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 caring for the family; (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 deems reasonable, but in any case the party by whose efforts the assets were acquired must receive a greater proportion of the assets.<sup>121</sup></p>	<p><i>Ahmad</i>,<sup>129</sup> the woman and man had married in 1981 and divorced in 2007. The former wife filed an application for <i>harta sepencarian</i> on a double story house. She pleaded for an order that the property be divided 40% for herself and 60% for her former husband and an enforcement of the order via sale. The lower court ordered the division of 40% of the house in favour of the former wife. In his appeal, the former husband claimed that the</p>	<p>marriage an after divorce irrespective of whether the child is in: (i) his custody; (ii) the custody of other person including the mother and her relations; or (iii) under the guardianship of other person.</p> <p>The Government of Malaysia in its 2016 report to the CEDAW Committee informed that Section 73 of IFLA was amended to obligate a man to pay maintenance for the benefit of any child of his in the event that he enters into another marriage.<sup>132</sup></p>		
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<sup>120</sup> Section 122(2) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>121</sup> Section 122(4) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>129</sup> Aida Othman, "Shari'ah Matrimonial Rights in Malaysia", ZICO, PowerPoint Presentation

<sup>132</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/3-5 (2016), para. 186, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>Section 122(5) of IFLA 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>122</sup></p> <p>Where matrimonial proceeding, including any proceeding relating to division of matrimonial assets, is pending, Section 107A of IFLA mandates the court to make an order prohibiting the wife or husband, as the case may be, from disposing any assets acquired by them jointly or solely, during their marriage if the court is satisfied it is necessary to do so.<sup>123</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</p>	<p>lower court had erred in its decision on the basis that the former wife had failed to prove the extent of her contribution; in fact, his former wife had herself admitted that she was a full-time housewife and her contribution in the acquisition of the house was from the maintenance she received from the former husband. The appeal court rejected the former husband's appeal, holding that the 40% rate decided by the trial judge was reasonable taking into account the former wife's direct and</p>			
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<sup>122</sup> Section 122(5) of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>123</sup> Section 107A of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

	<p>them to pursue further or higher education or training.<sup>124</sup></p>	<p>indirect contribution i.e. she had taken good care of the family's affairs for 26 years enabling her husband to focus on his work and earn more salary in order to maintain their family. The appeal court upheld the decision of the trial judge despite earlier cases which had awarded one-third of the <i>harta sepencarian</i> to a wife when her contribution toward the acquisition of the property was indirect.</p>			
	<b>Legislative Framework</b>	<b>Case Law</b>	<b>Policy</b>	<b>Procedure</b>	<b>Practice</b>

<sup>124</sup> Sections 72-80 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<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 Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>A mother has priority right over the custody of her children (followed by the children's maternal grandmother, father, paternal grandmother, etc.) until her daughter reaches nine and her son reaches seven; although the court may allow the mother to have custody of her daughter until she reaches 11 and her son until he reaches nine. Thereafter, the father has custody of the children, though a child who has reached the age of discernment (<i>mumaiyiz</i>) may choose to live with either parent unless the court orders otherwise.<sup>136</sup></p> <p>Despite a mother's priority over the custody of her children, courts have to decide custody 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>137</sup></p>	<p>In <i>Maimunah bte Hamzah v Mohammad bin Embong</i><sup>144</sup> [2005] 4 SHLR 122, the Court held for the custody of Mohd Hafiz bin Mohammad, the Court ruled that the custody belongs to the plaintiff (mother), by his own choice of living. While, the custody of Nur Maisarah bte Mohammad belongs to the plaintiff (mother), according to <i>Hukum Syara'</i> and the law itself. Additionally, the defendant (father) is allowed for</p>	<p>The Government of Malaysia in its 2004 report to the CEDAW Committee explained that Muslims view the mother as the person best entitled to the custody of children of up to seven years of age. The mother and her relations have exclusive custody of illegitimate children. The father may also apply to the <i>Shari'ah</i> Court for the custody of the children and the court will generally consider the welfare of the child as the paramount consideration before deciding on the issue of custody.<sup>146</sup></p>		
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<sup>136</sup> Sections 81, 84 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>137</sup> Section 86 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>144</sup> Aida Othman, "Shari'ah Matrimonial Rights in Malaysia", ZICO, PowerPoint Presentation

<sup>146</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), para. 443, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>Section 83 of IFLA mandates that a mother can lose custody of her child if she: (i) marries a man who is not closely related to her children and the marriage would affect the welfare of the child but custody would revert back to the mother if the marriage is dissolved; (ii) is grossly and openly immoral; (iii) changes her place of residence (with the exception of the mother's birth place) in order to prevent the father from exercising the necessary supervision over the child; (iv) renounces Islam; or (v) neglects or abuses the child.<sup>138</sup></p> <p>In Practice Direction No. 15/2007,<sup>139</sup> it provides if a father or any other man obtains the custody of his children, he can lose his right if:</p> <p>i) he misbehaves in an outrageous and open manner ; ii) he apostates; iii) he excludes or abuses the child; iv) he becomes unsound of mind;</p>	<p>visitation or to take for outings one or both the children from the plaintiff's custody at any convenient time according to <i>Hukum Syara'</i> provided that it will not bring any physical, mental and to the children's education, any harm and the notice must be given to the plaintiff prior to the visitation.</p> <p>In another case that concerned one parent converted to Islam and unilaterally converted their three children too without consent of the other</p>			
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<sup>138</sup> Section 83 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>139</sup> Practice Direction No. 15/2007, "Grounds Disqualifying Custody Rights of a Father or the Male relatives", (Original text in Bahasa Malaysia), <http://www.esyariah.gov.my/portal/page/portal/BI2007AA/Practice%20Direction%20-%20No%2015%20Year%202007>

	<p>v) he has leprosy, vitiligo or other infectious disease that harms the child.</p> <p>While a mother’s loss of custody is qualified by the legislation, a father’s loss of custody lies within a practice direction. The former carries legal status, while the latter functions to facilitate procedures or policies to streamline administration and judicial management across all <i>Shari’ah</i> Courts in Malaysia.</p> <p>The Director General of the Department of <i>Shari’ah</i> Judiciary Malaysia (JKSM) or the Chief <i>Shari’ah</i> Judge issues Practice Directions. It must be observed and adhered to even if it lacks legal standing. While it may be argued that compliance with PD is mandatory, it has no legal effect if not followed.<sup>140</sup></p> <p>A court is mandated to grant the custodian the right to decide all</p>	<p>parent, it was decided unanimously by the Federal Court in 2018</p> <p>ruled that the unilateral conversion of the three children was null and void, holding that the consent of both parents was needed to convert a minor.<sup>145</sup> Additionally, the right forum to determine the issue of custody lies with the Civil Court, not the <i>Shari’ah</i> Court.</p>			
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<sup>140</sup> “Practice Direction of the Department of Shariah Judiciary Malaysia in Shariah Court: A Literature Review”, *Mazni Abdul Wahab*, Journal of Shariah Law Research (2016) vol. 1 (2) 175-186

<sup>145</sup> Press Release | Respect Separation of Powers — Enforce Pronouncement of the Federal Court in the Indira Gandhi Case Without Delay, Feb 2020, <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-release-respect-separation-of-powers-enforce-pronouncement-of-the-federal-court-in-t-he-indira-gandhi-case-without-delay>

	<p>questions relating to the 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 non-custodian parent to have access to the child at such times and such frequency as the court thinks reasonable; (iv) provision for the child to visit the non-custodian parent or any other member of the family as the court considers reasonable; or (v) prohibition of the custodian to take the child outside Malaysia.<sup>141</sup></p> <p>Custody and maintenance of a child born out of wedlock is conferred exclusively upon a mother and her relations.<sup>142</sup></p> <p>In a case where one of the parents converted to Islam, the non-muslim parent will not be</p>				
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<sup>141</sup> Section 87 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>142</sup> Section 80 and 85 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)



	granted custody pursuant to Section 82(a) of the IFLA. <sup>143</sup>				
	<b>Legislative Framework</b>	<b>Case Law</b>	<b>Policy</b>	<b>Procedure</b>	<b>Practice</b>
<p><b>Guardianship of Children</b></p> <p><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></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>A father has priority right over the guardianship of his children followed by the paternal grandfather, the executor of the father's will, the father's executor's executor; the paternal grandfather's executor, and the paternal grandfather's executor's executors.<sup>147</sup></p> <p>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 cases, the court may also appoint a joint guardian.<sup>148</sup></p>		<p>Pursuant to the 1999 Amendment to the Guardianship of Infants Act (GIA) 1961,<sup>149</sup> both father and mother are of the equal standing of parental rights, including renewal and/or application of children's passports.</p> <p>Passport application forms<sup>150</sup> allow either the mother, father or guardian to sign the form when applying for a child's passport.<sup>151 152</sup></p>		

<sup>143</sup> Section 82. Qualifications necessary for custody, of the IFLA of the Islamic Family Law (Federal Territories) Act (1984), [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_act\\_lib.nsf/b3ac9c218c8efdc4482568310022d8b3/05912ad9925f449d482569810025f14e?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_act_lib.nsf/b3ac9c218c8efdc4482568310022d8b3/05912ad9925f449d482569810025f14e?OpenDocument)

<sup>147</sup> Section 88 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>148</sup> Sections 90, 92 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>149</sup> Section 5. Equality of Parental Rights of the Guardianship of Infants Act 1961, <https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20351.pdf>

<sup>150</sup> "Borang Pengesahan Izin Bapa atau Penjaga Yang Sah" (Translated as: Parent or Legal Guardian Consent Confirmation Form) <https://www.imi.gov.my/portal2017/images/borang/Pasport/Borang%20Pengesahan%20Izin%20Bapa%20Penjaga%20Yang%20Sah.pdf> (Form is in Bahasa Malaysia)

<sup>151</sup> Information obtained from Malaysian advocate, March 2017

<sup>152</sup> Official Portal of Malaysian Immigration Department, Ministry of Home Affairs, <https://www2.imi.gov.my/index.php/en/main-services/passport/malaysian-international-passport/>

<p><b>Family Planning (Ireeny)</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 Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>Abortion is strictly prohibited by law, except when it is necessary to save the pregnant woman's life or prevent a significant risk to her physical or mental health. The approval of two government medical specialists is required before the abortion can be carried out.<sup>153</sup> The current lack of clarity in Malaysia's abortion laws, and its restrictive nature and disregard of mental and psychological stress deprives women their right to autonomy.</p>		<p>The Government of Malaysia in its 2016 report to the CEDAW Committee informed that steps are being taken to address the stagnant use of contraceptives in recent years which among others include the training of health-care providers and introducing effective family planning among high risk mothers.<sup>154</sup></p>	<p>A wife needs the consent of her husband where the medical treatment involves her reproductive system e.g. use of IUD, etc.<sup>155</sup></p> <p>In 2012, Ministry of Health Malaysia issued Guidelines On Termination Of Pregnancy (Top) For Hospitals In The Ministry Of Health<sup>156</sup> which states a written consent should be from the woman herself. However for Muslim couples, consent from the husband is also necessary as per Fatwa. A married non Muslim woman</p>	<p>In 2020, Dr. SP Choong, founder member and hotline coordinator of Reproductive Rights Advocacy Alliance Malaysia (RRAAM), reports that lockdown restrictions in Malaysia have already resulted in an increasing number of unwanted pregnancies, as the number of callers to RRAAM's abortion hotline increased in May 2020. The average 300 calls per month saw an increase of 20 per cent in May 2020 after almost six weeks of the Movement Control Order (MCO) implementation</p>
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<sup>153</sup> Sections 312-318 of the Penal Code (1976), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61339/117909/F-833274986/MYS61339%202018.pdf>; Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), para. 252, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>154</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/3-5 (2016), para. 213, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>155</sup> Information obtained from Malaysian Advocate, May 2017

<sup>156</sup> Guidelines On Termination Of Pregnancy (Top) For Hospitals In The Ministry Of Health, 2012  
<https://www.moh.gov.my/moh/images/gallery/GarisPanduan/Guideline%20On%20TOP%20for%20Hospitals%20in%20MOH.pdf>

				<p>should also be encouraged to discuss the termination of pregnancy with her husband.</p>	<p>during the Covid-19 outbreak.<sup>157</sup></p> <p>The Federation of Reproductive Health Associations Malaysia (FRHAM) has estimated that there are about 90,000 abortions performed annually in Malaysia.<sup>158</sup></p> <p>The Reproductive Rights Advocacy Alliance Malaysia (RRAAM) reports that there are an estimated 240 clinics nationwide offering abortion services, but not all have been vetted for quality of care or safety.<sup>159</sup></p> <p>According to World Bank data, the total</p>
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<sup>157</sup> As Unwanted Pregnancies Rise, MOH Told To Provide Medical Abortion, 30th June 2020  
<https://codeblue.galencentre.org/2020/06/30/as-unwanted-pregnancies-rise-moh-told-to-provide-medical-abortion/>

<sup>158</sup> Federation of Reproductive Health Associations Malaysia (FRHAM) (2015) Country Profile. On universal access to sexual and reproductive rights – Malaysia, p.4

<sup>159</sup> The law, trials and imprisonment for abortion in Malaysia, July 2018,  
<https://www.safeabortionwomensright.org/wp-content/uploads/2018/07/The-law-trials-and-imprisonment-for-abortion-in-Malaysia-July-2018.pdf>

				<p>fertility rate decreased from 6.2 children per woman in 1960 to 1.9 in 2015.<sup>160</sup></p> <p>According to the UN Population Division's 2015 Trends in Contraceptive Use Worldwide:<sup>161</sup></p> <ul style="list-style-type: none"> <li>• 57% of married women aged 15-49 are using a method of contraception, with 42% of women using a modern method;</li> <li>• 15% of married women aged 15-49 have an unmet need for family planning services; and</li> <li>• 58% of marriage women aged 15-49 had their</li> </ul>
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<sup>160</sup> The World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

<sup>161</sup> United Nations Population Division, "Trends in Contraceptive Use Worldwide 2015", Annex Table 1, pp. 36-42, <http://www.un.org/en/development/desa/population/publications/pdf/family/trendsContraceptiveUse2015Report.pdf>

					<p>demands for family planning satisfied by modern methods of contraception.</p> <p>There is an ongoing debate on the acceptability of family planning among Muslims. Conservative Muslim groups oppose the practice on the grounds that it is against Islam while moderate Muslim voices offer the view that family planning is a decision to be taken responsibly and after due consideration of all circumstances.<sup>162</sup></p>
<p><b>Personal rights of spouses (Ireeny)</b> <i>Does a woman need the consent</i></p>	<p>Article 5 of the Constitution prohibits the deprivation of a person's life or personal liberty.<sup>163</sup></p>		<p>The Government of Malaysia in its 2004 report to the CEDAW</p>	<p>Married women in Malaysia retain their maiden</p>	<p>According to World Bank data, female labour force</p>

<sup>162</sup> Aedi Asri, "Nothing wrong with family planning, experts tell Muslims", *FMT*, 16 December 2016, <http://www.freemalaysiatoday.com/category/nation/2016/12/16/nothing-wrong-with-family-planning-expert-tells-muslims/>

<sup>163</sup> Article 5 of Malaysia's Constitution (1957), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20\(Reprint%202020\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20(Reprint%202020).pdf)

<p><i>of her spouse or guardian to work, choose a profession, leave the 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 Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>Article 9 of the Constitution guarantees the freedom of movement and residence of every Malaysian within Malaysia.<sup>164</sup></p> <p>Despite the constitutional provisions stating otherwise, IFLA potentially restricts the personal rights of a Muslim wife as a result of its maintenance-for-obedience legal framework. For instance, a wife risks losing her financial maintenance if she:<sup>165</sup></p> <ul style="list-style-type: none"> <li>• Fails to ensure that her husband's conjugal rights are met;</li> <li>• Leaves the marital home against the husband's wishes;</li> <li>• Refuses to move with the husband to another home or place in accordance with his wishes.</li> </ul>		<p>Committee explained that Malaysia has a reservation to Article 16(1)(g) because the concept of husbands and wives having same personal rights is incompatible with <i>Shari'ah</i>.<sup>167</sup></p>	<p>names.<sup>168</sup></p>	<p>participation increased from 43% in 1990 to 49% in 2016.<sup>169</sup> During the same period, male labour force participation decreased from 80% to 78%.<sup>170</sup></p> <p>According to the 2016 UNDP Human Development Report:<sup>171</sup></p> <ul style="list-style-type: none"> <li>• 75% of women over 25 have at least some secondary education as compared to 79% of men of the same age group;</li> <li>• 99% of females aged 15-24 are able to read and</li> </ul>
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<sup>164</sup> Article 9 of Malaysia's Constitution (1957), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20\(Reprint%202020\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20(Reprint%202020).pdf)

<sup>165</sup> Section 59 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>167</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), paras. 414-415, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>168</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), para. 414, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>169</sup> The World Bank, "Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)",

<http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

<sup>170</sup> The World Bank, "Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)",

<http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

<sup>171</sup> UNDP, "Human Development Report 2016", Tables 5, 9, 14, pp. 214-217, 230-233, 250-253, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)

	In addition, a wife who willfully disobeys an order of her husband may be fined up to 100 Malaysian ringgit for her first offence and up to 500 Malaysian ringgit for her second and subsequent offence. <sup>166</sup>				<p>write a short simple sentence as compared to 98% of males in the same age group; and</p> <ul style="list-style-type: none"> <li>62% of women are satisfied with their freedom of choice as compared to 71% of men.</li> </ul> <p>According to information on the ground, there are cases of husbands who claim that their wives are disobedient (<i>nusyuz</i>) for continuing to work or study, even though previously they have allowed their wives to undertake such activities.<sup>172</sup></p>
<b>Inheritance rights (Ireeny)</b>	Inheritance for Muslims in Malaysia are guided by the		The Government of Malaysia in its 2004	Division of the deceased's	

<sup>166</sup> Section 129 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>172</sup> Information obtained from Malaysian advocate, February 2017

<p><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 the death of their father?</i></p> <p><u>Applicable CEDAW Provision</u> Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>following laws and instruments;</p> <p>1) <i>Wasiat</i><sup>173</sup> or will - A <i>Wasiat</i> is a document or an instruction through oral or signage by a Muslim which allows him/her to bequeath one-third (1/3) of his/her properties to beneficiaries who are not rightful heirs. Aside from property, a testator may leave instructions to the wasi to do certain acts upon the testator's demise. A testator can make provisions to benefit their loved ones who do not fall within the category of Quranic Heirs and/or beneficiaries in Islam, for example, adopted children, child born out of wedlock, non-Muslim parents or any charitable body.</p> <p>2) <i>Hibah</i><sup>174</sup> or gift - Alternatively, he/she could</p>		<p>report to the CEDAW Committee explained that:<sup>177</sup></p> <ul style="list-style-type: none"> <li>• The Islamic system of succession and inheritance aims at a wide distribution of property. If a person is survived by parents, spouse and offspring they will all inherit, but they will get different proportions of the inheritance;</li> <li>• The general rule that the share of a man is double that of a woman in the same degree of relationship is based on the rationale that men have an obligation to provide for their families but women don't;</li> </ul>	<p>property can be changed in whatever manner if all heirs agree to such division.<sup>178</sup></p>	
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<sup>173</sup> Muslim Wills (Selangor) Enactment 1999

<sup>174</sup> Managing Family Institution, Managing Muslim Property, Managing Hibah, <https://www.malaysia.gov.my/portal/content/27730>

<sup>177</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/1-2 (2004), paras. 438-439, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>178</sup> Musawah, "Thematic Report on Article 16: Qatar", *Submission to the CEDAW Committee for the 57<sup>th</sup> Session*, 2014, p. 22, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT\\_CEDAW\\_NGO\\_QAT\\_16419\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT_CEDAW_NGO_QAT_16419_E.pdf)




	<p>have repurposed his properties to be given as a gift during his/her lifetime. Hibah is recognized by the Syariah Law in Malaysia, however it is not governed or regulated by the Syariah Law - no enactments or acts on Hibah. A Beneficiary of Hibah can be any person whether a Muslim or Non-Muslim, as long as the person is able to inherit the asset by bequest as an adult (<i>mukallaf</i>) or a minor. In other words once an asset is given by Settlor to the Beneficiary (ies), ownership and control over the asset is transferred to the beneficiary/ies. If the beneficiary/ies is not an adult or has a disability, a representative (Wali Mal) or trustee may be appointed to accept the asset on his/her behalf. The beneficiary/ies must accept the asset given and has the power to own it. In other words, the control and possession of</p>		<ul style="list-style-type: none"> <li>• The general principle of Islamic law on testacy is that testamentary disposition (e.g. a will) may not exceed one-third of the value of the estate of the deceased, in order to ensure fair distribution of property to all family members.</li> </ul>		
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	<p>the property must be given to the beneficiary/ies.</p> <p>3) Lastly and ultimately, any balance of inheritance by a muslim will follow the Faraid system, if the above (2) two instruments stated above does not exist, all inheritance will be distributed using the calculation of Faraid - an official application via the provisions of the law is to apply for the Faraid Certificate, the deceased's heirs must first fulfil certain obligations according to the Islamic law and execute them in sequence. These obligations include the burial management cost, settlement of debt, division of Husband-Wife Common Property, completion of will, and finally the distribution of estate to the entitled heirs. Matters such as pawning, sales claims, right restrictions of land interests and others must be solved before the</p>				
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	<p>distribution of estate is initiated. The Faraid Certificate<sup>175</sup> is an official declaration containing the description regarding the valuation of the deceased's inheritance and the entitled heirs who are Muslim as well as their entitled parts of the inheritance after the faraid calculations are verified and issued by the Syariah Court by the powers bestowed by the law. There are no substantive codified laws relating to Faraid. Inheritance rights and calculation under Faraid are based on <i>Shari'ah</i>.<sup>176</sup></p>				
	<b>Legislative Framework</b>	<b>Case Law</b>	<b>Policy</b>	<b>Procedure</b>	<b>Practice</b>
<b>Violence against women in the family</b>	The Domestic Violence Act (DVA) is an Act that provides protections in matters relating to domestic		The Government of Malaysia in its 2016 report to the CEDAW		According to the Women's Aid Organisation,

<sup>175</sup> Section 51 of Administration Of Islamic Law Enactment 1991  
[http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng\\_enactment\\_Ori\\_lib.nsf/100ae747c72508e748256faa00188094/7bc2adbdc545c945482576b3002dbf3d?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_enactment_Ori_lib.nsf/100ae747c72508e748256faa00188094/7bc2adbdc545c945482576b3002dbf3d?OpenDocument)

<sup>176</sup> Farid S. Shuaib, "The Islamic Legal System in Malaysia", (Pacific Rim Law & Policy Journal, 21:1, 2012), pp. 94-95,  
<https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1094/21PRPLJ085.pdf?sequence=1>

<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 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 Provision</u> GRs 12 &amp; 19 Para. 40 GR21</p>	<p>violence. This Act is applicable to all women regardless of their religion as it is a federal law.</p> <p>Section 2 defines “domestic violence” as including: (i) willfully or knowingly placing, or attempting to place, the victim in fear of physical injury; (ii) causing physical injury to the victim; (iii) compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from the which the victim has as a right to abstain; (iv) confining or detaining the victim against the victim’s will; (v) causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim; (iv) dishonestly misappropriating the victim’s property which causes the victim to suffer distress due to financial loss; (v) threatening the victim with intent to cause fear for his safety or his property, to fear for the safety of a third person, or to suffer distress; (vi) communicating with the victim, or about the victim to a third person, with intent to</p>		<p>Committee explained that the Domestic Violence Act was enacted to curb the use of violence as an instrument to settle domestic disputes and as a platform for the victims (spouse, former spouse, child, incapacitated adult or any member of the family) to seek protection and justice. The Act has been amended to protect victims not only from physical abuse but also from emotional, mental and psychological abuses.<sup>189</sup></p> <p>The Malaysian government also informed that:<sup>190</sup></p> <ul style="list-style-type: none"> <li>• The Penal Code was amended to increase the penalties for offences relating to rape and incest;</li> <li>• Although the term “marital rape” is not</li> </ul>		<p>statistics by the Malaysian police and the Ministry of Women, Family and Community Development show that in 2014 there were:<sup>194</sup></p> <ul style="list-style-type: none"> <li>• 4,807 reported cases of domestic violence (2013: 4,123);</li> <li>• 2,045 reported cases of rape (2013: 2,767); and</li> <li>• 328 reported cases of child abuse (2013: 295).</li> </ul> <p>A study on the practice of the female circumcision in Malaysia found that the practice is common among Muslims. The most</p>
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<sup>189</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/3-5 (2016), para. 23, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>190</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/3-5 (2016), paras. 8-15, 23, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>194</sup> “Police statistics on violence against women in Malaysia,” <https://wao.org.my/domestic-violence-statistics/>

	<p>insult modesty through any means, electronic or otherwise;<sup>179</sup> (vii) causing psychological abuse which includes emotional injury to the victim; (viii) causing the victim to suffer delusions by using any intoxicating substance or any other substance without the victim's consent or if the consent is given, the consent was unlawfully obtained.<sup>180</sup></p> <p>The DVA has to be read together with the Penal Code, in order for domestic violence acts to be recognised as a crime.<sup>181</sup> Sections 321 to 326A are outlined to capture the act of crime as per Section 2 of the DVA, whereby the perpetrator can be charged under.</p> <p>For instance, the Penal Code criminalises: (i) the voluntary causing of hurt through various means and under different circumstances, with Section 326A of the Penal Code providing for punishment that is twice as long</p>		<p>explicitly stipulated in Section 375A of the Penal Code, it is clear that the section intends to further strengthen the legal protection accorded to wives from being hurt by their husbands to have sexual intercourse; and</p> <ul style="list-style-type: none"> <li>• There are other existing provisions in the Penal Code which may be resorted to by wives to seek legal protection and justice. For instance, a husband may be charged for an offence of causing injury.</li> </ul> <p>In the government appearance before the CEDAW Committee in 2006, a Malaysian government representative stated that,</p>		<p>common reason for practicing circumcision was religious obligation (82%), hygiene (41%) and cultural practice (32%).<sup>195</sup></p>
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<sup>179</sup> Act A1538 Domestic Violence (Amendment) Act 2017, [https://lom.agc.gov.my/ilims/upload/portal/akta/outputaktap/20170921\\_A1538\\_BI\\_WJW009193%20BI.pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/outputaktap/20170921_A1538_BI_WJW009193%20BI.pdf)

<sup>180</sup> Section 2 of the Domestic Violence Act (1994), <https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20521%20-%20Domestic%20Violence%20Act%201994.pdf>

<sup>181</sup> "Laws related to Domestic Violence - Domestic Violence Act 1994", *Women Centre for Change, Penang*, <https://www.wccpenang.org/domestic-violence-laws-in-malaysia/>

<sup>195</sup> Maznah Dahlui, "The Practice of Female Circumcision in Malaysia", *KANITA USM*, 10 May 2012, <http://web.archive.org/web/20131004225752/http://spm.um.edu.my/news/20120503-female-circumcision-My-USM/index.php>

	<p>as what would otherwise be the maximum sentence where the victim is the perpetrator’s spouse; (ii) rape; (iii) the sexual connection with another person by the introduction of any object; (iii) gross indecency; and (iv) the utterance of any words or making of any sounds or gestures with the intent of outraging a person’s modesty.<sup>182</sup></p> <p>Protections for domestic violence survivors are provided for under the Domestic Violence Act (1994) (DVA).<sup>183</sup> The Act was amended in 2017<sup>184</sup> to inter alia, expand the definition of domestic violence, and an emergency protection order was included in addition to the other two existing protections for survivors. Consequently a victim of domestic violence is now able to apply for a temporary protection (Emergency Protection Order) from a Social Welfare officer which lapse within 7 days, without them having to lodge a police report or apply to court.</p>		<p>“the Parliamentary Select Committee had concluded that marital rape couldnot be made an offence, as that would be inconsistent with <i>Shari’ah</i> law. As a compromise, the Select Committee had proposed that hurting or threatening to hurt a wife in order to compel her to have relations would constitute an offence.”<sup>191</sup></p> <p>In terms of support services for a domestic violence survivor, there are several options<sup>192</sup> they can go to to seek help:</p> <p>i) “One Stop Crisis Centres” (OSCC) are located at emergency rooms of government hospitals. At the OSCC, doctors provide medical treatment for any injury</p>		
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<sup>182</sup> Section 323-331, 352(A), 375, 377CA, 509 of the Penal Code, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61339/117909/F-833274986/MYS61339%202018.pdf>

<sup>183</sup> Domestic Violence Act (1994) - as of 2012, <https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20521%20-%20Domestic%20Violence%20Act%201994.pdf>

<sup>184</sup> Act1538, Domestic Violence (Amendment) Act 2017, [https://lom.agc.gov.my/ilims/upload/portal/akta/outputaktap/20170921\\_A1538\\_BI\\_WJW009193%20BI.pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/outputaktap/20170921_A1538_BI_WJW009193%20BI.pdf)

<sup>191</sup> Committee on the Elimination of Discrimination against Women, Summary Record of the 731st Meeting held on 24 May 2006 at 3pm, para 54 (CEDAW/C/SR.732)

<sup>192</sup> Getting Help for Domestic Violence, *Women’s Aid Organisation*, <https://wao.org.my/getting-help-for-domestic-violence/>

	<p>Section 375 of the Penal Code generally exempts sexual intercourse by a man with his own wife from being a crime. However, it lifts the exemption under certain circumstances where the marriage has broken down e.g.: (i) where the wife has obtained an injunction restraining her husband from having sexual intercourse with her; or (iii) where the wife is living separately from her husband during the <i>iddah</i> period. In addition, Section 375A provides that any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person to have sexual intercourse with his wife shall be punished with imprisonment of up to five years.<sup>185</sup></p> <p>Despite the categorisation of sexual violence as domestic violence, the Penal Code does not recognise marital rape as an offence. As the definition of marital rape is based on potential or actual physical harm, rather</p>		<p>and also collect medical evidence, which can be used in court.</p> <p>A police report can be lodged at the hospital without having to commute to a police station.</p> <p>The OSCC can also help access police protection, shelter, legal advice, and counselling via the Medical Social Worker or Social Welfare Officer.</p> <p>Medical services at the OSCC are free for survivors of domestic violence and sexual violence.</p> <p>ii) Obtaining Emergency Protection Order from the Welfare Officer as a temporary measure to stop the perpetrator from committing acts of violence towards the</p>		
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<sup>185</sup> Section 375-375A of the Penal Code, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61339/117909/F-833274986/MYS61339%202018.pdf>

	<p>than the rape itself.<sup>186</sup></p> <p>Section 107 of IFLA empowers the <i>Shari'ah</i> court to order any person to refrain from forcing his or her society on his or her spouse or former spouse and from other acts of molestation, during the pendency of any matrimonial proceedings or on or after the grant of an order of divorce, fasakh, or annulment. A failure to comply with this order is punishable as a contempt of court.<sup>187</sup></p> <p>Section 127 of IFLA provides that a man who ill-treats his wife or cheats his wife of her property (or <i>vice versa</i>) commits an offence.<sup>188</sup></p>		<p>survivor.</p> <p>iii) Lodging a police report and applying for interim and permanent protection order.</p> <p>In 2009, the Fatwa Committee of Malaysia's National Council of Islamic Religious Affairs issued a religious ruling stating that female circumcision is obligatory for Muslims.<sup>193</sup></p>		
<p><b>Nationality rights</b></p> <p><i>Does a wife have the right to</i></p>	<p>A Malaysian man may pass his nationality to his non-Malaysian wife under Article 15 of the Constitution.<sup>196</sup> The Constitution</p>	<p>Timeline of events in the case of <b>Suriani Kempe &amp; Ors v</b></p>	<p>The Government of Malaysia in its 2016 report to the CEDAW</p>		

<sup>186</sup> The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia, 2019, p.110, *Women's Aid Organisation*, <https://wao.org.my/wp-content/uploads/2019/01/The-Status-of-Womens-Human-Rights-24-Years-of-CEDAW-in-Malaysia.pdf>

<sup>187</sup> Section 107 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>188</sup> Section 127 of the Islamic Family Law (Federal Territories) Act (1984), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>193</sup> Zofia Reych, "Malaysia: Female genital mutilation on the rise", ASEAN Today, 22 June 2016, <https://www.aseantoday.com/2016/06/malaysia-female-genital-mutilation/>

<sup>196</sup> Article 8 of Malaysia's Constitution (1957), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20\(Reprint%202020\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20(Reprint%202020).pdf)



<p><i>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 Provision</u> Article 9 Para. 6 GR21</p>	<p>does not specifically provide for a Malaysian wife to confer her nationality to her foreign husband. The foreign husband of a Malaysian woman may acquire Malaysian citizenship through naturalisation.<sup>197</sup></p> <p>A Malaysian father passes his citizenship to his children wherever they are born. A Malaysian mother passes her citizenship to her children born in Malaysia unless the child's non-Malaysian father is a diplomat or an enemy of the state. The law does not specifically provide for a Malaysian mother to confer her nationality to her children born outside of Malaysia. In this instance, a Malaysian mother may make an application in a prescribed manner for her minor child to be a Malaysian citizen.<sup>198</sup></p> <p>In 2020, a suit was filed against this unequal citizenship in <b>Suriani Kempe &amp; Ors v Malaysian Govt &amp; Ors</b></p>	<p><b>Malaysian Govt &amp; Ors</b>, an on-going case of Malaysian mothers fighting for equal rights to confer automatic citizenship on their overseas-born children are as follows;</p> <p><b>18 December 2020:</b> An Originating Summons for this suit has been filed with naming the Government of Malaysia, the Minister of Home Affairs and the Director General of the National Registration Department as the Defendant.</p>	<p>Committee explained that:<sup>199</sup></p> <ul style="list-style-type: none"> <li>• Women and men are accorded equal right to citizenship under the Constitution. Article 14(1)(b) and Part II of the Second Schedule of the Federal Constitution provide for citizenship by operation of law for every person born outside Malaysia whose father is at the time of the birth a citizen of Malaysia;</li> <li>• A Malaysian mother may apply for her child to be registered as a citizen under Article 15(2) of the Constitution. The Malaysian government has enhanced the implementation of Article 15(2) by way of an interim administrative</li> </ul>		
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<sup>197</sup> Article 19 of Malaysia's Constitution (1957), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20\(Reprint%202020\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20(Reprint%202020).pdf)

<sup>198</sup> Article 14, 15(2), Part II of the Second Schedule of Malaysia's Constitution (1957), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20\(Reprint%202020\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Federal%20Constitution%20(Reprint%202020).pdf)

<sup>199</sup> Malaysia State party report, U.N. Doc. CEDAW/C/MYS/3-5 (2016), paras. 69-70, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

		<p><b>22 January 2021:</b> The Government has filed an application to set aside this lawsuit on the grounds that it is something is an act that is “disgraceful, frivolous and inconvenient” and it is an “abuse of court process”. However, the High Court has decided not to allow Defendant's application on May 6, 2021 and ruled that this suit has merit to be heard.</p> <p><b>7 May 2021:</b> Following the High Court decision, the government has filed an appeal to the Court of Appeal</p>	<p>procedure that was implemented on 1 June 2010 and applies to children born overseas after 1 January 2010 to Malaysian mothers who are married to non-Malaysians. Applications can be made by the Malaysian mother at the respective Malaysian Consulate within a year from the date of the child's birth. This administrative procedure further reinforces equal rights of women in determining the citizenship status of children.</p>		
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		<p>against the decision.</p> <p>The same day, the government has also filed a suspension application execution in the High Court until the appeal against the application for setting aside the suit was decided by the Court of Appeal.</p> <p><b>19 August 2021:</b> The High Court decided to dismiss the application suspension of execution filed by the Government and set 24 August 2021 as the date of Plaintiff's suit hearing.</p> <p><b>20 August 2021:</b> The Court of Appeal</p>			
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		<p>dismissed the Government's appeal against the decision of the High Court not to allow this suit to be set aside. The Court of Appeal also ruled that there was merit in that suit filed by the Plaintiffs. Therefore the Court of Appeal states that the High Court has the power to hear Originating Summons filed by Plaintiffs.</p> <p><b>24 August 2021:</b> The High Court heard the Originating Summons that had been filed.</p> <p><b>9 September 2021:</b> The Kuala Lumpur High Court ruled that Article</p>			
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		<p>14 (1) (b) of the Federal Constitution together with the Second Schedule, Part II, Section 1 (b) shall be read in harmony with Article 8. Court High also decided that the word 'father' should be read with include 'mothers' and therefore children born abroad by a mother who has Malaysian citizenship is entitled and eligible to obtain citizenship status based on the implementation of the law.</p> <p><b>13 September 2021:</b> Upon filing an appeal against the 9 September KL High Court</p>			
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		<p>decision—that granted Malaysian mothers equal rights to confer automatic citizenship on their overseas-born children—the Government also filed a stay application at the High Court to stay the execution of the 9 September decision pending appeal.</p> <p><b>15 November 2021:</b> The KL High Court dismissed the Government’s stay application</p> <p><b>16 November 2021:</b> The Government applied for a stay at the Court of Appeal—hearing</p>			
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		<p>was fixed for 18 March 2022.</p> <p><b>17 November 2021:</b> The Government filed an interim stay to temporarily suspend the implementation of the High Court order pending the hearing of the mainstay application on 18 March 2022.</p> <p><b>6 December 2021:</b> The Court of Appeal made no order as to the interim stay by the Government and instead brought forward the 18 March 2022 stay application</p>			
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		<p>hearing to 22 December 2021.</p> <p><b>22 December 2021:</b> The Court of Appeal unanimously dismissed the Government's application for a stay of execution of the High Court decision on 9 September 2021.</p>			
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**ACCESS TO JUSTICE (please include sources to information as much as possible)**

SYSTEM	PROCEDURES	CHALLENGES FOR WOMEN	GOOD PRACTICES IN COURT SYSTEM
<p><i>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?)</i></p> <p>In Malaysia, the personal laws for Muslims (which includes matters like marriage, divorce, child custody etc) are governed by the Shari'ah laws, under the purview of each States, pursuant to the first paragraph of the State List (List II) of the 9th Schedule of the Malaysian Federal Constitution.</p> <p>The adjudication of any Shari'ah matters are determined by the Shari'ah Courts, pursuant to Article 121(1A).</p> <p>Meanwhile the Shari'ah Courts sentencing jurisdiction is provided for under the Shari'ah Courts (Criminal Jurisdiction) Act 1965, that includes fines, imprisonment and/or cane.</p>	<p><i>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?</i></p> <p>The Islamic Family Law (Federal Territories) Act was enacted in 1984<sup>212</sup> that stipulates the provisions in respect of marriage, divorce, maintenance, guardianship, and other matters connected with family life.</p> <p>Court procedures pertaining to family matters are largely governed by the <i>Shari'ah</i> Court Civil Procedure (Federal Territories) Act 1998. In addition to that, references must also be made to other relevant legislations such as the <i>Shari'ah</i> Court Evidence (Federal</p>	<p><i>What are some key challenges that Muslim women face in accessing justice on family law matters?</i></p> <p>(E.g. lack of accessibility, costly, bad procedures, delayed processes, gender insensitive judges, etc?)</p> <p><u>Inefficient management and hearing system during the pandemic (Early 2020)</u></p> <p>Throughout the pandemic, the Shariah courts were closed and only operated for emergency cases i.e; Domestic Violence. As the civil court adapts to the situation and holds hearings online, the Shariah courts still refuse to take this effort into consideration and remain closed. Hence, there are too many backlog cases and pending processes. Women were told to hold their filing or applications due to the backlog. Syariah Courts were in full operation again, in October 2021.</p>	<p><i>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?</i></p> <p>(E.g. prioritising certain types of cases, timely delivery of decisions, clear procedure, etc)</p> <p><u>Family Support Division (BSK) Support Services</u></p> <p>BSK<sup>237</sup> is a Division established under the Department of Syariah Judiciary Malaysia (JKSM) to enforce maintenance orders issued by the Syariah Court. BSK was established to ensure that maintenance orders issued by the Syariah Court are complied with and fulfilled by the former husband/father to the former wife/children.</p>

<sup>212</sup> Islamic Family Law (Federal Territories) Act 1984 (IFLA), [https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20\(11.3.2014\).pdf](https://lom.agc.gov.my/ilims/upload/portal/akta/LOM/EN/Act%20303%20(11.3.2014).pdf)

<sup>237</sup> Family Support Division Help Services, <https://www.malaysia.gov.my/portal/content/28866>

<p><i>How many courthouses/court rooms around the country that administer Muslim family law cases?</i></p> <p>3 level of courts;</p> <ol style="list-style-type: none"> <li>1) <i>Mahkamah Rendah Syariah</i> (MRS) - Lower court</li> <li>2) <i>Mahkamah Tinggi Syariah</i> (MTS) - High Court</li> <li>3) <i>Mahkamah Rayuan Syariah</i> (MRS) - Appeal Court</li> </ol> <p>Johor - 9 courthouses; 16 courtrooms Kedah - 11 courthouses; 17 courtrooms Kelantan - 10 courthouses; 17 courtrooms Melaka - 4 courthouses; 12 courtrooms Negeri Sembilan - 7 courthouses; 15 courtrooms Pahang - 13 courthouses; 20 courtrooms Perak - 16 courthouses; 43 courtrooms Perlis - 1 courthouse; 9 courtrooms Pulau Pinang - 6 courthouses; 15</p>	<p>Territories) Act 1997, or subsidiary legislations e.g.</p> <p>For Islamic Family Law matters, the relevant rules are:</p> <ol style="list-style-type: none"> <li>a) Islamic Family Law (Forms and Fees) Rules 1987<sup>213</sup></li> <li>b) Matrimonial Proceedings Rules 1987<sup>214</sup></li> </ol> <p>For Shari'ah Civil Procedure, the relevant rules are:</p> <ol style="list-style-type: none"> <li>a) Syariah Court Civil Procedure (Sulh) (Federal Territories) Rules 2004<sup>215</sup></li> <li>b) Syariah Court Civil Procedure (Fees) (Federal Territories) Rules 2011<sup>216</sup></li> <li>c) Syariah Court Civil Procedure (Costs And Allowances)</li> </ol>	<p><u>Access to representation</u></p> <p>Legal fees for syarie lawyers are expensive and are not regulated or uniform across all states. Alternatively, women resort to self-representation in court but would face difficulties in understanding the legal procedure and the legal substance - which cost them injustice in claiming their full rights in court.</p> <p>Where clients who are legally represented by syarie lawyers, wish to lodge complaints against the misconduct of their lawyers, they are not able to do so due to the lack of substantiated disciplinary mechanism within the <i>Shari'ah</i> legal system.</p>	
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<sup>213</sup> Islamic Family Law (Forms and Fees) Rules 1987,  
[http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_rules\\_Ori\\_lib.nsf/3b952b66bcd69acd48256c720009fcec/3d23d298d7127d8c48256cfe00292819?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_rules_Ori_lib.nsf/3b952b66bcd69acd48256c720009fcec/3d23d298d7127d8c48256cfe00292819?OpenDocument)

<sup>214</sup> Matrimonial Proceedings Rules 1987,  
[http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_rules\\_Ori\\_lib.nsf/3b952b66bcd69acd48256c720009fcec/8ce7174cc42c3cab48256d010011f71c?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_rules_Ori_lib.nsf/3b952b66bcd69acd48256c720009fcec/8ce7174cc42c3cab48256d010011f71c?OpenDocument)

<sup>215</sup> Syariah Court Civil Procedure (Sulh) (Federal Territories) Rules 2004,  
[http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_rules\\_Ori\\_lib.nsf/3b952b66bcd69acd48256c720009fcec/9d2a711f1684724b48257654001962ca?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_rules_Ori_lib.nsf/3b952b66bcd69acd48256c720009fcec/9d2a711f1684724b48257654001962ca?OpenDocument)

<sup>216</sup> Syariah Court Civil Procedure (Fees) (Federal Territories) Rules 2011,  
[http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_rules\\_Ori\\_lib.nsf/3b952b66bcd69acd48256c720009fcec/533271e0d9ace28948257aa1000b90f5?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_rules_Ori_lib.nsf/3b952b66bcd69acd48256c720009fcec/533271e0d9ace28948257aa1000b90f5?OpenDocument)

<p>courtrooms Sabah - 11 courthouses; 17 courtrooms Sarawak - 12 courthouses; 19 courtrooms Selangor - 12 courthouses; 22 courtrooms Terengganu - 7 courthouses; 15 courtrooms</p> <p>Federal Territories: Kuala Lumpur - 1 courthouse; 16 courtrooms Labuan - 1 courthouse; 5 courtrooms Putrajaya - 1 courthouse; 5 courtrooms</p> <p><i>If civil or Kadhi courts - what cases are handled by what courts?</i></p> <p>The <i>Shari'ah</i> high court's jurisdiction is</p>	<p>(Federal Territories) Rules 2011<sup>217</sup></p> <p>Further to that, practice directions can also be issued by the <i>Shari'ah</i> Chief Judge for the purpose of uniformity of legal procedures and administration of <i>Shari'ah</i> courts throughout Malaysia.</p> <p><i>In general practice do judges/Kadhis follow procedures?</i></p> <p>Judges<sup>218</sup> and Registrar<sup>219</sup> are bound by powers within the limits of the governing Act. Any transgression of their limits can</p>	<p>Comparatively, a Legal Profession Act 1976<sup>232</sup> consolidates the law relating to the legal profession that is applicable to all the practising civil lawyers. It also provides for the establishment of the Bar Council, the Disciplinary Board <i>etc</i> to govern professional etiquette, conduct and discipline of lawyers.</p> <p>To date, the Syarie Legal Profession (Federal Territories) Bill 2019<sup>233</sup> was passed in July 2019<sup>234</sup> awaiting the Royal assent before it will come into force. Part VIII of the Bill deals with professional practice, etiquette, conduct and discipline, whilst Part IX deals with disciplinary proceedings. The impending Act substantively mirrors the LPA 1976.</p> <p><u>Access to legal aids</u></p>	
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<sup>217</sup> Syariah Court Civil Procedure (Costs And Allowances) (Federal Territories) Rules 2011 , [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_rules\\_Ori\\_lib.nsf/3b952b66bcd69acd48256c720009fcec/c4ce44f20ba3dc6948257aa1000b9706?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_rules_Ori_lib.nsf/3b952b66bcd69acd48256c720009fcec/c4ce44f20ba3dc6948257aa1000b9706?OpenDocument)

<sup>218</sup> Section 209 of the Syariah Court Civil Procedure (Federal Territories) Act 1998, [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/7c41611ba3c0d75448256816000874b4?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/7c41611ba3c0d75448256816000874b4?OpenDocument)

<sup>219</sup> Section 208 of the Syariah Court Civil Procedure (Federal Territories) Act 1998, [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/d545f9a6ee4d64e548256816000874b3?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/d545f9a6ee4d64e548256816000874b3?OpenDocument)

<sup>232</sup> Legal Profession Act (1976), [https://www.malaysianbar.org.my/cms/upload\\_files/document/Legal%20Profession%20Act%201976%20as%20at%201%20August%202018%20\(English\).from%20AGC%20website.pdf](https://www.malaysianbar.org.my/cms/upload_files/document/Legal%20Profession%20Act%201976%20as%20at%201%20August%202018%20(English).from%20AGC%20website.pdf)

<sup>233</sup> Syarie Legal Profession (Federal Territories) Bill 2019, [https://www.cjlaw.com/files/bills/pdf/2019/MY\\_FS\\_BIL\\_2019\\_18.pdf](https://www.cjlaw.com/files/bills/pdf/2019/MY_FS_BIL_2019_18.pdf)

<sup>234</sup> "Senate approves Syarie Legal Profession (FT) Bill 2019", *The Malay Mail Online*, July 2019, <https://www.malaymail.com/news/malaysia/2019/07/31/senate-approves-syarie-legal-profession-ft-bill-2019/1776412>

<p>mandated in Section 46 (2)(b)<sup>200</sup> of the AILA to hear and determine civil matters in which all the parties are Muslims and which relate to -</p> <p>(i) betrothal, marriage, <i>ruju'</i>, divorce, nullity of marriage (<i>fasakh</i>) , <i>nusyuz</i>, or judicial separation (<i>faraq</i>) or other matters relating to the relationship between husband and wife;</p> <p>(ii) any disposition of, or claim to, property arising out of any of the matters set out in subparagraph (i);</p> <p>(iii) the maintenance of dependants, legitimacy, or guardianship or custody (<i>hadhanah</i>) of infants;</p> <p>(iv) the division of, or claims to, harta sepencarian;</p> <p>(v) wills or death-bed gifts (<i>marad-al-maut</i>) of a deceased Muslim;</p>	<p>be challenged via available mechanisms within the <i>Shari'ah</i> legal systems, such as through appeal process<sup>220</sup></p> <p>However, complaints of other court staff (counter/admin staff) overstepping their scope of duty have emerged - requesting unnecessary preliminary procedures, and bureaucracy.</p> <p><i>How much judicial discretion do judges/Kadhis have over marriage and family matters?</i></p> <p>The legal doctrine of <i>stare decisis</i> or binding precedent that is applicable at the civil courts in Malaysia is not followed by the <i>Shari'ah</i> courts. The doctrine of binding precedent means that decisions of the superior courts are binding upon the inferior courts in subsequent similar cases.</p>	<p>Subsidised and free, but only limited to those with earnings below RM50,000 per year<sup>235</sup>.</p> <p><u>Access to accurate information</u> As a result of inconsistent laws, procedures and processes in the <i>Shari'ah</i> legal system, it creates many gaps for the <i>Shari'ah</i> court clients.</p> <p>In accessing accurate information, clients are mostly at the losing end because of the outdated and the unavailability of a consolidated platform that carries accurate and updated information on the laws and its procedures. For instance, the online e-syariah official portal as the primary hub for all States <i>shari'ah</i> related was last updated in January 2019.<sup>236</sup> For instance, the Syarie Legal Profession (Federal Territories) Bill 2019 is not incorporated yet into the system. The effect is, a client researching their</p>	
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<sup>200</sup> Section 46 of Administration of Islamic Law (Federal Territories) Act 1993 (AILA), [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/bf22664def390b64c82568a200176e77?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/bf22664def390b64c82568a200176e77?OpenDocument)

<sup>220</sup> Section 210. Appeal against judgment, etc. of Registrar to Judge in Chambers of the Syariah Court Civil Procedure (Federal Territories) Act 1998, [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/453e2646c1fa55ef48256816000874b5?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/453e2646c1fa55ef48256816000874b5?OpenDocument)

<sup>235</sup> Eligibility of Applicant, Legal Aid Department Malaysia <https://www.jbg.gov.my/index.php/en/legal-aid/eligibility-of-the-applicant>

<sup>236</sup> E-Syariah Official Portal, <http://www.esyariah.gov.my/portal/page/portal/Portal%20E-Syariah%20BI/E-Syariah%20Main%20Portal>

<p>(vi) gifts inter vivos, or settlements made without adequate consideration in money or money's worth, by a Muslim;</p> <p>(vii) <i>wakaf</i> or <i>nazr</i>;</p> <p>(viii) division and inheritance of testate or intestate property;</p> <p>(ix) the determination of the persons entitled to share in the estate of a deceased Muslim or of the shares to which such persons are respectively entitled; or</p> <p>(x) other matters in respect of which jurisdiction is conferred by any written law.</p> <p>Meanwhile the <i>Shari'ah</i> lower court jurisdiction is established in Section 47<sup>201</sup> of the AILA.</p> <p>Section 47(2)(b) mandates its civil jurisdiction to hear and determine matters in which the amount or value of</p>	<p>By reason of Practice Direction No. 1/2002,<sup>221</sup> earlier judgments can be referred to if they involve similar laws and facts, and they do not conflict with Islamic law.</p> <p>The <i>Shari'ah</i> court judges therefore gain more independence and flexibility in deciding their cases on its own merit based on '<i>ijtihad</i>' (intellectual reasoning) of the two main sources, 'Al-Quran' and 'As Sunnah'.<sup>222</sup></p> <p>The Court generally has a wide discretion. By virtue of Section 244<sup>223</sup> of the Syariah Court Civil Procedure (Federal Territories) Act 1998, the Court has inherent power to make any orders in order to prevent injustice and to prevent abuse of Court process.</p>	<p>cases, could make reference to an outdated piece of legislation. Further, case law access is typically to the outdated ones. The way to circumvent these shortcomings is by going to the State's official Judiciary Department website for more reliable information.</p>	
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<sup>201</sup> Section 47 of the Administration of Islamic Law (Federal Territories) Act 1993 (AILA), [http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/eb4ccc0063a4de74c82568a200176e78?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/eb4ccc0063a4de74c82568a200176e78?OpenDocument)

<sup>221</sup> Practice Direction No. 1/2002, "Effect of Higher Court Decisions" (Original text in Bahasa Malaysia:), 2002, <http://bsktransit.iksm.gov.my/aa/uploads/012002.pdf>

<sup>222</sup> "Application of the Doctrine of Binding Precedent in Malaysia: A Re-Evaluation", Nasrul Hisyam Nor Muhamad, Mohd Khairy Kamarudin, Abdul Basit Samat@Darawi, Sulaiman Shakib Mohd Noor, Ahmad Muhyuddin Hassan & Aminuddin Ruskam, , Journal of Politics and Law; Vol. 13, No. 3; 2020

<sup>223</sup> Section 244. Inherent power of the Court of the Syariah Court Civil Procedure (Federal Territories) Act 1998, [http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/1298284552f15f4748256816000874d?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/1298284552f15f4748256816000874d?OpenDocument)

<p>the subject-matter in dispute does not exceed fifty thousand ringgit or is not capable of estimation in terms of money.</p> <p>Additionally, pursuant to the Practice Direction No. 2/2002,<sup>202</sup> effective from June 2002, all cases pertaining to custody, immovable matrimonial assets and ex-parte applications must commence at the <i>Shari'ah</i> High Court.</p> <p><i>How many Muslim family law-related judges? Are there women working within the court system as judges/marriage registrars e.t.c?</i></p> <p>As of 2019, there are 22 women syarie judges and 5 women registrar<sup>203</sup></p> <p><i>Do lawyers represent clients?</i></p>	<p>Specific for Islamic Family matters, many of the provisions within the IFLA confer discretion to the presiding judge to decide on matters such as, in several circumstances pertaining to marriage applications reference must be made to a <i>Shari'ah</i> judge;<sup>224</sup> permission to enter into polygamous marriage;<sup>225</sup> in the case of matrimonial assets division, pursuant to Section 58 of IFLA, a judge is empowered to order the assets division between the parties subject to considerations under the provision, depending upon acquiring of the assets either by joint effort or sole effort; in the case of maintenance of wife or children.</p>		
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<sup>202</sup> Practice Direction No. 2/2002, "Hadhanah, Matrimonial Assets, and Ex-parte Application - In the Syariah High Court" (Original text in Bahasa Malaysia), <http://bsktransit.jksm.gov.my/aa/uploads/022002.pdf>

<sup>203</sup> Malaysia *Shari'ah* Judiciary Department, "Peraturan Wanita Dalam Kehakiman Syariah bagi tahun 2019" (Translated to: Percentage of Women in the *Shari'ah* Judiciary for year 2019), [https://www.data.gov.my/data/en\\_US/dataset/peraturan-wanita-dalam-kehakiman-syariah/resource/ba7671f8-cea2-41fa-90ef-ccd56e1b270c](https://www.data.gov.my/data/en_US/dataset/peraturan-wanita-dalam-kehakiman-syariah/resource/ba7671f8-cea2-41fa-90ef-ccd56e1b270c)

<sup>224</sup> Section 18. Reference to an action by Syar'iah Judge of the Islamic Family Law (Federal Territories) Act 1984 (IFLA), [http://www2.esyariah.gov.my/esyariah/mal/porta1v1/enakmen2011/Eng\\_act\\_lib.nsf/b3ac9c218c8efdc4482568310022d8b3/fd1a0ae2a8bad796482569810025f10e?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/porta1v1/enakmen2011/Eng_act_lib.nsf/b3ac9c218c8efdc4482568310022d8b3/fd1a0ae2a8bad796482569810025f10e?OpenDocument)

<sup>225</sup> Section 23. Polygamy of the Islamic Family Law (Federal Territories) Act 1984 (IFLA), [http://www2.esyariah.gov.my/esyariah/mal/porta1v1/enakmen2011/Eng\\_act\\_lib.nsf/b3ac9c218c8efdc4482568310022d8b3/ab535f57be74f80e482569810025f113?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/porta1v1/enakmen2011/Eng_act_lib.nsf/b3ac9c218c8efdc4482568310022d8b3/ab535f57be74f80e482569810025f113?OpenDocument)

<p>Unlike the secular civil justice system, as <i>Shari'ah</i> matters fall within the purview of the State, a Syarie lawyer cannot practice across Malaysia, unless they are called to the Bar of all States in Malaysia. Therefore affairs of a Syarie lawyer are subjected to each of the State's Islamic Religious Council.</p> <p>Based on observations done on the ground, Syarie lawyers are most likely to take on cases under the Islamic Family Law rather than cases under the Syariah Criminal Law. Most Syarie lawyers refuse to become a defense lawyer for a person who has allegedly committed a syariah offence/s. Hence more often than not, a person charged for Syariah Criminal Offences will feel obligated to plead guilty to the charge/s without proceeding with trial or sometimes even be advised to plead guilty as it is a more 'convenient' and 'cheaper' option.</p> <p>Under the Malaysian <i>Shari'ah</i> justice system, legal representations can come from private lawyers, or State subsidised legal aids (Legal Aid Department), and</p>	<p>Further to that, Section 134(2)<sup>226</sup> of the IFLA states that the Court may adopt practice and procedure in matrimonial proceedings not expressly provided for in IFLA or in any rules made under IFLA or in the Administration Enactment, as may seem proper for the avoidance of injustice and the disposal of the matters in issue between the parties.</p> <p><i>Are there appeal processes?</i></p> <p>Section 48 of the Administration of Islamic Law (Federal Territories) Act 1993 (AILA) stipulates that the <i>Shari'ah</i> High Court shall have appeal jurisdiction from any decision of a <i>Shari'ah</i> Subordinate Court.<sup>227</sup> In a similar vein, Section 52 of AILA confers the Shari'ah Appeal Court jurisdiction to hear and determine any appeal against any decision made by</p>		
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<sup>226</sup> Section 134. Power to Make Rules of the Islamic Family Law (Federal Territories) Act 1984 (IFLA), [http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng\\_act\\_lib.nsf/b3ac9c218c8efdc4482568310022d8b3/6a048feccf6a3ba482569810025f182?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_act_lib.nsf/b3ac9c218c8efdc4482568310022d8b3/6a048feccf6a3ba482569810025f182?OpenDocument)

<sup>227</sup> Section 48 of Administration of Islamic Law (Federal Territories) Act 1993 (AILA), [http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/173be96a0a54cb54c82568a200176e79?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/173be96a0a54cb54c82568a200176e79?OpenDocument)

<p>the State's Bar Legal Aid Centres throughout Malaysia.<sup>204</sup></p> <p>The Legal Aid Department (LAD) is a federal agency under the Legal Affairs Division of the Prime Minister's Department. The governing Act is the Legal Aid Act 1971 (LAA). One of its functions is to provide legal representation for <i>Shari'ah</i> proceedings as per the Third Schedule of the 1971 Act.<sup>205</sup></p> <p>The areas in which the subsidised legal aid representation can be rendered by a <i>Shari'ah</i> lawyer in the <i>Shari'ah</i> court, are limited to proceedings:-</p> <ol style="list-style-type: none"> <li>relating to betrothal (damages), maintenance, custody, divorce, marital debt, <i>muta'ah</i> and matrimonial assets (<i>harta sepencarian</i>).</li> <li>relating to gifts inter vivos (hibah)</li> </ol>	<p>the <i>Shari'ah</i> High Court in the exercise of its original jurisdiction.<sup>228</sup></p> <p>The <i>Shari'ah</i> Courts in Malaysia therefore have 2-tier appeal processes, appeal from the subordinate court to the high court, and from the high court to the appeal court.</p> <p>Additionally, in the interest of justice, the High Court<sup>229</sup> and the Court of Appeal<sup>230</sup> are conferred with supervisory and revisionary power to call for and examine any lower Courts' records and give directions as justice may require, at any stage in any matter or proceedings.</p>		
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<sup>204</sup> All States Legal Aid Centres, <https://www.kllac.com/all-state-lacs/>

<sup>205</sup> Legal Aid (Amendment of the Third Schedule) Order 2011 (PUA 429), page 7, [https://www.jbg.gov.my/images/doc/Akta/PERINTAH\\_BANTUAN\\_GUAMAN\\_PINDAAN\\_JADUAL\\_KETIGA\\_2011.pdf](https://www.jbg.gov.my/images/doc/Akta/PERINTAH_BANTUAN_GUAMAN_PINDAAN_JADUAL_KETIGA_2011.pdf)

<sup>228</sup> Section 52 of Administration of Islamic Law (Federal Territories) Act 1993 (AILA), [http://www2.esyariah.gov.my/esyariah/mal/portals1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/b4ccab42bfcdba19c82568a200176e7d?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portals1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/b4ccab42bfcdba19c82568a200176e7d?OpenDocument)

<sup>229</sup> Section 51 of the Administration of Islamic Law (Federal Territories) Act 1993 (AILA), [http://www2.esyariah.gov.my/esyariah/mal/portals1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/42d97854424472e8c82568a200176e7c?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portals1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/42d97854424472e8c82568a200176e7c?OpenDocument)

<sup>230</sup> Section 53 of the Administration of Islamic Law (Federal Territories) Act 1993 (AILA), [http://www2.esyariah.gov.my/esyariah/mal/portals1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/1face49d13a3fd9ec82568a200176e7e?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portals1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/1face49d13a3fd9ec82568a200176e7e?OpenDocument)



<p>and will.</p> <p>A prospective applicant for the legal aid must satisfy the means test set under the Legal Aid (Criteria and Means Test) Regulations 2017.<sup>206</sup></p> <p>For legal aid assistance under the Malaysian Bar, their 2 programs are the Legal Aid Centre and the National Legal Aid Foundation (YBGK). The latter however only deals with criminal proceedings. For <i>Shari'ah</i> proceedings, the LAC of each States have varied approaches. For the Kuala Lumpur's State Bar, under their LAC program,<sup>207</sup> they only render legal advice for <i>Shari'ah</i> proceedings, on matters such as:</p> <ul style="list-style-type: none"> <li>● Application for divorce</li> <li>● <i>Fasakh</i> and other related matters</li> <li>● Proceeding for the Wife to Obey (<i>Kembali Taat</i>)</li> <li>● Divorce pronouncement</li> <li>● Maintenance</li> <li>● Matrimonial Property Claims</li> </ul> <p>Meanwhile, the Selangor Bar LAC<sup>208</sup> sets</p>	<p>The appeal procedures are governed by the <i>Shari'ah</i> Court Civil Procedure (Federal Territories) Act 1998.</p> <p>However Section 57 of the AILA empowers the <i>Shari'ah</i> Chief Judge to make rules on the procedure for appeals and applications for leave to appeal.<sup>231</sup></p>		
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<sup>206</sup> Section 4 of the Legal Aid (Criteria and Means Test) Regulations 2017, page 7, [https://www.jbg.gov.my/images/doc/Akta/Peraturan-Peraturan%20Bantuan%20Guaman%20\(Kriteria%20dan%20Ujian%20Kemampuan\)%202017.pdf](https://www.jbg.gov.my/images/doc/Akta/Peraturan-Peraturan%20Bantuan%20Guaman%20(Kriteria%20dan%20Ujian%20Kemampuan)%202017.pdf)

<sup>207</sup> Kuala Lumpur Bar Legal Aid Centre, Legal Aid Programs, <https://www.kllac.com/lac-program/>

<sup>208</sup> Selangor Bar Legal Aid Centre, [https://www.selangorbar.org/page\\_dtl.php?id=680](https://www.selangorbar.org/page_dtl.php?id=680)

<sup>231</sup> Section 57 of the Administration of Islamic Law (Federal Territories) Act 1993 (AILA), [http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/35077103a2c7b146c82568a200176e82?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/35077103a2c7b146c82568a200176e82?OpenDocument)

<p>out <i>Shari'ah</i> proceedings as one of their areas of assistance, and further monetary threshold is set out to be eligible for aid.</p> <p>Clients can alternatively represent themselves. Section 120(1) of the <i>Shari'ah</i> Court Civil Procedure (Federal Territories) Act 1998 provides that any party may appear in person or through his <i>Peguam Syarie</i>.<sup>209</sup></p> <p>The 1998 Act also recognises another category. A person can apply to Court to sue or defend as a poor person, under Section 31<sup>210</sup> of the <i>Syariah</i> Court Civil Procedure (Federal Territories) Act 1998 (SCCP). Further to that, Section 33<sup>211</sup> SCCP stipulates a poor person suing or defending under Section 31 is not liable to pay costs to any party or to receive from any other party any costs other than the actual expenses incurred in the course of the proceedings, unless with Court's instructions.</p>			
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<sup>209</sup> Section 120 of the *Syariah* Court Civil Procedure (Federal Territories) Act 1998, [http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/4aec49827c77ad254825681600087497?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/4aec49827c77ad254825681600087497?OpenDocument)

<sup>210</sup> Section 31 of the *Syariah* Court Civil Procedure (Federal Territories) Act 1998, [http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/424acbcf810097fd48256816000874f4?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/424acbcf810097fd48256816000874f4?OpenDocument)

<sup>211</sup> Section 33 of the *Syariah* Court Civil Procedure (Federal Territories) Act 1998, [http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng\\_act\\_lib.nsf/f0a1dd6010da414b48256815001bd4fc/0e703ae6068716a048256816000874f6?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_act_lib.nsf/f0a1dd6010da414b48256815001bd4fc/0e703ae6068716a048256816000874f6?OpenDocument)