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For Equality in the Family

A REPORT ON MALAYSIA'S PROGRESS AND COMMITMENT TO THE SUSTAINABLE DEVELOPMENT GOAL (SDG) TARGET 5.1 INDICATOR 5.1.1

Prepared by Ipsos Strategy3 for SIS and Musawah

A Report on Malaysia's Progress and Commitment to the Sustainable Development Goal (SDG) Target 5.1 indicator 5.1.1

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**SECTION 1:
EXECUTIVE SUMMARY**

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

Never before have women been more empowered than now – we are seeing more women in the workforce, leadership positions, and governance. However, there is still a long way to go in the journey towards gender parity. Women are still unfairly burdened by societal expectations and are first to bear the brunt of negative socioeconomic impacts.

The COVID-19 pandemic exacerbated existing inequalities – before COVID, women were nearly three times more likely to perform unpaid care work. With the closure of schools, women still bore a disproportionate share of unpaid care work (with evidence suggesting an increased amount), often while managing paid work.¹

In Malaysia, many policies and initiatives have been introduced over the last few years to improve and protect women's rights. Under the Twelfth Malaysia Plan, the government intends to increase labour force participation to 59% by 2025 from 55.6% in 2019.² One of the ways identified is through encouraging the participation of women, whose low participation (at 55.3%)³

in the labour market is primarily attributed to family responsibilities in the workforce.⁴ By increasing access and quality of early childhood care, education services, and affordable elderly care, these initiatives hope to encourage more women to stay employed or return to work. Additionally, Dewan Negara has passed the Anti-Sexual Harassment Bill in August 2022, providing the right of redress for sexual harassment survivors and an avenue to hold their perpetrators accountable.

Whilst efforts are being made to strengthen women's rights and protect women's interests in Malaysia, challenges remain. Cases of domestic violence have shown a significant increase, rising by 42% from 5,260 reported cases to 7,468 cases between 2020 and 2021.⁵ Meanwhile, the law in Malaysia does not currently criminalise marital rape⁶, and there is no clear plan by the government to make child marriage illegal, thus putting girls at risk of being forced into marriage. Despite progress made, gender inequality, yet again, persists.

The importance of gender equality is underlined through its inclusion as one of 17 Sustainable Development Goals (SDGs) under the 2030 Global Agenda for Sustainable Development adopted by all members of the United Nations. SDG 5 on gender equality ambitious target 5.1.1 to end

¹ UN Women, "How COVID-19 Impacts Women and Children", 2021

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

³ 12th Malaysia Plan 2021 - 2025

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

⁵ Ministry of Women, Family and Community Development

⁶ Marital rape is not criminalised, the exception to section 375 of the Penal Code permits marital rape as long as the marriage is legally enforceable.

all forms of discrimination against all women and girls everywhere by 2030. Progress for this target is measured through indicator 5.1.1 - whether governments and nations have added legal frameworks to promote, enforce and monitor equality and non-discrimination based on sex. This report, commissioned by Musawah and Sisters in Islam (SIS), aims to raise awareness of where Malaysia currently stands in its efforts to eliminate discrimination against women and to achieve gender equality based on the framework provided by the UN.

This report examines Malaysia's current progress on the current legislative system and policies that are in place to promote, enforce and promote equality and non-discrimination based on indicator 5.1.1 through 45 key questions developed by the UN. These questions, covering several areas of law, are drawn from the international legal and policy framework on gender equality, particularly the Convention on the Elimination of All Forms of Discrimination

against Women (CEDAW), which has 189 States parties, and the Beijing Platform for Action.⁷

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

Ultimately, this report seeks to raise awareness on Malaysia's current standing and to advocate for change from the government of Malaysia to realise the UNSDG goal of achieving gender equality by 2030.

⁷ United Nations, Global SDG Indicator Platform, <https://sdg.tracking-progress.org/indicator/5-1-1-legal-frameworks-that-promote-enforce-monitor-gender-equality-area-4-marriageand-family/>, Accessed 13th September 2022

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



**SECTION 2:
INTRODUCTION**

2.1 | Background

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

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

Sisters in Islam (SIS) is a non-governmental organisation working toward advancing Muslim women’s rights in Malaysia.

SIS was founded in 1988 by a group of Muslim women who came together to address the injustice women face under the Syariah (Islamic law) legal system. Their critical reading of the Al-Quran through a hermeneutical approach opened a world of Islam for women filled with love, mercy, equality and justice.

In early 2022, Musawah and SIS embarked on a collaborative effort envisioning this report with three objectives:

1. To test the 45 questions outlined in SDG indicator 5.1.1 through legal research.
2. To collect the official datasets reported around SDG indicator 5.1.1 from respective stakeholders.
3. To ascertain the actual progress of Malaysia in terms of SDG indicator 5.1.1.

With these objectives in mind, this report serves as a crucial tool to provide a comprehensive understanding of Malaysia’s current position in eliminating discrimination against women and achieve gender equality. Through an assessment of Malaysia’s efforts, it aims to shed light on the progress made while identifying the key gaps and challenges that continue to persist.

Central to this report is the United Nations Sustainable Development Goal (SDG) 5.1.1 indicator, which provides a structured framework for measuring government efforts in promoting and enforcing gender equality through legal frameworks. As part of this report, Malaysia’s progress in aligning with SDG indicator 5.1.1 is reported through the questionnaire developed by the UN to measure four areas of law, which are:

1. Overarching legal frameworks and public life;
2. Violence against women;
3. Employment and economic benefits; and
4. Marriage and family.

By understanding its current state and addressing the identified gaps, Malaysia can take substantial strides towards eliminating discrimination against women and fostering an environment where all women can thrive and contribute to a more inclusive society.

2.2 | Methodology

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



Literature Review



In-depth Interviews



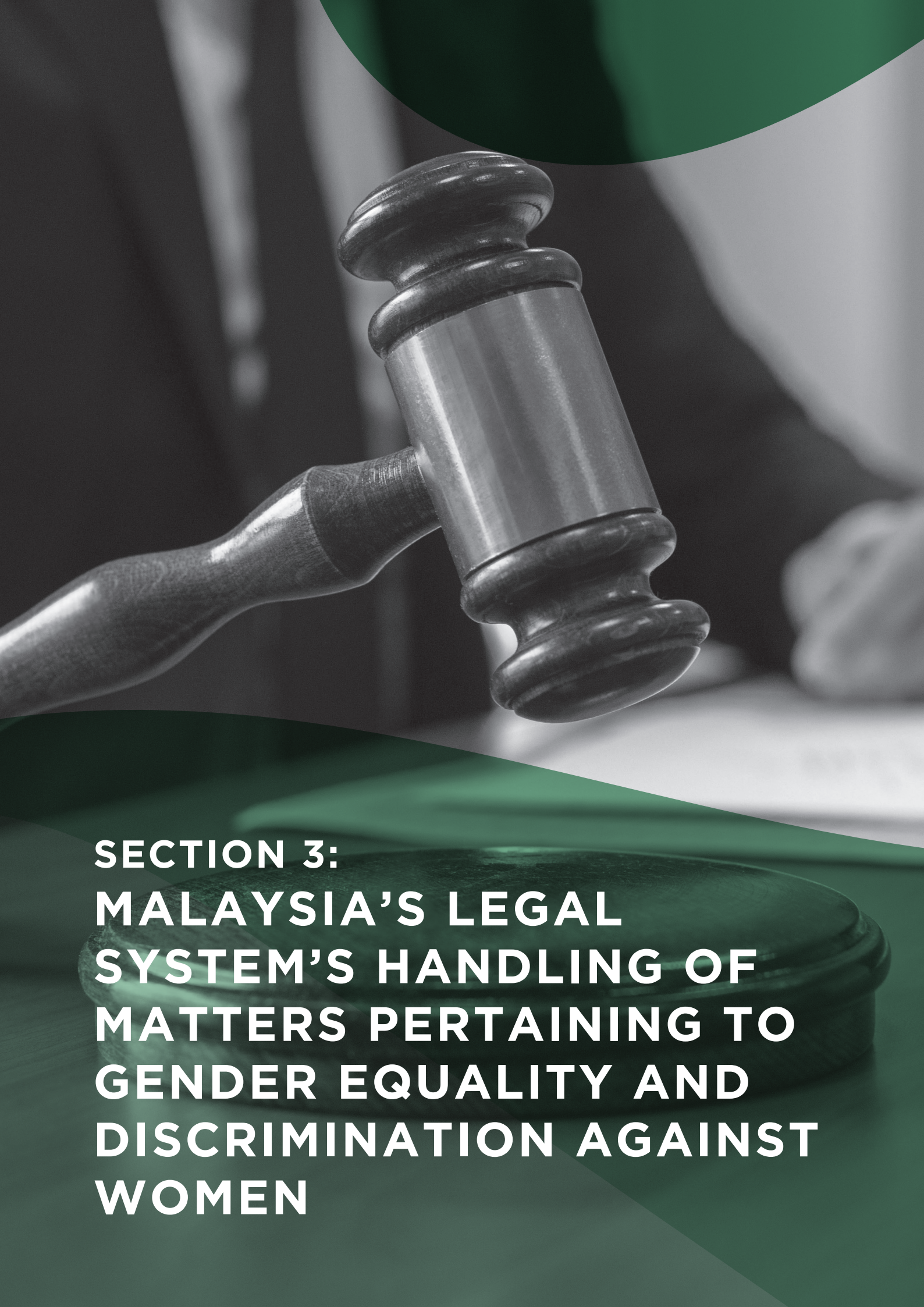
Legal Framework Assessment

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

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

Musawah and Sisters in Islam commissioned Ipsos Strategy3 to conduct the research, and the recommendations provided (Chapter 7) are solely informed by the findings of this study.



A close-up photograph of a wooden gavel resting on a wooden block. The gavel is positioned diagonally, with its handle pointing towards the bottom left and its head pointing towards the top right. The background is blurred, showing what appears to be a courtroom setting with a person's hand visible on the right. The image is overlaid with a dark green circular shape at the top and a dark green curved shape at the bottom, which serves as a background for the text.

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

3.1 | Overview of the legal system of Malaysia



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

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

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

The separation between these two legal systems is further codified within Article 121(1A) of the Federal Constitution. It stipulated that the civil courts have no jurisdiction in matters that fall within the Syariah court jurisdiction. This is meant to provide a clear distinction between the jurisdiction of the two systems. Therefore, a matter can only be under the jurisdiction of the civil court or the Syariah court, but not both.⁸

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

⁸ Yvonne Tew, "The Malaysian Legal System: A Tale of Two Courts", Georgetown University Law Center, 2011

Figure 1: Legal system of Malaysia

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

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

3.2 | Civil law

Under the Federal Constitution, Article 8 (2) has prohibited gender discrimination with the stipulation in place, “there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment”.

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

Economic participation and opportunities

Under the Employment Act, both men and women generally enjoy equal protection in matters of economic participation and opportunities. However, the Act lacks explicit provisions for equal pay for work of equal value and does not specifically address gender-based employment discrimination.

Additionally, the government has amended the Employment Act 1955 to increase maternity leave from 60 days to 98 days – in line with the International Labor Organization (ILO) standards. The same amendment also added paternity leave from three days to seven days for married male employees to manage matters related to the birth of their children.⁹

Violence against women

Malaysia does have a law that specifically addresses acts of domestic violence through the Domestic Violence Act (DVA) 1994. The act is read together with the Penal Code, which outlines punishments for various offences. While Penal Code charges are not specific to domestic violence, those who commit certain Penal Code offences against a spouse may receive greater punishment compared to offences made to non-spouse. Additionally, domestic violence survivors are entitled to protection orders under the Domestic Violence Act.¹⁰

The definition of domestic violence includes the following:¹¹

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

⁹ Parliament of Malaysia, https://parlimen.gov.my/files/billindex/pdf/2021/DR/DR%201_2021%20-%20bm-merged.pdf

¹⁰ Women's Aid Organisation (WAO), <https://wao.org.my/laws-on-domestic-violence/>, Accessed 19th September 2022

¹¹ Malaysian Administrative Modernisation and Management Planning Unit (MAMPU), Accessed 13th September 2022

Meanwhile, the Anti-Sexual Harassment Bill was tabled for the first reading in the Dewan Rakyat on 15 December 2021¹² and was subsequently passed in August 2022. The bill stipulates the setup of a tribunal to hear cases of sexual harassment, providing the right of redress for sexual harassment survivors and an avenue to hold their perpetrators accountable. If convicted, the court may direct perpetrators to issue an official apology or require them to compensate the victims. At the same time, failure to comply may result in a fine or imprisonment.¹³

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

¹² Parliament of Malaysia, <https://www.parlimen.gov.my/bills-dewan-rakyat.html?uweb=dr&>

¹³ S. Indramalar, "It's time's up for sexual harassers in Malaysia, with Anti Sexual Harassment Bill passed", The Star, Published July 2022

Marriage and family

Matters relating to marriages fall under purview of civil law for non-Muslims. The legal framework for civil marriage is primarily based on the Law Reform (Marriage and Divorce) Act 1976. Under this Act, individuals of different genders who meet the eligibility criteria can enter into a legally recognised marriage.

Marriage age

Minimum age of marriage for non-Muslims is enshrined in the constitution through the Law Reform (Marriage and Divorce) Act of 1976, which sets the legal marriage age at 18 years old for both male and female. It also stipulates that under no circumstances can the marriage of non-Muslims girls below 16 years old be legally approved.

However, girls between the ages of 16 and 18 may marry with the consent of the Chief Minister of a particular state.

Citizenship

There are different processes in conferring citizenship for children born abroad to a

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

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

3.3 | Syariah law

Syariah, or Islamic law, only has jurisdiction over Muslims and is limited to family law and religious matters. It falls under the purview of the state, and hence, may differ from one state to another. In general, there are four common issues surrounding women's rights in the Islamic Family Laws Act – the dissolution of marriage (*fasakh*), polygamy, matrimonial property, and custody of children (*hadhanah*).¹⁴

Despite many recent cases ruling in favour of men over women, Syariah lawyers have stated that Syariah law statutes have provided good grounds for protection for women over men.¹⁵ The lack of rulings in favour of women can be attributed to poor preparation and execution in court cases. This pattern is particularly prevalent in marriage and divorce-related cases.

¹⁴ Md Zawawi Abu Bakar, "Permasalahan Hak Pasangan dalam Undang-undang Keluarga Islam"

¹⁵ In-depth Interviews with Syariah Lawyers

Marriage and family

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

Alimony and child support payments

One of the biggest challenges women face in Syariah law for marriage and family is delinquency on alimony and child support payments from former husbands. According to lawyers, this process could take six months and more than a year to be resolved with no mechanism to speed up this process. This issue persists even with local governments taking action to pursue the guilty parties.¹⁶

Other developments

In 2010, two women were appointed as Federal Territory Syariah Subordinate Court (Hakim Mahkamah Rendah Syariah) judges in the Federal Territory Syariah Court. Several other states, namely Melaka, Perlis, Sabah, Kelantan, Pahang, Selangor, Kedah and Terengganu, have implemented similar measures by appointing several women Syariah officers as Syariah Subordinate Court Judges.¹⁸

Marriage age

In terms of marriage, most states maintain the minimum age of marriage at 16 for girls and 18 for boys. The exceptions to this practice are the state of Selangor and Kedah – the former amended the minimum age for marriage to 18 for boys and girls¹⁷ in 2018, while the latter recently approved an amendment to state law to increase the minimum age to the same level in July 2022. Despite the minimum age requirement, Syariah law also permits the marriage of those below the minimum age, as long as they obtain permission from the Syariah court.

In 2016, two women Syariah officers in Selangor were appointed as Judges of the Syariah High Court, Selangor. This groundbreaking appointment not only marked a significant milestone, but also demonstrated a recognition of the capabilities of women to excel in such roles within the Syariah courts in Malaysia.

¹⁶ Malay Mail, “FT sets up new Shariah unit to act on delinquent alimony, child support payments”, Published 2nd September 2019

¹⁷ Selangor Government, <http://dewan.selangor.gov.my/sultan-selangor-setuju-cadangan-naikkan-had-umur-perkahwinan-kepada-18-tahun/>

¹⁸ YA Noor Huda binti Roslan, Hakim Wanita di Mahkamah Syariah: Isu dan Cabaran

3.4 | Overlapping jurisdiction between federal and state governments



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

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

3.5 | Government policies and initiatives

Overview of overarching gender policies

The gender equality agenda in Malaysia is a mandate of the Ministry of Women, Family and Community Development (MWFCD), which is responsible for enforcing the legal framework for gender equality and non-discrimination against women in Malaysia.¹⁹ It was formed in 2001 as a coordinator for developing women and families as part of Malaysia's commitment to the Beijing Declaration and Platform for Action adopted at the United Nations' Fourth World Conference on Women in Beijing in September 1995.

At a national level, National Women Policy aims to ensure the development and empowerment of women by mainstreaming women's interests in achieving their full potential in planning and country development to achieve gender equality.²⁰

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

At the international level, apart from its commitment to the Beijing Declaration, Malaysia ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in July 1995.²¹

¹⁹ Manual on Gender Budgeting in Malaysia, Ministry of Women, Family and Community Development

²⁰ Department of Women's Development, Ministry of Women, Family and Community Development

²¹ Refer to Section 5: How States Report on the Elimination of All Forms of Discrimination Against Women

Economic participation and opportunities

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

Additionally, the Government, from the previous Budget 2022, expressed its commitment to mainstream the role of women in decision-making as well as strengthen women's leadership in the corporate world. Through the Securities Commission, the government will make it

mandatory for all publicly listed companies to appoint at least one female director. It is expected to take effect from 1 September 2022 for large, capitalised companies and 1 June 2023 for other publicly listed companies. The Government has also allocated RM5 million to the Women Leadership Foundation to boost women's participation in the economic sector through, among others, young leadership training and entrepreneurship programmes.

Violence against women

In the 2022 budget, the Government has also allocated RM13 million to empower Bahagian D11 Polis DiRaja Malaysia, which investigates sex crimes against women and children. A community awareness programme on violence against women nationwide through the WAJA (Women Anti-Crime) Squad will also be implemented with an allocation

of RM10 million. In addition, to protect the welfare of more survivors of domestic violence, the Government will add a One-Stop Social Support Centre (with an allocation of RM4.5 million) and work with NGOs to increase the number of Women's Special Shelters with a budget of RM10 million.²²

Marriage and family

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

health education (SRH) and parenting skills, 3) lack of access to education and low school attendance, 4) stigma and social norms towards lower marriage age being made the best option in society to solve problems, and 5) loose laws that provide for marriage applications under 18.²³ However, as of 2022, there is still a lack of effort to coordinate and publish transparent underage marriage and divorce data.

Data and statistics on women

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

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

to domestic violence under the Select Committee on Women and Children and Social Development.²⁴ The Data Working Committee involves the Royal Malaysia Police, NGOs, the Social Welfare Department, and the courts and it is led by MWFCDD, which provides a uniform template to collect data from these agencies and publish the data, which was expected to be completed in June 2022.

²² Ministry of Finance Malaysia, "Budget 2022", <https://budget.mof.gov.my/pdf/2022/ucapan/ub22.pdf>

²³ Ministry of Women, Family and Community Development, "National Strategy Plan in 28 Handling the Causes of Child Marriage", 2020

²⁴ Based on in-depth interview





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

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

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

The Global Gender Gap Report by the World Economic Forum released in 2022 highlighted alarming gaps for Malaysia. Overall, Malaysia was ranked 103rd out of 146 countries on the Global Gender Gap Index (GGI). Despite this being a minor improvement from 2021 (ranked 112th), the nation still trails behind many of its peers. Within the East Asia and the Pacific region²⁵, Malaysia was only

ranked 14th out of 19 countries across all four key indicators; Economic Participation and Opportunity, Educational Attainment, Health and Survival and Political Empowerment.

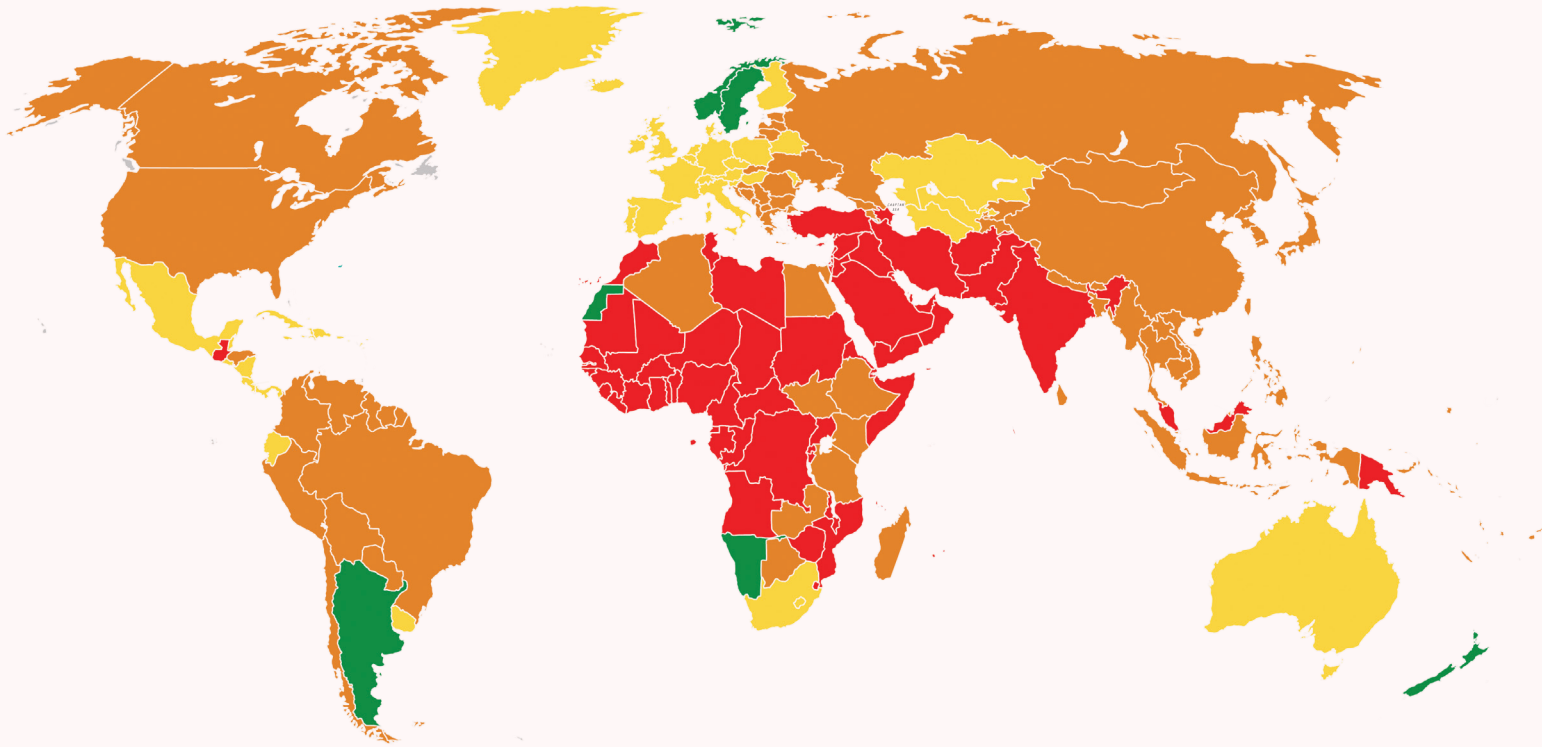
At the national level, the Malaysia Gender Gap Index (produced according to the methodology of GGI using the latest data from DOSM) shows that in 2020, women underperformed in all sub-indices, except for Educational Attainment. The Health and Survival sub-index recorded a score of 0.956,²⁶ followed by Economic Participation and Opportunity (0.738). Political Empowerment recorded the lowest at 0.1. This underlines the level of inequality between men and women in Malaysia.

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


²⁵ Global Gender Gap Index 2022. The East Asia and Pacific region is represented by New Zealand, Philippines, Australia, Singapore, Laos, Timor Leste, Mongolia, Thailand, Vietnam, Indonesia, South Korea, China, Brunei, Myanmar, Fiji, Vanuatu, Japan and Malaysia

²⁶ A score of 1.0 (100%) indicates equality between men and women has been achieved

Figure 2: Visual Representation of Malaysia's performance on SDG 5



- SDG achieved
- Challenges remain
- Significant challenges remain
- Major challenges remain
- Information unavailable

 **Malaysia**
Major challenges remain

Source: UN Sustainable Development Report, Accessed September 2022

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

4.1 | Economic participation and opportunities

Women still make out a fraction of the workforce compared to men. In 2021, the female labour force participation rate was 55.5% compared to males at 80.9%.²⁷ Meanwhile, women's involvement in politics accounted for only 13.2% of elected parliamentary representatives. The proportion of women in decision-making positions in the private sector was still below the 30% minimum national target, with only 25.8% of women directors on the boards of Malaysia's top 100 publicly listed companies (PLCs).²⁸

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

responsibility between men and women. Childcare remains one of the biggest barriers to employment for women, further compounded by the burden of indirect care work, such as cooking and cleaning, of which women do more than double the amount compared to men.²⁹

Additionally, despite the equal rights afforded to men and women in the Constitution, application of the said right seems to apply selectively. In the case of *Beatrice Fernandez v. Sistem Penerbangan Malaysia and Anor (2005)*, the Federal Court decided that Article 8(2) only applied to public authorities and private employers had the right to terminate the employment of their pregnant employee. A similar judgement was made in *Air Asia Bhd v. Rafizah Shima Mohamed Aris (2014)*.³⁰ In this regard, gender-inclusive employment laws must be legally mandated to prevent discrimination based on gender and bodily autonomy in both the public and private sectors.

²⁷ DOSM, "Labour Force Survey Report 2021"

²⁸ 12th Malaysia Plan

²⁹ Khazanah Research Institute, "Work in an Evolving Malaysia", 2020,. Accessed from <https://bit.ly/3rOW1J6>

³⁰ Skrine, "The Pregnant Pause", Published 30th September 2014

4.2 | Marriage and family

Unequal rights to confer citizenship to overseas-born children

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

Despite the Constitution guaranteeing equal rights to men and women, discriminatory laws still exist. Malaysia is one of just 28 countries that do not allow women to pass on their nationality on an equal basis with men.³¹ This has placed an immense burden on the mothers – leading to various issues such as forcing women to stay in abusive marriages with their partners to avoid being separated from their children. COVID-19 has exacerbated the issue – movement restrictions and border closure meant that some Malaysian mothers were forced to separate from their overseas-born children, separating family units as overseas-born children are unable to reside in Malaysia permanently.

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

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

Meanwhile, non-citizen wives may acquire citizenship by registration if the marriage is still subsisting, she has resided in Malaysia for two years preceding the application, and she is of ‘good character’.³² The varying processes for men and women for their spouses reinforce a patriarchal viewpoint, suggesting that women require assistance in making important decisions and thus require additional legal protection.

³¹ E. Ding, “Malaysian mothers fight country’s unequal citizenship laws”, Al-Jazeera,

³² Federal Constitution of Malaysia, Article 15 (1)

The process has inadvertently promoted discriminatory practices against Malaysian women who are married to non-citizen husbands. If the principle of equality between

men and women is to be upheld, it should also extend to equal treatment of their spouses before the law.

Prevalence of underage marriage

Based on statistics released by the Department of Statistics Malaysia (DOSM), an average of 1,500 children are reportedly married each year as of 2018. While the practice affects both boys and girls, it disproportionately affects girls - 90% of children married in 2018 were girls.³³ Girls at that age are still growing and still learning the ways of life. Early marriage robs them of their childhood, impacts their physical, psychological and social well-being, and has profound short- and long-term consequences on their health and livelihood.³⁴

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

Figure 3: Global impact of child marriages



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



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



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

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

³³ Unicef, "Advocacy Brief: Towards Ending Child Marriage in Malaysia", 2020

³⁴ Dr A. Ponnupillai, Dr P. Shanmuganathan, "Child marriage and its health consequences", The Sun Daily, Published 13th April 2022

Despite the negative impacts on girls, the government still has no plans to ban child marriages,³⁵ opting to focus its efforts on reducing the occurrence of child marriages through the implementation of the National Strategic Plan in Handling the Causes of Child Marriage (2020 to 2025). While advocacy is important, addressing this issue requires a multi-pronged approach - exceptions present through the law provide a loophole that can undermine efforts to reduce the occurrence of child marriages. Increasing the nationwide minimum age to marry at 18 not only safeguards the children from entering marriage before they can fully comprehend the magnitude of the situation but also enables Malaysia to fulfil its international commitments to CEDAW and SDG.

4.3 | Violence against women

Domestic Violence

According to World Health Organization (WHO), domestic or intimate partner violence is the most common form of violence experienced by women globally. Domestic violence refers to any act of direct or indirect violence or abuse used by someone within the domestic sphere to exercise power and control over another. It can include but is not limited to physical, sexual, psychological, verbal, emotional, and financial abuse.³⁶ In 2021, there was a 42% increase in domestic violence cases in Malaysia compared to 2020.³⁷ The movement control order brought by the COVID-19 pandemic is thought to have contributed to the increase in cases as people lost their livelihoods and were forced to stay home.

The DVA provides protection to spouses, former spouses, children, family members and differently-abled individuals living as family members. However, this act does not apply to women who are unmarried or in intimate partnerships. This leaves some women vulnerable and without adequate protection from the law. For example, abused intimate partners are often stigmatised and receive less attention and assistance, largely because they are not legally married.³⁸ This is an area of the law that the government should address to ensure equal protection for all women.

³⁵ K. Ayamany, “ Women’s Ministry says no plans to ban child marriages, better to change society’s attitudes through public education”, Malaymail, Published 22nd March 2022

³⁶ All Women’s Action Society (AWAM), “Domestic Violence,” AWAM, Accessed 21st September 2022

³⁷ A. Povera, “ 42pc spike in domestic violence cases last year”, New Straits Times, Published 10th March 2022

³⁸ SUKAHAM, “Human Rights Commission of Malaysia: An Independent Report to The Committee on the Convention on The Elimination of All Forms of Discrimination Against Women”, Published in 2017

Sexual harassment

The passing of the Anti-Sexual Harassment Bill has provided an avenue for sexual harassment survivors to hold their perpetrators accountable. However, the clauses stipulated in the bill contain several gaps, which have also been raised as concerns by various women's rights organisations.³⁹

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

Lastly, the bill lacks provisions to protect the complainant. For example, the complainant might face retaliation for reporting to his or

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

Incidents such as the usage of sexist remarks by Members of Parliament (MPs)⁴⁰ go to show the need for such protection. Allowing these MPs to get away with only a warning does not seem to reduce the frequency of the occurrence and sets a disappointing precedent whereby perpetrators are not held accountable for their actions. Having a hostile environment and one that favours men discourages women from participating in such professions – only 13.2% of parliament members were women.⁴¹ As elected representatives by the rakyat and thus in charge of developing and drafting such protections for the rakyat, these principles based on equality must also be embodied by the MPs and reflected in their behaviour.

³⁹ WAO, “Urgently review the Anti-Sexual Harassment Bill 2021”, Published April 2022

⁴⁰ M. Carvalho, T. Tan, R. Vethasalam, “Uproar in Parliament after MP calls out lawmakers ‘prone’ to making sexist remarks”, The Star, Published 19th July 2022

⁴¹ 12th Malaysia Plan

Marital rape

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

Section 375A in the Penal Code was introduced to provide some protection to wives. It holds the husbands accountable for causing harm or instilling fear of death in their wives in order to engage in sexual intercourse with them. However, this amendment is problematic as the offence criminalises the harm or fear of harm to the wife in the lead-

up to sex, rather than the act of rape itself, and carries a much lower sentence compared to rape.⁴² Rape can also happen without hurt or fear of hurt – for example, through intoxication. Consequentially, married women are left vulnerable to rape by their partners.

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

4.4 | Insufficient granular gender-based statistics from government sources

In general, Malaysia faces challenges in capturing and reporting on sex-disaggregated data.


While DOSM provides some breakdown of data based on gender (e.g. population breakdown, labour force, education level participation rate), the data are still insufficient to get a full picture of women's progress in Malaysia. For example, the Salaries & Wages Survey Report is an annual report published by DOSM that presents the

principal statistics of salaries and wages of Malaysians. While there are breakdowns in statistics on gender, these are just broad-based statistics such as mean salary by gender with a breakdown by strata (Urban vs Rural). However, if this data were broken down further by profession, sector, state and area, there would be an opportunity to cross analyse the gaps in detail to understand the areas lacking for women in the labour force.

⁴² All Women's Action Society (AWAM), "Legal Remedies," AWAM, Last modified November 8, 2020, <http://www.awam.org.my/2020/09/09/legal-information>.

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

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

A black and white photograph of two women wearing hijabs. The woman on the left is smiling broadly and looking at a smartphone held by the woman on the right. The woman on the right is looking at the phone with a focused expression. The image is overlaid with a dark red circular graphic in the top left and bottom right corners. The text is overlaid on a dark red circular graphic in the bottom left corner.

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

This chapter explores Malaysia’s commitment to CEDAW. Malaysia’s ratification of this Convention is significant as it demonstrates a commitment to transparency and accountability. Whilst this does not correlate with or directly influence the achievement of targets and indicators of SDG 5, the nation’s accountability and obligations can be observed and measured through a transparent reporting process.

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

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

Under the Convention, discrimination against women is defined as “...any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental

freedoms in the political, economic, social, cultural, civil or any other field⁴³.” Nations that have ratified the Convention have committed themselves to undertake measures which are in line with the targets of the Convention within their respective jurisdictions.

This includes incorporating the principle of gender equality into their legal system, abolishing all discriminatory laws, eliminating harmful and negative stereotypes and adopting appropriate legislation to prohibit any form of discrimination against women. Being part of this Convention sets a basis for realising equality between men and women in various areas such as political and public life, education, health and employment.

⁴³ UN, “Convention on the Elimination of All Forms of Discrimination against Women”

5.2 | Malaysia's entry into the Convention

On the 5th of July 1995, Malaysia officially acceded to the Convention on the Elimination of All Forms of Discrimination against Women, albeit with reservations to several of CEDAW's Articles. As part its commitment to the Convention, Malaysia undergoes a review by the UN every four years.

Over time, Malaysia has withdrawn some of its initial reservations. However, almost 30 years since its ratification of the convention, Malaysia still maintains reservations on Articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g) on the grounds that these Articles conflict with the Federal Constitution and Islamic Law (Syariah).

These articles are:

1. Article 9(2): States Parties shall grant women equal rights with men concerning the nationality of their children.
2. Article 16: States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular, shall ensure, on a basis of equality of men and women:
 - (1)(a): The same right to enter into marriage;
 - (1)(c): The same rights and responsibilities during marriage and at its dissolution
 - 1)(f): The same rights and responsibilities concerning guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases, the interests of the children shall be paramount;
 - (1)(g): The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.

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

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

The committee was established in 1979 and comprised 23 independent experts from various regions, including Europe, Africa, Asia, and Oceania.⁴⁴

States that ratify CEDAW must legally fulfil the following:

- | | |
|---|--|
| <ol style="list-style-type: none">1. Eliminate all forms of discrimination against women in all areas of life.2. Ensure women’s full development and advancement so that they can exercise and enjoy their human rights and fundamental freedoms in the same way as men; and3. Allow the CEDAW Committee to scrutinise their efforts to implement the treaty by reporting to the body at regular intervals. | <p>Per the Protocols to the Convention, the Committee is mandated to:</p> <ol style="list-style-type: none">1. Receive communications from individuals or groups of individuals submitting claims of violations of rights protected under the Convention to the Committee and2. Initiate inquiries into situations of grave or systematic violations of women’s rights. These procedures are optional and are only available where the State concerned has accepted them. |
|---|--|

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

These suggestions and clarifications encompass issues such as violence, poverty, lack of legal protections, denial of inheritance and property rights, and limited access to credit. Such efforts have led to the development of women’s rights and the adoption of laws on gender equality in various countries such as Botswana, Japan, China, Sri Lanka, Tanzania, Costa Rica, Mongolia, Rwanda, Turkey, Nepal, South Africa, South Korea, Burkina Faso, Panama, Canada, Ukraine, and Moldova.⁴⁵

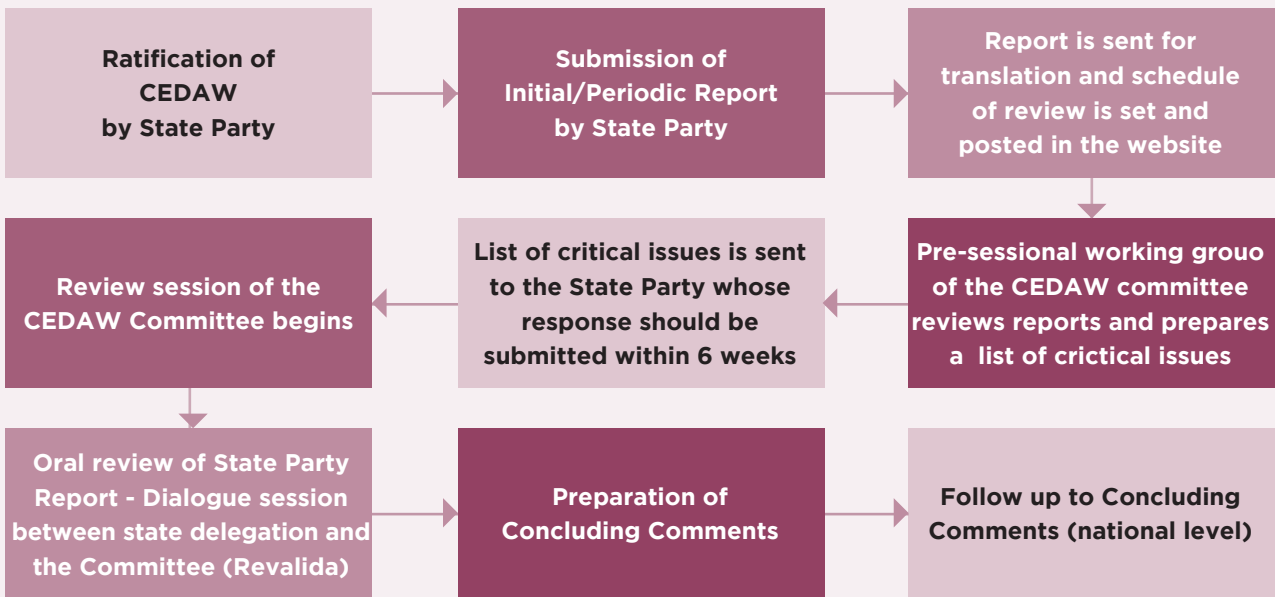
⁴⁴ OHCHR, “Introduction to CEDAW”

⁴⁵ OHCHR, “The work of the committee”

5.4 | The structure of nations' reporting to CEDAW

The CEDAW Committee oversees the implementation of the Convention through several key channels. These include collecting of State reports, individual complaints, inter-State complaints, inquiry requests, and preparing general recommendations, statements, and general discussions.

Figure 4: Reporting Process to the CEDAW Committee



Source: CEDAW

The CEDAW reporting is a process where countries regularly submit reports to the CEDAW Committee on how the rights of women are being implemented in each respective country. Each State Party will initially submit a State report upon admission into the CEDAW Convention, detailing the position of women in the State as an initial benchmark. Subsequently, each party will submit a periodic report every four years or whenever requested by CEDAW. These comprehensive reports, which are structured to be no more than 70 pages, must consist of a common core document, which lists general information about the reporting State, a framework for protecting human rights, and information on

the State's subsequent progress since the initial report.

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

CEDAW uses a simplified reporting procedure where the pre-working session groups send State parties a list of issues for reporting. This ensures a focused and targeted discussion on specific areas of concern. The reports play a crucial role in monitoring the implementation of CEDAW's recommendations to the States and serve as a mechanism for them to assess their progress in advancing gender equality and women's rights.

5.5 | Malaysia's history of periodic report submissions to CEDAW

Since acceding to CEDAW in 1995, Malaysia has submitted three periodic reports to the CEDAW Committee. The initial report was submitted belatedly, along with the second periodic report, on April 12, 2004, nearly ten years after acceding. Its subsequent submission encompassed the third, fourth, and fifth reports, which was submitted and published on the 18th of March 2018.

Malaysia's most recent periodic report submission to CEDAW, covering the period from 2017 to 2021, was published on

the 25th of April 2022. This latest report provides an update on Malaysia's progress in advancing gender equality and eliminating discrimination during the specified timeframe.

Like the fifth periodic report, the latest comprehensive submission also touched on 16 key articles on discrimination against women by reporting the current state of legislation for each article discussed.⁴⁶

⁴⁶ OHCHR.org

The Articles are as follows:

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

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

The most noticeable gaps from Malaysia's latest submission to CEDAW is the lack of clarity on future policies for child marriage and the failure to address the issue of marital rape, where the action only is taken if the perpetrator causes physical harm to the victim, thus rendering it unactionable until it is classified as a criminal case.⁴⁷ Despite so, according to MWFCD, Malaysia has been

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

Some of the key measures that have been highlighted include:

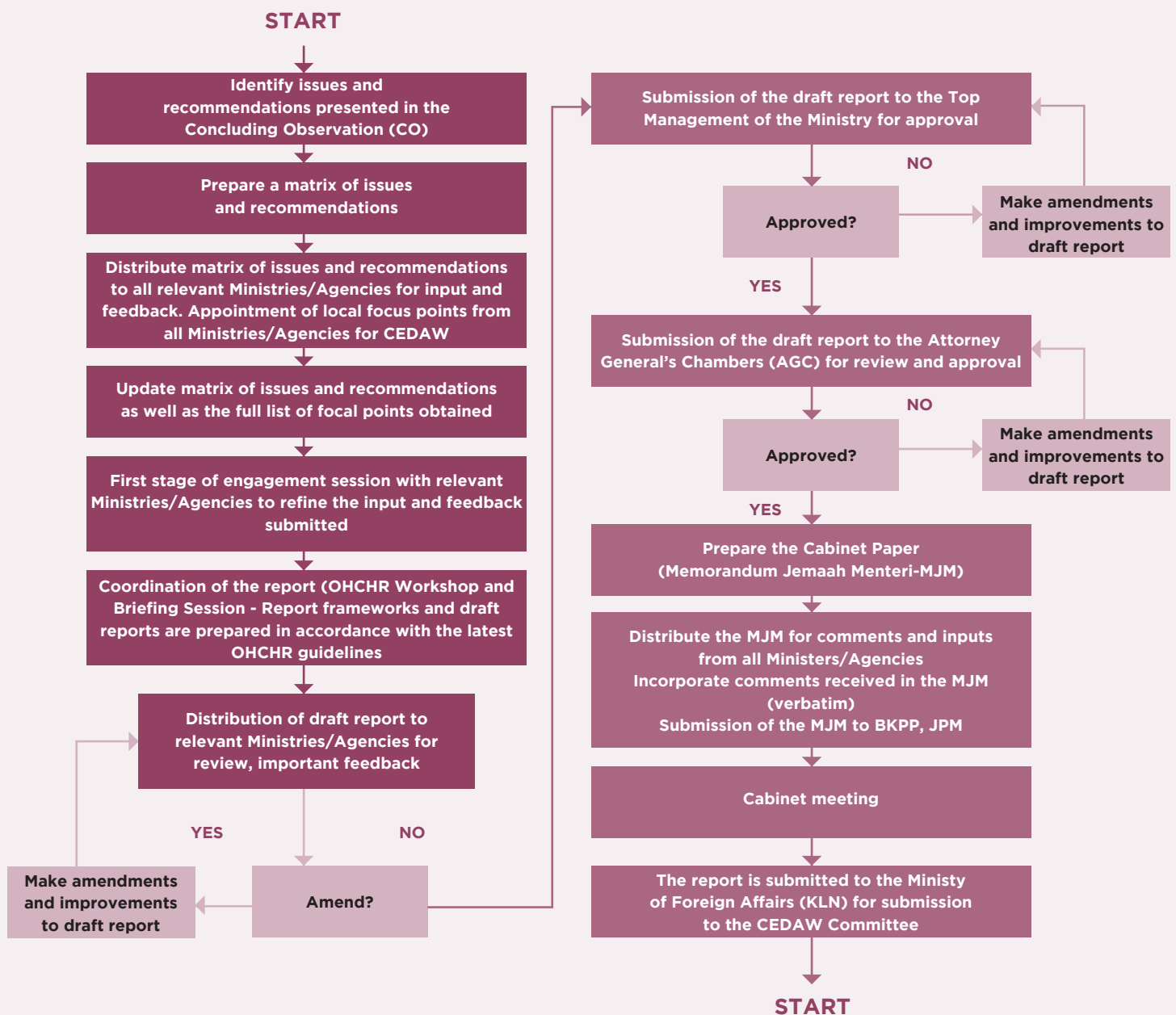
1. Working on the Anti-Discrimination Against Women Bill, which includes the definition of discrimination against women.
2. Digitalisation efforts of Malaysian Public Service through the Public Sector Digitalisation Strategic Plan (PSPSA) 2021-2025 showcases commitment towards a digital economy. It empowers social inclusion for all citizens regardless of their economic, social and political status, including women, who could access necessities without discrimination and prejudice.
3. In 2018, the Ministry of Women, Family and Community Development partnered with the United Nations Development Programme in the "Strengthening and Enhancing the Inclusiveness of Women Towards an Equitable Society" in the 11th Malaysia Plan. This is also in line with MWFCD's Strategic Plan 2021-2025, which contains eight main thrusts on plans to empower women and strengthen the family institution, protect and develop children, improve and create a more conducive environment for the elderly, empower persons with disabilities (PWDs), develop and increase the resilience of special groups, boost the country's visibility internationally and improve the efficiency and effectiveness of public service delivery.
4. Malaysian NGOs also identified the lack of data on domestic violence as a key barrier to evidence-based policymaking. In October 2021, three working committees were established under the Domestic Violence Committee, namely the Advocacy and Capacity Building Working Committee, Protection Working Committee and Data Working Committee to further strengthen the coordination of efforts to combat gender-based violence against women and ensure the services provided are more targeted and accessible to the public. The Data Working Committee is responsible for collecting, coordinating and circulating integrated national data on domestic violence to ensure holistic and accurate national reporting on this issue.

⁴⁷ UM Law Review, "Marital Rape: What You Need To Know"

5.6 | Malaysia's process of reporting to CEDAW

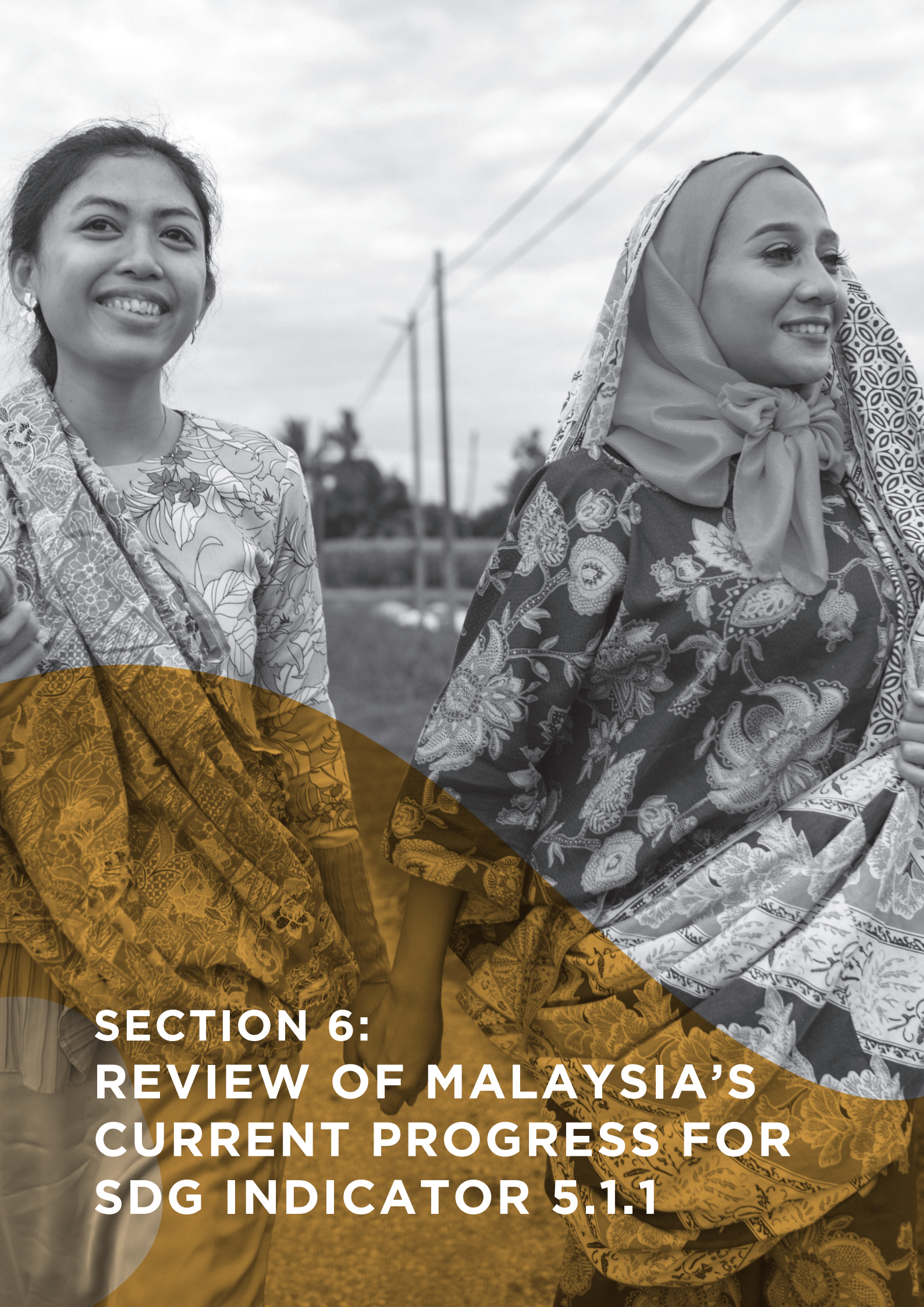
Malaysia's internal procedure for reporting to CEDAW is led by The Ministry of Women, Family and Community Development through a structured process. This is shown in the figure below:

Figure 5: Preparation of the CEDAW reporting by MWFC



Source: MWFC

The preparation of the report goes through several structured phases. Before submission to the CEDAW Committee, the report goes through several review processes with Ministries, Agencies, Attorney General's Chambers, and the Malaysian Cabinet to gather feedback and make amendments. Finally, the report is presented to the Cabinet of Malaysia, including the Prime Minister's department, before its submission by Malaysia's Ministry of Foreign Affairs.



**SECTION 6:
REVIEW OF MALAYSIA'S
CURRENT PROGRESS FOR
SDG INDICATOR 5.1.1**

This section provides a review of Malaysia's current progress in aligning with SDG indicator 5.1.1.

For this section, we will look at the background of the SDG 5 indicator, its key components and questions that would determine where nations stand in four key areas. Finally, we will also look at Malaysia's current progress towards SDG indicator 5.1.1.

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

The review of SDG indicator 5.1.1 carries significant importance as it serves as a crucial stocktake of where Malaysia stands in its efforts

to eliminate discrimination against women and achieve gender equality.

Currently, the only mechanism in place to review Malaysia's progress lies with the nation's reports to CEDAW.

However, those reports do not structurally review the components of discrimination against women specific to SDG indicator 5.1.1, but rather provide an overview of the steps taken to address key issues identified by the UN. Therefore, the following sections will encompass a compilation of Malaysia's current legal frameworks and policies within four key areas: overarching legal frameworks and public life, violence against women, employment and economic benefits, and marriage and family.

6.1 | Introduction to SDG 5 – Gender Equality

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

- 5.1. End all forms of discrimination against all women and girls everywhere.
- 5.2. Eliminate all forms of violence against all women and girls in public and private spheres, including trafficking and sexual and other types of exploitation.
- 5.3. Eliminate all harmful practices, such as child, early and forced marriage, and female genital mutilation.
- 5.4. Recognize and value unpaid care and domestic work through the provision of public services, infrastructure, and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.
- 5.5. Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life.

- 5.6. Ensure universal access to sexual and reproductive health and reproductive rights as agreed under the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences.
- 5.A. Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance, and natural resources, in accordance with national laws.
- 5.B. Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women.
- 5.C. Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

This report will focus on indicator SDG5.1.1, “whether legal frameworks are in place to promote, enforce and monitor equality and non-discrimination based on sex.”

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

SDG indicator 5.1.1 tracks progress on target 5.1, which is to “end all forms of discrimination against all women and girls everywhere”. Indicator 5.1.1 monitors and evaluates “whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex”. This echoes the “essential and critical component of a State party’s general legal obligation” under CEDAW, which is to “pursue by all appropriate means and without delay a policy of eliminating discrimination against women”.⁴⁸ The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has emphasised that such a policy must include “constitutional and legislative guarantees” along with “comprehensive action plans and mechanisms for monitoring and implementing” which together provide a “framework for the practical realization of the principle of formal and substantive equality of women and men.”⁴⁹

To monitor and assess the progress towards SDG target 5.1, 45 key questions were developed under indicator 5.1.1 to measure how governments have adopted legal frameworks for eliminating discrimination against women. The questions were developed between July

⁴⁸ CEDAW, Convention, Article 2

⁴⁹ CEDAW, General Recommendation 28, para 24.

and December 2016 and were officially presented to the Inter-Agency and Expert Group on Sustainable Development Goal Indicators (IAEG-SDGs) in 2018. The scope of the 45 questions is based on the core principles of equality and non-discrimination of CEDAW and the framework of the Beijing Platform for Action (BPFA).⁵⁰ The questions cover four key areas and were drafted to assess whether the legal framework (i) promotes gender equality and (ii) enforces / monitors gender equality within each area.

Figure 6: Key Areas of SDG indicator 5.1.1



AREA 1:
Overarching Legal Framework



AREA 2:
Violence Against Women



AREA 3:
Employment and Economic Benefit



AREA 4:
Marriage and Family

⁵⁰ UN Women, <https://unstats.un.org/sdgs/files/meetings/iaeg-sdgs-meeting-07/5.3%20UN-Women%205.1.1%20Reclassification.pdf>

6.3 | Key questions to monitor SDG Indicator 5.1.1

The goal of these 45 questions is to understand countries' progress of implementation. The questions are answered with a "Yes" or "No" in order to assign scores to the responses (Yes = 1; No = 0), which will ultimately be used to calculate the average score for each of the four areas. Guidance on answering these questions is available in the Coding Guidelines.⁵¹ Every two years, the UN statistics agency will review and post the overall standing for the four key areas for all nations under its purview. This is calculated based on the responses by the country counterparts/ focal points to each of these questions.

Presently, no country has been able to answer affirmatively to all 45 questions across the four key areas outlined in the questionnaire and achieve the complete fulfilment of the target outlined in Indicator 5.1.1.

Area 1: Overarching legal frameworks and public life

Promote

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

Enforce and monitor

1. Does the law establish a specialised independent body tasked with receiving complaints of discrimination based on gender (e.g., national human rights institution, women's commission, ombudsperson)?
2. Is legal aid mandated in criminal matters?

⁵¹ UN Women, et al, Coding Guidelines: SDG indicator 5.1.1: Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex, 2021. Available at https://data.unwomen.org/sites/default/files/modules/sdg-files/localdata/5_1_1_coding_guidelines.pdf

3. Is legal aid mandated in civil/family matters?
4. Does a woman's testimony carry the same evidentiary weight in court as a man's?
5. Are there laws that explicitly require the production and/or dissemination of gender statistics?
6. Are there sanctions for non-compliance with mandated candidate list quotas or incentives for political parties to field women candidates in national parliamentary elections?

Area 2: Violence against women

Promote

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

Enforce and monitor

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

Area 3: Employment and economic benefits

Promote

1. Does the law mandate non-discrimination on the basis of gender in employment?
2. Does the law mandate equal remuneration for work of equal value?
3. Can women work in jobs deemed hazardous, arduous, or morally inappropriate in the same way as men?
4. Are women able to work in the same industries as men?
5. Are women able to perform the same tasks as men?
6. Does the law allow women to work the same night hours as men?
7. Does the law provide for maternity or parental leave available to mothers in accordance with the ILO standards?
8. Does the law provide for paid paternity or parental leave available to fathers or partners?

Enforce and monitor

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

Area 4: Marriage and family

Promote

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

Enforce and monitor

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

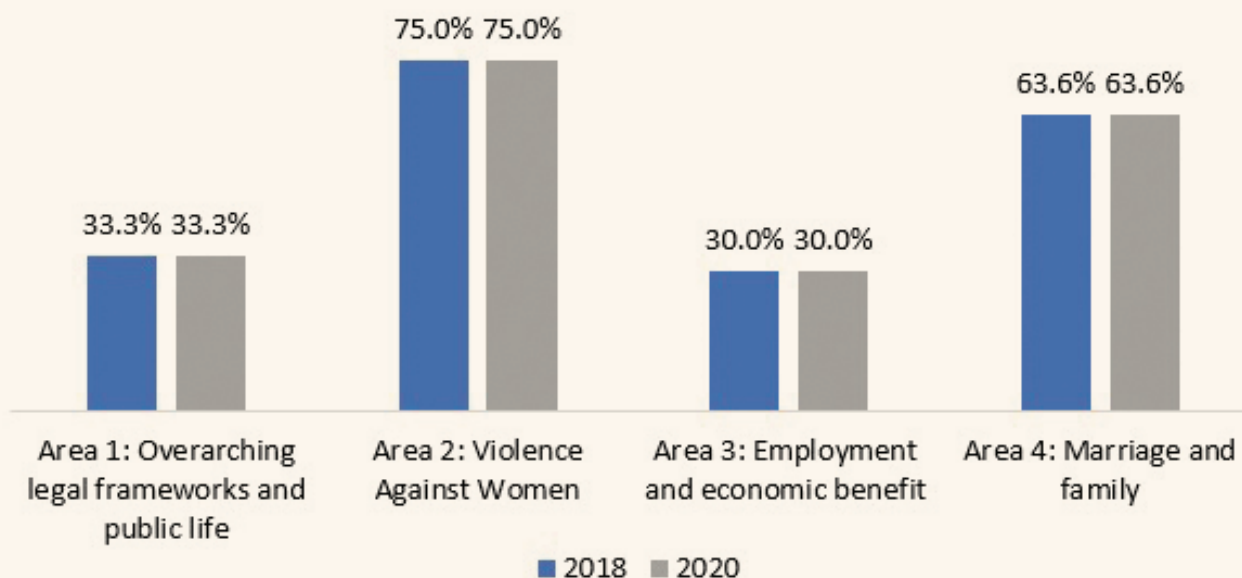
6.4 | What is the progress of Malaysia towards SDG indicator 5.1.1?

Within this section, we will explore Malaysia's current standing for the 45 questions on the 5.1.1 indicator to fully understand the gaps in legislation and policies in tackling discrimination against women and achieving gender equality. For the purposes of this report, some answers have not adhered strictly to a "Yes" or "No" answer. This is due to the context where, because of the plurality of legal systems and different identities (e.g. non-citizen, migrant, etc), certain categories of the population might be affected differently by different legal frameworks or are excluded within certain laws. Though the Coding Guidelines indicate to respond based on the legal system that applies to the majority of the population, this report has indicated "Yes and No" where different

categories of women are affected differently to acknowledge the impact on certain women due to their intersecting identities.

Despite having this framework in place within the UN since 2018, Malaysia has yet to fully utilise it to track its progress in achieving gender equality. Nor are there any published data to gauge Malaysia's progress in this regard. In all four areas, Malaysia has yet to produce the necessary legal frameworks to achieve full adherence to SDG indicator 5.1.1, with the least progress in Overarching legal frameworks and public life, and Employment and economic benefit. However, it is disappointing that between 2018 and 2020, there was completely no progress. This is shown in the chart below.

Figure 7: Malaysia’s overall progress of SDG indicator 5.1.1 based on a percentage per area of law



The lack of action from Malaysia to progress on the SDG indicator 5.1.1 framework is alarming. While the government has increased efforts to drive gender equality, many key areas are not set in stone within the legislative framework and policies. The next section provides a deep-dive summary of the legal framework and policies in place to tackle each of the forty-five questions within the SDG indicator 5.1.1 framework. Each question is provided with an answer for the current situation in Malaysia and key legal frameworks and/or policies that address the key area.

6.4.1 | Summary of Malaysia's Sustainable Development Goals – Indicator 5.1.1 Standing

GOAL 5: Achieve gender equality and empower all women and girls.

TARGET 5.1. End all forms of discrimination against all women and girls everywhere Indicator 5.1.1: Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex.

AREA 1: OVERARCHING LEGAL FRAMEWORKS AND PUBLIC LIFE

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

YES.

The Federal Constitution is the supreme law of the land, but it recognises the position of “any custom or usage having the force of law in the Federation” (Article 160(2), Federal Constitution). This would include Malay customs and Native customs of Sabah and Sarawak that have been enacted into law⁵². Within the Federation, the enactment of laws related to these customs falls specifically within the jurisdictions of the States (Ninth Schedule, List II & List IIA, Federal Constitution). However, any law that is inconsistent with the Federal Constitution shall, to the extent of the inconsistency, be void (Article 4(1),

Federal Constitution). By extension, this would include any customary law inconsistent with constitutional provisions on equality found in Article 8 of the Federal Constitution.

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

NO.

Personal laws are recognised under the Federal Constitution and within the context of the Malaysian legal system refer mainly to ‘Islamic law and personal and family law of persons professing the religion of Islam’ (Ninth Schedule, List II, Para 1, Federal Constitution). Personal laws are placed specifically within the jurisdiction of the States (Ninth Schedule, List II, Para 1, Federal Constitution). As a result, each of the 14 states is able to enact its own set of personal laws to govern Muslims within its respective

⁵² Professor Emeritus Datuk Dr Shad Saleem Faruqi, *Malaysian Legal System – An Introduction*, 2017. Available at https://www.umlareview.com/lex-in-breve/malaysian-legal-system-an-introduction#_ftn119

state. Although the Federal Constitution is the supreme law of the Federation, the Constitutional provision on equality provides an exemption under Article 8(5)(a) for “any provision regulating personal law”. This enables laws that provide for unequal rights for Muslim women in marriage, divorce, guardianship of children and inheritance to persist⁵³. The CEDAW Committee, having raised this matter, recommended measures to ensure that civil law and Syariah law are in compliance with CEDAW “so as to ensure that the rights of all women are legally guaranteed on an equal footing”.⁵⁴

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

NO.

There is no specific discrimination law that prohibits both direct and indirect discrimination against women. Article 8(2) of the Federal Constitution prohibits discrimination on the ground of, among others, gender, however, there are limitations to the scope of this provision:

- i. There is no definition of discrimination prohibiting both direct and indirect discrimination in accordance with Article 1 of the CEDAW Convention.
- ii. Individuals are only protected from violations of rights by the state and public authorities, not private actors.⁵⁵

The amendments to The Employment Act 1955, that came into force on 1 January 2023, include a procedure for dealing with discrimination in employment (section 69F, The Employment Act 1955). While this should cover discrimination against women in employment, its scope appears limited to discrimination within an employment relationship and not in relation to applicants for employment. Further, the provision does not define discrimination or prohibit direct and indirect discrimination specifically.⁵⁶

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

YES.

The legal framework provides for equal rights to hold public and political office based on Article 8(2) of the Federal Constitution which prohibits discrimination on the grounds of gender, among others. The government removed its reservations to Article 7(b) of CEDAW in relation to the appointment of women to certain public offices like the Mufti and Syariah Court Judges in 2010, and in 2016 appointed the first two female judges in the Syariah High Court.⁵⁷

While there might not be any legal barriers to women holding public and political office, however, there is a

⁵³ WAO, The Status of Women’s Human Rights: 24 Years of CEDAW in Malaysia, 2019, p120 & 131.

⁵⁴ CEDAW Committee, Concluding Observations on the combined third to fifth periodic reports of Malaysia, 2018, para 12(c).

⁵⁵ WAO, The Status of Women’s Human Rights: 24 Years of CEDAW in Malaysia, 2019, p119. See also CEDAW Committee, Concluding Observations on the combined third to fifth periodic reports of Malaysia, 2018, para 11.

⁵⁶ WAO, Employment Act amendments - progress but gaps remain, 2022. Available at <https://wao.org.my/employment-act-amendments-progress-but-gaps-remain-2/>. Also <https://www.skrine.com/insights/alerts/december-2022/employment-amendment-act-2022-comes-into-force-on>

⁵⁷ WAO, The Status of Women’s Human Rights: 24 Years of CEDAW in Malaysia, 2019, p202.

significant lack of representation of women in this area.⁵⁸ The Global Gender Gap Index 2022 confirms that political empowerment remains Malaysia's weakest area out of the four areas assessed under that index. Malaysia is currently ranked 123rd out of 146 countries.⁵⁹ The CEDAW Committee stressed the importance of ensuring women from marginalized groups are also represented in areas of political and public life and called for the adoption of measures, including temporary special measures, to accelerate the participation of women at all levels.⁶⁰

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

NO.

There are no legislated quotas for women or quotas for women in candidate lists in the national parliament. The government has indicated that it sees its policy of a minimum of 30 per cent of women in top management positions as a 'guiding principle towards equal representation for women'.⁶¹ There have been some initiatives at the State level to increase women's representation to 30 per cent

via non-constituency appointments (e.g. Penang and Terengganu).⁶² Two political parties have also voluntarily included a 30 per cent commitment to women's representation within their parties but application has been "limited" and "lacks specific guidelines and mechanisms for implementation, monitoring and evaluation."⁶³

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

NO.

Women do not have equal rights with men to confer citizenship to their spouses and their children under the Federal Constitution. While non-citizen wives of citizens can apply for citizenship via registration (Article 15(1), Federal Constitution) which, among others, requires she have resided in the country for two years preceding her application, however, for non-citizen husbands, applications must be made via naturalization (Article 19, Federal Constitution) which require 10 years of residence preceding his application.⁶⁴

⁵⁸ New Straits Times, Malaysia still far behind in women's political participation, 2 Nov 2022. Available at <https://www.nst.com.my/opinion/columnists/2022/11/845919/malaysia-still-far-behind-womens-political-participation>

⁵⁹ World Economic Forum, Global Gender Gap Report 2022, p240. Available at https://www3.weforum.org/docs/WEF_GGGR_2022.pdf

⁶⁰ CEDAW Committee, Concluding Observations on the combined third to fifth periodic reports of Malaysia, 2018, para 29.

⁶¹ Sixth periodic report submitted by Malaysia to the CEDAW Committee, 2022, para 18.

⁶² The Sun Daily, Thumbs up to Penang's TWOAS initiative, 6 Feb 2021. Available at <https://www.thesundaily.my/local/thumbs-up-to-penang-s-twoas-initiative-JH6559748>. See also Selangor Journal, Non-constituency seats will improve women's representation, September 2022. Available at <https://selangorjournal.my/2022/09/non-constituency-seats-will-improve-womens-representation/>

⁶³ CEDAW Committee, Concluding Observations on the combined third to fifth periodic reports of Malaysia, 2018 para 17 & 18.

⁶⁴ WAO, The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia, 2019, p215

With regards to conferring citizenship on their children, the Federal Constitution currently states that Malaysian fathers whose children are born overseas can confer citizenship to their children by operation of law (Second Schedule, Part II, Art 1(b), Federal Constitution). This however does not apply to Malaysian mothers whose children are born overseas to non-citizen fathers, resulting in a significantly different and more difficult process for Malaysian mothers.⁶⁵ This provision is being challenged in court on the grounds of it being discriminatory against women and awaits a decision from the Federal Court. In March 2023, the government announced that it will be tabling amendments to the Federal Constitution to enable foreign-born children of Malaysian mothers to automatically gain citizenship.⁶⁶

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

NO.

There is no law establishing a specialised independent body to receive complaints of discrimination based on gender. Although the Human Rights Commission of Malaysia (SUHAKAM), which is an independent body established by Parliament, is able to receive complaints on any violation of human rights, it does not have a specialised

division for gender-based discrimination. Similarly, recent amendments to the Employment Act 1955, that came into force on 1 January 2023, empower the Director General to investigate any matter relating to discrimination in employment (section 69F, Employment Act 1955) however there is no specialised body or process to deal with gender-based discrimination.

8. Is legal aid mandated in criminal matters?

YES AND NO

The Legal Aid Act 1971 provides for free and subsidised legal aid services by the Legal Aid Department to eligible persons in relation to certain criminal cases (section 2A(1)(a), Legal Aid Act 1971)⁶⁷, namely all criminal proceedings in which the accused not being represented pleads guilty to the charge and wishes to make a plea in mitigation, proceedings under the Child Protection Act 1991 and the Minor Offences Act 1955 (section 10 and Second Schedule, Legal Aid Act 1971). In particular cases of hardship and the interest of justice, the Minister can authorize legal aid in connection with any other criminal proceedings (section 10(2A), Legal Aid Act 1971).

These legal aid services are however only available to Malaysian citizens (section 2A(2), Legal Aid Act 1971), excluding migrant, refugee and asylum seekers from this service.

⁶⁵ WAO, The Status of Women’s Human Rights: 24 Years of CEDAW in Malaysia, 2019, p217

⁶⁶ MalayMail, Azalina: Bill for automatic citizenship of kids born abroad to Malaysian women now set for June, March 2023. Available at <https://www.malaymail.com/news/malaysia/2023/03/11/azalina-bill-for-automatic-citizenship-of-kids-born-abroad-to-malaysian-women-now-set-for-june/58994>

⁶⁷ <https://www.jbg.gov.my/index.php/en/services/litigation#ii-civil-proceedings>

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

YES AND NO

The Legal Aid Act 1971 provides for free and subsidised legal aid services by the Legal Aid Department to eligible persons in relation to certain civil matters (section 2A(1)(b), Legal Aid Act).⁶⁸

This includes proceedings related to maintenance, divorce, custody under civil law, maintenance, custody, divorce and harta sepencarian under Syariah law, probate, etc. (section 12 and Third Schedule). In particular cases of hardship and the interest of justice, the Minister can authorize legal aid in connection with any other criminal proceedings (section 12 (3), Legal Aid Act).

These legal aid services are however only available to Malaysian citizens (section 2A(2), Legal Aid Act 1971), excluding migrant, refugee and asylum seekers from this service. Further, the eligibility depends on a means test that assesses the financial earnings to qualify. The current criteria and threshold limit access to legal aid for many who need it. In terms of the scope of coverage under this law, there is a need to expand it to include actions taken by survivors of violence, for example, restraining orders under the Domestic Violence Act.⁶⁹

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

YES AND NO

Generally, within the civil court system, a woman's testimony carries the same evidentiary weight as a man's for all legal matters. However, in the Syariah court system, most states have Syariah evidence laws that equate the testimony of two female witnesses to that of one male witness (e.g. section 86, Syariah Court Evidence (Federal Territories) Act 1997; section 86, Syariah Court Evidence (State of Selangor) Enactment 2003). As a subsidiary legal system, the application of this is limited to cases within the jurisdiction of the Syariah Courts which include certain criminal offences and matters of personal law.

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

NO.

There are no laws that explicitly require the production and/or dissemination of gender statistics. The National Policy on Women (1989) does indicate the need for a 'central database to integrate data based on gender from various sources including Government agencies, private sector and non-government organization'.⁷⁰ However, this has not fully materialised. The CEDAW Committee

⁶⁸ <https://www.jbg.gov.my/index.php/en/services/litigation#ii-civil-proceedings>

⁶⁹ WAO, Budget 2022: A resilient national recovery for women, Recommendations to empower women and families across employment, livelihoods, and healthcare in a post pandemic society, 2021.

⁷⁰ Ministry of Women, Family and Community Development, Dasar Wanita dan Pelan Tindakan Pembangunan Wanita, 1989. Available at <https://www.kpwkm.gov.my/kpwkm/uploads/files/Dokumen/Dasar/DASAR%20WANITA%20NEGARA.pdf>

in its Concluding Observations to Malaysia in 2018 recommended the development of a “comprehensive system to collect, analyse and publish data on all areas covered by the Convention, disaggregated by sex, age, disability, ethnic origin, religion and other relevant factors”.⁷¹ The government has highlighted in its 6th periodic report to the CEDAW Committee that it has published annually since 2017 the Statistics on Women Empowerment in Selected Domains.⁷² These gender statistics remain limited in scope.

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

NO.

There are currently no sanctions for non-compliance with mandated candidate list quotas or incentives in the existing legal framework.

AREA 2: VIOLENCE AGAINST WOMEN

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

YES.

The Domestic Violence Act 1994 (DVA) provides for legal protection in situations of domestic violence which includes

physical violence. It also covers situations of, psychological abuse, destruction of property, threats to cause fear, misappropriating property, etc (section 2, DVA). It applies to spouses, former spouses, children, incapacitated adults, and other members of the family (section 2, DVA). The DVA however has to be read together with the Penal Code for the corresponding offences relating to physical violence (section 3, DVA). The Penal Code does provide for twice the maximum term of imprisonment in cases where the hurt is caused to a spouse or former spouse (section 326A, Penal Code). The DVA also provides for emergency protection orders, interim protection orders and protection orders.

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

YES.

The Domestic Violence Act 1994 (DVA) recognises compelling a victim by force or threat to engage in any conduct, sexual or otherwise from which the victim has a right to abstain as domestic violence (section 2, DVA). The DVA however has to be read together with the Penal Code to identify the corresponding offences and punishment (section 3, DVA). The Penal Code does provide for twice the maximum term of imprisonment in cases where the hurt is caused to a spouse or former spouse (section 326A, Penal Code).

⁷¹ CEDAW Committee, Concluding Observations on the combined third to fifth periodic reports of Malaysia, 2018 para 16(e)

⁷² Sixth periodic report submitted by Malaysia to the CEDAW Committee, 2022, para 10.

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

YES.

The Domestic Violence Act 1994 (DVA) recognises psychological abuse which includes emotional injury as domestic violence (section 2, DVA). The DVA however has to be read together with the Penal Code to identify the corresponding offences and punishment (section 3, DVA). The Penal Code does provide for twice the maximum term of imprisonment in cases where the hurt is caused to a spouse or former spouse (section 326A, Penal Code).

16. Is there legislation on domestic violence that includes financial/ economic violence?

YES.

The Domestic Violence Act 1994 (DVA) recognises dishonest misappropriation of the property causing distress due to financial loss, as well as mischief and destruction or damage to property with intent to cause distress or annoyance as domestic violence (section 2, DVA). The DVA however has to be read together with the Penal Code to identify the corresponding offences and punishment (section 3, DVA).

17. Have provisions exempting perpetrators from facing charges for rape if the perpetrator marries the victim after

the crime has been removed, or never existed in legislation?

YES.

There are no provisions in the law exempting a perpetrator from rape charges if the perpetrator marries the victim. However, in practice, there have been documented cases where rape charges were withdrawn as the perpetrator had married the victim. This was met with public outcry and objections by women's and children's rights organisations and in some reported cases, the rape charges were reinstated. However, the courts appeared reluctant to annul such marriages.⁷³

There remains an exception within Section 375 of the Penal Code to marital rape which if read along with provisions in the law that allow for child marriage, would have the effect of circumventing statutory rape laws (Section 375(g) of the Penal Code) within the marriage.

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

YES.

There are no provisions in the law that reduce penalties in cases of honour crimes. While the term 'honour crimes' is not mentioned in the law, these would possibly be covered under the Penal Code depending on the type of offence. The Penal Code in actual fact provides for

⁷³ WAO, The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia, 2019, p70 & 335. Also see CEDAW Committee's Concluding Observations on the third to fifth periodic reports of Malaysia, 2018, paras 23(d) & 24(d) and The Star, Marriage cannot negate rape charge, says lawyer, 29 Nov 2013. Available at <https://www.thestar.com.my/news/nation/2013/11/29/marriage-cannot-negate-rape-charge-says-lawyer/>

increased punishment in cases where hurt has been caused to a spouse or former spouse (section 326A, Penal Code).

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

NO.

The Penal Code describes rape as the lack of consent, or when consent is obtained under fear, or misconception, without understanding the consequences or by using a position of authority (section 375, Penal Code). However, in cases of statutory rape, i.e. victim is under 16 years of age, lack of consent is no longer the basis due to the age of the victim (section 375(g), Penal Code). The provision does also require proof of sexual intercourse which is explained as penetration (section 375, Penal Code). Further, the law only recognises rape in the context of a male perpetrator and a female victim. Section 377CA of the Penal Code attempts to broaden the scope of rape establishing sexual connection by object as a crime. However, this is placed under Unnatural Offences instead of within the sections on rape.⁷⁴

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

NO.

Marital rape is not criminalised under the law. Section 375 of the Penal Code on

the crime of rape exempts cases where a man forces sexual intercourse with his wife in a legally subsisting marriage. This exception doesn't apply if the wife (i) is living separately under a decree of judicial separation or decree nisi not made absolute, (ii) has obtained an injunction restraining the husband from having sexual intercourse with her, or (iii) is a Muslim and living separately during the period of iddah.

Although causing hurt or fear of death or hurt to his wife to have sexual intercourse within a legally subsisting marriage is an offence (Section 375A of the Penal Code), this however does not amount to criminalising marital rape as it focuses on the "hurt or fear of death or hurt" rather than the offence of rape itself. This offence also carries a much lower sentence compared to rape.⁷⁵

21. Is there legislation that specifically addresses sexual harassment?

YES.

The Anti-Sexual Harassment Act 2022 was gazetted in October 2022 and comes into force in stages. As of 28 March 2023, sections 1, 2, 24, 25 and 26 have come into force. According to the Ministry for Women, Family and Community Development, it is important to educate and increase awareness and understanding of the issue before the Act is fully enforced.⁷⁶ Once fully enforceable, the Act provides redress for any person who has been sexually harassed,

⁷⁴ ARROW, Monitoring report: Gender equality in Malaysia, 2020, p11.

⁷⁵ Women's Aid Organisation, Marriage is not a license to rape, 2018. Available at <https://wao.org.my/wp-content/uploads/2018/11/WAO-Policy-Brief-2018-1-Marital-Rape.pdf>

⁷⁶ New Straits Times, Anti-sexual harassment Act enforced in phases from today, 28 March 2023. Available at <https://www.nst.com.my/news/nation/2023/03/893770/anti-sexual-harassment-act-enforced-phases-today>

establishes a Tribunal for Anti-Sexual Harassment and is to raise awareness to prevent sexual harassment.

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

YES.

Under the Twelfth Malaysia Plan (2021 – 2025), there is a commitment towards promoting gender equality and enhancing legal protection and eliminating violence against women (Priority Area F, Strategy 3). Budget 2021 and 2022 both made allocations towards addressing violence against women. For example, Budget 2021 allocated 21 million to local social support centres as well as an allocation for short-term social workers and medical officers. Budget 2022 had an allocation of RM13 million to hire and train 100 new D11 police officers (Sexual / Domestic Violence / Child Abuse Investigation Division). However, more is needed to ensure implementation is comprehensive and covers all stages and aspects of addressing violence against women. Further, there is a need for monitoring and evaluation processes of these key allocations to understand the impact it has in supporting domestic violence survivors.⁷⁷

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

YES.

The Special Treasury Assistance Grant is a government financial assistance distributed to non-governmental organisations (NGOs) that carry out programmes relevant to women, families and the community. The NGOs become partners with the Ministry of Women, Family and Community Development in providing services. Among the prioritised fields of special assistance is Nur Bahagia which addresses violence against women.⁷⁸

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

NO.

Although violence against women is one of the 13 sectors identified in the National Women's Policy 2009 and Plan of Action, with six identified objectives and corresponding strategies, activities, duration, outcome and implementing agency,⁷⁹ there is no clear mandated national mechanism to monitor and

⁷⁷ Women's Aid Organisation, Budget 2022: A resilient national recovery for women, 2021 and Budget 2023 Memorandum: Facilitating resilient and sustainable reforms to support women and children, 2022.

⁷⁸ <https://www.jpw.gov.my/index.php/en/about-jpw/division-unit/management-services-division>

⁷⁹ Kementerian Pembangunan Wanita, Keluarga dan Masyarakat (KPWK), Dasar Wanita Negara 2009. Available at <https://www.kpwkm.gov.my/kpwkm/index.php?r=portal/full3&id=Z0I4TIFWWERadGtkeVEzT3ZEK1ErQT09>

review its overall implementation and to update the Plan of Action's strategies and timelines.

In relation to domestic violence, a National Committee on Domestic Violence (NCDV) was established in 2019 led by the Ministry for Women, Family and Community Development. It is a multi-stakeholder platform with working committees on advocacy and capacity building, protection and data.⁸⁰ There however is no national mechanism to address violence against women as a whole and comprehensively.

AREA 3: EMPLOYMENT AND ECONOMIC BENEFITS

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

YES AND NO

In general, there is a non-discrimination provision in the Federal Constitution, Article 8(2), that provides that there shall be no discrimination on the ground of gender, among others. However, judicial interpretation and precedent on the application of this provision has been limited to discrimination in "some law or action of the Executive" as constitutional law deals with the "contravention of individual rights by Legislature or the

Executive or its agencies"⁸¹ - limiting its application to situations of discrimination by public authorities and not the private sector.

The amendments to The Employment Act 1955 that came into force on 1 January 2023, include a provision on handling disputes in relation to discrimination in employment (section 69F, Employment Act 1955) which should include discrimination based on gender. However, there is no definition of discrimination and discrimination itself is not prohibited in the Employment Act, only the failure to comply with the order of the Director General after an inquiry into the matter (section 69F (2), Employment Act 1955).⁸²

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

NO.

No law mandates equal remuneration for work of equal value for employees. The Employment Act 1955, Part III on wages is silent on this matter. Malaysia has ratified the ILO Convention on Equal Remuneration (C 100) showing its commitment towards equal pay for men and women for work of equal value but this has not been translated into specific national legislation. Within the public service, parity is identified as one of the principles of remuneration.⁸³

⁸⁰ Sixth periodic report submitted by Malaysia to the CEDAW Committee, 2022, para 25

⁸¹ Beatrice Fernandez v Sistem Penerbangan Malaysia & Anor [2005] 3 MLJ 681 and AirAsia Berhad v Rafizah Shima binti Mohamed Aris [2014] MLJU 606. Also see WAO, The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia, 2019, p119; AirAsia Berhad v Rafizah Shima binti Mohamed Aris (2014)

⁸² WAO, Employment Act amendments – Progress but gaps remain, 2022. Available at <https://wao.org.my/employment-act-amendments-progress-but-gaps-remain/>

⁸³ Public Service Department, Remuneration components. Available at <https://www.jpa.gov.my/en/faq-sm/salaries-and-allowances/salary>

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

YES.

With the repeal of sections 34 and 35 of the Employment Act 1955 that prohibited women from engaging in night work in any industrial or agricultural undertaking and underground work, there are no legal restrictions or prohibitions on women's type of work. The recent amendment also removed the powers of the Minister to order a prohibition on female employees under the Employment Act 1955.

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

YES.

With the repeal of sections 34 and 35 of the Employment Act 1955 that prohibited women from engaging in night work in any industrial or agricultural undertaking and underground work, there are no legal restrictions or prohibitions for women working in the same industries as men. However, in practice, there are gender stereotypes and norms that might continue to create barriers for women in certain more male-dominated industries.

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

YES.

There are no legal provisions prohibiting women from performing the same tasks as men at work.

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

YES.

With the repeal of section 34 of the Employment Act 1955 which prohibited women from working at night within the industrial or agricultural sectors, there are no legal barriers to women working the same night hours as men.

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

YES AND NO

The amendment to The Employment Act 1955, which came into force on 1 January 2023, now provides "every female employee" with 98 days of paid maternity leave in respect of each confinement (section 37(1)(a) and (d)(ii), Employment Act 1955). The Employment Act also provides for "maternity allowance" at her "ordinary rate of pay" (section 37(2)). These are in line with ILO standards.

However, the Employment Act excludes domestic employees (defined in section 2 as a person employed in connection with the work of a private dwelling-house) from the entire Part IX on Maternity Protection (First Schedule, Employment Act 1955).

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

YES.

The amendment to The Employment Act 1955, which came into force on 1 January 2023, now provides a "married

male employee” with paid paternity leave for seven consecutive days in respect of each confinement but is restricted to five confinements (Section 60FA, Employment Act 1955).

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

YES.

In general, employment disputes can be brought to the civil courts, Labour Court or Industrial Court depending on the nature of the dispute/complaint. The recent amendment to the Employment Act 1955, added a provision for the Director General of Labour to inquire into and decide on disputes relating to discrimination in employment. While gender discrimination is not specifically mentioned, there is scope to receive and investigate such complaints. The Human Rights Commission (Suhakam) is also able to receive complaints on violations of human rights which could include gender discrimination in employment.

The Anti-Sexual Harassment Act 2022, once it comes into force fully, establishes a Tribunal for Anti-Sexual Harassment to hear and determine any complaint of sexual harassment by any person – this would include sexual harassment at work.

34. Is childcare publicly provided or subsidized?

YES.

The Malaysian Education Blueprint 2013 – 2025 indicates the aspiration of the Ministry of Education to achieve universal enrolment in preschool through to upper secondary school.⁸⁴ There are public preschools which are managed by the relevant ministries and fully funded by the government.⁸⁵ There are also private preschools that are funded by the private sector. The government allocates substantial funding for early childhood care and education (ECCE) and provides stimulus to private companies to provide childcare facilities.⁸⁶ The government also has a childcare subsidy scheme that is paid to eligible parents.⁸⁷

AREA 4: MARRIAGE AND FAMILY

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

NO.

The minimum age of marriage varies based on sex and legal system and certain exceptions are also made for both women and men.⁸⁸

⁸⁴ Ministry of Education, Malaysia Education Blueprint 2013 – 2025. Available at https://www.ilo.org/dyn/youthpol/en/equest.fileutils.dochandle?p_uploaded_file_id=406

⁸⁵ Rahmahtullah, B., et al., Overview of early childhood care and education in Malaysia, 2021. Available at <https://akjournals.com/view/journals/063/11/4/article-p396.xml>

⁸⁶ Rahmahtullah, B., et al., Overview of early childhood care and education in Malaysia, 2021. Available at <https://akjournals.com/view/journals/063/11/4/article-p396.xml>

⁸⁷ <https://www.nst.com.my/news/nation/2022/07/812936/expand-childcare-subsidies-reflect-rising-costs-says-group>

⁸⁸ WAO, The Status of Women’s Human Rights: 24 Years of CEDAW in Malaysia, 2019, p333

Under Syariah law, generally, the minimum age of marriage is 18 for boys and 16 for girls (e.g. Section 8, Islamic Family Law (Federal Territories) Act 1984) with some states having raised the minimum age for girls to 18 (e.g. Selangor and Kedah).⁸⁹ Exceptions are also allowed under the law where the age can be lowered further for both boys and girls with the permission of the Syariah judge under certain circumstances (section 8, Islamic Family Law (Federal Territories) Act 1984).⁹⁰

Under Civil Law, the minimum age for both girls and boys is 18 (Section 10, Law Reform (Marriage and Divorce) Act 1976). An exception is allowed under the law for girls between 16 and 18 years old with the consent of the Chief Minister (LRA). However, if one is below 21, the written consent of a parent or guardian is required before they can get married (section 12 Law Reform (Marriage and Divorce) Act 1976).

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

YES AND NO

Muslim women and non-Muslim women have different rights in relation to entering a marriage and initiating divorce. Muslim women do not have equal rights to enter marriage and initiate divorce proceedings.

Under civil law, women and men have equal rights to enter into a marriage.

However, under Syariah law, although the Islamic Family Law (Federal Territory) Act 1984 states that both parties to the marriage must have consented for the marriage to be recognised and registered, an additional requirement is for the wali (male guardian) to be present (section 7, Islamic Family (Federal Territories) Act 1984) and also to consent to the marriage (section 13, Islamic Family (Federal Territories) Act 1984). If there is no wali or consent is not given, the marriage may be solemnized with the approval of a Syariah judge (section 13, Islamic Family (Federal Territories) Act 1984).

Under civil law, women and men have the same rights to initiate a divorce. However, under Syariah law, although the law provides that a husband or a wife who desires a divorce can present an application (section 47, Islamic Family (Federal Territories) Act 1984), the actual divorce process differs for a husband and a wife. Under the Islamic Family (Federal Territories) Act 1984, a husband can divorce his wife unilaterally by pronouncing talaq (section 47, Islamic Family (Federal Territories) Act 1984). Although there are some legal provisions to regulate this including making it an offence to pronounce talaq outside of court (section 124, Islamic Family (Federal Territories) Act 1984), the court is in a position to register the pronouncement later if satisfied it is valid according to Hukum Syara' (section 55A, Islamic Family (Federal Territories) Act 1984). Women cannot pronounce talaq and are

⁸⁹ The Star, How Malaysia can get serious about child marriage, 14 May 2023. Available at <https://www.thestar.com.my/news/focus/2023/05/14/how-malaysia-can-get-serious-about-child-marriage>

⁹⁰ Malaysiakini, Stricter guidelines for Muslim child marriage are in force, 2019. Available at <https://www.malaysiakini.com/news/489578>

provided limited grounds for divorce through a court process which requires specific conditions and/or consent of husbands (section 47, 49, 50, 50A, 52, Islamic Family Law (Federal Territories) Act (1984)).⁹¹

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

YES AND NO

Muslim women do not have the same right to be the legal guardian of their children.

Non-Muslim women and men now have equal parental rights based on the amended Guardianship of Infants Act 1961. However, under Syariah law, only a father is the “first and primary natural guardian” of any children born within the marriage (section 88, Islamic Family (Federal Territories) Act, 1984). If the father passes away, the guardianship is transferred to the paternal grandfather. Although guardianship could include custody of the child (i.e. care, control and access), under the Islamic Family (Federal Territories) Act the mother

can be awarded custody of her child but under certain conditions, she can lose custody (section 82 Islamic Family (Federal Territories) Act, 1984).

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

YES.

There are no official restrictions on women being recognised as head of the household. However, men are culturally deemed to be the head of household being the main provider⁹² and are predominantly listed as head of household.⁹³ Low-income female-headed households are acknowledged as a vulnerable category⁹⁴.

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

YES.

There are no legal restrictions that deny equal rights between women and men to choose where to live. However, under civil law, there is the domicile of dependency imposed on married women through the

⁹¹ Musawah, Sisters in Islam, Joint report on Muslim family law and Muslim women's rights in Malaysia, 2018. Available at <https://www.musawah.org/wp-content/uploads/2019/02/Malaysia-SIS-Musawah-Joint-Thematic-Report-2018- CEDAW69.pdf>

⁹² National Population and Family Development Board (LPPKN), Report on key findings of the fifth Malaysian Population and Family survey 2014, p29. Available at <https://fliphtml5.com/kxud/axww/basic>. The report states that “Culturally, a male is deemed to be the head of household wherein the said head of household is the main provider for the household. Survey results found that the majority of heads of household are male, which is 82 percent of the total heads of household?...” Also see <https://360info.org/why-women-are-often-overlooked-in-household-surveys/>

⁹³ Christopher Choong, Why women are often overlooked in household surveys, 8 March 2022. Available at <https://360info.org/why-women-are-often-overlooked-in-household-surveys/>

⁹⁴ Unicef, Families on the Edge: Low-income families need continued support to recover from the effects of COVID-19, 2020. Available at <https://www.unicef.org/malaysia/press-releases/families-edge-low-income-families-need-continued-support-recover-effects-covid-19>. See also Irene Xavier, Review criteria for women to receive assistance, The Star, 2020. Available at <https://www.thestar.com.my/opinion/letters/2020/08/25/review-criteria-for-women-to-receive-assistance>

application of common law and this might have implications in an application for divorce.⁹⁵

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

YES.

There are no legal restrictions on women's or men's rights to choose a profession.

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

YES.

There are no inequalities in the process of obtaining an identity card for women and men. Based on Regulation 3 of the National Registration Regulations 1990 (Amendment 2007), a Malaysian child who has reached the age of 12 must register for an identity card.⁹⁶

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

YES.

There are no differences in passport application procedures for women and men. Malaysians regardless of gender above the age of 18 can apply for a passport.⁹⁷

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

YES AND NO

In general women and men have equal rights under civil law to own, access and control marital property. The Married Women's Act of 1957 states that all married women shall be capable of acquiring, holding, and disposing of any property. This law also applies to Muslim women subject to the Islamic law and customs governing the relations between husband and wife (section 3, Married Women's Act 1957).

In cases of a civil divorce, the Court has the power to order the division of assets and taking into account the extent of each party's contribution, debts and minor children and would be inclined towards equality of division (section 76, Law Reform (Marriage and Divorce) Act 1976). A similar provision exists within Syariah law (section 58, Islamic Family (Federal Territories) Act 1984) regarding the division of harta sepencarian (matrimonial assets).

However, some of the provisions with regards to marital property under Syariah law, although couched in a gender-neutral language, in effect leave women

⁹⁵ Goh Siu Lin, Domicile and Divorce, 2014. Available at <https://www.studocu.com/my/document/international-islamic-university-malaysia/family-law/family-law-july-2014-goh-siu-lin/10647469> and <https://www.shangco.com.my/domicile>. Also see WAO, The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia, 2019, p315.

⁹⁶ MyGovernment Website, "Identity Card Application", Accessed from: <https://www.malaysia.gov.my/portal/content/28868>

⁹⁷ Immigration Department of Malaysia, "Malaysian International Passport", Accessed from: <https://www.imi.gov.my/portal2017/index.php/en/main-services/passport/malaysian-international-passport.html>

with fewer rights⁹⁸ and do not reflect the “balance and justice that was originally intended by the Syariah”.⁹⁹ These include provisions where the court can prohibit either husband or wife from disposing of any assets acquired by them, jointly or solely, during the subsistence of their marriage (section 107A, Islamic Family (Federal Territories) Act 1984). This was originally a wife’s right to stop the husband from disposing of his assets but has now been extended to the husband as well.¹⁰⁰

Further, the Court in registering a polygamous marriage has the power on the application of any party to the marriage to order the division of any assets acquired during the marriage by joint efforts or the division of proceeds of the sale of those assets (section 23(9) (b), Islamic Family (Federal Territories) Act 1984). This created “gross injury upon the rights of an existing wife where a husband who is going to marry a new wife would be able to seek the sale of the matrimonial home and make claims on the matrimonial assets to support his new family”.¹⁰¹

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

YES.

Both civil and syariah law have provisions and exceptions that lower the legal age of marriage below 18 years (see Question 35). Marriages that fall outside of these provisions and exceptions would be void.

The Law Reform (Marriage and Divorce) Act 1976 provides that civil marriages under the legal age of eighteen shall be void, except for girls who have completed their sixteenth year where the marriage was authorized by the Chief Minister (section 10 of the Law Reform (Marriage and Divorce) Act 1976). Under syariah law, generally the minimum age of marriage is 18 for boys and 16 for girls, with exceptions allowed for lower ages with the permission of the Syariah Judge under certain circumstances (section 8, Islamic Family Law (Federal Territories) Act 1984). The law provides that a marriage that fails to satisfy all conditions according to Hukum Syarak for the validity of that marriage, shall be void (section 11 of the Islamic Family Law (Federal Territories) Act 1984).

⁹⁸ Musawah, Sisters in Islam, Joint report on Muslim family law and Muslim women’s rights in Malaysia, 2018. Available at <https://www.musawah.org/wp-content/uploads/2019/02/Malaysia-SIS-Musawah-Joint-Thematic-Report-2018-CEDAW69.pdf>

⁹⁹ WAO, The Status of Women’s Human Rights: 24 Years of CEDAW in Malaysia, 2019, p347

¹⁰⁰ Musawah, Sisters in Islam, Joint report on Muslim family law and Muslim women’s rights in Malaysia, 2018. Available at <https://www.musawah.org/wp-content/uploads/2019/02/Malaysia-SIS-Musawah-Joint-Thematic-Report-2018-CEDAW69.pdf>

¹⁰¹ Musawah, Sisters in Islam, Joint report on Muslim family law and Muslim women’s rights in Malaysia, 2018. Available at <https://www.musawah.org/wp-content/uploads/2019/02/Malaysia-SIS-Musawah-Joint-Thematic-Report-2018-CEDAW69.pdf>

45. Are there dedicated and specialised family courts?

YES AND NO

Only the civil courts have specialised family courts. Two High Courts are referred to as Family Courts in Kuala Lumpur and Shah Alam. There are no dedicated and specialised family courts within the Syariah court system.

The findings above showcased a significant gap in Malaysia's legal and policy development, particularly concerning the welfare of women in various aspects of life. It is evident that Malaysia has a long way to go in addressing these key areas, and the government must take more decisive actions to bridge this divide. A poll conducted by UCSI revealed that 72% of Malaysians have personally experienced or witnessed gender inequality¹⁰², underscoring the urgency of the matter. More needs to be done to ensure that the rights of women are kept protected in households, schools, and workplaces. The next section provides a way forward through the recommendations of initiatives and action plans to address this key issue. We implore the government to take heed in ensuring that these actions can be put into practice.

¹⁰² TheEdge, "Gender Inequality in Malaysia", Published 17th August 2022



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

The findings of this report have provided a picture of Malaysia's current progress with SDG indicator 5.1.1. On an overall level, progress has been made to eliminate discrimination and achieve gender parity. For example, Malaysia Gender Gap Index (MGGI) scored 71.4 per cent in 2020, up from 70.9 per cent in 2019.¹⁰³ However, a comparison of progress with other neighbouring nations such as Singapore, New Zealand, and the Philippines revealed that Malaysia still lagged behind. Much more needs to be done and many key areas still need to be addressed before Malaysia can achieve the targets outlined in the 2030 Agenda for Sustainable Development.

In line with the United Nation's SDG indicator 5.1.1 and fulfilment of CEDAW, we recommend stronger awareness and a call to action on the issues and gaps in discrimination against women in Malaysia. We advocate for the government, through MWFC and its sub-agencies, to take on a bigger and more commanding role in progressively ensuring that future actions, policies, and roadmaps will continue to protect women's rights and eliminate discrimination against women. This includes reviewing any reservations that are currently hindering or decelerating its commitment to eliminate discrimination against women.

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

role in implementing gender equality practices and place stronger emphasis on policies that can promote gender equality and eliminate discrimination against women. To start, we advocate for the formation of a framework dedicated to addressing the issues, challenges, and gaps in the four areas within SDG indicator 5.1.1 – 1) Overarching legal frameworks, 2) Violence against women, 3) Employment and Economic benefits, and 4) Marriage and family.

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

¹⁰³ DOSM, "Statistics on Women Empowerment in Selected Domains, Malaysia, 2021"

7.1 | Recommendations for government and government agencies on the fulfilment of SDG indicator 5.1.1

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

The way forward

The government has undertaken significant efforts to raise awareness and educate society about underage marriages. While underage marriage is not permitted for non-Muslims, it varies from state to state for Muslims under the Syariah law. Consequently, the government has openly acknowledged that it currently has no plans to enforce a complete ban on child marriage.

Additional measures can be taken to protect the rights of underage girls in various areas, particularly in terms of educational opportunities. This can be achieved by implementing accompanying court orders for underage marriages to safeguard a girl's right to receive an education and pursue a career. Such measures may include introducing conditions that enable girls to complete their secondary and tertiary education and pursue careers of their choice.

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

The way forward

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

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

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

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

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

The way forward

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

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

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

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

The way forward

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

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

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

The way forward

Marital rape in Malaysia has not been recognised as a crime (*Marital rape is not criminalised, the exception to section 375 of the Penal Code permits marital rape if the marriage is legally enforceable*).¹⁰⁴ Meanwhile, statistics from WAO have showcased that the number of domestic violence cases has increased in the last decade.¹⁰⁵ To ensure that Malaysia is on track to meet the UN 2030 Sustainable Development goal, the government should consider amending legislation on marital rape as a criminal offence.

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

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


The way forward

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

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

¹⁰⁴ Legal Research

¹⁰⁵ WAO, "<https://wao.org.my/domestic-violence-statistics/>"



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