

# THAILAND

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JOINT CEDAW SHADOW REPORT  
On

## SITUATION OF THE RIGHTS OF MALAY MUSLIM WOMEN IN SOUTHERN THAILAND

CEDAW/C/THA/Q/6-7

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TO UNITED NATIONS COMMITTEE ON ELIMINATION OF ALL FORMS OF  
DISCRIMINATION AGAINST WOMEN (CEDAW)

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*PATANI Working Group for Monitoring of International Mechanisms, Thailand*

The Working Group includes women's rights activists, individual rights advocates, lawyers, academics and researchers. This report was written with support from Musawah - the global movement for equality and justice in the Muslim Family.

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# PART 1

## INTRODUCTION

This is the CEDAW Committee's fourth engagement with Thailand, which acceded to the CEDAW Convention on 9 August 1985. The Government has gradually withdrawn a number of reservations that it had made at the time of accession: reservations to Article 11 (para. 1(b)) and Article 15 (para 3) were withdrawn on 25 January 1991; reservation to Article 9 (para 2) was withdrawn on 26 October 1992; and reservation to Article 16 was withdrawn on 18 July 2012. Currently, Thailand only retains a reservation to Article 29 (para. 1) of the Convention.<sup>1</sup>

Despite the State Party's noteworthy history of reservation withdrawal, particularly the reservation to Article 16, we remain concerned by its continued non-implementation of the Convention in areas concerning marriage and family relations, especially in the context of the Muslim population. This report takes a critical look at the use of religion, culture, and tradition (RCT) to justify discriminatory law and practice.

The purpose of the report is to present the situation on the rights of women in Deep South Thailand, their basic human rights and fundamental freedom especially in conflict affected areas. This report focuses on specific issues: marriage and family life, violence against women, maternal and child health, and women, peace and security.

In particular, this report examines Muslim family law and practices that enforce *de jure* and *de facto* discrimination against Muslim women in the following areas: *equal rights & responsibilities in marriage; early and child marriage; polygamy; access to divorce; and violence against women.*

It is anticipated that this report will create more awareness on issues affecting Muslim women, the gaps in government response, as well as to push for increasing participation of women in decision making processes and peace networks and in ensuring State accountability and commitment towards implementing CEDAW Convention.

This joint report was prepared by the PATANI Working Group for Monitoring of International Mechanisms, Thailand with the support of Musawah, the global movement for equality and justice in the Muslim family. It is based on primary information from testimonies, experiences and lived realities of women in the southernmost provinces of Thailand in Malay/Muslim-majority areas, where conflict and unrest have gone on for more than a decade. Several rounds of consultations were held among women groups, civil society organizations, women's rights leaders and academics in Southern Thailand. The endorsing organizations are;

- 1) Asian Muslim Action Network (AMAN), Thailand
- 2) Center for Conflict Studies and Cultural Diversity (CSCD), Prince of Songkla University, Pattani
- 3) Faculty of Communication Sciences, Prince of Songkla University, Pattani
- 4) Friends of Women Foundation (FOW), Pattani
- 5) Intellectual of Patani
- 6) Justice for Peace Foundation (JPF)

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<sup>1</sup> Thailand's Reservations to CEDAW, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en#EndDec)

- 7) Muslim Attorney Centre Foundation
- 8) Nusantara Foundation
- 9) Patani Institute
- 10) Patani Women Organization
- 11) School of Liberal Arts, Walailak University, Nakhon Si Thammarat
- 12) Southern Paralegal Advocacy Network
- 13) Southern Women's Peace Network to Stop Violence
- 14) WANITA Peace Network

## II. BACKGROUND

1. Muslims comprise 4.3% of the Thai population, as per latest Government statistics,<sup>2</sup> though other sources put the figure as high as 10%.<sup>3</sup> Over 80%<sup>4</sup> of the population in the southernmost provinces near the Malaysian border are Muslim.
2. A new era of violent conflict began in 2004 in the Malay-Muslim dominated provinces of Southern Border Provinces (SBPs) of Pattani, Yala, Narathiwat, and parts of Songkla. Violence in this area had resulted in death, physical injury, psychological trauma, increase in the number of orphans and widows, loss of income and livelihood as well as deprivation of rights. Civilians, mainly women and children have become the major victims of conflict. It has also affected their ability to access justice mechanisms. Studies show that women have faced various forms of gender discrimination and gender based violence. Particularly, Muslim women have experienced domestic violence and sexual violence by spouses.<sup>5</sup>
3. In the last decade, Thailand has taken commendable steps to advance the protection of women's human rights and access to justice through law reform such as the Gender Equality Act B.E. 2558 (2015) and Domestic Violence Victim Protection Act B.E. 2550 (2007). However significant problems persist, especially for Malay Muslim women in Southern Border Provinces (SBPs). Justice remains an illusive prospect.

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<sup>2</sup> <http://web.nso.go.th/en/survey/popchan/data/2015-2016-Executive%20Summary.pdf>

<sup>3</sup> U.S. Department of State, International Religious Freedom Report, 17 November 2010.

<sup>4</sup> Thailand Country Report submitted to the Committee on the Elimination of Racial Discrimination, 28 July 2011. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTHA%2f1-3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTHA%2f1-3&Lang=en)

<sup>5</sup> Kasetchai Laeheem and Kettawa Boonprakarn, "Family Background Risk Factors Associated with Domestic Violence among Married Thai Muslims Couples in Pattani Province", 11(9) *Asian Social Science*, 235 (2015), <http://www.ccsenet.org/journal/index.php/ass/article/view/47165/25503>. The study found 38.3 percent of Muslim couples in Pattani Province used domestic violence; Amporn Marddent, Manawat Promrat and Taweeluck Pollachom, *Development of Sustainable Community Extension Services for Women and Children Most-affected by the Unrest and Violence in the Deep South Thailand* (Assessment Report for Raks Thai Foundation and Friends of Women Foundation, funded by European Union, February, 2015). This study found domestic violence happening with women in three southern border provinces of Thailand in the forms of assault to death, assault to injure or disable, sexual harassment, intimidation and others; *Yearly report of Friends of Women Foundation in Narathiwat Province* (Research Monograph in Thai, 2016). It is found 85 cases of Muslim women who asked for assistance from local religious leaders.

4. There is a lack of coordination between stake holders and decision makers in government.<sup>6</sup> They fail to provide adequate support, protection and remedies to survivors of domestic violence, especially those who are reluctant to come forward because of fear of reprisals from abusers and lack of confidence in judicial protection and legal aid services. NGOs and Civil Society Organizations in the SBPs have initiated several projects and formed networks to provide support to women and children in these conflict areas. These include a training center for women and a legal service for those mentally, socially, or economically affected by violence.
5. These support services deal with a wide range of problems, especially domestic violence, sexual abuse, unwanted pregnancy, unjust and unequal treatment from the government, social welfare needs and children's scholarship. However, these services are unsustainable.<sup>7</sup> Women's groups and civil society organizations are constrained by limited financial resources.

## PART 2: CRITICAL ISSUES

### I. DISCRIMINATORY LAW AND PRACTICE

6. Even though Thailand signed the Convention to End All Forms of Discrimination Against Women (CEDAW) in 1995, the National Legislative Assembly (NLA) only enacted the Bill on Gender Equality on 9 January 2015. Still, the law poses many challenges and fails to provide genuine safeguards to ensure gender equality. For example, Section 17(2) of the Act allows gender based discrimination if it is done so for safety and wellbeing, if it serves religious principles or national security. Therefore, religion, national security or safety can be cited as grounds to permit gender-based discrimination in Thailand.
7. At present, in SBPs more than 70% of students in higher education institutions such as high school and University are women. Still, their opportunities to obtain a job are slim. Malay Muslim women often find themselves deprived of opportunities to develop and empower themselves. They are often blamed by their spouses or society for going outside the home to obtain training or attend seminars for empowerment.<sup>8</sup>

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<sup>6</sup> Discussions during workshop on "Strengthening Muslim Women in Southern Border Provinces of Thailand", under the *Project of Policy Recommendation and Law Reform for Accessing to Justice of Muslim Women in Southern Border Provinces of Thailand*, 6-8 May 2017, Pattani. The workshop was organized by The Subcommittee on Rights and Gender Equality, the Office of National Human Rights Commission of Thailand. It was attended by representatives from organizations in the public and private sectors, including Islamic organizations and female youth leaders, working in the field of promoting gender equality and women's access to justice. The workshop's aim was to share and review the lessons learned from organizations and groups working to promote gender equality and Muslim women's access to justice in Thailand under the Act of Implementation of Islamic laws in Pattani, Narathiwat, Yala and Satun Provinces B.E. 2489 (1946).

<sup>7</sup> *Ibid.*, 2015 (*Development of Sustainable Community Extension Services for Women and Children Most-affected by the Unrest and Violence in the Deep South Thailand*).

<sup>8</sup> *A report on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces*, the Senate Special Standing Committee on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces, March 2013, page 88.

## RECOMMENDATIONS TO STATE:

- ❖ The State should amend the Gender Equality Act 2558 by abolishing the clause on exemptions for discrimination on grounds of religious principles or national security, according to Section 17.
- ❖ Definitions on gender, gender status, gender orientation, violence from sexual cause and sexual assault should be added in the law in order that all law enforcement personnel at every level nationwide will have the same correct understanding and be able to perform their duties efficiently.

## II. APPLICATION OF ISLAMIC LAW IN FAMILY AND INHERITANCE MATTERS

8. In the southern provinces of Pattani, Yala, Narathiwat and Satun, Muslims have been governed by **Islamic Family and Inheritance Law** since **B.E. 2489 (1946)**<sup>9</sup>, while the rest of the country is governed by the Civil Law. However this Islamic law has not been officially passed by Parliament.<sup>10</sup>
9. **The contents of the Islamic family and inheritance law for the Southern Four Border Provinces of Thailand, and its administration remain unknown or ambiguous and has been deemed irrelevant to the present circumstances.**<sup>11</sup>
10. There have been no attempts made by the government to reform and review the contents of the Islamic family and inheritance law, despite several criticisms made by the local judges as well as academicians on its lack of conformity with trends in law reform in some Muslim countries<sup>12</sup>.
11. However, the Thai Ministry of Justice has directed that this law is to use as the basic reference guide for conduct of court hearings.<sup>13</sup> The Provincial Courts and Courts of First Instance in these provinces thus apply this Islamic law in cases involving family and inheritance matters, with the assistance of *Dato Yuthitham* (Justice Dato or the Muslim Judge), who are Islamic scholars. **Only men can be the *Dato Yuthitham*.**

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<sup>9</sup> *Lak Kodmai Islam Waduai Krobkrua Lae Moradok*, <http://www.yala.go.th/yala-lawaid/files/km-islam.pdf>.

<sup>10</sup> The Act of Implementation of Islamic laws in Pattani, Narathiwat, Yala and Satun Provinces B.E. 2489 (1946), Section 3.

<sup>11</sup> Dorloh, Sulaiman (2009). The Code of Muslim Family Law and Law of Inheritance (1941) as applicable in the provincial courts of Southern Four Border Provinces of Thailand: Issues and Prospects. *Journal of Fiqh*, No. 6 (2009) 125-148.

<sup>12</sup> *Ibid* (2009).

<sup>13</sup> Mahyidin Hamat et. Al., Talaq (Divorce) Procedure in the Provisions of Muslim Family and Inheritance Law of Patani Province, Southern Thailand, 22(2) *IOSR Journal of Humanities and Social Science* 98 (2017).

12. Since it is not formally passed by Parliament, the *Dato Yuthitham* does not uniformly apply it.<sup>14</sup> The lack of clarity and certainty in the law has allowed for arbitrary interpretations based on individual *Dato Yuthitham*.<sup>15</sup>
13. The justice system in the SBPs is rather complicated due to the adoption of both multicultural jurisprudence and a multicultural justice system. There is a lack of legal decisiveness. There is also a lack of strict enforcement of the Islamic Law on family and inheritance matters.<sup>16</sup> The current justice system is a combination of the *Dato Yutitham* and the resolution of disputes concerning family and inheritance matters by the Provincial Islamic Committee plus the informal customary justice system managed by the community leaders. The decisions made either by the *Dato Yuthitham* or the Provincial Islamic Committee are more or less based on personal discretion and lack both certainty and standards as far as the adjudication is concerned.
14. The Senate Special Standing Committee has found that many women in the SBPs have their marriages registered using Islamic Law (customary practice) by declaring them to the Provincial Islamic Committee or local religious leaders. As all members of the Provincial Islamic Committee are male, it makes hard for women to give their accounts of sexual violence or domestic violence and to make those men understand their situations.<sup>17</sup>
15. Moreover as the decision of Provincial Islamic Committee or the Islamic Community Leaders are only customary practice, it cannot be enforced. Muslim women have no official documents to show they are divorced and have the right to manage their properties. Thus they are not able to approach the Land Office under the Ministry of Interior to change the land title to their name. This prevents them from accessing their right to land and other properties.

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<sup>14</sup> Sulaiman Dorloh, *The Code of Muslim Family Law and Inheritance (1941) as applicable in the Provincial Courts of the Four Southern Border Provinces of Thailand: Issues and Prospects*, 6 *Journal of Fiqh* 125 (2009).

<sup>15</sup> International Commission of Jurists and Justice for Peace Foundation, *Women's Access to Justice: Identifying the Obstacles and Need for Change*, (2012, 47); Muhammad Rorfee-E Musor, *The Implementation Of Islamic Family Law In A Malay Muslim Society In The Three Border Provinces Of Southern Thailand*, 9th International Academic Conference, Istanbul, 13 April 2014.

<sup>16</sup> *Women's Access to Justice: Identifying Obstacles and Need for Change Thailand*, International Commission of Jurists and Justice for Peace Foundation, Geneva 2012, page 45.

<sup>17</sup> *A report on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces, the Senate Special Standing Committee on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces*, pp. 50, March 2013.

#### RECOMMENDATIONS TO STATE:

- ❖ Amend the Islamic Family and Inheritance Law B.E. 2489 (1946) to ensure that it is in compliance with CEDAW.
- ❖ Ensure women's rights activists are included in the process of amending the discriminatory Islamic Family and Inheritance Law.
- ❖ Provide training on CEDAW, women's human rights and human rights based on a rights-based understanding of Islam for the Provincial Islamic Committee, religious and community leaders and women and girls in the SBPs.
- ❖ Consult with religious leaders to guarantee the appointment of women as members of the Provincial Islamic Committee and the local bodies to address domestic violence and sexual violence.

### III. DISCRIMINATION AND VIOLENCE AGAINST WOMEN IN MARRIAGE, DIVORCE AND FAMILY LIFE

#### A) *LACK OF MINIMUM AGE OF MARRIAGE, TEENAGE PREGNANCY*

16. The Thai Civil and Commercial Code provides for a minimum marriage age of 17 years for both men and women, though the Court may permit marriage at an earlier age if there are appropriate reasons.<sup>18</sup> However, this provision does not apply to marriage among Muslims, who are governed by Islamic Family and Inheritance Law or customary practice. In the four Southern Border Provinces, Islamic law permits girls to marry as soon as they reach puberty.<sup>19</sup>
17. Out of wedlock pregnancy / rape / unwanted pregnancy or teenage pregnancy is a major issue in the SBPs given the changes in social values of the teenagers. Also, given the strict imposition of the religious code and a lack of counseling about maternity and child health problems and reproductive health, many girls and women cannot find good solutions to their problems.

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<sup>18</sup> Thailand Civil and Commercial Code, section 1458.

<sup>19</sup> Summary Records, CEDAW/C/SR.708 (2006); Principles of Islamic Family Law and Inheritance, sections 1(13); (15).

## RECOMMENDATIONS TO STATE:

- ❖ Establish the minimum age of marriage at 18 for all citizens regardless of religion, ethnicity, and geographic location.
- ❖ Set up health centers to provide counseling to women and girls on teen pregnancy and reproductive health and rights. It should be made safe and confidential so that the women and girls feel secure about seeking such services.
- ❖ Ensure that pregnant teenagers can continue to access their right to education and have opportunity to work without any discrimination.

## POSITIVE DEVELOPMENT IN MUSLIM FAMILY LAW GLOBALLY <sup>20</sup>

| Family Matter  | Muslim Family Laws Currently in Force  |
|--|--|
| <p><b>Minimum and equal age of marriage</b></p> <p><u>Applicable CEDAW Provision</u></p> <p>Article 16(2)</p> <p>Paras. 36-39 GR21</p> | <p><b><u>Minimum age for marriage is 18 with no exceptions:</u></b></p> <p><b>Egypt:</b> The minimum age for marriage is 18 for both females and males. The registration of the marriage of a person below 18 is prohibited and penalized.</p> <p><b>Kenya:</b> The minimum age for marriage is 18 for both females and males. Any person who marries or knowingly celebrates or witnesses the marriage of a person below 18 commits an offence and will be liable to a penalty (imprisonment, fine or both).</p> <p><b>Pakistan (Sindh Province):</b> The minimum age for marriage is 18 for both females and males. The law criminalizes and penalizes the following: (i) males over 18 who contracts a child marriage; (ii) whoever performs, conducts or directs a child marriage; and (iii) parents or guardians who promote a child marriage, permit it to be solemnized or negligently fail to prevent it from being solemnized.</p> <p><b><u>Minimum age for marriage is 18 with judicial exceptions and with an absolute minimum age:</u></b></p> <p><b>Iraq:</b> The minimum age for marriage is 18 for both females and males. A judge may authorize the marriage of females and males below 18 if convinced that the person is physically capable of being married and the marriage is of urgent necessity. A marriage cannot be authorized for persons below 15.</p> <p><b>Jordan:</b> The minimum age for marriage is 18 for both females and males. A judge may authorize the marriage of females and males below 18 if it is deemed to be in their interest. A marriage cannot be authorized for persons below 15.</p> |

## B) RIGHTS TO DIVORCE AND ISSUES OF MAINTENANCE

<sup>20</sup> This table is based on Musawah's research on Muslim family laws and practices in 30 countries. It is a work in progress and will be uploaded onto the Musawah website in August 2017.

18. Muslim men have greater rights of divorce than women under the Islamic Family and Inheritance Law as it applies in SBPs. Husbands can pronounce *talaq* (unilateral repudiation of marriage) without any reason, while wives have to approach the Court to obtain a judicial divorce (which is allowed only on limited grounds).<sup>21</sup> Apart from *talaq*, the grounds for divorce available are *ta'liq* (if the husband breaches the terms of the marriage contract), *faskh* (judicial divorce granted under certain specified circumstances) and *khul'* (redemption by the wife on payment of money to the husband).<sup>22</sup>
19. Muslim women face difficulties in accessing their right to divorce. Given the challenges in filing their application to divorce, women seek to obtain divorce by alternate ways, such as provoking the husband to pronounce unilateral divorce or paying their husbands to divorce them (*khul'*).<sup>23</sup> Even then, very few women approach the Courts and religious authorities to access this right.<sup>24</sup> The divorce process is difficult, time-consuming and costly.
20. Women undergo traveling costs to the Provincial Islamic Committee offices in each province, and legal and administrative costs that they can hardly afford. Women also face difficulties in getting their side of the story believed. They need to provide circumstantial evidence as well as provide witnesses to obtain divorce. Some community religious leaders and Islamic Committee members accuse the women of being emotional and do not believe that domestic violence had occurred. They also suggest that women do not have religious knowledge and are unable to decide what is best. Women themselves also feel that men have the best knowledge on religion. Therefore, only men should hold decision-making power over marriage cases and dispute resolution.
21. Men often fail to provide maintenance to children and ex-wives after divorce. The **Islamic Family and Inheritance Law** and the Thai Civil Code provide for payment of maintenance, but in practice Malay Muslim women lack the ability to enforce payment of maintenance.<sup>25</sup> This is because the **Islamic Family and Inheritance Law** serves only as guidelines and therefore is without any enforcement mechanism. There is no *Shariah* Courts system in Thailand with the power to enforce court judgements. Most Malay Muslims do not register their marriage under the Thai Civil Code and therefore are unable to access any rights under the Civil Code.

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<sup>21</sup> International Commission of Jurists & Justice for Peace Foundation, *Women's Access to Justice: Identifying the Obstacles and Need for Change*, 2012, p. 47.

<sup>22</sup> Sulaiman Dorloh and Ahmad Baha hj Mokhtar, Right Of Muslim Women In Thailand Under The Muslim Family Law Of Inheritance Code, 1941, *Journal of Fiqh*, No. 12 (2015) 95-112.

<sup>23</sup> International Commission of Jurists & Justice for Peace Foundation, *Women's Access to Justice: Identifying the Obstacles and Need for Change*, 2012, p. 47.

<sup>24</sup> Sulaiman Dorloh, The Position of Islamic Law in Four Southern Border Provinces of Thailand, <http://guamansyariah.blogspot.com/2013/09/selatan-thailand.html>.

<sup>25</sup> *Ibid*, International Commission of Jurists & Justice for Peace Foundation, *Women's Access to Justice: Identifying the Obstacles and Need for Change*, 2012, p. 47.

22. The decision of the *Dato Yuthitham* in the Provincial Court is final and cannot be appealed. Women could go to the Provincial Courts to compel husbands to pay for compensations, but this process cost money. Most women are poor and lack education, thus face many hurdles in their effort to access their rights under the law. Therefore, many women decide to raise their children on their own and not pursue maintenance.

**Case study:** *“They, the Mediation Committee under the Islamic Provincial Committee will invite men and agree to pay a compensation of 4,000 baht to their kids. Then, we followed up and found out that the men had not paid. The women didn’t know what to do. Women said if their husbands would not support them, it was all right. They could raise their children on their own. They were afraid that if kids reach the age of seven, the committee would ask them whom they will stay with. (A coordinator of women network, November 21, 2014)*

**RECOMMENDATIONS TO STATE:**

- ❖ State must ensure the equal rights and access for both men and women to matters related to the dissolution of marriage, including the grounds for divorce and standards of proof.
- ❖ Abolish the husband’s right to unilateral divorce under the Islamic family law, and ensure both parties in a marriage are fully aware of its dissolution and its consequences.
- ❖ Ensure that maintenance granted to women and children after divorce is sufficient and reviewable, and based on their needs.
- ❖ Ensure that there is an effective enforcement mechanism for payment of the maintenance to women and children.
- ❖ Introduce gender sensitization training to religious and court officials.
- ❖ Undertake a wide public education campaign to raise women’s awareness on their rights under the law. And provide support services to make it easier for women to access the courts or the religious council.

| POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS |                                       |
|---|---------------------------------------|
| Family Matter                               | Muslim Family Laws Currently in Force |
| Divorce rights                              | <u>Equal right to divorce:</u>        |

|  |  |
|--|--|
| <p><u>Applicable CEDAW Provision</u></p> <p>Article 16(1)(c)</p> <p>Paras. 17-18 GR21</p> <p>Paras. 34, 39-40 GR29</p> | <p><b>Turkey, Tunisia:</b> All divorces must go through the court. The grounds for divorce are equally available to both spouses. Divorce through unilateral repudiation (<i>talaq</i>) by the husband is not recognized.</p> <p><b>Singapore:</b> A wife will inevitably get a divorce whether the husband agrees to the divorce or not and even in instances where the wife is unable to prove a breach of the marriage vows (<i>taklik</i>) or one of the grounds for judicial divorce. The reconciliation process (<i>hakam</i>) will end up with either: (i) the husband voluntarily pronouncing <i>talaq</i>; or (ii) the husband delegating the right to divorce to his wife (<i>talaq-e-tafwid</i> or <i>'esma</i>); or (iii) if the husband refuses to do either (i) or (ii), the court will direct the husband's arbitrator during the reconciliation process to pronounce <i>talaq</i> on the husband's behalf.</p> <p><b><u>Judicial divorce due to irreconcilable differences:</u></b></p> <p><b>Jordan, Morocco:</b> A wife may petition the court for a divorce on the ground of "irreconcilable differences" or irretrievable breakdown of the marriage (<i>shiqaq wa niza'</i>).</p> <p><b><u>Divorce through repudiation by the husband (talaq):</u></b></p> <p><b>Algeria, Mauritania:</b> A divorce by way of repudiation by the husband can only be effectuated through the court.</p> <p><b>Bangladesh, Pakistan:</b> The standard marriage form includes a provision on the curtailment of a husband's right to divorce.</p> <p><b>Bahrain (Shia):</b> A divorce by way of the repudiation by the husband cannot be finalized unless both parties appear before the court to register the divorce.</p> <p><b>Brunei, Malaysia:</b> <i>Talaq</i> must be pronounced in court and it is an offence to pronounce <i>talaq</i> outside the court. If a husband pronounces <i>talaq</i> outside the court, he is required to report the pronouncement within seven days and will be subject to a penalty (imprisonment, fine or both).</p> <p><b>Indonesia:</b> A divorce by way of repudiation by the husband (<i>cerai talak</i>) must be effectuated through the court. The husband must make a request to the court where his wife resides to hold a court proceeding to witness his pronouncement. His application must contain the reasons for his request.</p> <p><b>Morocco:</b> Divorce by way of repudiation which can only be effectuated under judicial supervision. The wife and children must have received all their vested rights before it is authorized.</p> <p><b>Palestine (West Bank):</b> A husband must register a divorce by way of repudiation before a judge. In case he divorced his wife outside the court and did not register it, he must report to the religious court for the registration of the divorce within 15 days. Failure to register the repudiation is penalised. The court must notify the wife who is absent within one week from its registration.</p> <p><b>Singapore:</b> Both the husband and wife must personally appear before the court within seven days of the pronouncement of <i>talaq</i> to apply for divorce. Failure to do so is an offence.</p> <p><b>Egypt:</b> A husband must register his divorce by way of repudiation within 30 days for its pronouncement. If the wife is not present at the registry office, the civil registrar (<i>ma'dhun</i>) is tasked with the responsibility of notifying the wife of her divorce.</p> |
|--|--|

| POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS*  |  |
|---|--|
| Family Matter   | Muslim Family Laws Currently in Force  |
| <p><b>Women's financial rights after divorce</b></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(c), 16(1)(h)</p> <p>Paras. 30-33 GR21</p> <p>Paras. 34-35, 43-48 GR29</p> | <p><u>Consolatory gift or compensation (mu'tah):</u></p> <p><b>Brunei, Egypt, Indonesia, Jordan, Kenya, Malaysia, Mauritania, Morocco, Oman, Qatar, Singapore, United Arab Emirates:</b> The court has the power to order a man to pay his former wife a consolatory gift or compensation' (<i>mut'ah</i>) in addition to the financial maintenance he has to pay her during the waiting period after the divorce (<i>iddah</i>). The amount of compensation varies in each country and may be based on a multiple of the <i>iddah</i> maintenance or what the court deems as fair and just.</p> <p><b>Singapore:</b> Wives will almost always receive <i>mut'ah</i> payment even if she is the party petitioning for the divorce or she has "misconducted" herself. Arguments that a wife is "disobedient" (<i>nusyuz</i>) have generally not been accepted by the court to disqualify a wife from being entitled to <i>mu'tah</i> payment.</p> <p><u>Compensation for unreasonable divorce:</u></p> <p><b>Algeria, Iraq, Kenya, Palestine (West Bank), Syria:</b> If the court finds that a man has divorced his wife in an arbitrary, unfair or unreasonable manner, the court can order him to pay his former wife compensation for the divorce in addition to the financial maintenance he has to pay her during the <i>iddah</i> period.</p> <p><u>Compensation for harm suffered by the wife:</u></p> <p><b>Algeria:</b> If a judge finds that a wife has suffered harm during her marriage, the judge can order her former husband to compensate her for the harm she suffered in addition to the financial maintenance he has to pay her during the <i>iddah</i> period.</p> <p><b>Tunisia:</b> If the court finds that a wife has suffered harm during her marriage, it will proceed to determine the appropriate level of maintenance and compensation due to her upon the pronouncement of the divorce. The level of maintenance and compensation is determined based on the standard of living that the former wife was accustomed to during her marriage. The maintenance and compensation takes the form of regular monthly payments that continue until the former wife's remarriage, death or she no longer requires them.</p> <p><b>Turkey:</b> A spouse who claims to have suffered material or moral damage can make a request to the court for an order that compensation be paid by the other party to him/her for the damage suffered.</p> <p><u>Housing post-divorce:</u></p> <p><b>Saudi Arabia:</b> Fathers must provide housing for the mothers with custody of the children. It is considered shameful if fathers do not provide mothers with housing.</p> <p><u>Enforcement of court-ordered maintenance:</u></p> <p><b>Singapore:</b> The country has a number of mechanisms to effectively enforce court-ordered maintenance including:</p> |

\* This table is based on Musawah's research on Muslim family laws and practices in 30 countries. It is a work in progress and will be uploaded onto the Musawah website in August 2017.

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|  | <ul style="list-style-type: none"> <li>• The establishment of a specialised court to solely handle maintenance concerns, thus expediting claims and enforcement;</li> <li>• Empowering the court to impose a wide range of measures against defaulters, including: (i) imposing penalties such as fines or imprisonment; (ii) making garnishee orders against the defaulter’s earnings; (iii) ordering the defaulter to post a banker’s guarantee against future defaults, attend financial counselling and/or perform community service; and (iv) requesting access to the employment information of the defaulter from the CPF in order to facilitate the direct deduction of maintenance payments from the defaulter’s wages;</li> <li>• Empowering the <i>Shari’ah</i> court to sign on behalf of a party who, without good reason, refuses to sign the necessary documents to sell or transfer ownership of a property to the other party despite a prior court order for the party to do so;</li> <li>• Providing women with the ability to report the court-ordered maintenance amount owed to designated credit bureau(s). This measure is aimed at discouraging defaults in the payment of court-ordered maintenance as such defaults would affect the credit stranding of the defaulter; and</li> <li>• Obligating men to declare to their prospective wives (prior to remarriage), their maintenance debts and obligations towards their former wives and/or children. This ensures that their prospective wives are aware of their prospective husband’s maintenance before marrying them.</li> </ul> <p><b>Bahrain, Palestine, Tunisia:</b> These countries have established a fund that assumes responsibility for payment of court-ordered maintenance if a former husband or father is delinquent in his maintenance payment.</p> |
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### C) WIDOWHOOD AND POLYGAMY

Polygamy is prohibited under Thai civil law.<sup>26</sup> It is indirectly criminalized under the Penal Code which makes it a criminal offence to make a false declaration before a government official.<sup>27</sup> However, provisions of the civil law do not apply to Muslim communities in the four southern-most provinces. The **Islamic Family and Inheritance Law** specifically allows polygamous marriages.<sup>28</sup>

**23. Stigmatization of widows.** The Southern provinces face the particular problem of widows entering into polygamous marriages out of societal pressure. Most of these Malay Muslim women lost their husbands because of the unrest. Their day to day life is particularly challenging, due to both poverty and stigmatization. They feel insecure and are very concerned to be called widows. Security for themselves and their children is an issue of concern. They also face problems dealing with government agencies and outsiders. They believe society looks down on them and men treat them with disrespect. In many cases, widows are verbally and physically abused such as sneering, unwanted physical contact, and sexual harassment.

*“Men think widows are ‘easy’ so they like to harass her by touching her. Men regard widows as ‘toys’. I do not like them nor want to meet them.” (Women in Pattani, November 24, 2014).*

Households without male leaders are stigmatized, labelled by the community as *“this house is weak because of no men.” (Women adversely affected by violence, November 24, 2014).*

<sup>26</sup> Thailand Civil and Commercial Code, section 1452.

<sup>27</sup> Thailand Criminal Code B.E. 2499 (1956), section 137.

<sup>28</sup> Principles of Islamic Family Law and Inheritance, section 40.

24. **Pressure to remarry.** These widows feel pressured to get married again in order to lead a “normal” life and not be stigmatized and seen as ‘valueless’. More often than not, they enter into polygamous marriages as the choice of marrying a single man is limited. Remarriage is regarded as a widow’s way of adapting to the impact of the conflict and unrest. (*A chair woman of the Women’s Network and a coordinator of the Raks Thai Foundation, October 10 and November 22, 2014*).

In some instances, Islamic tradition is cited to justify the marriage of widows, following the example of the Prophet Muhammad who married Khadijah, a widow older than him. (*A religious male official and a female leader in Narathiwat, November 21 and 22, 2014*).

According to interviews and case studies, widows are often courted by men they desired to be their new spouses and these relationships would end in marriage. Many women stated that one of the reasons they chose the ones who approached them is their financial status.

25. **Disempowerment, abuse and violence.** Sadly the widows who decided to lead a more “normal” and “protected” life by becoming second or third or fourth wives, often end up in distress.

Many women stated that during the honeymoon period, their new husbands took care of them and spent time with them, however afterwards their husbands chose to stay with their first wives.

In many instances, these women experience violence in a new form because of the unequal power relationship between men and women. They are unable to negotiate any conditions in the marriage to protect themselves. Many are threatened by their new husbands with separation or divorce. However, the women are reluctant to allow service providers to provide help and decline to file a police report or file for divorce. They would only file for divorce when they discovered that their husbands had other women.

*“Residents in the community don’t dare to get involved, even the police because they said it is a family affair. If they report it to the police, they will eventually reconcile. They are too embarrassed to disclose to anyone, unless it is unbearable. They will get divorced only when their spouses have other women, not because of violence. Having new women is unacceptable. Most of the women are like that, so it is difficult to solve.”* (An officer of a multi-disciplinary network and a social worker in Yala, November 24, 2014)

26. Many of these remarried widows live with domestic violence for years, which seriously affect their mental and physical health. In some cases, husbands do not work but are drug-addicts. This is usually a main cause for eventual divorce. Many of these women too have contracted sexually transmitted diseases from their husbands. A large number of women are ashamed to see the doctor after contracting STDs. Women report they do not have the agency to tell their husbands to use condoms or to refuse sexual relations.

*“I ask myself why I stand him. The answer is I don’t want to become a widow because it is difficult to live. Men approach me inappropriately and nobody protects me. Community turns a blind eye to Muslim men who have many wives or many girlfriends. Affected women who knew soldiers and policemen become their girlfriends”.* (A female staff of an NGO in Pattani, October 25, 2014)

Some women feel their husbands only wanted to take advantage of their widow's pension and allowance for their children.

*"In terms of a husband's responsibility, first wives are better off. The men take our money to their first wives. In this case, it is better to be without husbands. If the situation goes on, we will divorce them one day. However without husbands, women feel uncomfortable. With husbands, they are unhappy because they don't get the desired financial security. Husbands often say "Your children are not mine and I have my own. Although your children are orphaned, they have a monthly allowance provided by the Ministry of Social Development and Human Security. The government will support your children's education until they finish the Bachelor's degree". Men only want the women; not the responsibility of children." (A widow and remarried woman affected by violence in Pattani, November 24, 2014)*

- 27. Fear of incestuous relationships.** Women are also concerned with the relationship between new husbands and their daughters. They are afraid that their daughters will have an affair or sexual relationship with their new husbands because they are older, burdened with chores and must allocate time to do activities outside the house. They are worried that their daughters are susceptible to coercion and abuse given the vulnerable conditions of their mothers.

**RECOMMENDATIONS TO STATE:**

- ❖ For equality in marriage, the state must have clear priority to eliminate all discrimination against Malay Muslim women in relation to widow and polygamy.
- ❖ Abolish polygamy in law and practice.
- ❖ Enable women to add a condition in their marriage contracts that their husbands cannot take other wives without their permission, and that polygamy could constitute grounds for divorce.
- ❖ Include strict conditions to the practice of polygamy and that it can only take place with the permission of the court in compliance with the conditions established which may include ability to be fair, financial ability to support all family members, and that no harm is caused to the existing wife and family.
- ❖ State must ensure women rights and equality under Constitution Provision by not allow polygamous marriage under customary law that violates the Constitutional rights and equality of women.
- ❖ Islamic Provincial Committee must to follow the good practices from other Muslim countries in the region on polygamy by guarantee the rights of women and children under Islamic Principle.
- ❖ Undertake awareness-raising activities throughout four provinces on the negative effects of polygamy with a view to eliminate the practice.
- ❖ Provide full and effective support system, i.e., social inclusion, legal aid service, and economic stability service, such as occupational and marketing training, giving low-interest loan for setting up small business, and providing scholarship for children of the widows. All of these activities must be in cooperation with women’s groups.

**POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAWS**

| <b>Family Matter</b> | <b>Muslim Family Laws Currently in Force</b> |
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| <p><b>Polygamous marriage</b></p> <p><u>Applicable CEDAW Provision</u></p> <p>Para. 14 GR21</p> <p>Para. 34 GR29</p> | <p><u><i>Prohibition of polygamy by law:</i></u></p> <p><b>Kyrgyzstan, Tajikistan, Tunisia, Turkey, Uzbekistan:</b> Polygamy is prohibited.</p> <p><u><i>Requirement for court authorization and agreement of existing wives to enter into a polygamous marriage:</i></u></p> <p><b>Algeria:</b> Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives. Court permission is only granted if the husband is able to provide justification for entering into multiple marriages as well as proof of his ability to be fair to all wives and meet the necessary conditions of married life with regard to all his marriages.</p> <p><b>Indonesia:</b> Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives. Court permission is only be granted if the husband's existing wife: (i) is unable to perform her conjugal duties; (ii) suffers from a physical infirmity or an incurable disease; or (iii) cannot bear children.</p> <p><b>Iraq (Kurdistan region):</b> Polygamous marriages must be authorized by the court and may only be concluded with the agreement of the existing wives. Court permission is only granted if certain conditions are met: (i) the first wife has to agree before the court to her husband marrying a second wife; (ii) if the wife is diagnosed with an incurable disease that prevents sexual intercourse or if the wife is infertile; (iii) the man has the financial capacity to support more than one wife; (iv) the husband signs a contract promising to deal with both wives fairly and equally in terms of sexual intercourse and other marriage relations; (v) the first wife does not have a condition in the marriage contract that the husband will not take a second wife. A man who concludes a polygamous marriage without the authorization of a judge will be subject to a penalty of imprisonment and fine and judges are prohibited from suspending the penalties.</p> <p><u><i>Requirement for official (court, etc.) authorization to enter into a polygamous marriage:</i></u></p> <p><b>Bangladesh, Pakistan:</b> Polygamous marriages are only permitted with the written permission of an Arbitration Council consisting of a Chairman and one representative each of the husband and wife or wives. The Arbitration Council may only permit a new marriage if it is satisfied that the proposed marriage is necessary and just, subject to such conditions (if any) as may be deemed fit.</p> <p><b>Iraq:</b> Unless the prospective bride is a widow, polygamous marriages must be authorized by a judge (<i>qadi</i>). A judge may only authorize a polygamous marriage if: (i) the husband has financial capacity; (ii) there is a legitimate interest for multiple marriages; and (iii) there is no fear of injustice between wives.</p> <p><b>Jordan:</b> Polygamous marriages must be authorized by a judge. A judge may only authorize a polygamous marriage if the man can afford paying a dower (<i>mahr</i>) and is capable of financially supporting all those for whom he is responsible.</p> <p><b>Morocco:</b> Polygamous marriages must be authorized by the court. A court may only authorise a polygamous marriage if an exceptional and objective justification for entering into multiple marriages is proven and the man is able to that he is financially capable of supporting multiple wives. The first wife must be present before the judge and be consulted before authorization is granted.</p> <p><b>Singapore:</b> Polygamous marriages must be authorized by a state appointed official (<i>kadi</i>). The <i>kadi</i> may only authorize a polygamous marriage if he is satisfied that: (i) The husband has the capacity to provide a life that is balanced in regard to the</p> |
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|  | <p>financial, physical and emotional well-being of his wives; (ii) The husband currently has a good marriage and is not seeking to take on additional wives because his existing marriage is not going well; and (iii) The new marriage will be beneficial to all parties.</p> <p><b>Syria:</b> Polygamous marriages must be authorized by the court. A court may only authorize a polygamous marriage if: (i) the husband has the financial capacity to support multiple wives and families; and (ii) there is a legitimate reason for the multiple marriages.</p> <p><u><i>Wife's right to seek divorce following a polygamous marriage by her husband</i></u></p> <p><b>Afghanistan (Shia), Algeria, Bahrain, Egypt, Jordan, Lebanon, Mauritania, Morocco, Palestine:</b> A woman can stipulate in the marriage contract that her husband cannot take another wife. If her husband breaches this term of the marriage contract, the woman has the right divorce.</p> <p><b>Algeria:</b> A woman may petition the court for a divorce if she is able to show that her husband has failed to meet the requirements that he must meet under the law with regard to polygamous marriages.</p> <p><b>Afghanistan (Sunni), Egypt:</b> A woman may petition the court for a divorce if she is able to show that her husband's polygamous marriage is causing her harm.</p> <p><b>Bangladesh, Pakistan:</b> A wife may seek a divorce if her husband has taken an additional wife in contravention with the requirements of the law.</p> |
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**D) MATERNAL AND CHILD HEALTH IN ARMED CONFLICT**

28. People in the SBPs have found it difficult to access health services and there has been misinformation spread in local communities. There is also a lack of knowledge about reproductive health. All of these have impeded access to necessary health services causing impacts on the health of the people, particularly women and children. It was found that children there have low I.Q. and there is high rate of maternal mortality. Owing to problems in prenatal care and child delivery, many babies are born with a birth weight less than 2.5 kilograms. There is also a spread of HIV/AIDS and a lack of access to treatment. Children have no access to necessary vaccination and other treatments. Rehabilitation of drug users has not met international standards, etc.<sup>29</sup>
29. **Female circumcision exists widely among Malay Muslim girls in the SBPs.** Most newborn girls are circumcised at birth or within seven days by local midwives (*Toe Bidae*)

<sup>29</sup> A report on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces, the Senate Special Standing Committee on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces, March 2013, page 103.

or even gynecologists in state hospitals<sup>30</sup>. Some receive it when they are two or three years old. Several girls show signs of infection of the circumcision.<sup>31</sup>

30. Most ethnic Malay Muslim women in the SBPs barely have knowledge of sex education, family health, reproductive health and proper Islamic teachings about reproductive health. Thus, they have no right to reproductive health. Some women have refused to have their children delivered in hospitals and a number of them do not have postnatal care and treatment. Some suffer from cervical cancer and refuse to undergo STI screening as they fear it is against their religious teaching since the doctors and support staff are male.
31. Maternal mortality rate (MMR) fluctuated between 2003 and 2011, but remained higher than the national indicator of 18 per 100,000 live births. In 2012, the MMR in the southern provinces<sup>32</sup> was 30.5 per 100,000 live births.<sup>33</sup> Intrapartum and post partum hemorrhaging were the major causes of maternal deaths.<sup>34</sup>
32. Infant mortality rate (IMR) in the conflict-affected areas is higher than in the non-conflict areas. The rise in IMR has been observed in Pattani Province since 2005, following the resurgence of violence. The major causes of early infant death (occurring within the first 28 days of life) in 2011 were congenital abnormalities and obstetric complications, include velamentous umbilical cord, antepartum hemorrhaging and intrauterine asphyxia, while infectious diseases are the most common cause of late infancy death.<sup>35</sup>
33. The coverage of the recommended vaccine immunization among children in Thailand was more than 80 per cent in 2006<sup>36</sup> and 2010.<sup>37</sup> However, the accessibility of vaccine immunization among children in the Deep South has been worsening. The health surveys in 2006 and 2010 reported that the coverage was lower than 60 per cent in Pattani, Yala and Narathiwat provinces. This led to the outbreak of several vaccine-preventable

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<sup>30</sup> <http://www.theguardian.com/global-development/2015/apr/01/thailand-muslim-south-authorities-blind-eye-fgm-who?CMP>.

<sup>31</sup> JPF interview Malay Muslim women during the seminar “Access to Justice of Women in the Southern Border Provinces” organized by the Subcommittee on operational strategies regarding human rights in the Southern Border Provinces, the National Human Rights Commission, 8-10 September 2014.

<sup>32</sup> The Southern Border Provinces are comprised of Yala, Pattani and Narathiwat.

<sup>33</sup> Central health Promotion Region 12, The Statistical Report 2006-2012: *Maternal mortality rates*. Yala Center for Health Promotion Region 12.

<sup>34</sup> Department of Health Promotion, *Cause of Maternal Deaths: Reported from Saiyairak Project*. Available at [www.saiyairakhospital.com/newdemo/admin/user\\_department\\_report.html](http://www.saiyairakhospital.com/newdemo/admin/user_department_report.html) [accessed on 30 May 2013].

<sup>35</sup> The deep South Relief and Reconciliation[DSRR] Foundation and the Rugiagli Initiative[tRI], **Healing Under Fire: The Case of Southern Thailand**, Bangkok, page 36.

<sup>36</sup> National Statistical office and UNICEF, **Multiple Indicators Cluster Survey December 2005-February 2006**, Bangkok: UNICEF Thailand Country Office, 2006.

<sup>37</sup> Department of Disease Control, **National Survey Vaccine Coverage 2010**, Nonthaburi: Ministry of Public Health, 2010.

diseases during 2007-2012.<sup>38</sup> The low coverage of immunization was associated with the intensity of armed violence. Residents of areas with a high intensity of violent conflict had a 2.4 times higher risk to have incomplete immunization in comparison with residents in the non-conflict areas of the South.<sup>39</sup>

#### RECOMMENDATIONS TO STATE

- ❖ State must make efforts to abolish and criminalize Female Genital Circumcision by introducing necessary legislation and strict reporting and enforcement policies, along with awareness raising campaigns about its impacts.
- ❖ State agencies have to combine efforts to develop a strategic plan to promote the health of the people in SBPs and develop a database of communicable disease surveillance which can be retrieved for timely use. Also, collaboration should be undertaken to promote health proactively at the provincial, district, village and community levels appropriate to the health problems of the people. An effort should be made to address health problems of mothers and children, reproductive health, and preventable disease control using vaccination, which is a major problem in the SBPs.
- ❖ An effort should be made with regards to the prevention and treatment of HIV/AIDS and its prevalence in the Muslim community in the central area and in the SBPs. Apart from supporting access to treatment among people living with HIV/AIDS and condom-based prevention, concerned agencies should engage themselves in community education efforts using Islam and local culture as a means to spread information in the SBPs. It should help to prevent and address the prevalence of HIV/AIDS and create mutual understanding among religious and community leaders so that they accept the PHAs and AIDS patients who should receive mental counseling to give them moral support and to enhance their social reintegration.
- ❖ An effort should be made to provide sex and reproductive health and rights education based on the proper religious teachings among the Malay Muslim women and men in the SBPs to enable them to look after themselves and their children effectively and safely.

<sup>38</sup> Bureau of Epidemiology, Ministry of Public health. *Annual report of Infectious disease 2007-2012*. Bangkok: Government of Thailand 2013. Available from [www.boe.moph.go.th/Annual/Total\\_Annual.html](http://www.boe.moph.go.th/Annual/Total_Annual.html).

<sup>39</sup> Jeharsae, R., *Effects of Armed Violence on Growth and Development of 1-to 5-years old Children in Southern Thailand*, Songkhla: Prince of Songkhla University, 2011.

## ***F) GENDER-BASED VIOLENCE IN THE CONTEXT OF CONFLICT***

34. Conflict related violence in this area overlaps with gender-based violence. In many cases, women do not think that physical abuse, scolding, threats, non-maintenance, etc. constitute a violation of rights. Many of their husbands are drug addicts and some are alcoholics. Unemployment is also a major problem. When the men are unable to get any money from their wives, they resort to violence, both beatings and sexual violence.
35. Women interviewed for this shadow report found that many of them do not know who or where to go for help. If they go to the police station to report domestic violence, the police often refuse to accept their reports as they think it is a family matter related to Islamic Family and Inheritance Law B.E. 2489 (1946). So they tell the women to complain to the Islamic Provincial Council. Most women experience domestic violence by their husbands and do not file for divorce at the Provincial Court. In worst cases, women pursue redress and justice by going to the Provincial Islamic Council Office. All of the mediators are men and the affected women view that men often believe and support what other men say or act. In cases of violence, any wound or any sign of assault cannot be disclosed to the male council members.
36. In fact domestic violence and instances of martial rape are crimes subject to Thai Criminal law and as outlined above constitute conduct in relation to which stringent international obligations of investigation and accountability apply. Meanwhile the women explained that in practice, in order to escape such violence they will either physically leave the area or, as highlighted above, will seek to convince their husband to divorce them. Seeking legal protection or justice does not appear to be something they consider<sup>40</sup>.

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<sup>40</sup> Ibid, International Commission of Jurists & Justice for Peace Foundation, **Women's Access to Justice: Identifying the Obstacles and Need for Change**, 2012

## RECOMMENDATIONS TO STATE

- ❖ Ensure that sexual violence is regarded as serious criminal conduct and that officials and the Islamic Provincial Council must treat incidents seriously and must not encourage survivors to withdraw complaints or settle cases.
- ❖ Ensure that those subject to sexual violence must be treated with respect and appropriate sensitivity, and ensure that procedures applied during investigation and trial do not cause further harm to the person who has suffered the violence.
- ❖ Provide detailed procedural guidelines, developed with the assistance and advice of competent experts on violence against women, to assist officials dealing with instances of sexual and domestic violence.
- ❖ Administrative organizations, the Central Islamic Committee and the Provincial Islamic Council should find ways to address the misuse of community and customary rules and practices which have led to the infringement of women's human rights and to prevent women from being subjected to acts of torture and other ill-treatment. The Thai authorities must make it succinctly clear that officials in the justice process are mandated to prevent, investigate and prosecute any act which could be construed as a grave offence of sexual harassment.

### E) WOMEN, PEACE AND SECURITY

37. The State party report refers to the establishment of the Southern Border Provincial Peace Building Council and the Southern Border Provincial Administration and Development Council (para. 138), and a committee, chaired by the Deputy Prime Minister, mandated to provide assistance and rehabilitation of victims of the situation of violence and the unrest in the Southern Border Provinces (para. 137). There is an urgent need to appoint more women to all these institutions set up by the government.
38. In the Southern Border Provinces (SBPs), women's political participation and decision making are restricted by factors concerning the religion, culture and tradition as well as local values which underpin the belief that women are supposed to act as wives and mothers. The current restiveness has resulted in a growing number of widowed women having to assume leadership of their families. Also, there has been a rise in the number of women having access to education. Still, women's roles have still been impeded and no effort has been made to promote their leaderships in society and to facilitate the making of their own decisions regarding issues at local levels.<sup>41</sup>
39. There were complaints from the Malay Muslim people in the Deep South to the SBPAC's *Damrong Tham Center (Justice Center)* that some security officials deployed in the SBPs have had sexual relationships with local Malay Muslim women. In some cases, the officials

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<sup>41</sup> Justice for Peace Foundation, *Parallel Report Submission to the Committee on Economic, Social and Cultural Rights*, April 2015.

married the women but in some other cases, the relationships remain out of wedlock. When the forces were transferred back to their homes, the contacts were terminated. Women and their babies were left to their own devices without any support and having to endure shame. Insofar, none of the concerned agencies have adopted any measures to address the needs of these vulnerable women and children.<sup>42</sup>

#### **RECOMMENDATIONS TO STATE**

- ❖ The RTG must adopt the UNSC Resolution no. 1325 in armed conflict areas to promote the roles and decision-making of women in the peace making process. The peace process in southern conflict must include women on the peace table.
- ❖ More representation of women in the Committees or Taskforces set up by the state to develop and make decisions concerning policy issues should be encouraged. More women officials including police, community leaders and commanding officials must be deployed to give instructions and to make decisions in various areas.
- ❖ Regarding married /non-married sexual relationships between the security forces and local Malay Muslim women, their superior officials have to closely monitor the situation. If these forces have been relocated and they have failed to provide sustaining support for the women's families, their in charge agencies must impose disciplinary actions against them and legal actions must be launched to protect the interests of the women and children.

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<sup>42</sup> Workshop report, "Malay Muslim Women Access to Justice", NHRCT-Women Foundation-Justice for Peace Foundation and UN Women ect., February 2014.