

MALAYSIA¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 31 May 2017)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Equality of spouses in marriage</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 irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncodified,</i></p>	<p>Article 8 of the Constitution provides for equality before the law and prohibits discrimination on several basis, including gender.²</p> <p>Article 8(5) of the Constitution allows for different personal laws based on religious belief.³</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.⁴ The Government of Malaysia has developed a “model law” entitled the Islamic Family</p>		<p>Malaysia has the following reservations to CEDAW:¹⁰</p> <ul style="list-style-type: none"> 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 provisions of the Convention do not conflict with the provisions of the Islamic <i>Shari’ah</i> law and the Federal Constitution of 		<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.¹³</p> <p>According to Sisters-in-Islam,¹⁴ the IFLA has been amended to make it gender-neutral. On the one hand, men</p>

¹ 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.

² Article 8 of Malaysia’s Constitution (1957), [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf)

³ Article 8(5) of Malaysia’s Constitution (1957), [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf)

⁴ Article 74(2), List II (State List) of Ninth Schedule of Malaysia’s Constitution (1957), [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).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

<p>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?</p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>Law (Federal Territories) Act (IFLA).⁵ 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.⁶</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 Shafie</i>, or according to one of the <i>Mazhab Maliki</i>, <i>Hanafi</i> or <i>Hanbali</i>.”⁷</p> <p>Despite the equality guarantee under Article 8 of the Constitution, the IFLA provides for a marital framework based on ‘reciprocal’</p>		<p>Malaysia; and</p> <ul style="list-style-type: none"> Article 11. This reservation was made “as a reference to the prohibition of discrimination on the basis of equality between men and women only.” <p>The Government of Malaysia in its 2016 report to the CEDAW Committee explained that:¹¹</p> <ul style="list-style-type: none"> Malaysia maintains two parallel family legal systems - one based on <i>Shari’ah</i> and the other on English common law; and <i>Shari’ah</i> laws are purely state matters under the 	<p>have been accorded with more rights. Such enhanced rights include:</p> <ul style="list-style-type: none"> 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 and necessary” as was the case in the past; and Providing husbands with the ability to
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¹⁰ United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-8&chapter=4&clang=en

¹³ UNDP, “Human Development Report 2016”, Table 5, pp. 214-217, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

¹⁴ 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>

⁵ Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.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

⁶ 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>

⁷ Sections 2, 134A of the Islamic Family Law (Federal Territories) Act (1984), http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/07216923c4bb5e6348257633002a0c8d?OpenDocument

	<p>or 'complementary' rights (as opposed to 'equal' rights) between the two spouses, whereby in return for maintenance and protection from her husband, a wife is expected to obey him. Thus:⁸</p> <ul style="list-style-type: none"> • Based on Section 59(1) of IFLA, a husband is obligated to pay his wife maintenance; • Based on Section 59(2) of IFLA, the wife is obligated to obey the lawful wises 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; • Section 128 of IFLA penalises a husband who fails to give proper justice to his wife; and • Section 129 of IFLA penalises a wife who willfully disobeys an order of her husband. 		<p>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 woman. For instance, 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"> • 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 		<p>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>),</p> <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, 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>
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¹¹ 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>

⁸ Sections 59, 128-129 of the Islamic Family Law (Federal Territory) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

	<p>Marriage and family relations of Malaysia’s non-Muslim minority communities are mainly governed by the Law Reform (Marriage and Divorce) Act (LRA).⁹ The LRA exclusively recognises civil marriages. It is a federal law and applies equally to all states in Malaysia.</p>		<p>maintenance, etc. In addition, the Syariah Court Evidence, Syariah Criminal Procedures and Syariah Court Civil Procedure which are 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 on areas that are not prescribed in depth in the</p>		
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⁹ Law Reform (Marriage and Divorce) Act (1976), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20164.pdf>

			primary sources of Islamic law. In this regard, the concept of <i>siasah shar'iyah</i> or public policy is used and has been used in marriage. ¹²		
<p>Minimum and equal legal age for marriage</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><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</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."¹⁵</p> <p>IFLA does not stipulate an absolute minimum age below which a marriage may not be authorised.</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.¹⁶</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</p>		<p>There is an ongoing policy debate on the possibility of increasing the minimum age for marriage. Cabinet ministers appear to have different positions on the issue:</p> <ul style="list-style-type: none"> In 2016, the Minister of Women, Family and Community Development was reported to have said that Malaysia is guided by the principle of "developing the full potential of the child". However, the Minister in charge of religious affairs had told her that "their hands are tied" if both sets of parents are agreeable to the child marriage.¹⁸ In 2010, the Minister in 	<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.²¹</p> <p>Court procedures in ascertaining consent of the child is inconsistent.²²</p>	<p>Various sources suggest that child marriage is a relatively common practice in Malaysia:</p> <ul style="list-style-type: none"> 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 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

¹² 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>

¹⁵ Section 8 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

¹⁶ Section 27 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

	<p>divorce if she repudiated the marriage before attaining 18 and the marriage has not been consummated.¹⁷</p>		<p>charge of Religious Affairs was reported to have rejected civil society calls to increase the minimum age for marriage for Muslims because: (i) the law already provide that marrying a girl below 17 requires the consent of the <i>Shari'ah</i> court; and (ii) maturity is a subjective question; it depends on the development of the person and not solely on age of the person.¹⁹</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.²⁰</p>		<p>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 1,090 in 2013 to 1,025 in 2015.²³</p> <ul style="list-style-type: none"> • According to Malaysia's Millennium Development Goals Report 2015, the 2010 Malaysian Population Census indicate that child
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¹⁸ Victoria Brown, "Rohani: Malaysia opposed to child marriage", *The Star*, 25 February 2016, <http://www.thestar.com.my/news/nation/2016/02/25/rohani-on-child-marriage/>

²¹ Information obtained from Malaysian advocate, February 2017

²² Information obtained from Malaysian advocate, February 2017

¹⁷ Section 52(1)(g) of the Islamic Family Law (Federal Territories) Act (1984), http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/lead91b822eb80a2a48257634000583c1?OpenDocument

¹⁹ AFP, "Malaysian minister rejects child marriage reform", *Asia One News*, 17 March 2010, <http://news.asiaone.com/News/Latest%2BNews/Asia/Story/A1Story20100317-205077.html>

²⁰ Girls Not Brides, "Malaysia", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/malaysia/>

					<p>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, constituting 1.4% of all married women in Malaysia while 73,428 of married</p>
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²³ Parlimen Malaysia, "Penyata Rasmi Dewan Rakyat: Parliament Ketiga Belas, Penggal Keempat, Mesyuarat Kedua", 19 May 2016, p. 17, <http://www.parlimen.gov.my/files/hindex/pdf/DR-19052016.pdf>

				<p>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;²⁴</p> <ul style="list-style-type: none"> • According to a media report, about 16,000 girls aged below 15 were married in 2010;²⁵ and • According to information on the ground, anecdotal evidence suggests that there may be a large number of unregistered marriages that involve underage children.²⁶ <p>According to UN World Marriage Data 2015, the average</p>
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²⁴ Malaysian Economic Planning Unit and United Nations Malaysia, "Millennium Development Goals Report: Malaysia 2015", p. X, <http://mdgr2015.com.my/img/Malaysia-Millennium-Development-Goals-Report-2015.pdf>

²⁵ The Star, "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/>

²⁶ Information obtained from Malaysian advocate, February 2017

				<p>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 2010.²⁷</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.²⁸ For instance:</p> <ul style="list-style-type: none"> • 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 al-
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²⁷ United Nations Population Division, "World Marriage Data 2015", <https://esa.un.org/ffps/Index.html#/maritalStatusData>
²⁸ Dr Muzaffar Shah Mallow, "Protecting Children from Underage Marriages", *News Straits Times*, 17 March 2017, <http://www.nst.com.my/news/2017/03/221605/protecting-children-underage-marriages>

					<p>leged to have raped. A higher court has since ruled that the man must face trial;²⁹</p> <ul style="list-style-type: none"> • 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 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
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²⁹ 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>continue schooling after the marriage;³⁰</p> <ul style="list-style-type: none"> • 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 court;³¹ and • 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.³² <p>According to Girls Not Bride child</p>
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³⁰ The Star, "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/>

³¹ The Star, "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/>

³² The Star, "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/>

				<p>marriages are largely driven by culture and tradition. They also to be more more common among rural and indigenous communities.³³</p> <p>The apparent differing views on the acceptability of child marriages at the policy level is also reflected in the on-going debate on the issue among civil society groups:</p> <ul style="list-style-type: none"> • 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;³⁴
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³³ Girls Not Brides, "Malaysia", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/malaysia/>

³⁴ 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>

					<ul style="list-style-type: none"> 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.³⁵
<p>Women's consent to marriage</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>Applicable CEDAW Provision</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.³⁶</p> <p>Section 37(a) of IFLA makes it an offense to use force or threat to compel a person to marry.³⁷</p> <p>Section 52(1)(j) entitles a wife</p>		<p>The Government of Malaysia in its 2004 report to the CEDAW Committee asserted that:⁴²</p> <ul style="list-style-type: none"> 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; Muslim women were accorded the right to 	<p>Prospective brides are required to sign a consent form prior to the solemnisation of the marriage.⁴³</p> <p>There is a standardised marriage contract. The marriage contract is known as the <i>ta'liq</i> Certificate. The <i>ta'liq</i> Certifi-</p>	<p>There are media reports of forced marriages:</p> <ul style="list-style-type: none"> 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

³⁵ 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/>

³⁶ Section 13 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

³⁷ Section 37(a) of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

⁴² 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>

⁴³ Information obtained from Malaysian Advocate, February 2017

<p>Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>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 Sayarak</i> to seek divorce.³⁸</p> <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.³⁹</p> <p>Between 2003 and 2005, the Islamic Family Laws of different states were amended, banning marriage by force (<i>ijbar</i>).⁴⁰</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.⁴¹</p>		<p>choose husbands of the same standing (<i>kufu</i>) as her. The rationale for <i>kufu</i> is to ensure compatibility and suitability between 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"> When applying for official permission to marry, the 	<p>cate is a document containing the promises expressed by a husband after solemnisation of the marriage. A 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.⁴⁴</p> <p>The standard <i>ta'liq</i> provision states that where the husband abandons</p>	<p>physically and mentally" and was found "in a state of depression";⁴⁷</p> <ul style="list-style-type: none"> Also in 2010, a 10-year-old girl 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.⁴⁸
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³⁸ 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

³⁹ Section 366 of the Penal Code (1976), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>

⁴⁰ 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>

⁴¹ Sections 25, 34, 125 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

⁴⁴ Sections 2, 22(1) of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

⁴⁷ 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>prospective groom must supply details such as his status, occupation and salary, which must be confirmed by his employer.</p>	<p>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 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>.⁴⁵</p> <p>Upon registration of a marriage and the payment of the prescribed fee,</p>	
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⁴⁸ 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/>

⁴⁵ Information obtained from Malaysian Advocate, February 2017

				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. ⁴⁶	
<p>Women's capacity to enter into marriage</p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can</i></p>	<p>Regardless of her age, a prospective bride requires the consent of a marital guardian (<i>wali</i>) to enter into marriage. The guardian must be a Muslim and a male relative of the prospective bride (father, followed by the paternal grandfather, full-brothers, half-brothers, sons of full brothers, sons of half-brothers, paternal uncles and male cousins).⁴⁹</p> <p>A judge may act as guardian in the absence of a stipulated male</p>	<p>The fathers in the cases of <i>Saad bin Syafie v Sarimah binti Saad & Seorang Lagi</i>,⁵³ and <i>Hussin v Saayah & Mat Hassan</i>,⁵⁴ filed for the annulment of the marriage of their daughters who eloped to be married in Thai-</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 be-</p>	<p>According to information on the ground, it is not common to include additional conditions to the prescribed <i>tal'iq</i> certificate.⁵⁶</p>

⁴⁶ Sections 21, 22 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

⁴⁹ Sections 7, 13 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>; Information obtained from Malaysian Advocate, February 2017

⁵³ [1992] 9 JH (2) 204

⁵⁴ [1980] 7 JH 35

<p><i>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>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.⁵⁰</p> <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.⁵¹</p> <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."⁵²</p>	<p>land.</p>		<p>fore and during the marriage.⁵⁵</p>	
<p>Polygamous marriages</p> <p><i>Does the law prohibit polygamy or impose strict conditions on such</i></p>	<p>A Muslim man may marry up to four wives at one time.</p> <p>Section 14(1) of IFLA prohibits</p>	<p>In <i>Aisyah bt Abdul Raof v Wan Mohd Yusof</i>,⁶⁷ the court granted</p>	<p>The Government of Malaysia in its 2016 report to the CEDAW Committee informed that.⁶⁹</p>	<p>The signatures of the existing wife or wives is(are) required</p>	<p>According to the Minister in charge of Religious Affairs, based on the rec-</p>

⁵⁶ Information obtained from Malaysian advocate, May 2017

⁵⁰ Section 13 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

⁵¹ Section 37 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

⁵² Section 22(1) of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

⁵⁵ Section 22 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>; Information obtained from Malaysian Advocate, February 2017

<p><i>practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a 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>women from marrying multiple men.⁶⁷</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 officially registered subject to a penalty under Section 123.⁶⁸</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</p>	<p>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>In <i>Sharif bin Jamaludin v Kuning bt Kasim</i>,⁶⁸ 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 maintenance. The court</p>	<ul style="list-style-type: none"> • <i>Shari'ah</i> allows Muslim men to have four wives but requires the men to be just to all the wives; • Section 23 of IFLA was amended to protect a woman 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; • 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 man's occupation, earnings as well as seeking medical reports for cases of infertility; 	<p>for a man to enter into a polygamous marriage.⁷⁰</p> <p>Similar to a monogamous marriage, the non-registration of a polygamous marriage does not necessarily invalidate 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 risks being deprived of her rights in the event of the</p>	<p>ords of the <i>Shari'ah</i> Courts across Malaysia, 8,808 cases of applications by husbands who were eligible and capable were given permission to enter into polygamous marriages between 2010 and 2016.⁷²</p> <p>A 2010 survey report on polygamous marriage by Sisters-in-Islam showed that:⁷³</p> <ul style="list-style-type: none"> • 35% of first wives were of the view that polygamous husbands were not able to afford the additional burden of having another wife and family, resulting in the first wife having to seek employment for
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⁶⁷ [1991] 7 JH 152

⁶⁹ 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>
⁵⁷ Section 14(1) of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

⁵⁸ Sections 23(1), 23(1A) of the Islamic Family Law (Federal Territories) Act (1984), http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/35c19dde03c64581482576340003acc1?OpenDocument

	<p>obtained or not regarding the proposed marriage.⁵⁹</p> <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.⁶⁰ To</p>	<p>allowed the husband to marry a second wife and the existing wife was granted the fixed monthly maintenance.</p>	<ul style="list-style-type: none"> • 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 marriage. This has proven an advantage for a women since prior to this amendment the application for the division of assets acquired during the 	<p>divorce or upon her husband's death, the status and rights of the children from the unregistered marriage may also be affected.⁷¹</p>	<p>additional income;</p> <ul style="list-style-type: none"> • 60% of the children of first wives said that they were disappointed when they found out about their fathers' polygamous marriage; • It is not uncommon for courts not to inquire as to the financial capacity of the man seeking to enter into a polygamous marriage; and
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⁶⁸ [1999] 15 JH (2) 73

⁷⁰ Information obtained from Malaysian advocate, February 2017

⁷² 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>

⁷³ 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/>

⁵⁹ Section 23(3) of the Islamic Family Law (Federal Territories) Act (1984),

http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/35c19dde03c64581482576340003acc1?OpenDocument

⁶⁰ Section 23(4) of the Islamic Family Law (Federal Territories) Act (1984),

http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/35c19dde03c64581482576340003acc1?OpenDocument

	<p>assist the court in the inquiry, the court must summon the 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.⁶¹</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.⁶²</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.⁶³</p>		<p>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>		<ul style="list-style-type: none"> • 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.
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⁷¹ Sections 25, 34, 125 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>; Information obtained from Malaysian advocate, February 2017

⁶¹ Section 23(4) 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

⁶² Section 23(5) 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

⁶³ Section 23(8) of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

	<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) order the division between the parties to the marriage of any assets acquired by them during the marrying 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.⁶⁴</p> <p>Section 123 makes it an offence for a man to enter into a polygamous marriage without the written permission of a court.⁶⁵</p> <p>Temporary marriages is not recognised by the law.⁶⁶</p>				
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⁶⁴ Sections 23(9), 73(1)(e) 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

⁶⁵ Section 123 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

⁶⁶ Information obtained from Malaysian advocate, February 2017

<p>Divorce rights</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 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</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.⁷⁴</p> <p>A husband may unilaterally repudiate the marriage, which must generally be effectuated in 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:⁷⁵</p> <ul style="list-style-type: none"> • 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 • Section 124 makes it an offence for a man to divorce his wife by pronouncement of <i>talaq</i> in any form outside the 	<p>In <i>Talib bin Saleh v Sepiah</i>,⁸¹ the wife filed for divorce on the ground that she was treated badly. She agreed to withdraw the action when her husband 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>,⁸² the</p>	<p>The Government of Malaysia in its 2004 report to the CEDAW Committee explained that:⁸⁴</p> <ul style="list-style-type: none"> • Under the Islamic Family Law Enactments of all states, the <i>Shari'ah</i> Court can make an order relating to divorce by allowing a husband to pronounce a <i>talāq</i> (repudiation of marriage); • 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>. • A Muslim wife can divorce her husband on grounds based on the prescribed <i>ta'liq</i> (a promise expressed by the husband after 	<p>The registration of divorce is mandatory, a standard procedure must be followed (e.g. a divorce cannot be registered without a final court order) and a divorce certificate will be issued to both parties.⁸⁵</p>	
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⁷⁴ Sections 47, 49, 50, 50A, 52 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

⁷⁵ Section 47, 55A, 124 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>
⁸¹ [1979] 1 JH 84

⁸² [1990] 7 JH 216

⁸⁴ 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>

⁸⁵ Sections 54, 55 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

<p>Paras. 34, 39-40 GR29</p>	<p>court and without the court's permission and prescribes a penalty (fine, imprisonment or both) for the offence.</p> <p>A married woman may, if entitled to a divorce pursuant to the terms of her <i>ta'liq</i> certificate made upon marriage, apply to the Court to pronounce that such divorce has taken place. The Court must, before pronouncing the divorce, examine the application and make an inquiry as to the validity of the divorce. If the court is satisfied that the divorce is valid in accordance with <i>Hukum Syarak</i>, it must confirm and record such divorce and send one certified copy of the record to the marriage registrar.⁷⁶</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</p>	<p>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 a divorce.</p> <p>In <i>Fakhariah v Johari</i>,⁸³ 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 mar-</p>	<p>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;</p> <ul style="list-style-type: none"> • Under IFLA, if the husband wishes to <i>ruju'</i> (resume conjugal relationship) with his divorced wife, the re-cohabitation must take place by mutual consent and without force. 		
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Section 50 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf> [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://umexpert.um.edu.my/file/publication/00004711_128946.pdf

	<p>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>).⁷⁷</p> <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</p>	<p>riage. The lower court dismissed the wife's application for divorce. However, the appeal court allowed her appeal and permitted the divorce by way of <i>ta'liq</i>.</p>			
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⁷⁷ Sections 50A, 52 of the Islamic Family Law (Federal Territories) Act (1984), http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/ead91b822eb80a2a48257634000583c1?OpenDocument

	<p>equitably in accordance with <i>Hukum Syarak</i>.⁷⁸</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 <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.⁷⁹</p> <p>The mandatory registration of a</p>				
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⁷⁸ Section 52 (h) 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

⁷⁹ Sections 47, 48, 49 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

	divorce is provided for in Section 54 of IFLA. ⁸⁰				
<p>Women's financial rights after divorce</p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h)</p>	<p>Generally, upon divorce, a woman may be entitled to: (i) financial maintenance during the waiting period after the divorce (<i>iddah</i>); (ii) a consolatory gift (<i>mut'ah</i>); and (iii) a share of the matrimonial assets (<i>harta sepencarian</i>).</p> <p>Under 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.⁸⁶</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.⁸⁷</p>	<p>The amount of maintenance and compensation differs from case-to-case; it depends on the financial situation of the family.⁹⁵</p> <p>In <i>Noor Bee v Ahmad Sanusi</i>,⁹⁶ 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>,⁹⁷ the former wife claimed for a piece of land in Kuala Lumpur, shares and money in banks</p>	<p>The Government of Malaysia in its 2004 report to the CEDAW Committee explained that a divorced Muslim woman may be entitled to:¹⁰⁰</p> <ul style="list-style-type: none"> • Reasonable maintenance from her former husband during the <i>'iddah</i> period (approximately a period of three months.); • <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 	<p>According to information on the ground:¹⁰³</p> <ul style="list-style-type: none"> • Much still needs to be done to increase the 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; • In light of the rising cost of living in Malaysia,¹⁰⁴ court-ordered maintenance for children while under the custody 	

⁸⁰ Section 55 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

⁸⁶ Sections 59(1), 61, 65(1) of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.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>

⁸⁷ Section 65 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

<p>Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</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 what the court considers fair and just in accordance with <i>Hukum Syarak</i>.⁸⁸</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</p>	<p>as <i>harta sepencarian</i> from her husband. 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</i></p>	<p>financial difficulties caused by separation from her former 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"> • <i>Harta sepencarian</i>, which means property jointly acquired by both husband and wife during the subsistence of marriage. The 	<p>of the mother are usually inadequate or inconsistent. In certain cases, child maintenance may be as low as 200 Malaysian ringgit per month per child.¹⁰⁵</p>
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⁹⁵ Information obtained from Malaysian Advocate, February 2017

⁹⁶ [1978] 1 JH (2) 63

⁹⁷ [1987] 6 JH 272; Aida Othman, "Shari'ah Matrimonial Rights in Malaysia", 2017, ZICO, p. 15, http://www.step.org/sites/default/files/Events/2017/Malaysia/Harta_Sepencarian_090317.pdf

¹⁰⁰ 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>

¹⁰³ Information obtained from Malaysian Advocate, February 2017

¹⁰⁴ 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>

⁸⁸ Section 56 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

	<p>any such sale to be divided between the parties.⁸⁹</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 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.⁹⁰</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</p>	<p><i>Aman @Abd Rahman</i>,⁹⁸ 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 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</p>	<p>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 towards the jointly acquired property.</p> <p>In addition, the Malaysian government explained that:¹⁰¹</p> <ul style="list-style-type: none"> • 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. 		
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¹⁰⁵ Information obtained from Malaysian advocate, February 2017

⁸⁹ Section 122 of the Islamic Family Law (Federal Territories) Act (1984), http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/9b92e9e51b49334a48257634000ae324?OpenDocument

⁹⁰ Section 122(2) of the Islamic Family Law (Federal Territories) Act (1984), http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/9b92e9e51b49334a48257634000ae324?OpenDocument

⁹⁸ JH 30 BHG. 1 1431H/2009; Aida Othman, "Shari'ah Matrimonial Rights in Malaysia", 2017, *ZICO*, p. 16, http://www.step.org/sites/default/files/Events/2017/Malaysia/Harta_Sepencarian_090317.pdf

¹⁰¹ 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>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.⁹¹</p> <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.⁹²</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,</p>	<p>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 Ahmad</i>,⁹⁹ the woman and man had married in 1981 and divorced in 2007. The former wife filed an application for <i>harta spencarian</i> on a double story house. She pleaded for an order that the</p>	<p>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;</p> <ul style="list-style-type: none"> • Under <i>Shari'ah</i>, the man is required to pay maintenance for his children during 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>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</p>		
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⁹¹ Section 122(4) of the Islamic Family Law (Federal Territories) Act (1984), http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/9b92e9e51b49334a48257634000ae324?OpenDocument

⁹² Section 122(5) of the Islamic Family Law (Federal Territories) Act (1984), http://www2.esyariah.gov.my/esyariah/mal/portaltv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/9b92e9e51b49334a48257634000ae324?OpenDocument

	<p>from disposing any assets acquired by them jointly or solely, during their marriage if the court is satisfied it is necessary to do so.⁹³</p> <p>Following a divorce, a father is responsible for the financial maintenance of his children. If the mother is the custodian, he is obligated to pay her maintenance to cover the expenses of his children. Both daughters and sons are entitled to maintenance until they are 18 but the court may extend the maintenance period as it thinks reasonable to enable them to pursue further or higher education or training.⁹⁴</p>	<p>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 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</p>	<p>another marriage.¹⁰²</p>		
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⁹⁹ [2015] 1 SHLR 90 Aida Othman, “*Shari’ah* Matrimonial Rights in Malaysia”, 2017, *ZICO*, p. 17, http://www.step.org/sites/default/files/Events/2017/Malaysia/Harta_Sepencarian_090317.pdf

⁹³ Section 107A of the Islamic Family Law (Federal Territories) Act (1984), http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/9b92e9e51b49334a48257634000ae324?OpenDocument

⁹⁴ Sections 72-80 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

¹⁰² 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>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 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</p>			
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		decision of the trial judged 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>Custody of Children</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 re-marriage 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>mu-maiyiz</i>) may choose to live with either parent unless the court orders otherwise.¹⁰⁶</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</p>		

¹⁰⁶ Sections 81, 84 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

	<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.¹⁰⁷</p> <p>A mother loses 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.¹⁰⁸</p> <p>A court is mandated to grant the custodian the right to decide all questions relating to the</p>		<p>deciding on the issue of custody.¹¹⁰</p>		
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¹⁰⁷ Section 86 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

¹⁰⁸ Section 83 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

¹¹⁰ 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>

	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. ¹⁰⁹				
Guardianship of Children <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>	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. ¹¹¹			Passport application forms allow either the mother, father or guardian to sign the form when applying for a child's passport. ¹¹³	
Applicable CEDAW Provision	A mother may only be appointed				

¹⁰⁹ Section 87 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

¹¹¹ Section 88 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

¹¹³ Information obtained from Malaysian advocate, March 2017

<p>Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>as guardian of her children by the court in the absence of any other guardian as specifically stipulated by law. In such case, the court may also appoint a joint guardian.¹¹²</p>				
<p>Family Planning</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.¹¹⁴</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.¹¹⁵</p>	<p>A wife needs the consent of her husband where the medical treatment involves her reproductive system e.g. use of IUD, etc.¹¹⁶</p>	<p>According to World Bank data, the total fertility rate decreased from 6.2 children per woman in 1960 to 1.9 in 2015.¹¹⁷</p> <p>According to the UN Population Division's 2015 Trends in Contraceptive Use Worldwide:¹¹⁸</p> <ul style="list-style-type: none"> • 57% of married women aged 15-49 are using a method of contraception, with 42% of

¹¹² Sections 90, 92 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

¹¹⁴ Sections 312-318 of the Penal Code (1976), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/ Penal%20Code%20%5BAct%20574%5D2.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>

¹¹⁵ 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>

¹¹⁶ Information obtained from Malaysian Advocate, May 2017

¹¹⁷ The World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

¹¹⁸ 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>women using a modern method;</p> <ul style="list-style-type: none"> • 15% of married women aged 15-49 have an unmet need for family planning services; and • 58% of marriage women aged 15-49 had their demands for family planning satisfied by modern methods of contraception. <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</p>
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					due consideration of all circumstances. ¹¹⁹
<p>Personal rights of spouses</p> <p><i>Does a woman need the consent 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 5 of the Constitution prohibits the deprivation of a person's life or personal liberty.¹²⁰</p> <p>Article 9 of the Constitution guarantees the freedom of movement and residence of every Malaysian within Malaysia.¹²¹</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:¹²²</p> <ul style="list-style-type: none"> • Fails to ensure that her husband's conjugal rights are met; 		<p>The Government of Malaysia in its 2004 report to the CEDAW 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>.¹²⁴</p>	<p>Married women in Malaysia retain their maiden names.¹²⁵</p>	<p>According to World Bank data, female labour force participation increased from 43% in 1990 to 49% in 2016.¹²⁶ During the same period, male labour force participation decreased from 80% to 78%.¹²⁷</p> <p>According to the 2016 UNDP Human Development Report:¹²⁸</p> <ul style="list-style-type: none"> • 75% of women over 25 have at least some secondary education

¹¹⁹ 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/>

¹²⁰ Article 5 of Malaysia's Constitution (1957), [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf)

¹²¹ Article 9 of Malaysia's Constitution (1957), [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf)

¹²² Section 59 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

¹²⁴ 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>

¹²⁵ 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>

¹²⁶ 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>

¹²⁷ 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>

¹²⁸ 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

	<ul style="list-style-type: none"> Leaves the marital home against the husband's wishes; Refuses to move with the husband to another home or place in accordance with his wishes. <p>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.¹²³</p>			<p>as compared to 79% of men of the same age group;</p> <ul style="list-style-type: none"> 99% of females aged 15-24 are able to read and write a short simple sentence as compared to 98% of males in the same age group; and 62% of women are satisfied with their freedom of choice as compared to 71% of men. <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</p>
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¹²³ Section 129 of the Islamic Family Law (Federal Territories) Act (1984), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20303.pdf>

					to undertake such activities. ¹²⁹
<p>Inheritance rights</p> <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>Generally, inheritance rights between Muslim women and men are unequal. There are no substantive codified laws relating to inheritance rights of Muslims. Inheritance rights of Muslims are based on <i>Shari'ah</i>.¹³⁰ In many instances, for example in the cases involving widows and widowers as well as siblings, a woman is entitled to half the share of a man.</p>		<p>The Government of Malaysia in its 2004 report to the CEDAW Committee explained that:¹³¹</p> <ul style="list-style-type: none"> • 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; • 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; 	<p>Division of the deceased's property can be changed in whatever manner if all heirs agree to such division.¹³²</p>	

¹²⁹ Information obtained from Malaysian advocate, February 2017

¹³⁰ 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>

¹³¹ 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>

¹³² Musawah, "Thematic Report on Article 16: Qatar", *Submission to the CEDAW Committee for the 57th Session*, 2014, p. 22, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/QAT/INT_CEDAW_NGO_QAT_16419_E.pdf

			<ul style="list-style-type: none"> 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. 	
<p>Violence against women in the family</p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that 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>Applicable CEDAW Provision</p>	<p>The Domestic Violence Act criminalises a number of acts of domestic violence.¹³³ 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 damage to property with intent to cause distress or annoyance to the victim; (vi) causing psychological abuse which includes emotional injury to the victim; (vii) causing the victim to suffer delusions by using any intoxicating</p>		<p>The Government of Malaysia in its 2016 report to the CEDAW 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.¹³⁸</p> <p>The Malaysian government also informed that:¹³⁹</p>	<p>According to the Women's Aid Organisation, statistics by the Malaysian police and the Ministry of Women, Family and Community Development show that in 2014 there were:¹⁴¹</p> <ul style="list-style-type: none"> 4,807 reported cases of domestic violence (2013: 4,123); 2,045 reported cases of rape (2013: 2,767); and 328 reported

¹³³ Section 2 of the Domestic Violence Act (1994), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20521%20-%20Domestic%20Violence%20Act%201994.pdf>

<p>GRs 12 & 19 Para. 40 GR21</p>	<p>substance or any other substance without the victim's consent.¹³⁴</p> <p>The Penal Code also contains some general prohibitions that are applicable to domestic violence. 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 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.¹³⁵</p> <p>Section 375 of the Penal Code generally exempts sexual inter-</p>		<ul style="list-style-type: none"> • The Penal Code was amended to increase the penalties for offences relating to rape and incest; • Although the term "marital rape" is not 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 • 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 	<p>cases of child abuse (2013: 295).</p> <p>A study on the practice of the female circumcision in Malaysia found that the practice is common among Muslims. The most common reason for practicing circumcision was religious obligation (82%), hygiene (41%) and cultural practice (32%).¹⁴²</p>
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¹³⁸ 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>

¹³⁹ 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>

¹⁴¹ "Police statistics on violence against women in Malaysia," http://www.wao.org.my/Police+Statistics+on+Violence+Against+Women+2000-2012_99_6_1.htm

¹³⁴ Section 2 of the Domestic Violence Act (1994), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20521%20-%20Domestic%20Violence%20Act%201994.pdf>

¹³⁵ Section 323-331, 352(A), 375, 377CA, 509 of the Penal Code, <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>

¹⁴² 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>course 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.¹³⁶</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.¹³⁷</p>		<p>charged for an offence of causing injury.</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.¹⁴⁰</p>		
<p>Nationality rights</p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the na-</i></p>	<p>A Malaysian man may pass his nationality to his non-Malaysian wife under Article 15 of the Constitution.¹⁴³ The Constitution does not specifically provide for a</p>		<p>The Government of Malaysia in its 2016 report to the CEDAW Committee explained that:¹⁴⁶</p> <ul style="list-style-type: none"> • Women and men are 		

¹³⁶ Section 375-375A of the Penal Code, <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>

¹³⁷ Section 127 of the Islamic Family Law (Federal Territories) Act (1984), http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_acta_lib.nsf/1f6766512d9936a348256aa300143ae8/3d4506b8ed63ad7648257634000c2bc0?OpenDocument

¹⁴⁰ Zofia Reyeh, "Malaysia: Female genital mutilation on the rise", ASEAN Today, 22 June 2016, <https://www.aseantoday.com/2016/06/malaysia-female-genital-mutilation/>

¹⁴³ Article 8 of Malaysia's Constitution (1957), [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf)

<p><i>tionality 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>Malaysian wife to confer her nationality to her foreign husband. The foreign husband of a Malaysian woman may acquire Malaysian citizenship through naturalisation.¹⁴⁴</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 citizenship.¹⁴⁵</p>		<p>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;</p> <ul style="list-style-type: none"> • A Malaysian mother may apply for her child to be registered as a citizen under Article 15(2) of the Constitution. The Malaysian government has enhanced the implementation of Article 15(2) by way of an interim administrative procedure that was implemented on 1 June 2010 and applies to children born overseas after 1 January 2010 to Malaysian mothers who are married to non-Malaysians. Applications 		
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¹⁴⁶ 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>

¹⁴⁴ Article 19 of Malaysia's Constitution (1957), [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf)

¹⁴⁵ Article 14, 15(2), Part II of the Second Schedule of Malaysia's Constitution (1957), [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf)

			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.		
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