



Monitoring Report:

GENDER EQUALITY IN MALAYSIA

Monitoring Report: Gender Equality in Malaysia

2020



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About ARROW

ARROW is a regional non-profit women's organisation based in Kuala Lumpur, Malaysia. It has consultative status with the Economic and Social Council (UN ECOSOC) of the United Nations. ARROW strives to enable women to be equal citizens in all aspects of their life by ensuring their sexual and reproductive health and rights (SRHR) are achieved.

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About the Federation of Reproductive Health Associations, Malaysia

The Federation of Reproductive Health Associations, Malaysia (FRHAM) is a federated organisation comprising 13 State member associations. Since its inception as the Federation of Family Planning Associations Malaysia (FFPAM) in 1958, FRHAM has been educating, promoting and supporting Malaysians in family planning, sexual and reproductive health and rights (SRHR), and responsible parenthood.

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About the Gender Equality Initiative (GEI) in Malaysia

Launched in 2020, the GEI aims to contribute to the implementation of relevant CEDAW and UPR concluding observations and recommendations, specifically the adoption of the gender equality act that aims to abolish discriminatory laws and policies against women and girls and fulfill the human rights of the LGBTIQ community against discrimination and violence in Malaysia.

We are grateful to the European Union for their funding of the initiative and this report.

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Executive Summary

The Asian-Pacific Resource and Research Centre for Women (ARROW), together with the Federation of Reproductive Health Associations Malaysia (FRHAM) and Justice For Sisters (JFS) organised the Gender Equality Initiative, a project aimed to monitor and support the Malaysian government to implement their commitment towards the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Universal Periodic Review (UPR). This two-year project is funded by the European Union, dedicated to working with stakeholders, in particular governmental bodies, civil society organisations, media, women and young girls in Perak, Terengganu and at the national level.

In the third UPR Cycle, Malaysia has received several recommendations on gender equality, sexual and reproductive health, access to comprehensive sexuality education and protection of women and girls from violence. Malaysia is urged to accede to relevant Optional Protocols and withdraw reservations to the Convention which hinder the rights of women and girls in Malaysia. As a result, FRHAM was commissioned to conduct a research on the Baseline Monitoring Report containing four thematic areas, namely, a) ending all forms of discrimination against women and girls;

(b) eliminating violence against women and girls; (c) eliminating harmful practices against women and girls; and (d) ensuring universal access to SRHR.

Each thematic area focuses on specific indicators to measure the government's effort to uphold the rights of women and girls by examining law and policies, data and government's response on each area in Perak, Terengganu and at the national level. The information was based on desk review research with a restriction to gather data. As such, the report concludes with recommendations to improve the transparency of data and that it should be disaggregated by sex, age, ethnicity, religion, disability, etc. Additionally, the report suggests a continuous effort should be made by NGOs and the government to eliminate discrimination and violence, improve access to SRHR and ensure support of women and girls in all areas.

The information and recommendations made in this report should be used to develop training materials to uphold the rights of women and girls while lobbying the government in supporting the Gender Equality Act and Sexual Harassment Bill as well as strengthening policy and law for women and girls.

A more serious constraint — unfortunately not unique to this report but for most social science research in the country — is the lack of easily accessible, comprehensive and disaggregated official data. Any baseline report typically relies on having a good set of baseline statistics and information from which progress can be monitored, measured and evaluated for future action. In Malaysia's case, the scarcity of such data is a major drawback to such efforts.

Section 1:

Introduction

1.1 Background and Rationale

The Federation of Reproductive Health Associations, Malaysia (FRHAM) is a federated organisation comprising 13 State member associations. Since its inception as the Federation of Family Planning Associations Malaysia (FFPAM) in 1958, FRHAM has been educating, promoting and supporting Malaysians in family planning, sexual and reproductive health and rights (SRHR), and responsible parenthood. The organisation adopts a rights-based as well as a gender- and youth-focused approach in its work. Through State affiliates, it offers a range of services like counselling, contraception, gynaecology, pre-natal, and safe abortion care. It also supports those with issues relating to gender-based violence, sexually transmitted or reproductive tract infections, and HIV.

In early 2020, FRHAM commissioned this baseline report as part of the Gender Equality Initiative project it embarked on with the Asian-Pacific Resource and Research Centre for Women (ARROW). The project seeks to support Malaysia in implementing its commitments to two key UN bodies and processes, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Universal Periodic Review (UPR). As a state party to both, Malaysia has made some progress in fulfilling its obligations under them. Nevertheless, there remains much room for improvement, as reflected by the elusiveness of the long-promised Gender Equality Act that civil society has pushed for to advance women's equality and non-discrimination.

Since acceding to CEDAW in 1995, Malaysia maintains its reservation to Articles 9(2) and 16(1) (a), (c), (f) and (g) while accepting several UPR recommendations to promote and empower the rights of women and awareness towards gender equality. This report aims to provide baseline information that FRHAM can use to monitor progress, gaps, challenges and map the way forward for the Gender Equality Initiative project, which is funded by the European Union. It is also meant to guide FRHAM's lobbying and advocacy efforts. The focus is on four SRHR priority areas identified by FRHAM, and seeing how

these are manifested at the national/Federal and State levels, the latter by looking at the experience of Perak and Terengganu.

1.2 Methodology and Limitations

Based on desk research, this report was originally set to draw on secondary data – journal articles, news and other reports, published studies – as well as official statutes, data and outcome documents from the CEDAW and UPR processes. Having conducted a literature search, these were utilised as planned, but they were also to be supplemented with interviews, at least one for each of the two states under study (Perak, Terengganu), and another at the federal level.

Despite efforts to secure these, none of the interviewees contacted responded positively. Possibly, timing was an issue since this coincided with the end of the 10-week long Movement Control Order, imposed in response to the outbreak of the Covid-19 pandemic. A period of uncertainty for many, they would also have been busy trying to catch-up on months of a partial lockdown, to adjust to a 'new normal'. Without interviews with Members of Parliament, this report does not include first-hand insights into their commitment to eliminating gender-based violence, as initially planned. Even so, some of their views can be inferred through media reports that quote them and have been included here.

As the account below shows, a more serious constraint—unfortunately not unique to this report but for most social science research in the country—is the lack of easily accessible, comprehensive and disaggregated official data. Any baseline report typically relies on having a good set of baseline statistics and information from which progress can be monitored, measured and evaluated for future action. In Malaysia's case, the scarcity of such data is a major drawback to such efforts.

1.3 Structure of the Report

This report is followed by an examination and analysis of the areas based on CEDAW and UPR recommendations to bring women and girls as the focus of human rights concern by looking at the political, social, economic and cultural aspects that impact the lives of women and girls. Four priority areas have been identified by FRHAM – (a) ending all forms of discrimination against women and girls; (b) eliminating violence against women and girls; (c) eliminating harmful practices against women and girls; and (d) ensuring universal access to SRHR – and the indicators chosen for each. The discussion

in these sections first considers the respective legal and policy scenarios before turning to experiences on the ground, as reflected by the prevalence of and concerns around the issues considered. These are domestic violence, rape, early/forced/child marriage, female circumcision/genital cutting/genital mutilation, and sexual and bodily autonomy both within and outside of marriage or partnership. This is aligned with Malaysia's acceptance of the UPR recommendations to strengthen efforts to promote and protect the rights of women and girls including increasing the efforts to increase family planning and reproductive health service.

Section 2:

Priority Areas

2.1 Ending All Forms of Discrimination Against Women and Girls Everywhere

The FRHAM Baseline Report Monitoring Framework identifies two indicators for its first priority area, ending all forms of discrimination against women and girls everywhere. These are: (i) whether or not there are relevant laws and policies in place to promote gender equality and non-discrimination against women and girls in each of the targeted constituencies; and (ii) if there are mechanisms to enforce and monitor the legal frameworks for each of the areas discussed below.

LAWS AND POLICIES

2.1.1 At the national level, the highest law of the land – the Federal Constitution – states that all persons in Malaysia are equal before the law and entitled to the equal protection of the law (Article 8(1)). As well, since 2001, Article 8(2) of this Constitution has prohibited discrimination on the basis of gender as stated, “there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in 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.”

2.1.2 Malaysia's ratification of CEDAW in 1995, and adoption in 2015 of the Sustainable Development Goals (SDGs), which includes a goal on gender equality (Goal 5), have been viewed as signs of the government's commitment to gender equality and elimination of gender-based discrimination.

2.1.3 This commitment can also be seen in the introduction of the National Policy on Women and its Plan of Action in 1989,¹ the creation of a Cabinet Committee on Gender Equality in 2007, and piloting a system of Gender Focal Points and Gender-Responsive Budgeting in five ministries in 2003, as well as strengthening capacity building programmes for women.²

2.1.4 Notwithstanding the above, the effectiveness of these provisions and measures is debatable. In the declaration of the United Nations' High-Level Meeting on the Rule of Law, “all persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled without any discrimination to equal protection of the law.” However, the absence of a legal framework to guarantee an equality of outcomes has rendered Federal Constitution Article 8(1) fairly impotent. Likewise, the absence of a legal definition of discrimination means that the law does not recognise how manifestations of discrimination can be both direct, indirect or intersectional. It also does not acknowledge that discrimination can occur in both public and private spheres, and be perpetrated by state and non-state actors.³

The effectiveness of these provisions and measures is debatable. However, the absence of a legal framework to guarantee an equality of outcomes has rendered Federal Constitution Article 8(1) fairly impotent.

Likewise, the absence of a legal definition of discrimination means that the law does not recognise how manifestations of discrimination can be both direct, indirect or intersectional.

2.1.5 This lack of definitional clarity with regards to gender-based discrimination has given rise to narrow court interpretations of the law. In one of the earliest cases invoking Article 8(2), *Beatrice Fernandez v. Sistem Penerbangan Malaysia and Anor* (2005), the Federal Court ruled that this law only applied to public authorities, and hence private sector employers had the right to terminate their pregnant employees. Almost a decade later, the Court of Appeal made a similar argument in the *Air Asia Bhd v. Rafifah Shima Mohamed Aris* (2014) case, i.e., the constitutional guarantee under Article 8(2) did not extend to private entities. Both judgments infringed on the right of the female plaintiffs to sexual and bodily autonomy, and further perpetuate women's subordination.

2.1.6 The weak hold of Article 8(2) is one reason why there continues to be provisions in the statute books which are discriminatory against women. The Employment Act of 1955, for example, prohibits women from taking on night work in industrial or agricultural businesses, unless exempted by the Director General of Labour, as well as underground work. Citizenship laws also deny Malaysian mothers of children born overseas the right to confer their citizenship to their children. These rules do not apply to men.⁴

2.1.7 In Terengganu in 2018, two women were caned under the State's *syariah* criminal provisions for attempting to engage in lesbian sex, while another was caned for engaging in sex work.⁵ These provisions contravene the Federal Constitution and the Criminal Procedure Code (Section 289), which prohibits corporal punishment against women. The State also drafted what it deemed as *syariah*-compliant attire for athletes, which bears more heavily on women.⁶ These are examples of how

women in this State are denied access to justice, a key step to achieving gender equality.

2.1.8 These legal inconsistencies on gender-based discrimination, education, women's employment and citizenship can be rectified by passing a Gender Equality Act.⁷ Amongst others, this could fulfil the government's commitment on the CEDAW Convention, giving global women's rights standards the force of law in Malaysia. Both the previous Barisan Nasional (BN) and Pakatan Harapan (PH) governments had pledged to enact this law. However, the efforts were unsuccessful despite several MPs having pushed for the implementation. Although the latter made greater strides in this regard, its premature termination as government halted any potential progress. Meanwhile, the current Perikatan Nasional government has not indicated its position on this matter.

ENFORCEMENT AND MONITORING MECHANISMS

2.1.9 The Ministry of Women, Family and Community Development (MWFCD) is the national body responsible for enforcing the legal framework that upholds gender equality and non-discrimination against women in Malaysia. It is also responsible for monitoring this framework's impact. In these efforts, it is largely supported at the subnational level by the respective state departments of women's development, in this case, the *Jabatan Pembangunan Wanita* Perak and Terengganu.

2.1.10 As already noted, the MWFCD has not been successful at boosting the efficacy of this framework with gender equality legislation, despite indicating its intentions to do so since the early 2000s. This is a reflection of the broader challenges it faces in its pursuit of gender equality and addressing discrimination against women.

2.1.11 Foremost is the context in which the Ministry functions. This is one where patriarchal notions are embedded throughout society, such that even in the nation's august house, sexist comments based on gender stereotypes are regularly made with impunity. Despite such language being explicitly prohibited by Parliament's rules of conduct via amendment of Standing Order 36(4) in 2012, sexist remarks continue to exist.⁸ Evidently, several cases have happened throughout all rulings.⁹ Inevitably, this sends out a message that condones sexism and promotes a culture of violence against women and girls.

The slow progress of gender mainstreaming in the last 20 years suggests that promises made have not been matched with adequate resources and/or that resources allocated have not been prudently tracked and managed. There is also a lack of information to monitor and evaluate the progress that has been made by MWFC.

2.1.12 Since the late 1990s this situation has been compounded by a growing politicisation of ethnicity and religion. Efforts to regulate women's sexual expression, dressing and behaviour are increasingly justified in the name of upholding Islam and there is little action against those who threaten with violence women who do not comply with imposed norms. The phenomenon of online violence has grown in severity. Bearing the brunt of these attacks are Muslim women.¹⁰

2.1.13 The government itself has used Islam to justify Malaysia's remaining reservations to the CEDAW Convention, despite this contravening the object and purpose of the treaty.¹²

2.1.14 While the overall portion of funds allocated to MWFC is reflected in the government's annual budget, it is less clear how much of this is dedicated to human, technical and financial resources needed as there is a lack of information to monitor, enforce and evaluate efforts in promoting gender equality. The slow progress of gender mainstreaming in the last 20 years suggests that promises made have not been matched with adequate resources and/or that resources allocated have not been prudently tracked and managed. There is also a lack of information to monitor and evaluate the progress that has been made by MWFC.

2.1.15 As a line ministry too, the MWFC has been unsuccessful in compelling other ministries to take on gender mainstreaming at a level where real improvements to women's lives can be seen. Hence, despite numerous empowerment programmes for women, their impact remains unclear beyond the achievement of some numeric targets.

2.1.16 Another gap relates to the lack of a systematic and regular collection of sex-disaggregated data, as well as of staff who are adequately trained to analyse this through a

gender lens, both of which are crucial for more accurate policy interventions. The absence of data that reflects intersectional discrimination that some groups of women have faced also affects the efficacy of empowerment programmes offered.¹³

2.1.17 Despite having 30 years of the National Policy of Women, the effort made to uphold women's rights has still stagnated. Women's rights groups have still been advocating enactment of the Gender Equality Act and Sexual Harassment Bill to implement gender equality mechanisms nationwide.

2.1.18 In 2019, a report was launched to understand the status of women's human rights with the input from 40 NGOs to push for the changes in legislation. These changes would bring forward prohibitions on gender discrimination, a full implementation of CEDAW and establish strict enforcement and monitoring mechanisms.¹⁴

2.2 Eliminating Violence Against Women and Girls

Towards the goal of eliminating all forms of violence against women and girls in public and private spheres, including trafficking and exploitation, the second priority area of the FRHAM Baseline Report Monitoring Framework has three indicators: (i) existing laws and policies on domestic violence; (ii) the proportion of ever-partnered women and girls (15 years and older) subjected to physical, sexual or psychological violence by a current or former intimate partner in the previous 12 months; and (iii) the proportion of women and girls (15 and older) who have experienced sexual violence – defined here as rape – by persons other than an intimate partner in the previous 12 months.

LAWS AND POLICIES (ON DOMESTIC VIOLENCE)

2.2.1 Malaysia has had a Domestic Violence Act (DVA) since 1994, implemented from 1996 onwards in response to the National Women Policy and its Plan of Action. The government has responded to women's groups calling for further improvements to this law with amendments in 2011 and 2017. Among others, these widened the definition of domestic violence to cover "emotional, mental and psychological forms of violence"¹⁵ and created the Emergency Protection Order to offer survivors quicker protection while at the same time introducing fines for those who contravened this ruling.¹⁶

2.2.2 Besides an expanded definition of domestic violence and improved legislative protection for survivors, the government has also offered them support through the provision of shelters and One Stop Crisis Centres at all major public hospitals from 1994, as a response from the health sector on violence against women.¹⁷ It has conducted awareness-raising programmes and gender-sensitising and capacity building trainings for government medical personnel, social workers, law enforcers and court officers.

2.2.3 In 2015, MWFCDC collaborated with an NGO, Women's Aid Organisation, to produce the Domestic Violence Shelter Standards and Toolkit, and the Guidelines for Handling Domestic Violence Cases (*Garis Panduan Pengendalian Kes Keganasan Rumahtangga*). Both publications were important in setting national standards for the protection of domestic violence survivors. In 2019, MWFCDC reiterated its commitment to addressing this issue by strengthening relations and coordination among all nine agencies involved.¹⁸

2.2.4 Over the years, the measures above have substantially improved a domestic violence survivor's access to justice. Still, more can be done. For example, the law still does not recognise stalking as a crime even though this is common in cases of domestic violence. It is also conspicuously silent on intimate partner violence, i.e., violence perpetrated between unmarried intimate partners, extending protection and compensation only to members who fall under a heterosexual marriage and household. While a court case may take years to complete, protection orders last for only 12 months, or a maximum of another year upon request for renewal.

2.2.5 Sexual violence within marriage was criminalised in 2004. Nevertheless, women's groups have pushed for marital rape to be explicitly prohibited on grounds that (i) the current punishment for the offence is much lower than for rape; (ii) it excludes acts of rape that occur without the use of force; and (iii) it reinforces the message that sexual assault within marriage is not a matter to be taken seriously.¹⁹

2.2.6 Enforcement of the DVA is another area of concern as this has not been standardised across the nation. Women who seek legal protection may experience different outcomes depending, for example, on where they are located or lodge a report, and whether or not they can access legal aid or shelters. Those from marginalised communities like poor,

indigenous, transgender, migrant workers and refugee women are among the most vulnerable in this scenario.

2.2.7 Often the discretionary powers of police, welfare and court officers have influenced case outcomes unevenly. A study conducted in five states revealed how only just over one-third of deputy public prosecutors have sought and obtained compensation, suggesting that they may not be well-versed on the DVA and what it offers victims.²⁰

2.2.8 In 2011, Malaysia initiated a Malaysian Parliament Women's Caucus during the International Day for the Elimination of Violence against Women and Children to boost the effort in education and on lobbying MPs in gender issues. However, despite its existence, it was established without a resolution by Parliament.²¹

2.2.9 In the absence of a consistently implemented policy across the country and a dedicated budget allocation, the quality of services at the One Stop Crisis Centres has also been uneven across hospitals and states. Of concern is how today these centres predominantly follow a medical model, which provides women survivors only with treatment. Previously when the centres adopted an integrated empowerment model, survivors – supported by NGOs – had access to critical follow-up services (counselling, refuge, legal aid, court assistance).²²

2.2.10 Further improvements to the DVA appear to be held back by not only a lack of political will by the government but also the deeply embedded sexist views of some lawmakers. For example, while debating the 2017 amendments to the DVA, the Member of Parliament for Setiu in Terengganu, Che Mohamad Zulkifly Jusoh, argued that women who withheld sex with their husbands were guilty of emotional and psychological abuse.²³

Of concern is how today these One Stop Crisis Centres predominantly follow a medical model, which provides women survivors only with treatment. Previously when the centres adopted an integrated empowerment model, survivors—supported by NGOs—had access to critical follow-up services.

TABLE 1: DOMESTIC VIOLENCE CASES REPORTED (National), 2010–2018

Year	Number of Cases
2010	3,173
2015	5,014
2018	5,142

Source: Domestic Violence Statistics”, Website of Women’s Aid Organisation. <https://wao.org.my/domestic-violence-statistic>.

The country’s recent experience with the Covid-19 pandemic and the Movement Restriction Order that was imposed have highlighted the additional risks women face with violent or potentially violent partners under such conditions.

TABLE 2: DOMESTIC VIOLENCE CASES REPORTED (2017)

Area	Cases	Population (Millions)	Incidence of Domestic Violence (% of Population)
Malaysia	5,513	32	0.017
Terengganu	268 (4.9%)	1.21	0.022
Perak	320 (5.8%)	2.49	0.012
Selangor	775 (14.1%)	6.38	0.012

Source: “Domestic Violence Statistics”, Website of Women’s Aid Organisation. <https://wao.org.my/domestic-violence-statistics>, and “Malaysia @ a Glance”, Department of Statistics Malaysia, Official Portal, https://www.dosm.gov.my/v1/index.php?r=column/coneandmenu_id=ZmVrN2FoYnBvZEo5T1AzKoRLcEtiZzo9.

INCIDENCE OF INTIMATE PARTNER VIOLENCE (IPV)

2.2.11 Like other sections of this report, the information and analysis of intimate partner violence (IPV) here is limited by two major constraints: data availability and data accessibility.

2.2.12 As noted before too, this situation is made worse because the DVA does not recognise IPV. Apart from sporadic news reports, publicly available data on the prevalence of domestic violence focuses overwhelmingly on the experiences of those within the institution of a heterosexual marriage and family. Even so, this information is also lacking, and worse, has resulted in IPV – involving married and unmarried couples – being accorded low priority in the public health system.²⁴

2.2.13 Whatever information that is collected is also not easily accessible, what more the specific data this report requires, i.e., past-year IPV, defined as women and girls who have been abused by current or former partners in the previous 12 months. These limitations aside, several general observations can still be gleaned from data that was obtained.

2.2.14 Police statistics show that between 2010 and 2018 (Table 1), the annual number of domestic violence cases grew from 3,173 to 5,421. Although incomplete, data for 2019 – 4,963 cases from January to November – suggest that this upward trend has not abated.²⁵

As the CEDAW NGO Report for Malaysia notes, the rise in the number of cases can be due to greater awareness about the DVA. It is also widely known that such cases are usually under-reported; hence the actual number of cases on domestic violence could be higher.²⁶

2.2.15 While this may be true, it is worth noting that existing domestic violence statistics are not limited to spousal abuse. About half the cases pertain to violence involving other family members. The majority of victims are women (75%) while the majority of perpetrators are male. Only around 2% of cases reported involved abusive wives.²⁷

2.2.16 In 2017, the most recent year where data on reported cases broken down by state is publicly available, Selangor recorded the highest number of domestic violence cases (775, 14.1% of total cases), while Perak (320, 5.8%) and Terengganu (268, 4.9%), the two states under consideration in this report, were among those with the lowest numbers (Table 2).

2.2.17 A different picture emerges if these figures are understood proportionate to each state's population size. In this case, the incident of domestic violence in Terengganu was greater than that for Perak and Selangor, and higher than the national ratio as well (Table 2).

2.2.18 In one of the few studies on IPV in Malaysia – conducted in 2016 with 5,727 postpartum women at government primary healthcare clinics – those who were currently unmarried/without a partner were not only recorded as experiencing past-year IPV but also more likely to report this.²⁸ The reasons for this are unclear but worth investigating.

2.2.19 The country's recent experience with the Covid-19 pandemic and the Movement Restriction Order that was imposed have highlighted the additional risks women face with violent or potentially violent partners under such conditions. In the initial two weeks alone, MWFC's telephone hotline, *Talian Kasih*, recorded a 57% rise in calls from women about financial and marital issues and domestic violence.²⁹ More studies, however, are required to better understand the impact of such a policy on women.

INCIDENCE OF SEXUAL VIOLENCE BY PERSONS OTHER THAN INTIMATE PARTNER (RAPE)

2.2.20 A World Health Organization document defines sexual violence as: "any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work."³⁰

2.2.21 For the purposes of this report, however, the term refers only to the incidence of rape by non-intimate partners. This is largely because of the challenges around obtaining data as noted before, a situation further compounded by the more specific requirement for data pertaining to age of the victims and place of occurrence.

TABLE 3: RAPE CASES REPORTED (National), 2010–2017

Year	Number of Cases
2010	3,595
2015	1,873
2017	1,582

Source: "Rape Statistics", Website of Women's Aid Organisation. <https://wao.org.my/rape-statistics/>.

2.2.22 Unlike domestic violence, the number of rape cases reported decreased from 2010 to 2017 (Table 3).

2.2.23 In the absence of comprehensive research into the reasons for this decline, one can only speculate how far this can be attributed to greater public awareness of this issue, the effect of relevant laws that have been strengthened over time, or both.

2.2.24 For instance, the last round of amendments in 2017 introduced a new provision, Section 377CA of the Penal Code, to criminalise "sexual connection by object." With this, a person found guilty of inserting an object, including fingers and tongue, into another person's vagina or anus could be jailed between five to 30 years and/or whipped. The crime, however, is not officially categorised as rape but falls under the section of 'Unnatural Offences'.³¹

2.2.25 At almost 1,600 cases a year, this translates into just over four rape cases a day. Though seemingly low, this figure is still of concern particularly since this is likely the tip of the iceberg. It is widely accepted that due to stigma and other barriers, many more women who have been raped do not come forward to lodge police reports.

2.2.26 Perhaps more troubling is the severity and scope of rape cases that have emerged in the last ten years. Even with harsher rape penalties in place, the last decade has seen a rise in news reports featuring gang rapes, rape of girls, rape by persons of authority, rape-murder cases, and the emergence of online rape and death threats, especially against Muslim women who speak out against injustice and rights violations.³²

TABLE 4: RAPE CASES REPORTED (2017)

Area	Cases	Population (Millions)	Incidence of Rape (% of Population)
Malaysia	1,582	32	0.005
Terengganu	53 (3.4%)	1.21	0.004
Perak	73 (4.6%)	2.49	0.003
Selangor	296 (18.7%)	6.38	0.005

Source: "Rape Statistics", Website of Women's Aid Organisation, <https://wao.org.my/rape-statistics>, and "Malaysia @ a Glance", Department of Statistics Malaysia, Official Portal, https://www.dosm.gov.my/v1/index.php?r=column/coneandmenu_id=ZmVrN2FoYnBvZE05T1AzKoRLcEtiZz09.

TABLE 5: AGE BREAKDOWN OF RAPE SURVIVORS (National), 2013–2017

Age Range	2013	2014	2015	2016	2017
Under 12	111	87	85	98	94
12 – Under 18	1,790	1,496	1,324	1,260	1,163
18 and Above	617	462	464	340	278

Source: "Rape Statistics", Website of Women's Aid Organisation. <https://wao.org.my/rape-statistics/>

2.2.27 As the most populous state in the country, it is no surprise that Selangor registers the highest number of reported rape cases in the country. In 2017, this represented close to one-fifth (298) of all such cases, four times the figure recorded for Perak (73), and five-and-a-half times that of Terengganu (53). When compared against the size of their respective state populations, however, the difference becomes less palpable even though Selangor still had the highest incidence of rape for the year (Table 4).

2.2.28 Police statistics on the age breakdown of rape survivors for 2013–2017 reveals a disturbing pattern where the highest number of cases is recorded for those between 12 and 18 years of age. Again, there could be a number of reasons why this age cohort has the greatest number of victims. For example, they could be more prone to sexual violence, or their parents could also be more inclined to lodge police reports on their behalf but this can only be ascertained through further investigation (Table 5).

2.2.29 In the last few years, there have been statutory rape cases where perpetrators are adult men, and victims, children. In many of these cases, culture and religion have been used to justify rape or allow rapists to marry their underaged victims.³³

2.2.30 That being said, there has been some speculation of the data gathering methods and their validity. The government has provided a different number on rape cases during the second session of the 13th parliamentary session and the third session of the 14th parliamentary session.³⁴ Despite the disparity, women's groups and other civil society actors have lobbied for more stringent rape laws and its implementation to plug this gap with various closed-door discussions and research, but to no avail.

2.3 *Eliminating Harmful Practices Against Women and Girls*

The indicators under the third priority area of the FRHAM Baseline Monitoring Report Framework relates to early/forced/child marriage, and female circumcision/genital mutilation. The first seeks to establish the proportion of women (20–24 years old) who were married before the ages of 15 and 18; the second, the proportion of women and girls (15–49 years old) who have been subjected to female circumcision/cutting/genital mutilation. There is currently no publicly available data directly applicable to either. Instead, the commentary below is drawn from a number of secondary reports.

EARLY/FORCED/CHILD MARRIAGE

2.3.1 There is no straightforward legislative framework that governs child marriage in Malaysia today. This is because there are three different legal systems at play and each also operates with its own set of exceptions (Table 6).

2.3.2 Matters pertaining to Muslim marriage (and divorce) fall under the respective state's Islamic Family Law Act/Enactment (IFLA/E) while the Law Reform (Marriage and Divorce) Act 1976 (LRA) regulates marriages of non-Muslims.³⁵ As well, there is a separate set of customary laws for the Orang Asli of Peninsular Malaysia, and the Orang Asal of Sabah and Sarawak, if they opt to marry under these.

2.3.3 As seen in Table 6, none of these legal systems have a common minimum marriage age. The IFLA/E and the native customary laws set 18 as the minimum age for males, and 16 for females, while the LRA places this at 18 (with parental consent required for marriages of those under 21).

2.3.4 This situation is further complicated because each of these systems allows for exceptions. In the cases of the IFLA/E and native customary laws, there is no minimum age of marriage since, with the former, this is dependent on the decision of a *syariah* court “in certain circumstances,” and with the latter, on written consent from a parent or legal guardian. In the case of the LRA, a Chief Minister decides if marriages involving girls aged 16–18 should be solemnised.³⁶

2.3.5 The fact that the IFLA/E does not spell out what is meant by “in certain circumstances” is troubling, more so with the high approval rate of such applications. From 2005–2015, the Syariah Judiciary Department of Malaysia (*Jabatan Kehakiman Syariah Malaysia*, JKSM) received 10,240 applications where there was, on average, an approval rate of around 82%.³⁷ Another study conducted in seven states from 2012–2016 showed that this rate was even higher as, of 2,143 applications received, only ten were rejected.³⁸

2.3.6 The lack of guidelines for court officials and judges in handling child marriage applications has not helped.³⁹ According to a senior official at JKSM, when parents consent, “the court has ‘no option but to agree’ to the marriage.” This suggests that there is little judicial discretion being exercised, and judges are not seen to be intervening in the best interests of a child when dispensing with child marriage applications.⁴⁰

2.3.7 The National Fatwa Committee issued a fatwa – technically a legal opinion, but one whose influence can potentially be quite widespread in Malaysia particularly when gazetted and enforced as law – in 2014 to discourage child marriage, stating that it was not obligatory (*wajib*) or encouraged (*sunat*), but stopped short of declaring it as prohibited (*haram*).⁴¹

2.3.8 Official statistics on child marriage in Malaysia are difficult to obtain, and at times even when available, they do not help to clarify the reality of the phenomenon here.

2.3.9 The Population and Housing Census for 2000, for example, showed that there were 6,800 girls and 4,344 boys under 15 who were married. Ten years on, this data was missing from the next census so no comparison could be made nor was it possible to obtain any picture of its prevalence that year. Data for the 15–19-year age bracket was given in both censuses but since there was no breakdown by age, it remains unclear how many of those married were under 18 (Table 7).

TABLE 7: NUMBER OF MARRIED GIRLS AND BOYS (National), 2000 and 2010

Age Group	2000 Census		2010 Census	
	Girls	Boys	Girls	Boys
Under 15	6,800	4,344	—	—
15–19	53,196	11,833	68,688	72,640

Source: Women's Aid Organisation (WAO) and the Joint Action Group for Gender Equality (JAG). 2019. “The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia. Page 334.

There is no straightforward legislative framework that governs child marriage in Malaysia today. This is because there are three different legal systems at play and each also operates with its own set of exceptions.

The lack of guidelines for court officials and judges in handling child marriage applications has not helped.

2.3.10 The figures on Table 7 suggest that the number of married children may have grown from 2000 to 2010. For girls, this rose from 53,196 to 68,688 while for boys it jumped from 11,833 to 72,640.

2.3.11 Information from MWFC and the National Registration Department showed that a total of 14,999 registered child marriages occurred from 2007 to 2017, of which 10,000 involved Muslims. The number of such marriages for non-Muslims also rose from 436 (2015) to 930 (2018).⁴²

2.3.12 In terms of states with the highest number of Muslim child marriage applications, Sarawak recorded the highest (918) of the 5,462 applications that JKSM received from 2013 to 2017. At 407, Terengganu was the fourth highest, while Perak came in eighth with 266 applications.⁴³

2.3.13 In 2016, the then deputy minister of MWFC noted that between 2013 and 2016, there looked to be a downward trend in child marriages. The UN Special Rapporteur on Health had already said the same in his 2015 report on Malaysia, that the incidence of early marriage among girls aged 15–19 had decreased from 1970 to 2010.⁴⁴ Citing UN estimates and projections which have been reproduced and extended to 2020 below (Table 8), these figures include “in-union” girls, i.e., those in consensual unions, which likely accounts for the difference in numbers cited from the Population and Housing Census referred to earlier.

The existence of child marriage in Malaysia is still significant and worrying given the deprivations a girl child endures with early marriage. That it impacts on her “right to health, education, equality, non-discrimination and to live free from violence and exploitation” has been the main contention of advocates who want the government to ban such marriages.

2.3.14 The picture in Table 8 does not quite match claims that there is a worrying and rising number of child marriages in the country,⁴⁵ and further study is needed to understand this discrepancy.

Year	Percentage	Number ('000)
1970*	16.6	99
1980*	13.9	110
1990*	11.3	101
2000*	8.6	96
2010*	6.0	82
2020**	4.8	62

Key: *Estimate; **Projection

Source: United Nations, Department of Economic and Social Affairs, Population Division (2020).

2.3.15 Notwithstanding this falling trend, the existence of child marriage in Malaysia is still significant and worrying given the deprivations a girl child endures with early marriage.⁴⁶ That it impacts on her “right to health, education, equality, non-discrimination and to live free from violence and exploitation” has been the main contention of advocates who want the government to ban such marriages.⁴⁷

2.3.16 These calls have intensified in recent times given the tendency of some communities to use child marriage as a solution to curb the incidence of premarital sex, teenage pregnancy and abandoned babies.⁴⁸

2.3.17 They have also been made to counter the view that child marriage is an acceptable social solution to cases of statutory rape,⁴⁹ a position openly supported by UMNO and PAS parliamentarians, including one from Terengganu (Kuala Nerus) who also held that banning child marriage would increase cases of casual sex involving teenagers.⁵⁰

2.3.18 None of these claims have been substantiated with evidence-based research. Instead, a UNICEF study involving 140 participants who were in a child marriage between 2012 and 2016 found a correlation between premarital sex and school dropouts, namely that adolescents who drop out at the

primary or early secondary level have less awareness of sexual and reproductive health (SRH) issues as they did not receive any sex education that is only taught in Form 4.⁵¹

2.3.19 Following on from this, the study posits that any attempt to address child marriage requires youth to have greater awareness of SRH issues.⁵² However, there is resistance from some quarters, including teachers and parents, to revamp the existing sex education curriculum that is conducted through science, religion and moral education classes, and emphasises abstinence, to one that allows for SRH topics to be directly and openly discussed⁵³ (See also Section 2.4).

2.3.20 While family poverty has commonly been attributed as a key driver for child marriage,⁵⁴ there are in fact an interplay of factors at work. Among Muslims, Noraida and Intan (2015) show how even respondents in their study who were primarily from a lower socio-economic background stated that their reasons for supporting child marriage was not poverty but to avoid premarital sex and being charged for *khalwat* (close proximity), family pressure and pregnancy.⁵⁵

2.3.21 Another study has gone further to argue that rather than poverty, “religious dogmatism and moral shaming of sexual relations outside marriage”⁵⁶ are the main determinants. It claims that these are perpetuated by existing *syariah* legal provisions that criminalise both sex outside of marriage (*zina*) and *khalwat*, as well as a ruling enforced by the National Registration Department that any Muslim child born less than six months from the date of marriage be deemed illegitimate⁵⁷ and hence loses paternal inheritance rights.

2.3.22 Indeed, as other research shows, stigma and fear of prosecution around premarital sex and teenage pregnancy is so great that there are children and parents who opt for them to enter into early marriage.⁵⁸ Likewise with girls made pregnant “out of wedlock.” The fear of a pregnant girl being burdened as the sole provider of her ‘illegitimate’ child can also compel her into child marriage.

2.3.23 MWFCDC has officially issued a statement on the problems stemming from child marriage calling for an end to any activity that could potentially hinder a child’s growth towards realising their full potential (October 2015). As well, it highlighted current measures to equip youth, including potential brides, with information on reproductive health issues.⁵⁹

2.3.24 In formulating the *fatwa* on child marriage, the National Fatwa Committee had taken into account various considerations, but pointed out that even if permissible in Islam, this “should not be done lightly without considering the interests of the child” or “used as an excuse to enable child marriage with ease.”⁶⁰ JKSM also weighed in and stated that child marriage was not a ticket to legitimise rape.⁶¹ Despite these efforts, there remained an impasse on this issue.

2.3.25 Towards overcoming this, in early 2020, the government launched the National Strategy Plan in Handling the Causes of Child Marriage, having engaged with all relevant stakeholders for some time. This was to be a comprehensive approach to address “low household income and poverty; lack or no access to sexual reproductive health education and parenting skills; lack of access to education and poor school attendance; stigma and social norms that dictate that underaged marriage is the best solution to address problems; loose laws that provide for marriage under the age of 18; and coordination of marital data and underage divorce.”⁶²

Another study has gone further to argue that rather than poverty, “religious dogmatism and moral shaming of sexual relations outside marriage” are the main determinants.

2.3.26 It was also reported that JKSM had produced a national standard operating procedure for marriage applications involving minors, and that the government would extend its Reproductive and Social Health Education Programme to children as young as preschoolers.⁶³

2.3.27 Currently, child marriages continue to be permitted and the rate of child marriage is increasing. The Committee welcomes the legislative amendment to end discrimination in marriage and in the family and reiterates their recommendation for Malaysia to undertake law reform processes to remove inconsistencies between civil law and *Syariah* law in ensuring equal rights in all family and marriage matters.

Thus far, the current administration has not indicated what its position on child marriage is, nor what it intends to do with this Strategy Plan. This needs immediate clarification.

FEMALE CIRCUMCISION/GENITAL CUTTING/GENITAL MUTILATION

2.3.28 Like early/forced/child marriage, female circumcision – also known as female genital cutting or female genital mutilation – is a contentious subject in Malaysia. There is little agreement between both sides of the divide, those who believe that the practice should continue and those who want it banned.

2.3.29 This divide was compounded in 2009 after the National Fatwa Committee issued a *fatwa* that made it obligatory (*wajib*) for Muslim women to be circumcised unless this was potentially harmful to their wellbeing.⁶⁴ An important aside is how, even among Muslim clerics and religious leaders, there is no consensus on this position.⁶⁵

2.3.30 For the amount of debate on this subject, surprisingly very little is known about the phenomenon, e.g., its prevalence, procedures, practitioners or reasons for its occurrence. Apart from three studies – Isa et al., 1999; Maznah and Ng, 2011; Abdul Rashid and Iguchi, 2019 – research on female circumcision in Malaysia is scarce.

2.3.31 From this limited pool of information, it is understood that well over 90% of Muslim women in the country have been circumcised. Motivated by reasons ranging from health and hygiene concerns to cultural and religious beliefs, for a long time the practice here was largely believed to involve scratching, pricking or inflicting a superficial cut on the skin or tip of the clitoris when they were infants and up to the age of six.

2.3.32 In its 2008 CEDAW review, the Malaysian government reported that this kind of female circumcision fell under Type 4 of the World Health Organization FGM classification scheme, i.e., “all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterising the genital area.” This was traditionally performed by village midwives but increasingly, in present times, the services of medical doctors are more popular.⁶⁶

2.3.33 In 2012, the Ministry of Health proposed a set of guidelines to reclassify female circumcision as a medical practice. This, it said, would safeguard women and girls from harm because unlike before, they would now be able to have the procedure done at government healthcare facilities. This

move was criticised at the time as endorsing such acts as a medically safe and beneficial procedure⁶⁷ when in fact it goes counter to the WHO global medical strategy against the medicalisation of this practice.⁶⁸ It is believed that these guidelines have not been publicly released nor is their impact known.⁶⁹

2.3.34 Replying to oral questions by the CEDAW Committee at Malaysia’s last review in 2018, the then secretary-general of MWFCDC said that studies had found female circumcision in this country to be “harmless and did not have an impact on the sexual health of women.” She said that routine checks conducted by public health centres on 18-month olds showed that “83 to 85% of Muslim baby girls had been circumcised without any complications.”⁷⁰ The government has also claimed that Malaysia’s practice is part of a cultural obligation and not invasive like that of some African countries.⁷¹

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2.3.35 At this same review, for reasons that are unclear, the government revised its categorisation of the practice here and said that it was Type 1a, “removal of the prepuce/clitoral hood only.”⁷²

2.3.36 In its concluding observations, the Committee stressed that regardless of whether such a procedure was only symbolic or conducted within a medical institution, female circumcision, female genital cutting and female genital mutilation could not be justified on religious grounds and still constituted a “harmful practice.”⁷³

2.3.37 This issue is unlikely to be resolved any time soon. Public conversations have once again gone quiet even though civil society bodies like the National Council of Women’s Organisations and *Pertubuhan Ikram Malaysia* have organised expert group discussions and involved government

representatives to find a way forward. The former also submitted a memorandum to the National Fatwa Committee and the Department of Religious Affairs, recommending a review of the fatwa on female circumcision but to no avail.⁷⁴

2.3.38 At the same time, the government has failed to meet the two-year timeframe for providing information to the CEDAW Committee on how it engaged “in constructive dialogue with religious authorities, women’s non-governmental organisations and the public to convey the point that female genital mutilation cannot be justified by religion.”⁷⁵

2.4 Ensuring Universal Access to Sexual and Reproductive Health and Rights

The fourth priority area in the FRHAM Baseline Monitoring Framework is ensuring universal access to sexual and reproductive health and reproductive rights in accordance with the Cairo Programme of Action and the Beijing Platform of Action in 1994, as well as the outcome documents of their review conferences. The three indicators identified are: (i) laws to guarantee women and men aged 15 years and older access to sexual and reproductive healthcare, information and education; (ii) the proportion of women (15–49 years old) who made their own informed decisions regarding reproductive healthcare, contraceptive use, and sexual relations, and could access sexual and reproductive healthcare services in a public health facility; and (iii) the proportion of married or in-union women of reproductive age (15–49 years old) who have had their need for family planning satisfied with modern methods as well as are able to access sexual and reproductive healthcare services in a public health facility.

GUARANTEED EQUAL ACCESS TO WOMEN AND MEN AGED 15 YEARS AND OLDER TO SEXUAL AND REPRODUCTIVE HEALTH CARE, INFORMATION AND EDUCATION

2.4.1 On paper, Malaysia offers maternity care (antenatal and postnatal services) as well as contraception and family planning services to women via its primary and community-based health clinics or hospitals. Under British rule, these were initially developed for the rural population. The post-Independence government continued this emphasis before shifting its attention to improving macro-level health reforms for universal health coverage.⁷⁶ This helped to further improve maternal and child health services coverage nationwide.⁷⁷

2.4.2 Research on antenatal care in Malaysia also noted that despite earlier achievements on healthcare, recent progress in accessing adequacy of care and pregnancy outcomes had stagnated, and that additional monitoring and evaluation of the quality of antenatal care was needed.⁷⁸

2.4.3 Despite continuing to offer benefits from a well-established colonial era public health system, primary healthcare services today comprise far less public facilities (2,900) compared to the private sector (7,000).⁷⁹ In urban areas, these services are predominantly offered by private clinics,⁸⁰ which can be more costly for users. A study by the Ministry of Health and Universiti Malaya in 2011–2012 also noted that “[w]ithin the public sector, the distribution of health services and resources was unequal and strongly favoured the urban clinics,”⁸¹ while another by Ravichandran et al. (2010) highlighted the “maldistribution in the [maternity services] workforce in terms of workload between public and private hospitals and between different regions in the country.”

2.4.4 All these have implications, especially for those from marginalised communities such as indigenous, poor, migrant, refugee women, or women with disabilities, in having access to available maternal care services.

2.4.5 Similarly, while the Ministry of Health provides comprehensive healthcare services for all age groups and genders, including SRH services at minimal cost, this is not always accessible to young or unmarried women due to social stigma. If they are, these women risk having their right to privacy and confidentiality violated by the health authorities. For instance, government hospital doctors are required to report cases of single Muslim women who are pregnant.⁸²

2.4.6 A UNICEF report notes that Malaysia’s policies on sex education continue to lack clarity. There are numerous SRH policies in place, but none of these recognise the importance of having comprehensive SRH services, including education.⁸³

2.4.7 Where adolescents and youth are concerned, Parliament approved the National Policy on Reproductive Health and Social Education (*Pekerti*) and its Plan of Action at the end of 2009 as a way to improve their access to reproductive health education, information and services.⁸⁴ The National Population and Family Development Board (*Lembaga Penduduk dan Pembangunan Keluarga Negara*, LPPKN), an agency under the MWFC, was tasked with implementing this programme.

2.4.8 Towards this end, LPPKN introduced a module developed with FRHAM and the Women's Centre for Change (WCC) for its Kafe@Teen Adolescent Centres, targeting urban-based 13–24 year olds. It oversaw the integration of reproductive health and social education into the curriculum of the now defunct National Service Training Programme (*Program Khidmat Latihan Negara*, PLKN) for 18-year old youths in 2011. Together with the Ministry of Health, it also initiated the Pekerti@School programme for students aged 12 and 15, using the FRHAM Reproductive Health for Adolescents module for the former, and LPPKN's *Cakna Diri* module for the latter.⁸⁵

2.4.9 In 2016, LPPKN developed the Male Teenagers' Reproductive and Sexual Education module for teenage boys aged 16 and above, to teach those in five selected states about premarital sex, "sex variations," adolescent pregnancies, sexual abuse and sexually transmitted illnesses.⁸⁶

2.4.10 Separately, the Ministry of Education has offered a form of sex education in secondary schools from the 1980s onwards, extending this to primary schools in the mid-1990s through the Health Education curriculum.⁸⁷ This was later updated and known as Reproductive Health and Social Education (Peers).

2.4.11 Instead of comprehensive sexuality education, Peers adopts a harm reduction approach and emphasises abstinence in its messaging, in line with dominant religious values. Its curriculum is covered from Year 1 to Form 5 and integrated within subjects like science, biology, religious and moral education or physical education rather than, say, as a standalone sex education class.

2.4.12 This teaches about the importance of safe sex and preventing other sexually transmitted infections, most of all HIV/AIDS, but only cursorily discusses pregnancy prevention (and that too in the context of marriage alone). Sex outside of marriage is discouraged, and unwanted teen pregnancies are discussed only to highlight morbidity and mortality. No information on abortion is provided either.⁸⁸ At the most recent Universal Periodic Review in 2019, Malaysia was recommended to update this syllabus in line with UN technical guidelines on education.⁸⁹

2.4.13 The Ministry of Health has been advocating for SRH services to be made available for adolescents, regardless of their marital status. This is in line with recommendations by the

UN Special Rapporteur on Health after his visit to Malaysia in 2014,⁹⁰ and at the Universal Periodic Review.⁹¹

2.4.14 In 2012, the Ministry produced the Guidelines on Managing Adolescents Sexual and Reproductive Health Issues in Health Clinics to promote youth-friendly services in all healthcare facilities nationwide. These guidelines were to help healthcare providers in their treatment of adolescents, particularly girls who came for pregnancy-related services, contraceptives, sexually transmitted infections, and as survivors of sexual violence.⁹²

In 2012, the Ministry produced the Guidelines on Managing Adolescents Sexual and Reproductive Health Issues in Health Clinics to promote youth-friendly services in all healthcare facilities nationwide.

How successfully these guidelines have been implemented is uncertain due to the absence of data. The prevalence of unwanted teenage pregnancy and baby dumping suggests that reproductive health services most needed by girls and young women may still not be reaching them.

2.4.15 How successfully these guidelines have been implemented is uncertain due to the absence of data. The prevalence of unwanted teenage pregnancy and baby dumping⁹³ suggests that reproductive health services most needed by girls and young women may still not be reaching them.

2.4.16 Part of the challenge is the unhelpful, potentially dangerous, positions articulated by federal and state leaders. The Perak State Women's Minister, for instance, has equated increasing the number of baby hatches with encouraging more babies to be abandoned.⁹⁴ This is despite evidence that baby hatches have helped contain babies from being dumped in unsafe places since they were introduced in Malaysia in 2010.⁹⁵

2.4.17 Termination of pregnancy is legal in Malaysia under certain circumstances. The Penal Code (Section 312) allows a registered medical practitioner to perform this procedure to

save a woman's life or if her physical or mental health will be compromised if the pregnancy were allowed to continue.⁹⁶ Those below 18 years of age require parental consent to seek such services. Nevertheless, awareness about the legal status of abortion is generally low, both among women and medical practitioners.⁹⁷

SEXUAL AND BODILY AUTONOMY (REPRODUCTIVE HEALTHCARE, CONTRACEPTIVE USE, SEXUAL RELATIONS, ACCESS TO SRH PUBLIC HEALTHCARE SERVICES)

2.4.18 As with the other priority areas being investigated in this report, there is a lack of publicly available sex-disaggregated health data and gender-sensitive research on health issues in Malaysia.

2.4.19 The State of World Population 2019 Report which captures the percentage of married or in-union women aged 15-49 years who make their own decisions regarding sexual intercourse with their partner, use of contraception and healthcare, also had no information recorded for Malaysia.

2.4.20 Citing various cases, the CEDAW NGO report submitted by Malaysian women's NGOs in 2018 contends that "[m]any women have difficulty exercising their reproductive right to decide to have children and to access high quality services." For one, the contraceptive prevalence rate here for women aged 15-49 years has remained stagnant at 52% since 1984 – the regional Asia-Pacific average in 2019 was 67%.⁹⁸

2.4.21 For another, despite being legal, abortion is heavily stigmatised and often this service is not provided for in government facilities, so women are forced to go to a private centre which can be costly. If a woman wishes to opt for sterilisation, some doctors oblige her to first obtain her husband's consent even though this goes against guidelines of the Malaysian Medical Council.⁹⁹

2.4.22 A number of studies involving young Malaysians have shown how a majority of them either believed that despite receiving 'sex education' at school, they had not been sufficiently taught about SRH, or that they displayed a low level of knowledge on this subject.

2.4.23 For example, the 2014 Population and Health Survey records that only 38.4% of those surveyed from the 13-17 year old age bracket felt that they were sufficiently informed about

contraceptives.¹⁰⁰ An earlier study by Universiti Kebangsaan Malaysia in 2011 revealed that "90% of the respondents agreed that sex education had not been taught in Malaysian schools and [that] the information given by most teachers [was] vague."¹⁰¹ Likewise with a 2013 review involving 1,850 former students of the Peers programme which found that they best remembered information pertaining to human anatomy and general biological functions.¹⁰²

2.4.24 This picture is even more worrying considering how a national survey of just over 1,000 youths aged 18-29 in 2016 found that they had various misconceptions about contraception and were unable to make responsible sexual decisions.¹⁰³

2.4.25 All the respondents of another study on early marriage in Kelantan indicated that they had not received sex education at school prior to getting married.¹⁰⁴ Certainly, the number of teenage pregnancy cases, sexual crimes and sexually transmitted infections among youth in Malaysia serves as a reminder of the gaps in the current sex education curriculum.¹⁰⁵

2.4.26 In 2018, the elected government recognised this and had started to take steps to revamp the existing syllabus and expand the scope of topics offered through the Ministry of Education. This, it hoped, would enhance one's ability to say 'no' to uncomfortable touches, and to decide on their reproductive health matters.¹⁰⁶ However, there has been no news on this since the new government took over.

2.4.27 Even though the Adolescent Health Policy, Plan of Action and related guidelines sought to make SRH services available to all without discrimination, in reality not all women, especially those who are unmarried, are able to utilise these in public healthcare facilities. This is because their implementation relies heavily on the sensitivity of healthcare providers. The lack of sensitisation trainings, poor information dissemination or a fear of being stigmatised, discriminated against or legally prosecuted in the case of Muslims, also means that many young people are either unaware or afraid to access these services.¹⁰⁷ As such, they continue to have an unmet need where SRH services are concerned.

2.4.28 Abortion services, while available, are not always accessible to all women either. Muslim women, for example, need their husband's consent before getting an abortion.¹⁰⁸ Due to the stigma around this too, others prefer to have this

done covertly, seeking services of private clinics or hospitals instead. Sometimes this is not only potentially unsafe but also costly and hence unaffordable for marginalised, rural and/or poor women.¹⁰⁹

2.4.29 The bias of directing SRH services towards married women is also apparent in the government's pap smear test policy, which provided these for free in 2019 specifically to test for HPV, but only amongst married or previously married women aged 25–65 years. This was contrary to the policy in 2017 which offered these tests to any sexually active woman.¹¹⁰

SEXUAL AND BODILY AUTONOMY WITHIN MARRIAGE/ PARTNERSHIP (CONTRACEPTIVE USE, ACCESS TO MODERN SRH METHODS VIA PUBLIC HEALTHCARE SERVICES)

2.4.30 According to the State of World Population 2019 Report, the prevalence rate for married or in-union women in Malaysia aged 15 to 49 who satisfied their demand for family planning with the use of modern contraception – defined as including male and female sterilisation, IUD, the pill, injectables, hormonal implants, condoms and female barrier methods – was 39% in 2019.¹¹¹ The data compiled by FRHAM have indicated that modern contraception and its provision to the clients in 2019 was 3,309 in Perak while 1,362 in Terengganu.

2.4.31 While this figure had tripled from 50 years earlier, i.e., an estimated 13% in 1969, it remains low and is considerably less than the regional Asia-Pacific average of 62%. More significantly, it has only grown by three percentage points since 1994, i.e., 25 years ago.¹¹²

2.4.32 The government's 2014 Family Planning Survey showed 34.3% of married women using modern contraceptive methods, the most popular being the pill (13.2%), followed by tubal ligation (6.9%), condoms (5.6%), injectables (4.9%), IUDs (2.7%), and implants (0.7%).¹¹³

2.4.33 Reproductive Rights Advocacy Alliance Malaysia (RRAAM) has pointed out the increase of abortion hotline calls in 2020 due to the COVID-19 outbreak with an average of 300 calls per month,¹¹⁴ which calls for medical abortion services provision and the need to focus on contraceptive services.

2.4.34 There is a growing unmet need for contraception, especially among young unmarried women with little education and located in rural areas, which has resulted in a rise in unplanned and unwanted pregnancies and births.¹¹⁵ In Malaysia, the unmet need for family planning is 17.6% for women aged 15–49 years old, the highest number compared with other ASEAN countries.¹¹⁶

2.4.35 One research study has shown how often male partners take charge of decisions regarding the use of contraception in a marriage, including which contraception and how long the couple will use this. This has resulted in some rural women visiting family planning clinics in other districts to prevent their male partners from finding out that they have been buying and using contraceptives.¹¹⁷

One research study has shown how often male partners take charge of decisions regarding the use of contraception in a marriage, including which contraception and how long the couple will use this. This has resulted in some rural women visiting family planning clinics in other districts to prevent their male partners from finding out that they have been buying and using contraceptives.

Section 3:

The Way Forward

This baseline report has highlighted several key issues with regards to the four priority areas identified by the FRHAM monitoring framework. In line with the CEDAW recommendations, we call for the realisation of substantive gender equality to align with addressing disadvantages based on gender and sex, and to uphold equitable outcomes and equal opportunities in accordance with the provisions of the Convention, throughout the process of implementation of the 2030 Agenda for Sustainable Development. We encourage the government to uphold its commitments towards CEDAW and UPR and review any reservation or partial acceptance to ensure eliminating all forms of discrimination against women and girls. The government has expressed its obligation and pledge to implement the Beijing Platform for Action to realise women's rights as human rights. Thus a strategic framework would ensure protection for and improve the status of women in the country.¹¹⁸ The following action points are recommended as a way forward for FRHAM to support Malaysia in meeting its commitments under the CEDAW Convention and the UPR process.

3.1 Ending All Forms of Discrimination Against Woman and Girls Everywhere

3.1.1 Actively engage in ongoing advocacy for a Gender Equality Act in Malaysia. Under the elected government of 2018 to early 2020, the MWFC had coordinated a multi-stakeholder drafting team to work on a bill.¹¹⁹ The fate of this bill is now unknown. Considered and strategic lobbying is appropriate to help return the bill to the forefront of the MWFC agenda, and for subsequently tabling this for adoption at Parliament.

3.1.2 Part of this lobbying is also to ensure that besides including clear definitions of equality and non-discrimination, the draft bill will also address gender-based violence, harmful practices against women and girls, and universal access for all women and girls to SRHR.

The government has expressed its obligation and pledge to implement the Beijing Platform for Action to realise women's rights as human rights. Thus a strategic framework would ensure protection for and improve the status of women in the country.

3.1.3 Advocate for more concerted gender mainstreaming through the adoption of institutional measures (training programmes, Gender Focal Point system, Gender-Responsive Budgeting) that can strengthen the capacity of staff to conceptualise, lead, execute, and monitor and evaluate programmes. Among other actions, this will significantly improve women's access to justice across the board.

3.1.4 Support the CEDAW Committee recommendation to eliminate all forms of discrimination against women by withdrawing the remaining reservations to ensure the full applicability of CEDAW in Malaysia.

3.2 Eliminating Violence Against Women and Girls

3.2.1 Review existing law and policies with the support of women NGOs, and assess its implementation. This includes assessing the data gathering process and its validity.

3.2.2 Continue supporting reform of the Domestic Violence Act, in particular, to broaden its definition to include intimate partner violence so that 'in-union' couples can benefit too from the law's coverage; improve rehabilitation provisions; and extend the maximum duration of Protection Orders.

3.2.3 Ensure that survivors of gender-based violence have better support services regardless of their social status and location. Improvements can be made in relation to, for example, lodging police reports, obtaining protection, getting services via the One Stop Crisis Centre, and support during court proceedings.

3.3 *Eliminating Harmful Practices Against Women and Girls*

3.3.1 Support a campaign for the implementation of the National Strategy Plan in Handling the Causes of Child Marriage, drawn up under the previous administration.

3.3.2 Call on the government to bring together all relevant stakeholders, including religious authorities and women's NGOs, to participate in a constructive dialogue to break the existing impasse on female circumcision/genital cutting/genital mutilation caused by divergent viewpoints.

3.3.3 Implement the CEDAW concluding observation to raise the minimum age of marriage to 18 for women and men for both civil and Muslim marriages and to require the full consent of women for any marriage.

3.4 *Ensuring Universal Access to Sexual and Reproductive Health and Rights*

3.4.1 Since the previous government had already started to revise the existing 'sex' education syllabus, to lobby for this process to be continued along the same trajectory. Alternatively, development of new strategies for the most critical elements of Comprehensive Sexuality Education can be incorporated into the existing curriculum. This effort could be done by incorporating FRHAM's effort in educating young people on Comprehensive Sexuality Education. FRHAM envision to enable people in Malaysia to be fully informed and empowered to act on SRHR which include enabling young people to receive age-appropriate comprehensive sexual education and SRHR services, and to strengthen partnership with key stakeholders to champion SRHR.¹²⁰

3.4.2 Support the Ministry of Health in its efforts to ensure that SRH services are accessible for all, regardless of their marital status. This includes ensuring that information about contraceptive and abortion services are widely disseminated, and working with healthcare providers to raise their awareness about providing services that are gender sensitive and rights based.

3.5 *Improving Data Quality, Availability and Accessibility*

3.5.1 As a matter of priority, the actions recommended above will benefit by improving the kind of official gender data, especially statistics which are disaggregated by sex, age, ethnicity, religion, disability, etc., that are regularly collected and made accessible.

3.5.2 FRHAM has contacted stakeholders from civil society organisations and governmental bodies in order to understand and receive adequate data on SRHR, gender equality and legislation around the issues. However, there were limited responses from them. There are limited numbers of civil society organisations in Terengganu and Perak that focus on these issues which limits data collection from these two states.

3.5.3 In relation to this, it is important to support policy formulation with evidence-based research. FRHAM and its state member associations in Malaysia can assist both processes by lending its collective voice to existing initiatives that are pressing on the government to improve its gender-related data collection and dissemination services, and by collaborating with civil society organisations, academia and the government to conduct evidence-based research for policies that are more relevant to women's lived realities.

Endnotes

- 1 Committee on the Elimination of Discrimination against Women, 2018:2/18.
- 2 Committee on the Elimination of Discrimination against Women, 2016:16.
- 3 Committee on Elimination of Discrimination against Women, 2018.
- 4 WAO and JAG, 2019:44.
- 5 Timbuong, 2018a; Timbuong, 2018b.
- 6 *Malaysiakini*, 2018.
- 7 At the last Universal Periodic Review, several members of the Human Rights Council urged Malaysia to adopt this legislation alongside continuing existing efforts to ensure gender equality (Human Rights Council, 2019).
- 8 WAO and JAG, 2019:41.
- 9 While this list is not extensive, there were several remarks made during parliamentary sessions on 21st November 2016, 3rd July 2019, 13th July 2020.
- 10 Tan and Masjaliza, 2019.
- 11 Committee on the Elimination of Discrimination against Women, 2016:39/40.
- 12 Press release, “Malaysia successfully presented reports on the Convention On the Elimination of All Forms of Discrimination Against Women (CEDAW),” by MWFCO.
- 13 Committee on Elimination of Discrimination against Women, 2018.
- 14 The status of women’s human rights after 24 years of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), WAO and JAG
- 15 Committee on the Elimination of Discrimination against Women, 2018:2/18.
- 16 Soo, 2017.
- 17 Colombini, Ali, Watts et al. (2011).
- 18 KPWKM, 2019.
- 19 Women’s Aid Organisation, 2018.
- 20 Women’s Centre for Change (2015), “Consultation proceedings: National consultation on the rights of vulnerable witnesses in court”, p. 38, cited in WAO and JAG, 2019:57.
- 21 Parliamentary committee on gender equality boosts reform efforts, <https://www.nst.com.my/opinion/letters/2018/08/401887/parliamentary-committee-gender-equality-boosts-reform-efforts>.
- 22 Wong, 2010.
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- 24 Colombini, M, SH Mayhew, R Shuib, C Watts (2012), “An integrated health sector response to violence against women in Malaysia: Lessons for supporting scale up”, *BMC Public Health*, 12(1), p. 548, cited in Chan et al., 2019.
- 25 Junita, 2019.
- 26 WAO and JAG, 2019:358.
- 27 *ibid.*
- 28 Chan et al., 2019.
- 29 Tharanya, 2020.
- 30 Krug et al, 2002.
- 31 Tan and Masjaliza (2019).
- 32 *ibid.*
- 33 WAO and JAG, 2019:70.
- 34 Based on the Oral Answer of First Meeting of the Second Session, Thirteenth Parliamentary Session and Oral Answer, Third Meeting of the Third Session, Fourteenth Parliamentary Session.
- 35 UNICEF, 2018:40.
- 36 UNICEF, 2018:40,49.
- 37 Ooi, 2017.
- 38 UNICEF, 2018:3.
- 39 UNICEF, 2018:62.
- 40 Ooi, 2017; SIS and ARROW, 2018:16.
- 41 WAO and JAG, 2019:331; SIS and ARROW, 2018:16.
- 42 Thambiah, tan, Somiah, 2019:29.
- 43 Azura, 2020.
- 44 Human Rights Council, 2015:9.
- 45 See, for example, SUHAKAM, 2017:3.
- 46 Human Rights Council, 2015:9.
- 47 SUHAKAM, 2017:3.
- 48 Human Rights Council, 2015:9.
- 49 WAO and JAG, 2019:70. Member of Parliament (Tasek Glugor), Shabudin Yahaya, was reported saying that child victims of rape should marry their rapists to avoid social problems and lead a better life. After drawing local and global criticism, he issued a statement that claimed his views had been misrepresented, in fact he had “argued that flexibility and the discretion of the judges must be maintained to allow the courts to rule on cases of statutory rape involving consenting partners who are in a relationship and be treated differently from non-consensual rape” (*The Star Online*, 2017).
- 50 UNICEF, 2018:23.
- 51 UNICEF, 2018:35.
- 52 UNICEF, 2018:38.
- 53 UNICEF, 2018:3.
- 54 Kohno et al., 2019.
- 55 Noraida Endut and Intan Hashimah Mohd Hashim (2014), “A study of the incidences of child marriages in Malaysia and an in-depth study of their causes and consequences”, Universiti Sains Malaysia, cited in SIS and ARROW, 2018:10, 21.
- 56 SIS and ARROW, 2018:11.
- 57 SIS and ARROW, 2018:19.
- 58 Kohno, 2019 et al. and 2020.
- 59 SIS and ARROW, 2018:31-32.
- 60 SIS and ARROW, 2018:116.
- 61 Ooi, 2017.
- 62 Azura, 2020.
- 63 *ibid.*
- 64 Ainslie, 2015.
- 65 For details, see Abdul Rashid and Iguchi, 2019, and Tasneem, 2020.

- 66 A 2019 study involving 605 women aged 18 years and older from rural Kedah and Penang revealed that compared to the older women, the younger respondents not only tended sought the services of medical doctors (Abdul Rashid and Iguchi, 2019).
- 67 Committee on the Elimination of Discrimination against Women, 2018:6/18.
- 68 Human Rights Council, 2015:10.
- 69 US Department of State, 2019.
- 70 Committee on Elimination of Discrimination against Women, 2018.
- 71 *The Star Online*, 2018.
- 72 Apnizan, 2019. See also World Health Organization, n.d.
- 73 Committee on the Elimination of Discrimination against Women, 2018:7/18.
- 74 Apnizan, 2019; Thambiah, tan, Somiah, 2019:113.
- 75 Committee on the Elimination of Discrimination against Women, 2018:7/18.
- 76 Kuruvilla et al., 2014.
- 77 Yeoh et al., 2015.
- 78 Yeoh et al., 2015.
- 79 Lum, 2019.
- 80 Safurah, 2012:50.
- 81 Cited in Lum, 2019.
- 82 WAO and JAG, 2019:269.
- 83 UNICEF, 2018:35.
- 84 FRHAM and ARROW, n.d.(a):3.
- 85 LPPKN, n.d.; FRHAM and ARROW, n.d.(a):4.
- 86 SIS and ARROW, 2018:32.
- 87 FRHAM and ARROW, n.d.:15.
- 88 UNICEF, 2018:34.
- 89 Human Rights Council, 2019:20.
- 90 p. 8.
- 91 At this meeting, Fiji recommended that Malaysia “take effective measures to ensure that unmarried women and vulnerable groups have access to sexual and reproductive health care in government health centres” (Human Rights Council, 2019:20).
- 92 FRHAM and ARROW, n.d(a):6.
- 93 An estimated 18,000 teenage pregnancies occur in Malaysia every year, while baby dumping cases have averaged 100 annually for the last ten years (Teo, 2019).
- 94 She said this in response to the case of a 16-year old woman who had thrown her newborn baby out of the window of a double-storey house (Manjit, 2020a).
- 95 Manjit, 2020b.
- 96 FRHAM and ARROW, n.d.:49.
- 97 Human Rights Council, 2015:8.
- 98 WAO and JAG, 2019:49, 152, 155.
- 99 WAO and JAG, 2019:268.
- 100 WAO and JAG, 2019:51, 268.
- 101 FRHAM and ARROW, n.d.:15.
- 102 *ibid*.
- 103 Firdaous, 2016.
- 104 Kohno et al., 2019.
- 105 FRHAM and ARROW, n.d.:102.
- 106 Thambiah, tan and Somiah, 2019:26
- 107 FRHAM and ARROW, n.d.:71-72.
- 108 Guidelines on Termination of Pregnancy (ToP) for Hospitals in the Ministry of Health, No Reference: KKM/87/P1/27/1 Jld16(24), Ministry of Health Malaysia.
- 109 FRHAM and ARROW, n.d.(a):4.
- 110 Thambiah, Tan, Somiah, 2019:25.
- 111 p. 155.
- 112 *ibid*.
- 113 WAO and JAG, 2019:261.
- 114 “As unwanted pregnancies rise, MOH told to provide medical abortion”, <https://codeblue.galencentre.org/2020/06/30/as-unwanted-pregnancies-rise-moh-told-to-provide-medical-abortion/>.
- 115 WAO and JAG, 2019:262.
- 116 World Population Day poster 2018, LPPKN.
- 117 Fathilah Kamaluddin. 1998. “Urban Malaysian women’s experiences of abortion: Some implications for policy,” *Kajian Malaysia* 16(1-2), cited in WAO and JAG, 2019:263.
- 118 Thambiah, tan, Somiah, 2019:25.
- 119 *New Straits Times*, 2019.
- 120 FRHAM’s National Strategic Framework 2016-2020.

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