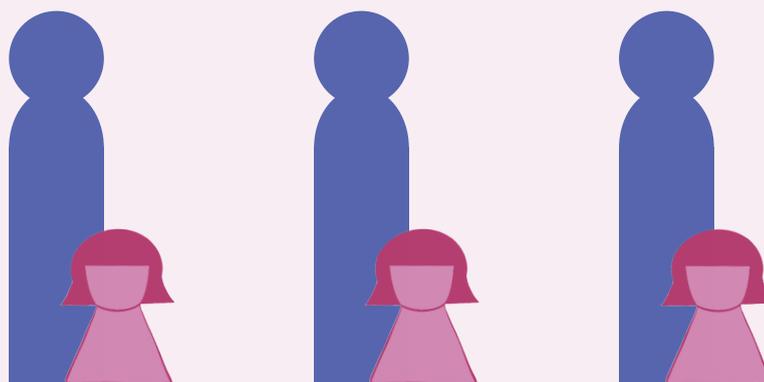


CHILD, EARLY AND FORCED MARRIAGES IN MALAYSIA



Grounding Human Rights in Malaysia for All: Embracing Change ADVOCACY BRIEF

CHILD, EARLY AND FORCED MARRIAGE IN MALAYSIA



Malaysia is a multi-diverse country in Southeast Asia that comprises two non-contiguous regions, namely Peninsular & West Malaysia.¹

In the first quarter of 2021, Malaysia's population reached 32.75 million with the sex ratio at 106 males per 100 females.² Heading towards an ageing nation, Malaysia saw an increase in the numbers of population aged 65 and above over the years and saw a decline in both age categories percentage - young and working.

Women and girls in Malaysia account for 48.6% of the total population, close to the percentage of women and girls in the East Asia Pacific region which is at 49.33% (World Bank, 2020).³ Even though they represent almost half of the nation's population, they are still facing many forms of gendered injustice through discriminatory and archaic laws and policies that hinders Malaysia's progress towards achieving gender equality. 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.⁴ Malaysia has participated in three cycles of the UPR – 2009, 2013 and 2018. In Malaysia's last review, it received 268 recommendations covering a wide range of areas, including international obligations, civil and political rights, discrimination, and human rights education and training. Of these, 147 recommendations were accepted in full, 37 were partially accepted and 84 were noted.⁵ Inconsistencies pertaining to gender discriminatory laws can be resolved by enacting a Gender Equality Act which will then help the Malaysian government to attain its CEDAW commitments, upholding Malaysia's women's rights to the highest level.⁶

¹ <https://www.britannica.com/place/Malaysia/Climate>

² https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=430&bul_id=aVIJRDAvbjhWWEhQa1YvSWhsSjF3QTo9&menu_id=LopheU43NWJwRWVVSzkiWdzQ4TlhUUT09

³ <https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS?locations=Z4>

⁴ <https://arrow.org.my/wp-content/uploads/2021/01/Gender-Equality-In-Malaysia-.pdf>

⁵ The Universal Periodic Review: A Practical Guide to the 3rd Universal Periodic Review (UPR) of Malaysia 2018 -2023, https://www.suhakam.org.my/wp-content/uploads/2020/05/UPR-Booklet-ENG_FINAL.pdf

⁶ <https://arrow.org.my/wp-content/uploads/2021/01/Gender-Equality-In-Malaysia-.pdf>

SITUATIONAL ANALYSIS: CHILD MARRIAGE IN THE NATIONAL CONTEXT

Malaysia has a dual legal system which practices a civil legal system and an Islamic (Sharia) legal system. Muslim marriages must be contracted and regulated under the Islamic family laws of each of the states. Section 8 of IFLA stipulates the minimum age of marriage for Muslims to be 18 years for boys and 16 years for girls.⁷ However, an exception is provided that allows a child under those ages to marry with the consent of the Sharia Court, for which there is no minimum age provided. There is no specific penalty provided if such an approval is not obtained.⁸ From 2005–2015, the Department of Syariah Judiciary Malaysia (Jabatan Kehakiman Syariah Malaysia, JKSM) received 10,240 applications where there was, on average, an approval rate of around 82%.⁹ Nonetheless, the department has issued a standard operating procedure for underage marriage applications to promote and strengthen the court's jurisdiction in overseeing and regulating applications of a marriage of a Muslim girl child under the age of 16.



From 2005–2015, the Department of Syariah Judiciary Malaysia (Jabatan Kehakiman Syariah Malaysia, JKSM) received 10,240 applications where there was, on average, an approval rate of around 82%.⁹

For civil marriages, the legal age of marriage for non-Muslims is 18, but interestingly, there is also an exception for females aged 16 to 18 marry with the consent of their state Chief Minister prescribed under the Law Reform (Marriage and Divorce) Act 1976 (LRA). It is equally essential to note that Malaysia acknowledges native customary marriages that are practised by the customs of the Orang Asli of Peninsular Malaysia, the Bumiputera of Sabah and Sarawak and Hindu communities.¹⁰

The LRA does not have overarching powers over these communities thus allowing their children to marry without any minimum age of marriage as opposed to the statutory minimum age of 16 for girls and 18 for boys. As reported by UNICEF as well, there is no stipulation whatsoever for the registry of these marriages which inevitably may expose these children to discriminative and gender-biased customs or practices as there is no law that prescribes their rights as a spouse.

Statistics from the Ministry of Women, Family and Community Development (MWFCD) 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).¹¹

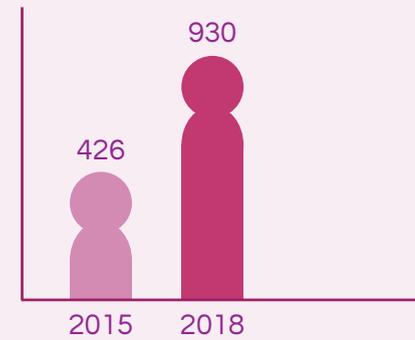
⁷ http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_act_lib.nsf/858a0729306dc24748257651000e16c5/1d314361e2750042482569810025fofc?OpenDocument

⁸ <https://arrow.org.my/wp-content/uploads/2018/03/National-Report-Child-Marriage.pdf>

⁹ <https://arrow.org.my/wp-content/uploads/2021/01/Gender-Equality-In-Malaysia-.pdf>

¹⁰ <https://www.unicef.org/malaysia/media/711/file/Child%20marriage%20in%20Malaysia.pdf>

Statistics of the increase of child marriages for non-Muslims in Malaysia from 2015 to 2018.



Studies have shown that the reason given for supporting child marriage in the country was not poverty but to avoid premarital sex and being charged for khalwat (close proximity), family pressure and pregnancy and that “religious dogmatism and moral shaming of sexual relations outside marriage” are the main determinants.¹² Stigma and fear of prosecution around premarital sex and teenage pregnancy is so great that parents would rather opt for their children to enter into early marriage.

The stigma against premarital sex is similarly a strong driving force for the practice of child marriage in non-Muslim communities. Child marriage is seen as a solution for non-Muslim families for their children who have engaged in pre-marital sex or in some circumstances, their children are subjected to arranged marriage.¹³

As a United Nations member state, Malaysia has affirmed acceptance of the Universal Declaration of Human Rights (UDHR), whose provisions are broadly accepted to reflect customary international law. Malaysia is also signatory to the Convention on the Rights of the Child (CRC) as well as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The main thrust of international human rights conventions is that “early marriage is a violation of fundamental human rights and that both state and non-state actors must be held accountable under international treaty obligations to combat early child marriage...”.¹⁴

The General Assembly affirms the necessity for States to better the gathering and usage of quantitative, qualitative and comparable data on violence against women and harmful practices, disaggregated by sex, age, disability, civil status, race, ethnicity, migratory status, geographical location, socioeconomic status, education level and other key factors, as appropriate, to strengthen research and dissemination of evidence-based and good practices relating to the prevention and elimination of child, early and forced marriage and to strengthen monitoring and impact assessment of existing policies and programmes as a means of ensuring their effectiveness and implementation.¹⁵

¹¹ Ibid

¹² Ibid

¹³ <https://www.unicef.org/malaysia/media/711/file/Child%20marriage%20in%20Malaysia.pdf>

¹⁴ UNICEF 2008

¹⁵ A/RES/71/175



Fast forwarding to the year 2022, there is still no national law that prevents or limits child marriage. Despite having Sabah, Selangor and Penang agreeing to raise the minimum age of marriage, seven other states denounced their willingness to participate in the anti-child marriage campaign. Not much has progressed since the launch of the National Strategy Plan in Handling the Causes of Child Marriage due to the multiple series of change of governments which sheds some light on the absence of political will by persons in power to enact laws to protect children in Malaysia.¹⁶

RECOMMENDATIONS AND THE WAYS FORWARD¹⁷

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. The ultimate solution must be a total ban on child marriage through reform of legislation. The minimum age of marriage must be raised to 18 for both genders, regardless of faith and ethnicity, with no exceptions.

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

The government and its relevant ministerial departments must provide more comprehensive sex education for the youth. Comprehensive sex education is defined as an “age-appropriate, culturally relevant approach to teaching about sexuality and relationships by providing scientifically accurate, realistic, non-judgmental information.”¹⁸

A national level advocacy programme needs to be put in place to raise awareness and educate and convince relevant parties, particularly religious leaders, that this is in the interest of healthy social and cultural development.

Education to raise awareness, empower girls, and dismantle patriarchal beliefs may be done through various means such as community and school programmes.

Create awareness on the causes and harmful impact of child marriage. Targeted audience should include:

- (i) parents;
- (ii) teachers;
- (iii) religious leaders;
- (iv) policymakers;
- (v) Sharia Court judges; and
- (vi) community leaders.

These are the people who wield the power of decision whether to allow a girl or boy to get married.

¹⁶ <https://www.nst.com.my/news/nation/2019/09/522946/seven-states-against-increasing-minimum-marriage-age-18>

¹⁷ <https://arrow.org.my/wp-content/uploads/2018/03/National-Report-Child-Marriage.pdf>

¹⁸ (UNESCO 2015).