

Child Marriage in Malaysia

(Working Paper)

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Executive Summary

“I see my friends and next thing you know, they’re in Form 5,” says a girl who left school in Form 1 to get married, which she now regrets. “They’re almost out of school. It’s a shame I didn’t go.” The girl, who belongs to the Orang Asli Jah Hut community in Malaysia, is one of 140 boys and girls who were interviewed during the course of this study to gain insight into child marriage. There is strong public opposition to the practice in Malaysia, but the data that is needed to provide an accurate and complete assessment of the prevalence of child marriage in the country is outdated, unavailable or cannot be made public.

Existing evidence, however, indicates that child marriage is practised in Muslim, non-Muslim, indigenous and refugee communities in Malaysia. For example, available data shows that there were some 15,000 girls who were married before the age of 15 as of October 2010.¹ The researchers also obtained data that showed there were 5,215 cases of married non-Muslim² female children (16 to 18 years old) from 2005 to October 2015. As for Muslims, the Department of Syariah Judiciary, Malaysia recorded 6,584 cases of marriage among Muslim children from 2011 to October 2016. According to the 2010 Orang Asli Census, there were 196 married Orang Asli children out of 63,883 married couples in that community in that year.

Based on interviews conducted and analysis of Shariah court files, the factors that place children at risk include low household income, which strongly correlates with children dropping out of school. Children who marry tend to have a poor understanding of sexual and reproductive health (SRH) issues, which in turn leads to a higher risk of pregnancy out of wedlock. Parents also lack an effective intervention support system, which leaves many of them believing that marriage is the best solution when their children become sexually active or become pregnant. Community social norms accept child marriage as an option.

¹ Malay Mail Online, “Child marriages not rare in Malaysia with 15,000 underage brides, activists say” 2 Oct 2015, retrieved from: <http://www.themalaymailonline.com/malaysia/article/child-marriages-not-rare-in-malaysia-with-15000-underage-brides-activists-s>

² According to the *2010 Population and Housing Census of Malaysia*, Bumiputera Malaysians made up 67.4 per cent of the national population of 28.3 million, with Chinese Malaysians at 24.6 per cent, Indian Malaysians at 7.3 per cent and Others at 0.7 per cent. ‘Bumiputera’ consists of Muslim Malays and Orang Asli in Peninsular Malaysia, as well as the indigenous peoples of Sabah and Sarawak. The same census found that Islam was the most widely professed religion and accounted for 61.3 per cent of the population. “Non-Muslim” thus included: Buddhism (19.8 per cent); Christianity (9.2 per cent); Hinduism (6.3 per cent); Confucianism, Taoism and tribal/folk/other traditional Chinese religion (1.3 per cent); no religion (0.7 per cent); other religion (0.4 per cent), and unknown (1.0 per cent).

See:

www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=117&bul_id=MDMxdHZjWTK1SjFzTzNkRXYzcVZjd09&menu_id=L0pheU43NWJwRWVVSZklWdzQ4TlhUUT09

Several legal and policy bottlenecks hinder efforts to curb child marriage in the country. Malaysia's complex legal system – which encompasses shariah, civil and customary law – makes it difficult to define 'child' in the context of child marriage. For example, civil law stipulates that the legal age of marriage for non-Muslims is 18 (although females aged 16 to 18 may marry with the consent of their state Chief Minister or Menteri Besar). Muslim law, however, which governs Malaysia's Muslim-majority population, provides that while girls may marry at 16 and boys at 18, the Shariah Court may grant permission to marry below those ages (i.e. below 16 for girls and below 18 for boys). The establishment of a clear minimum age for marriage at 18 in line with international standards that applies to all existing legal frameworks is therefore a key first step to ending child marriage in Malaysia.

Although shariah court judges have the authority to grant permission to boys under 18 and girls under 16 to marry, there is no standard operating procedure to guide them through the child marriage application process. This leaves judges to their own discretion and their individual understanding of Islamic legal perspectives when assessing each case. This study found that court decisions have usually been made in contravention of the international conventions and laws that Malaysia has ratified, including the Convention on the Rights of the Child (CRC) and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Judges also often rule from the position that child marriage is a viable solution to social problems such as pre-marital sexual activity and pregnancy out of wedlock, especially in the case of the latter, as marriage is perceived to save the baby from illegitimacy. Child marriage is thus a preferred and acceptable alternative to children being born out of wedlock.

According to case files and judges' notes made available to researchers, common reasons that shariah court judges gave for approving child marriage applications included the children's ability to support a family and manage a household, their memorization of basic Islamic teachings and the availability of family support after marriage. Reasons judges gave for rejecting marriage applications included any evidence of coercion, lack of consent from a guardian, a lack of knowledge of basic Islamic teachings, unemployment (for male applicants) and a criminal record. An analysis of case files from the shariah courts of seven states during the period of this study (2012 to 2016) revealed that of 2,143 applications for child marriage, only 10 were rejected, emphasizing that child marriage is easily accepted within the judicial system.

A key policy drawback, meanwhile, is the lack of a clear sex education policy. The current SRH school programme teaches students about various SRH issues through the subjects of science, religion and moral education, with an emphasis on abstinence. However, more direct topics, such as sex, sexuality, contraceptive use/practice and abortion are not

addressed, and any effort to do so is challenged by the belief – shared by teachers, parents and religious leaders – that sex education encourages sexual activity among children. This does not encourage political will to re-evaluate current SRH education initiatives and implement a more comprehensive programme, despite evidence that children are more likely to delay sexual debut when they are well informed about SRH.

Another important bottleneck is the lack of government jurisdictional responsibility over child marriage. While the Ministry of Women, Family and Community Development oversees the wellbeing of children and has affirmed that such marriage is not in the interest of a child, Ministry officials also say that child marriage is not within the Ministry's jurisdiction because Muslim marriages are governed by state Islamic enactments, not federal law. Nonetheless, the Ministry formed a taskforce in 2013 to make recommendations for government agencies to “curb” child marriage, but this has not led to any significant action so far. However, the recently-elected Alliance of Hope Government (Pakatan Harapan) included in its election manifesto a pledge to introduce a law that sets 18 as the minimum age of marriage. This is part of its commitment to ensuring that the legal system protects women's rights and dignity under their “Special Commitment for Women”.³

Definitions

The Committee on the Rights of the Child (CRC) defines ‘child marriage’ as any marriage where either one (or both) partners are below 18 years of age. The CRC urges countries to set the minimum age for marriage for men and women (with or without parental consent) at 18 years. The United Nations Population Fund (UNFPA) and the United Nations Children's Fund (UNICEF) define child marriage as “a formal marriage or informal union before age 18”. Informal cohabitation – that is, when a couple lives together without undergoing any formal ceremony or registration – is included in this definition because any child living in this arrangement faces the same violation of his or her basic human rights. In this report, ‘marriage’ also refers to unions under civil, religious or customary law, and this includes those that take place without formal registration. Further, ‘early marriage’ is used interchangeably with ‘child marriage’ in this report.

While the CRC defines ‘child’ as any human being under 18 years of age, in Malaysia the definition of ‘child’ can – and does – differ not only according to specific legislation but also within civil, criminal and Islamic law.

³ Pakatan Harapan, *Buku Harapan; Rebuilding our nation fulfilling our hopes*, 2018, p.141.

Background

Numerous studies and surveys by public and non-governmental organizations around the world have documented the negative consequences of child marriage extensively.⁴

The practice of child marriage limits children's educational development, cutting short their scholastic trajectory and ultimately disempowering them from engaging meaningfully with their community and the world at large. It also derails their personal development; facing the challenges of marriage and raising a family while still a child hampers growth, development and basic well being.

Child brides, especially, face harrowing medical risks, including sexually transmitted diseases, low infant mortality rates and complications during pregnancy and childbirth that can result in death. From an economic perspective, child marriage often leaves children, especially girls, unable to learn new skills or earn an income. It also puts them at greater risk of domestic violence, sexual exploitation and persistent low household income.

While the consequences of child marriage are more widely acknowledged today than ever before, the misconception is that it is confined to specific regions such as Africa, the Middle East and the Indian subcontinent. Southeast Asia has so far largely escaped scrutiny, with many not realizing that child marriage also takes place in countries such as the Philippines, Indonesia and Malaysia.⁵

In Malaysia there are several interrelated factors that allow for the practice of child marriage. These include multiple legal systems that confuse the definition of 'child' in the context of child marriage, social norms and values that hamper sexual and reproductive health education, gender-based attitudes towards sexual abuse and exploitation, and a lack of political will in adhering to international norms.

⁴ See, for example: United Nations Children's Fund, *Ending Child Marriage: Progress and Prospects*, 2014, retrieved from https://data.unicef.org/wp-content/uploads/2015/12/Child-Marriage-Brochure-HR_164.pdf; United Nations Children's Fund, *The State of the World's Children 2016: A fair chance for every child*, 2016, retrieved from https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf; Delprato, M., et al., 'On the Impact of Early Marriage on Schooling Outcomes in Sub-Saharan Africa and South West Asia', *International Journal of Educational Development*, 44, 2015, 42–55; Naveed, S. & Butt, K. M., 'Causes and Consequences of Child Marriages in South Asia: Pakistan's perspective', *A Research Journal of South Asian Studies*, 30(2), 2015, 161-175; and Svanemyr, J., et al., 'Preventing Child Marriages: First international day of the girl child "my life, my right, end child marriage"', *Reproductive Health*, 9(31), 2012, retrieved from <http://www.reproductive-health-journal.com/content/9/1/31>. See also Chapter 1 of this report, which provides a more detailed treatment of the literature surrounding this subject.

⁵ United Nations Children's Fund, *Concept Note for Regional Forum on Adolescent Pregnancy, Child Marriage and Early Union in South-East and East Asia*, held 4-5 April 2018 in Bangkok, Thailand.

UNICEF Malaysia commissioned this study to build on earlier attempts to examine child marriage within Malaysia's Muslim, non-Muslim, indigenous and refugee communities. Child marriage has been less well researched in Malaysia and other parts of Southeast Asia; it is thus imperative that more is done to understand and address the factors that allow child marriage to continue in this region, and in Malaysia, in the 21st century.

For UNICEF, ending child marriage by making institutional improvements to gender equality is a global priority. One of the five strategic goals of its Gender Action Plan 2018-2021 is to ensure the protection of children from violence and exploitation, including from child marriage. The goal of child rights advocates is to ensure that no child will face a future with limited hope and opportunity as a result of early marriage.

Methodology

For the collection of primary data, this study relied on qualitative research with focus-group discussions, in-depth semi-structured interviews and content analysis. Secondary data including statistics, previous research reports and case files collected from several research institutions, government agencies and the Shariah Court were used in the analysis.

A roundtable discussion was convened with public officials, political representatives, non-governmental organizations and community leaders to provide a larger context to the issue of child marriage in Malaysia and help researchers access specific information from particular stakeholders.

To obtain critical insights into child marriage, researchers conducted interviews with a wide range of front-liners, including Shariah Court judges and religious officials, as well as 140 study participants who were married as children between 2012 and 2016. Researchers also assessed 2,143 shariah court case files and judges' notes to analyse trends, patterns and factors pertaining to child marriage in the Malaysian-Muslim context, as well as data pertaining to Orang Asli from the 2010 Census, and other sources as listed below. For a fuller treatment of some of these sources, please see Chapter 5

Researchers' disclaimer:

This abridged study is based on a final report submitted to UNICEF in 2017. For the purposes of this publication, the study has been edited and condensed such that certain statements are not made by the researchers and are the views and opinions of UNICEF.

Table 1: Type and status of Information requested from government agencies

No.	Ministry, Department, Agency	Type of Data / Statistics	Status
1.	Department of Orang Asli Development (Jabatan Kemajuan Orang Asli)	a. Statistics of Orang Asli demography, according to tribe, religion and states between 2012 and 2016. b. Statistics of child marriage among Orang Asli in Malaysia from the 2010 Census.	Received: 6 October 2016
2.	Department of Syariah Judiciary, Malaysia (Jabatan Kehakiman Syariah Malaysia)	a. Statistics of child marriage for boys (below 18 years old) and girls (below 16 years old) in every state that has been registered in the e-Syariah system from 2011 to 2016. b. Statistics of divorce among couples below 18 years old from 2011 to 2016.	Received: 18 October 2016
3.	National Population and Family Development Board Malaysia (Lembaga Penduduk dan Pembangunan Keluarga Negara)	a. Statistics of children below 18 years of age who married, according to state from 2013 to 2016.	Received: 10 January 2017 by email

Chapter 1

Child Marriage Around the World: Factors and Implications

In many parts of the world, especially in developing countries, child marriage is forced upon young boys and girls. Girls are more likely to be the victims of forced marriage, with some marrying as young as eight years old. According to a UNICEF report, some 720 million women around the world today married as children,⁶ and about 15 million girls are still married every year before they turn 18.⁷ At this rate, there will be an estimated 1.2 billion child brides worldwide by 2050.⁸ In Asia and the Pacific region, 24 per cent of adolescent girls who are aged between 15 and 19 are married or in union.⁹ In Southeast Asia, the rate of child marriage is 35 per cent in Lao PDR, 22 per cent in Thailand, 19 per cent in Cambodia and Timor-Leste, 15 per cent in the Philippines, 14 per cent in Indonesia and 11 per cent in Vietnam.¹⁰

Factors of child marriage

Several interrelated factors help to create a conducive environment for this phenomenon, and each needs to be considered thoroughly.

Gender discrimination

The most critical factor is the gender discrimination that is deeply rooted in many societies. Where patriarchal norms prevail, women are considered the property of their fathers and husbands and have no freedom or right to choose whom or when to marry.¹¹ In Timor Leste, for example, a study revealed that unequal gender relationships played a key role in underage pregnancy and marriage.¹²

Gender discrimination thus shapes the social expectations that encourage the practice of child marriage. In places where child marriage is prevalent, many parents and teachers

⁶ United Nations Children's Fund, *Ending Child Marriage: Progress and Prospects*, 2014, retrieved from https://data.unicef.org/wp-content/uploads/2015/12/Child-Marriage-Brochure-HR_164.pdf

⁷ United Nations Children's Fund, *The State of the World's Children 2016: A fair chance for every child*, 2016, retrieved from https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf

⁸ Girls Not Brides, 'Child Marriage Around the World: Malaysia', 2017, retrieved from <http://www.girlsnotbrides.org/child-marriage/malaysia/>

⁹ United Nations Children's Fund, *Concept Note for Regional Forum on Adolescent Pregnancy, Child Marriage and Early Union in South-East and East Asia*, held 4-5 April 2018 in Bangkok, Thailand, p1.

¹⁰ Ibid.

¹¹ Delprato, M., et al., 'On the Impact of Early Marriage on Schooling Outcomes in Sub-Saharan Africa and South West Asia', *International Journal of Educational Development*, 44, 2015, 42–55.

¹² United Nations Children's Fund, *Concept Note*, p2.

believe that girls must inevitably marry to become housewives, good wives and mothers.¹³ Girls may be expected to marry and have children even in early adolescence.¹⁴

Social norms and values encourage the practice of child marriage as it maintains and ensures familial and community acceptance.¹⁵ Failure to conform may elicit social disapproval and bring shame to the family.¹⁶

Cultural and traditional practices also contribute to the gender discrimination that encourages child marriage. Early marriage has existed for centuries, and has historically been used to strengthen family ties and to build new connections or political alliances¹⁷ that contribute to family status and stabilize their position in society.¹⁸

Poor economic conditions

Poverty is recognized as a driver of early marriage.¹⁹ The rate of child marriage has been correlated to poor household economic conditions,²⁰ and a higher incidence of child marriage is evident in poverty-stricken areas.²¹ In fact, child marriage rates are highest in countries that are the poorest in the world.²²

The practice is common among economically-disadvantaged groups because they have fewer choices due to a lack of opportunities and resources. Some parents and families are unable to let their girls stay in school because they cannot afford to cover the cost of

¹³ Naveed, S. & Butt, K. M., 'Causes and Consequences of Child Marriages in South Asia: Pakistan's perspective', *A Research Journal of South Asian Studies*, 30(2), 2015, 161-175; Delprato M., et al., 'On the Impact of Early Marriage'.

¹⁴ Svanemyr, J., et al., 'Preventing Child Marriages: First international day of the girl child "my life, my right, end child marriage"', *Reproductive Health*, 9(31), 2012, retrieved from <http://www.reproductive-health-journal.com/content/9/1/31>

¹⁵ Naveed & Butt, 'Causes and Consequences'.

¹⁶ Delprato, M., 'Education Can Break the Bonds of Child Marriage', *Global Education Monitoring Report*, 2015, retrieved from <https://gemreportunesco.wordpress.com/2015/11/18/education-can-break-the-bonds-of-child-marriage>

¹⁷ Nour, N. M., 'Health Consequences of Child Marriage in Africa', *Emerging Infectious Diseases*, 12(11), 2006, 1644-1649; Erulkar & Muthengi, 'Evaluation of Berhane Hewan'; Delprato et al., 'Education Can Break the Bonds'.

¹⁸ Ibid.

¹⁹ Walker, J., 'Early Marriage in Africa - Trends, harmful effects and intervention', *African Journal of Reproductive Health*, 16(2), 2012, 231-240; Kamal, S. M. M., 'Decline in Child Marriage and Changes in its Effect on Reproductive Outcomes in Bangladesh', *Journal of Health, Population and Nutrition*, 30(3), 2012, 317-330, retrieved from <http://doi.org/10.3329/jhpn.v30i3.1373>; Okonofua, F., 'Prevention of Child Marriage and Teenage Pregnancy in Africa: Need for more research and innovation', *African Journal Reproduction Health*, 17(4), 2013, 9-13.

²⁰ Svanemyr et al., 'Preventing Child Marriages'.

²¹ Nour, N. M., 'Child Marriage: A silent health and human rights issue', *Obstetrics & Gynecology*, 2(1), 2009, 51-56.

²² Parsons, J., et al., 'Economic Impacts of Child Marriages: A review of the literature', *The Review of Faith & International Affairs*, 13(3), 2015, 12-22.

schooling.²³ These parents will end up choosing early marriages for their daughters because they do not see any future for the girls besides marriage.²⁴

Such conditions also encourage parents and families to marry off their daughters at a young age because of economic incentives in the form of the bride price or dowry that they are entitled to receive in exchange for the marriage.²⁵ In some parts of the world, the younger the bride, the higher the dowry that the groom's family must pay, which influences families to marry off their daughters as soon as possible in order to earn a higher bride price.²⁶ In other parts of the world, the bride price rises if the bride is older and more educated.²⁷ In such cases, parents still force their daughters into marriage as early as possible for fear that it will be more difficult to secure a marriage later when the dowry becomes too high.²⁸

Lack of education and awareness

A lack of education and awareness on the part of every party involved in child marriage – including the girls themselves, their parents and future husbands – is another contributing factor. Girls with no formal education are more likely to be victims of forced marriage at a young age than girls who are equipped with secondary and higher education.²⁹ If parents were educated, they would be more aware of the damage attached to child marriage and would view the practice unfavourably.³⁰

²³ Svanemyr et al., 'Preventing Child Marriages'; Naveed & Butt, 'Causes and Consequences'; Kanjanda, O. & Chiparange, G. V., 'The Effects of Early Girl-Child Marriage in Mutasa District - Manicaland Province: Cases of Samanga 'A' Ward in Honde Valley', *European Scientific Journal*, 12(11), 2016, 539-552. doi: 10.19044/esj.2016.v12n11p539

²⁴ Naveed & Butt, 'Causes and Consequences'.

²⁵ Nour, 'Child Marriage'; Hotchkiss, D. R., et al., 'Risk Factors Associated with the Practice of Child Marriage among Roma Girls in Serbia', *BMC International Health and Human Rights*, 2016, 16(6). doi: 10.1186/s12914-016-0081-3.

²⁶ Nour, 'Health Consequences'; Nour, 'Child Marriage'.

²⁷ Goodwin, M., 'When Institutions Fail: The case of underage marriage in India', *DePaul Law Review*, 2013, 62(357).

²⁸ Ibid.

²⁹ Kamal, S. M. M., et al., 'Child Marriage in Bangladesh: Trends and determinants', *Journal of Biosocial Science*, 47(1), 2015, 120–139.

³⁰ Naveed & Butt, 'Causes and Consequences'.

Regional and geographical factors

Adolescent girls in rural areas are often disproportionately affected by child marriage,³¹ and child marriage is more common in rural areas in developing countries.³² Young girls in rural areas are four times as likely to marry before reaching the age of 15 compared to their urban counterparts.³³ Two main reasons for this are that rural areas are often underdeveloped – with limited access to education and economic opportunities – and cultural norms and traditions are more prevalent.

In Pakistan, for example, several traditional cultural practices are still prevalent in certain rural and tribal areas even though some of these practices have been outlawed. These include the practice of *pait likkhi*, which involves the marriage of very young children – sometimes before they are even born.³⁴

Religious practices

Marriage before puberty is often justified via religious injunction together with customary practices influenced by male-dominated ideologies.³⁵ For example, the majority of Muslims believe that Islam strongly recommends early marriage. Elsewhere, the centrality of religion in the social life of the majority of Muslim villages and cities plays an important role in child marriage as it contributes to the continuation of traditional practices.³⁶ Religious leaders can therefore significantly influence the decision of parents to marry off their girls at an early age.³⁷ It must also be noted that child marriage becomes more complex because of religious leaders' different interpretations of the practice.³⁸

³¹ Nasrullah, M., et al., 'Girl Child Marriage and its Effect on Fertility in Pakistan: Findings from Pakistan Demographic and Health Survey, 2006-2007', *Maternal and Child Health Journal*, 18(3), 2014, 534-543. doi: 10.1007/s10995-013-1269-y; Svanemyr, J., et al., 'Research Priorities on Ending Child Marriage and Supporting Married Girls', *Reproductive Health*, 12(80), 2015. doi: 10.1186/s12978-015-0060-5.

³² Mutyaba, R., 'Early Marriage: A violation of girls' fundamental human rights in Africa', *The International Journal of Children's Rights*, 2011, 19(2), 339–355, retrieved from <http://booksandjournals.brillonline.com/content/10.1163/157181811x584514> <http://booksandjournals.brillonline.com/content/10.1163/157181811x584514>; Ridhwany, H. H. & al-Jawadi, A. A., 'Early Child Marriage in Mosul at North of Iraq: Prevalence and preference', *Middle East Journal of Family Medicine*, 12(2), 2014; Ahmed, T., 'Child Marriage: A discussion paper', *Bangladesh Journal of Bioethics*, 6(2), 2015, 8-14.

³³ Erulkar, A. 'Early Marriage, Marital Relations and Intimate Partner Violence in Ethiopia', *International Perspectives on Sexual and Reproductive Health*, 39(1), 2013, 6-13.

³⁴ Nasrullah, M., 'Child Marriage and its Impact on Maternal and Child Health in Pakistan (doctoral dissertation, Bielefeld University, Germany), 2015, retrieved from <https://pub.uni-bielefeld.de/download/2766061/2766063>.

³⁵ Walker, 'Early Marriage in Africa'.

³⁶ Wodon, Q., 'Child Marriage, Family Law, and Religion: An introduction to the fall 2015 issue,' *The Review of Faith & International Affairs*, 13(3), 2015, 1-5. doi: 10.1080/15570274.2015.1075761.

³⁷ Nasrullah, M., et al, 'Knowledge and Attitude Towards Child Marriage Practice among Women Married as Children - A qualitative study in urban slums of Lahore, Pakistan', *Bio Med Central Public Health*, 14, 2014, 1148. doi: 10.1186/1471-2458-14-1148.

³⁸ Naveed & Butt, 'Causes and Consequences'.

Protection of girls

In some parts of the world, child marriage is seen as a way of shielding girls from sexual threats and assault, especially due to the misconception that a girl's sexuality must be 'protected'.³⁹ Instead of letting girls go to school, parents and families seek marriage for their young daughters to protect them from the 'dishonour' that rape or sex poses.⁴⁰

Early marriage is also forced on young girls as a way of protecting them from child trafficking. In India, for example, child marriage is considered a less offensive and safer alternative to being trafficked.⁴¹ Unfortunately, parents do not realize that early marriage can also be considered a sexual threat because it is a form of sexual exploitation of girls.⁴²

Protection of dignity and honour

Early marriage among young girls is prevalent in parts of the world where communities seek to preserve dignity and avoid pregnancy outside of marriage. Unlike pregnancies within marriage that are celebrated, pregnancies out of wedlock can ruin one's reputation as well as bring shame and dishonour to the family, which in turn can shatter the girl's life.⁴³ Pregnant adolescents often marry to "save face" in Thailand, for example, where the adolescent birth rate increased in 2011 from 40 per 1,000 adolescent girls to 60 per 1,000 girls.⁴⁴

Ineffective implementation of laws and policies

Poor or non-existent enforcement of laws and policies can contribute to the practice of child marriage.⁴⁵ In India, for example, where the law requires all marriages to be registered, the governments of some states (such as Bihar) have chosen not to make

³⁹ Okonofua, 'Prevention of Child Marriage'.

⁴⁰ Delprato, 'On the Impact of Early Marriage'; Goodwin, 'When Institutions Fail'; Kanjanda, O., & Chiparange, G. V., 'The Effects of Early Girl-Child Marriage in Mutasa District – Manicaland Province: A Cases of Samanga 'A' Ward in Honde Valley', *European Scientific Journal*, 12(11), 2016, 539-552. doi: 10.19044/esj.2016.v12n11p539.

⁴¹ Goodwin, 'When Institutions Fail'.

⁴² Godha, D., Hotchkiss, D. R. & Gage, A. J., 'Association Between Child Marriage and Reproductive Health Outcomes and Service Utilization: A multi-country study from South Asia', *Journal of Adolescent Health*, 52(2), 2013, 552-558.

⁴³ Stein, J. S., 'Early to Wed: Teenage marriage in post-war America', *The Journal of the History of Childhood and Youth*, 6(2), 2013, 359-382.

⁴⁴ UNICEF 2015 *Situation Analysis of Adolescent Pregnancy in Thailand* in United Nations Children's Fund, *Concept Note*, p2

⁴⁵ Okonofua, 'Prevention of Child Marriage'; Delprato, 'On the Impact of Early Marriage'.

marriage registration obligatory,⁴⁶ while in Bangladesh laws that address the minimum legal age are often ignored.⁴⁷

Countervailing cultural practices and norms as well as the exceptions that overpower the law in certain countries also point to the ineffectiveness of the law in some cases.⁴⁸ An example of an exception is where the minimum age of marriage is already set at 18 in law, but marriage below 18 is allowed if the parents approve. In some countries, people also avoid legally registering the births of their daughters in order to ensure that they can arrange marriages for them at a young age.⁴⁹

Implications of child marriage

Young girls face a range of disadvantages after early marriage, including severe health problems; complications during and after pregnancy and childbirth; domestic violence and physical abuse; and the loss of education and employment opportunities. Child marriage affects girls' physical and psychological health as well as their social and economic wellbeing.⁵⁰

Violations of children's rights

According to General Recommendation 19 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), child marriage is a traditional practice that leads to the deprivation of a girl's human rights and perpetuates gender violence against women.⁵¹ These rights include the right to experience and enjoy childhood, have personal freedom to choose and to obtain education to develop a full sense of being a human being.⁵² It is also the right of a child to be able to experience effective social interaction with other people⁵³ instead of experiencing social isolation once she is married.⁵⁴ Child marriage jeopardizes a girl's right to health as she is more likely to be exposed to disease and other health issues attached to early childbearing.⁵⁵

⁴⁶ Delprato, 'On the Impact of Early Marriage'.

⁴⁷ Ferdousi, N., 'Child Marriage in Bangladesh: Socio-legal analysis', *International Journal of Sociology and Anthropology*, 2014, 6(1), 1-7.

⁴⁸ McCleary-Sills et al., 'Child Marriage: A critical barrier to girls' schooling and gender equality in education', *The Review of Faith & International Affairs*, 13(3), 2015, 69-80. doi: 10.1080/15570274.2015.1075755.

⁴⁹ Scolaro, E., et al., 'Child Marriage Legislation in the Asia-Pacific Region', *The Review of Faith & International Affairs*, 13(3), 2015, 23-31. doi: 10.1080/15570274.2015.1075755

⁵⁰ Naveed and Butt, 'Causes and Consequences'.

⁵¹ Mutyaba, 'Early Marriage'.

⁵² Ferdousi, 'Child Marriage in Bangladesh'; Raj, A., 'Child Marriage Declines in South Asia', *The Futurist*, 2012, September-October.

⁵³ Kanjanda and Chiparange, 'Effects of Early Girl-Child Marriage'.

⁵⁴ Raj, 'Child Marriage Declines'.

⁵⁵ Ibid.

Social consequences

a) Negative effect on a girl's educational development

One of the most damaging consequences that young girls face when they marry early is that they lose their opportunity to gain an education. Some families and parents pull their daughters out of school because they believe that further education is unnecessary if their daughters are meant to marry and have children.⁵⁶ In addition, child pregnancy appears to be an important reason for dropping out of school, especially for young girls in underprivileged households and rural areas.⁵⁷

Ceasing education causes girls to stop gaining essential knowledge and life skills that are vital for survival in today's world, including the knowledge needed to participate actively in their households and communities.⁵⁸ This negatively affects their future income, causes them to fall into poverty and reduces avenues for economic development.⁵⁹ In addition, since girls who marry before 18 are usually isolated from society, not going to school will shut them off from the world further, limiting their engagement with society and the community in national-level debates and discussions as well as political processes such as voting.⁶⁰

b) Higher probability of divorce and separation

In some studies, since young girls marry before reaching maturity, they face difficulties in trying to maintain the relationship and in committing to the marriage.⁶¹ Girls dissolve or annul their marriages because of a large age gap between spouses, ill-treatment and physical abuse by husbands, and husbands' over-exertion of authority.⁶² Divorce and separation can lead to larger problems, as young mothers bear the responsibility for

⁵⁶ Gaffney-Rhys, R., 'International Law as an Instrument to Combat Child Marriage', *The International Journal of Human Rights*, 15(3), 2011, 359-373. doi: 10.1080/13642980903315398.

⁵⁷ Wodon, Q., Nguyen, M. C. & Tsimpo, C., 'Child Marriage, Education, and Agency in Uganda', *Feminist Economics*, 22(1), 2015, 54-79. doi: 10.1080/13545701.2015.1102020

⁵⁸ Parsons et al., 'Economic Impacts'.

⁵⁹ Shawki, N., 'Norm-based Advocacy and Social Change: An analysis of advocacy efforts to end child marriage', *Social Alternatives*, 2015, 34(4).

⁶⁰ Parsons et al., 'Economic Impacts'.

⁶¹ Tilson, D. & Larsen, U., 'Divorce In Ethiopia: The impact of early marriage and childlessness', *Journal of Biosocial Science*, 32(3), 2000, 355-372.

⁶² Ibid; Pathfinder International, *Report on causes and consequences of early marriage in Amhara region*, Addis Ababa, Ethiopia, 2006. Retrieved from: <http://www.pathfinder.org/wp-content/uploads/2008/01/Causes-and-Consequences-of-Early-Marriage-in-the-Amhara-Region-of-Ethiopia.pdf>; Erulkar, A., 'Early marriage, marital relations and intimate partner violence in Ethiopia', *International Perspectives on Sexual and Reproductive Health*, 2006, 6-13; Chowdhury, F. D., 'The socio-cultural context of child marriage in a Bangladeshi village', *International Journal of Social Welfare*, 2004, 13: 244-253.

childbearing and childrearing without emotional or financial support from their families or from society.⁶³

c) Distorted personality development

Children aged 10 to 16 are at a critical stage of personality development, and girls who married early and experienced family disruptions were found to possess significantly lower scores for both self-esteem and internal locus of control.⁶⁴ Due to inadequacies caused by their lack of maturity and education, married girls feel incapable and helpless as they are unable to manage their responsibilities, including handling their families as well as bringing up their children in a proper manner. These can cause depression, leading to even more serious problems.⁶⁵

The large age gap between the young wife and her husband impacts negatively on the power dynamics at the household level as it denies equilibrium to the relationship and equity between the spouses.⁶⁶ The outcome is that these girls will most likely experience distorted personality development leading to low decision-making skills, low bargaining power, and low confidence and self-esteem, all of which remove empowerment.

d) High incidence of domestic violence

Girls who marry early are more likely to experience domestic violence and aggression as they tend to have lower levels of empowerment compared to their older spouses.⁶⁷ Married young girls are at an increased risk of domestic violence because their husbands take advantage of the large age gap to reinforce the girls' 'inferiority'.⁶⁸ As these girls normally marry at an age where they have no exposure to marriage, they will not know about the risk of intimate partner violence, including forced marital sex.⁶⁹ In certain communities and societies, no matter how abusive or violent the husband is towards his wife, it is unacceptable for her to leave her husband's house.⁷⁰

⁶³ Beguy, D., Ndugwa, R. & Kabiru, C. W., 'Entry Into Motherhood Among Adolescent Girls In Two Informal Settlements in Nairobi, Kenya', *Journal of Biosocial Science*, 45(6), 2013, 721-742. doi:10.1017/S0021932013000199.

⁶⁴ Prevoo, T. & Ter Weel, 'The Effect of Family Disruption on Children's Personality Development: Evidence from British longitudinal data', *Springer Science Business Media New York*, 2015.

⁶⁵ Bhutto, Z. H., Shariff, N. F. & Zakaria, A., 'Child Marriage as a Determinant of Depression in Women', *Journal of Behavioral Sciences*, 23(1) 2013.

⁶⁶ Nasrullah, M., et al., 'Girl Child Marriage and its Effect on Fertility in Pakistan: Findings from Pakistan Demographic and Health Survey, 2006-2007', *Maternal and Child Health Journal*, 18(3), 2014, 534-543. doi: 10.1007/s10995-013-1269-y.

⁶⁷ Abdullah, S., Qureshi, H. & Quayes, S., 'The Adverse Effect of Child Marriage on Women's Economic Wellbeing in Bangladesh - Can microfinance help?', *The Journal of Developing Areas*, 49, 2015, 109-125.

⁶⁸ Mutyaba, 'Early Marriage'.

⁶⁹ Erulkar, 'Early Marriage'.

⁷⁰ Naveed and Butt, 'Causes and Consequences'.

e) Sexual exploitation of girls

Young girls are expected to enter into a sexual relationship with their spouses once they are married,⁷¹ which can be both physically and psychologically harmful. The practice can be considered as statutory rape because girls below 18 are below the age of consent; hence, they cannot meaningfully consent to sex. It can also be deemed as forcible rape because, generally, adolescent girls are unable to object to or refuse the sexual demands of their older husbands who are in control of the family resources.

f) Low social status

Child marriage undermines the social status of young girls. In the Asia-Pacific region, where child marriage is prevalent in many societies, women and girls are traditionally assigned a status that is lower than men and boys, not just in society and the community but also within the household. Women are expected and assumed to stay at home to carry out their responsibilities within their households as caregivers, wives and mothers, instead of participating in the community actively.⁷²

g) Persistent state of poverty

As young girls are expected to carry out their social roles as wives and mothers, their rate of participation in the labour force is reduced since both their reproductive and social roles pose obstacles to employment.⁷³ Other negative effects of child marriage – such as marital instability and social isolation – also create high risks of poverty.⁷⁴

Medical consequences

a) Health risks

Child marriage leads to an early sexual debut, which automatically prolongs the period of being exposed to risks associated with pregnancy and childbearing.⁷⁵ The International Centre for Research on Women has found that girls below 15 years of age are five times more likely to die during pregnancy and childbirth than women in their 20s.⁷⁶ Girls aged below 18 also have a higher chance of complications in pregnancy and delivery compared to women aged 20 to 24.⁷⁷ This is mainly because girls at such a young age have not reached physical maturity, and their reproductive organs are not yet fully developed.⁷⁸

⁷¹ Gaffney-Rhys, 'International Law'.

⁷² Scolaro et al., 'Child Marriage Legislation'.

⁷³ Stith, J., 'Child Brides to Patriarchy Unveiling the Appropriation of the Missing Girl Child', *Journal of Feminist Studies in Religion*, 31(1), 2015, 803-102.

⁷⁴ Beguy et al., 'Entry Into Motherhood'.

⁷⁵ Ibid.

⁷⁶ Walker, 'Early Marriage in Africa'.

⁷⁷ Patra, S., 'Motherhood in Childhood: Addressing reproductive health hazards among adolescent married women in India', *Reproductive Health*, 13(52) 2016. doi: 10.1186/s12978-016-0171-7.

⁷⁸ Lamdan, 'Child Marriage in Jewish Society'; Chatterjee, P., 'India Grapples with its Child Marriage Challenge', *The Lancet*, Vol 378, 10 December 2011; Kamal, 'Decline in Child Marriage'.

b) Risking their children's lives

Studies have found that when the mother is aged below 18, the rate of infant mortality is 60 per cent higher.⁷⁹ Early pregnancies within child marriage are also consistently associated with miscarriage, stillbirth and abortion.⁸⁰

c) High risk of contracting STDs

Girls who marry at a young age are more likely to be infected with STDs, particularly HIV and human papilloma virus (HPV).⁸¹ Studies by the International Federation of Gynecology and Obstetrics, the International Labour Organization, the World Health Organization and other agencies show that young girls have a higher risk of contracting STDs through early marriage.⁸²

d) Psychological and psychiatric disorders

Married girls lose their childhood: they have no opportunity to play, develop friendships, build social skills or gain an education.⁸³ This disrupts their emotional and psychological development, leaving them feeling isolated, rejected and depressed.⁸⁴

Conclusion

It is important to fully understand the many interrelated factors that contribute to the practice of child marriage. Governments and agencies will need to cooperate extensively with one another to deal with these factors, which include gender discrimination, poor economic conditions, a lack of education and awareness, geographical factors, religious practices and poor implementation of existing law and policy. The perception that child marriage is also a form of protection for girls, including for their dignity and honour, must also be tackled.

Addressing child marriage is important because of the numerous negative implications that it has for children, particularly girls. These consequences range from the loss of education and economic opportunities, to severe health and psychological impacts.

⁷⁹ Nour, 'Child Marriage'.

⁸⁰ Doskoch, P., 'Child Marriage Associated with Suboptimal Reproductive Health', *International Perspectives on Sexual and Reproductive Health*, 2016.

⁸¹ Nour, 'Health Consequences'.

⁸² Morris, J. L. and Rushwan, H., 'Adolescent sexual and reproductive health: The global challenges', *International Journal of Gynecology & Obstetrics*, 2015, 131: S40-S42. doi:10.1016/j.ijgo.2015.02.006

⁸³ Ibid.; Nour, 'Child Marriage'.

⁸⁴ Nour, 'Child Marriage'.

CHAPTER 2

The Context of Child Marriage in Malaysia

Child marriage is a controversial subject in Malaysia that has attracted the attention and concern of various stakeholders and interested parties. In 2015, the Joint Action Group for Gender Equality (JAG) cited statistics provided by Datuk Heng Seai Kie, (a former Deputy Minister of Women, Family and Community Development), showing that an estimated 16,000 girls were married before the age of 15 as at October 2010. In 2014 the United Nations Population Fund (UNFPA) reported that there were 15,000 Malaysian girls who were married before the age of 19.⁸⁵ In April 2016, the senior judicial director of the Department of Syariah Judiciary, Malaysia (Jabatan Kehakiman Syariah Malaysia, JKSM), Mohd Nadzri Abd Rahman, revealed that there were 10,240 child marriage applications between 2005 to 2015, adding that “irresponsible parents” (in this case, fathers) were manipulating the legal system to have their underage daughters married to cover up instances of rape within the family.⁸⁶

Sarawak reported the highest number of child marriage applications at 2,064, while Kelantan and Terengganu followed with 1,929 and 924 cases respectively.⁸⁷ In April 2016, the former Minister of Women, Family and Community Development, Datuk Seri Rohani Abdul Karim, said that JKSM had registered 827 child marriages in 2015 while the Sarawak Native Customs Council reported 294 underage marriages in Sarawak in the same year.⁸⁸ She added that the Shariah Court received more than 1,000 child marriage applications from Muslims, but there were no cases of child marriage among non-Muslims as it was illegal for them to marry below the statutory minimum age.⁸⁹ However, JAG spokesperson Lee Wei San argued that the practice was “rampant in other communities” although the numbers were difficult to ascertain due to the lack of data.⁹⁰ Others have also argued that child marriage appeared to be common in Indian and

⁸⁵ Malay Mail Online, ‘Malaysia still long way to go in overcoming child marriage – Joint Action Group for Gender Equality’, 18 Apr 2016, retrieved from www.themalaymailonline.com/malaysia/article/suhakam-concerned-child-marriages-still-legal. See also: M. Chastain, ‘Malaysia Legislator: Banning Child Marriage Will Lead Girls to Seek Casual Sex’, 6 Apr 2016, retrieved from www.breitbart.com/national-security/2016/04/06/malaysia-mp-insists-banning-child-marriages-will-cause-girls-seek-casual-sex/

⁸⁶ Adilah, A., ‘Child marriage used to cover up rape’, Malay Mail Online, 23 Apr 2016, retrieved from www.themalaymailonline.com/malaysia/article/child-marriage-used-to-cover-up-rape

⁸⁷ Ibid.

⁸⁸ Kow, G.C., ‘MP: Banning child marriages will see lustful girls engaging in casual sex’, MalaysiaKini, 6 Apr 2016, retrieved from www.malaysiakini.com/news/336796; Today Online, ‘Over 1,000 applications for child marriages in M’sia in 2015’, 6 Apr 2016, retrieved from www.todayonline.com/world/asia/over-1000-applications-child-marriages-msia-2015

⁸⁹ Ibid.

⁹⁰ TheStar Online, ‘Child marriages also affect other communities’, 6 Oct 2013, retrieved from www.thestar.com.my/news/nation/2013/10/06/child-marriages-also-affect-other-communities/

indigenous communities.⁹¹ Through statistics obtained from the National Population and Family Development Board (NPFDB), this study found that there were 5,215 cases of child marriage among non-Muslim female children (16 to 18 years old) from 2005 to October 2015.

Sporadic reports of child marriage among non-Muslims have been noted, according to Datuk Azizah Mohd Dun (the former Deputy Minister of Women, Family, and Community Development). National Registration Department (NRD) records showed that 2,775 non-Muslim marriages involving individuals under 18 years old took place from 2010 to 2015.⁹² Also, in 2010, the media reported on data in the 2000 Population and Housing Census which revealed that 6,800 girls under 15 years old were married, of which Malay girls constituted the highest number at 2,450, followed by 1,550 Bumiputera, 1,600 Chinese, 600 Indians and 600 others – the media also claimed that the practice was rampant in East Malaysia where the incidence of low household income was higher.⁹³

Furthermore, JKSM statistics show that the rate of child marriage in Malaysia is rising: in 2011, there were 900 approved cases involving at least one Muslim minor (usually the bride), while in 2012 there were approximately 1,165 underage marriage applications. By June 2013, JKSM had received 600 child marriage applications and 446 were approved.⁹⁴

Positions and statements of stakeholders

A 2016 UNICEF Malaysia public opinion poll of 711 respondents indicated that Malaysians were strongly against child marriage: an overwhelming 95 per cent of respondents agreed to the statement that marrying a 14-year old girl was “not right”.⁹⁵ Ivy Josiah of the Women’s Aid Organisation (WAO) has also argued strongly against child marriage,

⁹¹ Voice of the Children, ‘Child Marriage in Malaysia, A Child Rights Issue’, Girls Not Brides, 20 May 2013, retrieved from www.girlsnotbrides.org/tackling-child-marriage-in-malaysia-a-child-rights-activists-perspective/

⁹² Carvalho, M., ‘Fewer child marriage cases now, says ministry’, TheStarOnline, 19 May 2016, retrieved from www.thestar.com.my/news/nation/2016/05/19/fewer-child-marriage-cases-now-says-ministry/

⁹³ Anwar, Z., ‘Nothing divine in child marriage’, TheStarOnline, 6 June 2010, retrieved from www.thestar.com.my/opinion/columnists/sharing-the-nation/2010/06/06/nothing-divine-in-child-marriage/

⁹⁴ Azizan, H., ‘Child Marriages on the rise’, TheStarOnline, 6 Oct 2013, retrieved from www.thestar.com.my/news/nation/2013/10/06/child-marriages-on-the-rise-1022-applications-approved-in-2012-compared-to-900-in-2011/

⁹⁵ BERNAMA, ‘95 pct agree marriage to a 14-year-old girl is ‘not ok’ – UNICEF’, The New Straits Times Online, 12 Aug 2016, retrieved from www.nst.com.my/news/2016/08/165119/95-pct-agree-marriage-14-year-old-girl-not-ok---unicef

citing the absence of logic in allowing young children to be married, and saying that this practice contradicted universal standards of human rights for children.⁹⁶

In addition, at its 106th discussion on Islamic affairs in Malaysia in October 2014, the National Fatwah Council of Malaysia made clear that the marriage between Prophet Muhammad and Aisha could not and should not be used as religious justification for underage marriage. The Council argued that child marriage was not a “healthy practice”⁹⁷ and that although there was an exception in the country’s laws that allowed child marriage, it should not be encouraged or allowed without weighing the benefits and the consequences for the children involved.

The Council pointed to the physical and mental health problems that young wives faced, as revealed by medical and psychological reports presented during its discussions. The Council argued further that child marriage was not an obligatory act in the religion as there was nothing in any hadith that encouraged child marriage – those that did occur within Islamic law were undertaken only in the best interests of the child.⁹⁸ Clarifying this position, the Mufti of Selangor, Datuk Seri Mohd Tamyas Abdul Wahid, said that “Islam does not prohibit underage marriage, as long as the couple is mature enough and understands the circumstances and responsibilities that come along with the act, as husband and wife.” However, he went on to stress the heavy responsibility of marriage, and that those who decide to marry must be mature in judgement, psychologically prepared and physically able.⁹⁹

Meanwhile, the Ministry of Women, Family and Community Development (MWFCD) said in a Press statement on 3 October 2015 that the Ministry was concerned about the potential physical risk to young couples and the possibility of divorce at an early stage of the marriage, which would put the children’s protection and welfare at risk. However, former Deputy Minister Azizah Mohd Dun said that child marriage was not within the Ministry’s jurisdiction because Muslim marriages were governed by state Islamic enactments and not the federal Child Act 2001.¹⁰⁰ She added that MWFCD had taken

⁹⁶ The New Straits Times, ‘Child marriage still alive in Malaysia’, *The New Straits Times*, 13 June 2010, retrieved from <http://news.asiaone.com/News/AsiaOne+News/Malaysia/Story/A1Story20100613-221834.html>

⁹⁷ Department of Islamic Development, Malaysia, ‘Kompilasi Pandangan Hukum, Muzakarah Jawatankuasa Fatwa, Majlis Kebangsaan Bagi Hal Ehwat Agama Islam Malaysia’, Department of Islamic Development, Malaysia (JAKIM), 2016, retrieved from www.islam.gov.my/images/ePenerbitan/KOMPILASI_MUZAKARAH_MKI_2016.pdf

⁹⁸ Ibid.

⁹⁹ Irsyad, A., ‘Child Brides: Legal Marriage, Illegal Age?’ 2015, retrieved from www.malaysiandigest.com/features/535461-child-brides-legal-marriage-illegal-age.html

¹⁰⁰ Kow, ‘MP: Banning child marriages’, M.L. Mayuri, ‘PAS MP suggests child marriage the answers for lustful teens’, 6 April 2016, *The Malay Mail Online*, retrieved from

measures to control the occurrence of child marriage by ensuring that applications for child marriage would be accompanied by social and medical reports of the children involved.¹⁰¹ Meanwhile, the former Minister, Datuk Seri Rohani Abdul Karim, said that the Government and her Ministry accepted – but did not condone – the Malaysian Islamic legal system’s position allowing child marriage,¹⁰² but added that the Government was limited in its actions if there was consent from both parties. In such cases, she said, the reason for marriage might be due to pregnancy as well as other issues.¹⁰³ MWFC strongly believes that to fully realize a child’s potential, any activity that can impede that realization (such as child marriage) must be stopped. In pursuing this goal, the Ministry has created a taskforce consisting of the relevant government agencies, academics and child activists.

Likewise, the Malaysian Human Rights Commission (SUHAKAM) has made a firm stand against child marriage. Tan Sri Hasmy Agam, a former SUHAKAM chairman, said that a child’s future must not be jeopardized by traditional child marriage practices. Instead, the child’s best interests must prevail over everything else.¹⁰⁴ SUHAKAM was concerned that child marriage was not prohibited in the 2016 amendments to the Child Act and was still legal in Malaysia,¹⁰⁵ and urged the Government to increase the legal age of marriage to 18 years for both men and women in all domestic law in order to comply with the definition of a child as stated in the Child Act.¹⁰⁶

Sisters in Islam (SIS) has also objected strongly to child marriage¹⁰⁷ and is greatly concerned by the practice, especially because there have been cases in which young girls were forced to marry the men who raped them. One such case occurred in 2013 when the Shariah Court approved an application for marriage by a 40-year-old man to a 13-year-old girl, despite the fact that the man had committed statutory rape of the girl.¹⁰⁸ In

www.themalaymailonline.com/malaysia/article/pas-mp-suggests-child-marriage-the-answer-for-lustful-teens

¹⁰¹ Mayuri, ‘PAS MP suggests’.

¹⁰² Today Online, ‘Over 1,000 applications’.

¹⁰³ Brown, V., ‘Rohani: Malaysia opposed to child marriage’, 25 Feb 2016, TheStarOnline retrieved from www.thestar.com.my/news/nation/2016/02/25/rohani-on-child-marriage/

¹⁰⁴ Tan, Y.L., ‘Suhakam: Child marriages must be opposed’, Human Rights in ASEAN, 19 Dec 2014, retrieved from <https://humanrightsinasean.info/article/suhakam-child-marriages-must-be-opposed.html><https://humanrightsinasean.info/article/suhakam-child-marriages-must-be-opposed.html>

¹⁰⁵ TheStarOnline, ‘Child marriages not prohibited in amended Act’, 19 April 2016, TheStarOnline, retrieved from www.thestar.com.my/news/nation/2016/04/19/child-marriages-not-prohibited-in-amended-act/

¹⁰⁶ Murad, D., ‘Suhakam welcomes Child Act amendments, but wants legal marrying age raised to 18’, 18 April 2016, TheStarOnline, retrieved from www.thestar.com.my/news/nation/2016/04/18/suhakam-welcomes-amendments-to-child-act/; and TheStarOnline, *op. cit.*, 2016.

¹⁰⁷ Sisters in Islam, Press statement: ‘SIS against marrying off young girls to protect rapist’, 2 Jan 2016, retrieved from www.sistersinislam.org.my/news.php?item.1400.41

¹⁰⁸ Sisters in Islam, Press statement: ‘Pushing for an end in child marriage’ 20 May 2013, retrieved from www.sistersinislam.org.my/news.php?item.1173.41

response to a statement by PAS¹⁰⁹ Member of Parliament Khairuddin Aman, who argued that statutory rape cases were mostly consensual on both sides, SIS said that pursuing early marriage as a solution to statutory rape made a mockery of Islam because it undermined the victim's fragile emotional state caused by the resulting trauma.¹¹⁰ SIS said that marriage in Islam was a union of *mawaddah warahmah* – a union composed of love, compassion, mutual respect and mutual responsibility between both spouses – and such a marriage would be unobtainable if it was intended only to absolve a rapist of his crime. According to SIS, such a marriage would cause an additional imbalance of power between husband and wife as well as create the possibility of further sexual abuse within the marriage. In SIS's view, instead of encouraging marriage that would free a suspect from a criminal charge, statutory rape should be viewed as sinful and not simply 'rewarded' with marriage.¹¹¹ SIS legal officer Katrina Mohd Sobri affirmed that her organization had adopted United Nations findings that showed the damaging consequences of child marriage – especially on girls as they were vulnerable to sexual and physical abuse, had limited education and were also in danger of contracting health problems.¹¹² SIS has also argued that any child marriage that negatively affects a child's life is contrary to *Maqasid Shariah*, i.e. the higher objective of Islamic law.¹¹³

However, some stakeholders have argued for the practice to be continued. Datuk Nik Mazian Nik Mohamad, a PAS lawmaker, said that child marriage could help solve the problem of teenagers with "urges" being involved in premarital sex, and he reasoned that teenagers would continue having sex freely if they were not allowed to marry young.¹¹⁴ This opinion was supported by Khairuddin Aman Razali (also a PAS lawmaker) and Noor Ehsanuddin Mohd Harun Narrashid (a government lawmaker), with Khairuddin sharing Nik Mazian's opinion that banning early marriage would only lead to premarital sex, which in his view was more damaging than child marriage.¹¹⁵

Below are the perspectives and views of these and other stakeholders on child marriage that were obtained through roundtable discussions and interviews.

¹⁰⁹ Parti Agama Islam SeMalaysia (PAS, or Pan-Malaysian Islamic Party).

¹¹⁰ SIS, 'SIS against marrying off'.

¹¹¹ Ibid.

¹¹² Azizan, 'Child Marriages on the Rise'.

¹¹³ Sisters in Islam, Press statement: 'Lindungi Anak-anak Kita: Naikkan Umur Minimum Perkahwinan', 2 Dec 2015, retrieved from www.sistersinislam.org.my/news.php?item.1398.41<http://www.sistersinislam.org.my/news.php?item.1398.41>

¹¹⁴ Mayuri, 'PAS MP suggests'.

¹¹⁵ Kow, 'MP: Banning child marriages'.

Stakeholder	Summary of position
Director of NRD, Sabah	Child marriage is acceptable among the Bumiputera in Sabah and there is no psychological issue that arises as a result of child marriage. Child marriage among Muslims usually occurs because of premarital sex. Child marriage among non-Muslims is due to arranged marriage or premarital sex. The director suggested that a heavy punishment should be meted out to those who have sex outside of marriage.
Department of Syariah Judiciary, Malaysia	The Shariah Court does not have an issue with child marriage applications. The discretion of judges in determining whether an application should be approved depends on the <i>maslahah</i> (best interests) of the child, as well as physical and environmental factors. According to the Selangor Shariah Chief Judge, child marriage involving a Muslim child is subject to the Islamic Family Enactment. Child marriage cases are decided by judges, who need to consider medical and counselling reports, and the aftermath of their decisions. The Shariah Court must cooperate with other authorities for the children’s welfare.
Division of Marriage, Divorce, National Registration Department, Putrajaya	The Law Reform (Marriage and Divorce) Act 1976 (LRA) allows a male non-Muslim to marry at the age 18 and females at 16. Marriage can be validated only by a NRD-accredited Assistant Registrar of Marriage. Common reasons of early marriage applications are “engagement in sexual relations” or “furthered studies together overseas”. For non-Muslims, a child born outside marriage is classified as illegitimate, and the marriage of the parents will legitimize the child.
Malaysian Hindu Sangam	Despite the occurrence of child marriage in India, there is no manuscript that supports child marriage in Hinduism. Marriage in Hinduism is more a religious matter than a customary one. There are also cases of child marriage due to pregnancy outside marriage as the family is ashamed that their child has engaged in premarital sex. A temple guideline will be issued to ensure that temples do not marry those

who do not have legal approval for marriage. There are many Indian children who have married according to custom and who have not registered their marriages with NRD.

Malaysian Chinese Association

Child marriage is not prevalent among the Chinese. Nonetheless, most Chinese Malaysians know of the LRA. Permission to marry for female individuals between the ages of 16 and 18 must be made through NRD.

Legal Bureau, Women's Wing of the United Malays National Organisation (UMNO)

The bureau suggested that the Shariah Court should obtain reports from the Department of Social Welfare and the advice of counsellors in determining the eligibility of a child to marry early. When the court issues a child marriage order, the parents of the applicant must attend counselling and parenting courses. The bureau also suggested that statistics and reports be sent to MWFC as Malaysia still does not have a focal agency to study such records.

Attorney-General's Chambers

There is an international law (i.e Article 1 of CRC) that defines a child as being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier. In the AGC's view, this allows state parties to set the minimum age of marriage. The minimum marriageable age before adulthood has never been amended and has been approved by the National Fatwa Council. Any suggested legal reform must go through the respective state's religious authority. The Attorney-General's Chambers also suggests that a special panel be created to address issues involving children. There is currently no standard procedure or referral process that requires child marriage applicants to attend marriage courses.

Ministry of Health

The Ministry does not have statistics on child marriage but collects aggregated data on adolescent pregnancy and contraceptive use among children and adolescents aged 10 to 19. The data is not aggregated according to age and marital status.

NRD Sarawak	If a female child is found to be pregnant outside of marriage, she will be counselled and placed under the guidance of the One-Stop Teenage Pregnancy Centre (OSTPC) in Kuching, Sarawak. The centre is established with the aim of reducing teenage pregnancies and to provide a support system, before and after birth, for young mothers.
Raudhatus Sakinah	Raudhatus Sakinah, a shelter home for unmarried pregnant female adolescents, suggested that child marriage applicants should seek counselling and psychiatric help. They also argued that education was the key to early prevention of child marriage and for children to understand the importance of reproductive health.
MWFC	MWFC does not have data on child marriage because the registration of early marriages and collection of data is not within its jurisdiction. Child marriage data obtained through other authorities are unreliable and confusing. The Ministry maintains that early marriage is not in the best interests of the child, and as the wellbeing of children is a Government responsibility, child marriages should be reported to the Department of Social Welfare. The Ministry discourages the practice of child marriage because of its many negative effects. Delaying marriage is better for the child's future and may also reduce economic problems and incidence of domestic violence. Amending the marriageable age will not solve the problem, but providing an education will. The Ministry has a responsibility to protect children's full development.
Muftis and the National Fatwa Council	Some muftis and members of the National Fatwa Council argue that child marriage brings both positive and negative implications. On the positive side, some muftis say child marriage grants women's rights, resolves the issue of premarital sex, addresses biological urges and also provides paternity rights. A marriage becomes negative if the bride or groom is not ready to bear the responsibility of marriage and it ends in divorce, if education is neglected, or if a

spouse has limited financial sources that may lead to child abuse and a burden upon the family.

Some muftis view the concept of *wali mujbeer* – the authority of fathers to marry off their daughters without their consent, as stated in classical fiqh – as relevant and practical today. However, other muftis argue that the *wali mujbeer* is no longer relevant since daughters know their future husbands better than their fathers, and fathers who marry off their children do not do so in the best interests of their children.

Some muftis argue that religious educators or teachers must teach sex education in school using content that is in line with Islamic values, and some muftis urge that sex education be implemented immediately. Muftis have also given their opinions on matters that the Shariah Court should emphasize when processing child marriage applications: applicants must have a basic knowledge of Islam (*Fardh Ain*); there must be a minimum age of marriage, family support, parental approval, the involvement of counsellors and officers investigating the application; and the court must ensure that applicants know their marital responsibilities.

The muftis and the National Fatwa Council have different views on the minimum age of marriage. Some muftis agree that the minimum age must serve the best interests of the people involved, with exceptions for certain cases. However, other muftis believe that increasing the minimum marriageable age will lead to higher risks. To some muftis, a young age is not the source of the problem; instead, the lack of formal education is the cause of marriage problems.

Child marriage and sexual reproductive health in Malaysia

There are several risk factors associated with child marriage in Southeast Asia generally, including low household income, social norms, customs and traditional requirements,

gender inequality, as well as the control of female sexuality (sexual double standards) to protect family honour.¹¹⁶

In Malaysia, child marriage is associated with challenges in legislation and enforcement, as well as the adolescent's sexual experience – specifically sexual morality – that is dictated by the community to prevent youths from initiating sexual intercourse before being legally married. Early marriage is generally viewed as a measure to safeguard a girl's future security and prosperity, as the responsibility to protect her from sexual harassment and violence transfers from father to husband. However, the trend has recently changed into a form of punishment for adolescents who have had or are having premarital sexual intercourse, as well as a method to protect the family honour for victims of sexual coercion (rape and incest), and those with unwanted pregnancies as a result of unprotected premarital sex or even rape.

These same social beliefs dictate that a person must remain a virgin until marriage, leading to the common practice of sexual abstinence in Malaysia.¹¹⁷ Generally, extramarital sex (premarital or adultery) is prohibited by all Malaysian communities due to its negative connotations, and is grouped together with substance abuse and criminal activity as an action that is shameful and which tarnishes family reputations.¹¹⁸

Furthermore, as a society in which gender inequality is commonplace, the Malay, Indian and Chinese communities tend to favour male children over females.¹¹⁹ However, in

¹¹⁶ Machel, G., Pires, E. & Carlsson, G., 'The World We Want: An end to child marriage', *The Lancet*, 382 (9897), 2013, 1005-1006. doi:10.1016/s0140-6736(13)61944-3; Godha, D., Hotchkiss, D.R. & Gage, A. J., 'Association Between Child Marriage and Reproductive Health Outcomes and Service Utilization: A multi-country study from South Asia', *Journal of Adolescent Health*, 52(5), 2013, 552-558, doi:10.1016/j.jadohealth.2013.01.021; ICRW, 'Solutions to End Child Marriage', ICRW, retrieved from <https://www.icrw.org/wp-content/uploads/2016/10/Solutions-to-End-Child-Marriage.pdf>; S. Khan, 'Fact Sheet: Accountability for child marriage. Key U.N. recommendations to governments in South Asia on reproductive health and sexual violence,' 2013, retrieved from www.reproductiverights.org/sites/crr.civicactions.net/files/documents/ChildMarriage_FactSheet_Web.pdf

¹¹⁷ Jaafar, J.A.S., Wibowo, I. & Afiatin, T., 'The Relationship between Religiosity, Youth Culture, and Premarital Sex among Malaysian and Indonesian Adolescents', *Asia Pacific Journal of Social Work and Development*, 16(2), 2016, 5-18. doi: 10.1080/21650993.2006.9755999; Mohamad-Nor, A. & Sumari, M. 'Adolescents with an Unwanted Pregnancy: An experience', *Counselling, Psychotherapy, and Health*, 8(1), 2013, 8-21.

¹¹⁸ Abdullah, S., Ghani, S.A., Sipon, S., Akil, S.M.S. & Faudzi, N., 'Relationship Between Parent and Peer Attachment with Coping Strategy among Teenagers Pregnancy' in *Procedia - Social and Behavioural Sciences*, 114, 2014, 439-445. doi: 10.1016/j.sbspro.2013.12.726; Ghani, S.A., Abdullah, S., Akil, S.M.S., & Nordin, N., 'Muslim Adolescents Moral Value and Coping Strategy among Muslim Female Adolescent involved in Premarital Sex', *Procedia - Social and Behavioral Sciences*, 114, 2014, 427-433. doi: 10.1016/j.sbspro.2013.12.724; Sivagnanam, G., Bairy, K.L. & D'Souza, U., 'Attitude Towards Rape: A comparative study among prospective physicians of Malaysia', *Med J Malaysia*, 60 No 3, 2005, 286-293.

¹¹⁹ Siah, P. C., 'Domestic Labor Sharing and Preference for Son: Children's perspective', *Multidisciplinary Journal of Gender Studies*, 2(1), 2013, 3757. doi: 10.4471/generos.2013.1 7; Siah, P. C., 'Sex Ratio at Birth among Chinese Malaysians, 1963-2003', *Journal of Social Issues in Southeast Asia*, 29, No.1, 2014, 184-194; Sultana, A.M. & Mohd Zulkefli, N.E., 'Discrimination Against Women in the Developing Countries: A comparative study', *International Journal of Social Science and Humanity*, 2, No. 3, 2012, 256-259.

terms of protecting family honour, daughters are tasked with greater responsibility compared to sons – the negative behaviour of boys is more acceptable and does not carry much weight with respect to a family's social standing.¹²⁰ A woman's virginity, however, determines her dignity,¹²¹ and a sexually active unmarried daughter can be disastrous for the reputation of a family.¹²²

Adding to this is urbanisation: statistical data from 1970 to 2010 show a significant population increase in urban areas from 26.8 per cent to 71.0 per cent.¹²³ This mass migration to cities and dense urban areas for work and/or education leads to young people being more exposed to risky behaviour, such as engaging in unprotected premarital sex, having multiple sexual partners, and using illicit substances, i.e. drugs and alcohol,¹²⁴ due to the lack of supervision by parents and/or guardians¹²⁵ and sheer physical distance between parents and children.¹²⁶ The mounting career demands of Malaysian parents today have also resulted in significantly less time spent overseeing their children's activities,¹²⁷ opening up opportunities for children to socialize without

¹²⁰ Bangpan, M. & Operario, D., 'Understanding the Role of Family on Sexual-Risk Decisions of Young Women: A systematic review'. *AIDS Care*, 24(9), 2012, 1163 - 1172; Vuttanont, U., Greenhalgh, T., Griffin, M. & Boynton, P., "'Smart Boys" and "Sweet Girls" – Sex education needs in Thai teenagers: a mixed-method study', *The Lancet*, 368(9552), 2006, 2068-2080; Yusran, S., *Developing Sexuality and Reproductive Health Education for Secondary Schools in Makassar: A Need Assessment*, (Doctoral dissertation), The Key Centre for Women's Health in Society, University of Melbourne, 2008.

¹²¹ Puri, S., Adams, V., Ivey, S. & Nachtigall, R.D., "'There is such a thing as too many daughters, but not too many sons": A qualitative study of son preference and fetal sex selection among Indian immigrants in the United States', *Social Science & Medicine*, 2011, 1-8. doi: 10.1016/j.socscimed.2011.01.027.

¹²² Bangpan & Operario, 'Understanding the role of family'.

¹²³ Department of Statistics, Malaysia, 'Population distribution and basic demographic characteristic report 2010', retrieved from

www.statistics.gov.my/portal/index.php?option=com_content&view=article&id=1215%3Apopulation-distribution-and-basic-demographic-characteristic-report-population-and-housing-census-malaysia-2010-updated-2972011&catid=130%3Apopulation-distribution-and-basic-demographic-characteristic-report-population-and-housing-census-malaysia-2010&Itemid=154&lang=en

¹²⁴ Anglewicz, P., VanLandingham, M. & Phuengsamran, D., 'Rural-to-Urban Migration and Sexual Debut in Thailand', *Demography*, 51(5), 2014, 1955-1976; Bearinger, L.H., Sieving, R.E., Ferguson, J. & Sharma, VV, 'Global Perspectives on the Sexual and Reproductive Health of Adolescents: Patterns, prevention, and potential', *The Lancet*, 369(9568), 2007, 1220-1231.

¹²⁵ Liu, A., Kilmarx, P., Jenkins, R.A., Manopaiboon, C., Mock, P.A., Jeeyapunt, S., Griensven, F. v., 'Sexual Initiation, Substance Use, and Sexual Behavior And Knowledge Among Vocational Students In Northern Thailand', *International Family Planning Perspectives*, 32(3), 2006, 126-135; Morrison, L., 'Traditions in Transition: Young people's risk for HIV in Chiang Mai, Thailand', *Qualitative Health Research*, 14, No. 3, 2004, 328-344.

¹²⁶ Manopaiboon, C., et al., 'High Rates of Pregnancy among Vocational School Students: Results of audio computer-assisted self-interview survey in Chiang Rai, Thailand', *Journal of Adolescence*, 26, 2003, 517-530.

¹²⁷ Omar, M.K., Ahmad, M.F. & Ismail, I.S., *Personal Factors and Work-Life Conflict: A study of a Malaysian statutory body*, 2016, 251-261. doi:10.15405/epsbs.2016.11.02.24; Abdul Rahman, R., *The Theory and Practice of Couples Managing Two Full-Time Careers in Malaysia*. (Doctor of Philosophy), the University of Manchester, 2014.

supervision. This subjects them to pressure to fit in with peers in uncontrolled environments, which leads to an increase in potential sexual activity.¹²⁸

In summary, despite the significant influence of religion and cultural tradition in Malaysia, young Malaysians do engage in premarital sex and unsafe sex, and they have multiple sexual partners.¹²⁹ Reports also indicate that young Malaysians are also significant contributors to adverse social and health outcomes, including unwanted teenage pregnancies and baby-dumping.¹³⁰

Gaps in knowledge about sexual and reproductive health

Accurate information regarding sexual and reproductive health (SRH) ensures that young people are able to protect themselves from outcomes that jeopardize their health, such as sexually transmitted infections (STIs) and unplanned pregnancies. SRH also encourages the practice of safe sex, and promotes an understanding of common biological changes and the nature of sexual coercion.¹³¹

Globally, young people's knowledge of various aspects of SRH is improving. Research shows that in more developed countries, young people display a high level of knowledge regarding HIV/AIDS, contraception and pregnancy. Youths reported that their SRH information came mainly from trusted and reliable sources such as school-based

¹²⁸ Ahmad, N. , et al., 'Sexual Activity among Malaysian School-going Adolescents: What are the risk and protective factors?', *Asia Pac J Public Health*, 26, 2014, 445-525; Feldman, S.S., et al., 'Ain't Misbehavin': Adolescent values and family environments as correlates of misconduct in Australia, Hong Kong, and the United States', *Journal of Research on Adolescence*, 1, No. 2, 1991, 109-134; Lee, L.K., Chen, P.C.Y. & Kaur, J., 'Premarital Sexual Intercourse among Adolescents in Malaysia: A cross-sectional Malaysian school survey', *Singapore Medical Journal*, 47(6), 2006, 476-481; Low, W.Y., et al., 'Sexual Issues: Let's hear it from the Malaysian boys', *The Journal of Men's Health & Gender*, 4(3), 2007, 283-291. doi: 10.1016/j.jmhg.2007.04.010; Morrison, 'Traditions in Transition'; Rosenthal, D., et al., 'Changes in Heterosexual University Undergraduates' HIV-related Knowledge, Attitudes and Behaviour: Melbourne, 1989-1994', *Genitourinary Medicine*, 72(2), 1996, 123-127.

¹²⁹ Lee, Chen & Kaur, 'Premarital sexual intercourse'; Mohamad Mokhtar, M., *Sexual and Reproductive Health Knowledge, Attitudes and Behaviours of Young College Students in one of the States in Malaysia*, (MSc Health Services and Public Health Research), the University of Aberdeen, 2005; Mohamad-Nor & Sumari, 'Adolescents with an unwanted pregnancy'; Wong, L.P., 'An Exploration of Knowledge, Attitudes and Behaviours of Young Multiethnic Muslim-Majority Society in Malaysia in Relation to Reproductive and Premarital Sexual Practices', *BMC Public Health*, 12, 2012, 865; Zulkifli, S.N. & Low, W.Y., 'Sexual Practices in Malaysia: Determinants of sexual intercourse among unmarried youths', *Journal of Adolescent Health*, 27(4), 2000, 276-280.

¹³⁰ Razali, S., et al., 'Infanticide and Illegal Infant Abandonment in Malaysia', *Child Abuse Negl*, 38(10), 2014, 1715-1724. doi:10.1016/j.chiabu.2014.06.008; Saim, N.J., *Social Support, Coping, Resilience and Mental Health in Malaysian Unwed Young Pregnant Women and Young Mothers: Their experiences while living in a shelter home*, (PhD), Umeå University, 2013.

¹³¹ Allen, L., 'Closing Sex Education's Knowledge/Practice Gap: The reconceptualisation of young people's sexual knowledge', *Sex Education*, 1(2), 2001, 109-122.

programmes (teachers), parents and health professionals,¹³² although some still depended on friends and media for information.¹³³ Studies also show that young people want information from reliable sources, and that they acknowledge that mass media and friends are not entirely dependable.¹³⁴

In Malaysia, however, the main sources of information regarding SRH are the mass media and peers. An NPFDB study¹³⁵ cited in a WHO study found that young people preferred to talk to their mothers and teachers (31.5 per cent), followed by friends (29.4 per cent), regarding pubertal changes. However, friends were their first choice when talking about male-female relationships and sexual relations, pregnancy and contraception. Another study found similar results: male participants aged 13 to 17 reported that their sources of SRH information were male friends or the mass media, while *none* of their parents talked to them about sexual matters.¹³⁶ The vulnerability to poor sexual health created by this situation is worsened by the fact that contraceptives were not available to unmarried youths.¹³⁷ Interviews conducted for this study also indicated a lack of SRH knowledge among participants.¹³⁸

¹³² Hillier, L., Harrison, L. & Warr, D., "'When You Carry Condoms All the Boys Think You Want It': Negotiating competing discourses about safe sex', *Journal of Adolescent Health*, 21, 1998, 15-29; Hillier, L., Warr, D., & Haste, B., *The Rural Mural: Sexuality and diversity in rural youth*, National Centre in HIV Social Research: Program in Youth/General Population, La Trobe University, Melbourne; Lindsay, J., Smith, A. M. A. & Rosenthal, D.A., 'Conflicting Advice? Australian Adolescents' Use of Condoms or the Pill', *Family Planning Perspective*, 31(4), 1999, 190-194; Measor, L., 'Young People's Views of Sex Education: Gender, information and knowledge', *Sex Education*, 4(2), 2004 153-166. doi: 10.1080/14681810410001678338; Rosedelia, A., Colin, H. & Lydia, A.S., 'Reproductive Health Education and Sexual Risk Among High-Risk Female Adolescents and Young Adults', *Journal of Pediatric and Adolescent Gynecology*, 18, 2005, 105-111. doi: 10.1016/j.jpag.2005.01.005.

¹³³ Measor, 'Young people's views'; Svenson, L. W., Carmel, S. & Varnhagen, C.K. 'A Review of the Knowledge, Attitudes and Behaviours of University Students Concerning HIV/AIDS', *Health Promotion International*, 12(1), 1997, 61-68; Teitelman, A.M., Bohinski, J.M. & Boente, A., 'The Social Context of Sexual Health and Sexual Risk for Urban Adolescent Girls in the United States', in *Issues In Mental Health Nursing*, 30(7), 2009, 460-469.

¹³⁴ Hillier et al., *The Rural Mural*; Lindsay et al., 'Conflicting Advice?'

¹³⁵ World Health Organization, *Sexual and reproductive health of adolescents and youths in Malaysia, A Review of Literature and Projects 2005*. (n.d.). Retrieved from: www.wpro.who.int/publications/docs/ASRHmalaysia.pdf

¹³⁶ Low et al., 'Sexual Issues'.

¹³⁷ Ahmad, N., et al., *Status Of Family Planning in Malaysia. Paper presented at the UNFPA and ICOMP Asia and The Pacific Regional Consultation Family Planning in Asia and The Pacific – Addressing the Challenges*, 2010, Bangkok, Thailand; FRHAM, RRAAM, & SRI, *Joint Stakeholder Submission on Sexual and Reproductive Rights in Malaysia for the 17th Session of the Universal Periodic Review – October 2013*, 2013, Federation of Reproductive Health Association of Malaysia (FRHAM), Reproductive Rights Advocacy Alliance Malaysia (RRAAM) and The Sexual Rights Initiative (SRI).

¹³⁸ Interviewers asked participants the following questions. The majority of answers revealed a lack of knowledge about SRH: *At what age did you reach puberty? After you hit puberty, did your parents advise you regarding your reproductive health? When did you begin to have a sexual relationship? Who was your first sexual partner? Do you practise safe sex and using condom? Where do you learn and get information about safe sex practices? Do you talk with your partner about safe sex and contraceptives? How did your partner approach you to have sex for the first time? Do you have access to the online pornographic materials? Have*

SRH programmes for young people in Malaysia

Schools are an ideal place to educate and disseminate accurate information on SRH to young people.¹³⁹ They also provide opportunities to disseminate information to a larger audience, as school enrolments around the globe have increased annually,¹⁴⁰ especially for females.¹⁴¹ However, in some developing countries such as Malaysia, the enrolment rate is relatively lower than in developed nations and percentages of young people at risk are higher, which is a starting point for educating most if not all youngsters. Additionally, schools are the only institutions in which students spend substantial time with generally consistent attendance.¹⁴²

The benefits of school-based sex education, especially adult-led programmes, are many: in school, clarification about sensitive issues via teachers is easily attainable, and school provides a means for two-way communication.¹⁴³ Teachers are a trusted source of accurate information, regardless of their own personal agenda or beliefs,¹⁴⁴ while for other adults (and especially parents) teaching young people about sensitive topics can be

you been pregnant before marriage? Were you prepared to be pregnant? Do you want to give birth and take care of the child? Did you attend antenatal classes during your pregnancy? Was there any thought or attempt to abort your child? Have you experienced any complications during or after giving birth? Do you know what contraceptive or family planning is? What kind of access do you have regarding family planning? Did you consult any doctors? What kind of family planning method do you subscribe to? Does your spouse accept or support family planning?

¹³⁹ Kirby, D., 'The Impact of Schools and School Programs Upon Adolescent Sexual Behavior,' *J Sex Res*, 39(1), 2002, 27-33. doi: 10.1080/00224490209552116; Kirby, D., Obasi, D., & Laris, B.A., 'The Effectiveness of Sex Education and HIV Education Interventions in Schools in Developing countries', Ross, D. A., Dick, B. & Ferguson, J. (eds.), *Preventing HIV/AIDS in Young People; A systematic review of the evidence from developing countries*, Vol. 938, 2006, Geneva: WHO, 103-150; UNESCO, *HV/AIDS Education: A strategic approach*, 2002, Paris: UNESCO/International Institute for Educational Planning (IIEP).

¹⁴⁰ Cappa, C., et al., 'Progress for Children: A report card on adolescents', *The Lancet*, 2012; Speizer, I., Magnani, R., & Colvin, C., 'The Effectiveness of Adolescent Reproductive Health Interventions in Developing Countries: A review of the evidence', *Journal of Adolescent Health*, 33(5), 2003, 324-348. doi: 10.1016/s1054-139x(02)00535-9.

¹⁴¹ Grant, M.J., & Behrman, J.R., 'Gender Gaps in Educational Attainment in Less Developed Countries', *Population and Development Review*, 36, No. 1, 2010, 71-89; UNESCO, *Teaching and Learning: Achieving quality for all*, 11th EFA Global Monitoring Report, 2014, France: UNESCO.

¹⁴² INCA, 'Trends in International Mathematics and Science Study 2007', 2009, retrieved from www.inca.org.uk/Table15.pdf; Lee, J.-W., & Barro, R., 'School quality in a cross-section of countries', *Economica*, 68(272), 2001, 465-488; Rivers, K. & Aggleton, P., *Adolescent Sexuality and the HIV Epidemic*, New York: UNDP HIV and Development Programme.

¹⁴³ Moore, S. & Rosenthal, D., *Sexuality in Adolescents: Current trends*, 2006, East Sussex: Routledge; Speizer et al., 'Effectiveness of Adolescent Reproductive Health Interventions'.

¹⁴⁴ Allen, L., "'It's Not Who They Are It's What They Are Like": Reconceptualising sexuality education's "best educator" debate', *Sex Education*, 9(1), 2009 33-49. doi: 10.1080/14681810802639814; Cohen, J.N., Byers, E.S. & Sears, H.A., 'Factors Affecting Canadian Teachers' Willingness to Teach Sexual Health Education', *Sex Education*, 2012, 1-18. doi: 10.1080/14681811.2011.615606.

challenging and often awkward.¹⁴⁵ Young people's unwillingness to consult adults about sexual issues means that many depend on the mass media – TV, radio, magazines, books and the Internet – for information, which involves only one-way communication. On the other hand, many fear that sex education might encourage premarital sexual activity among youths who are not already sexually active, as well as increased levels of risk-taking among those who are sexually experienced.¹⁴⁶ Contrary to these beliefs, however, most school-based sex education has managed to promote intervention that delays sexual activity instead of leading to an increase in sexual activity.¹⁴⁷

In Malaysia, the general consensus from most studies is that young Malaysians are very much in need of formal education about SRH and sexuality.¹⁴⁸ There has been strong public support for the implementation of sex education in schools, but many are unaware that it has been on the secondary school curriculum since 1989. The programme, called Reproductive Health and Social Education (PEERS), was previously known as Family Health Education (FHE). PEERS was introduced as part of Health Education¹⁴⁹ and constitutes over 75 per cent of the content of the Health Education curriculum (the remainder is nutrition at 15 per cent and first aid at 10 per cent). It should be noted that PEERS is not the typical sex education programme: it teaches students about various topics on SRH issues through other subjects such as science, biology, religious and moral education, physical education and more.¹⁵⁰ It should also be noted that while the Ministry of Education has taken steps to raise public awareness about the programme, many parties – mainly NGOs dealing with HIV/AIDS, orphanages and adolescents in

¹⁴⁵ Epstein, M. & Ward, L. "'Always Use Protection": Communication boys receive about sex from parents, peers, and the media', *Journal of Youth and Adolescence*, 37(2), 113-126; Hu, Y., et al., 'Do Parents Talk to Their Adolescent Children About Sex? – Findings from a community survey in Singapore', *Ann Acad Med Singapore*, 41, 2012, 239-246; Rosenthal, D., Senserrick, T. & Feldman, S., 'A Typology Approach to Describing Parents as Communicators About Sexuality', *Archives of Sexual Behavior*, 30(5), 2001, 463-482.

¹⁴⁶ Sabia, J.J., 'Does Sex Education Affect Adolescent Sexual Behaviors and Health?', *Journal of Policy Analysis and Management*, 25(4), 2006, 783-802. doi: 10.1002/pam.20208; Tavakol, M., Torabi, S. & Gibbons, C., 'A Quantitative Survey of Knowledge of Reproductive Health Issues of 12–14-Year-Old Girls of Different Ethnic and Religious Backgrounds in Iran: Implications for education', *Sex Education*, 3, No. 3, 2003, 231 -239.

¹⁴⁷ Kirby, D., 'Emerging Answers: Research findings on programs to reduce teen pregnancy', *The National Campaign to Prevent Teen Pregnancy*, 2001, 242; Kirby, D., Laris, B.A. & Rolleri, L. A., 'Sex and HIV Education Programs: Their impact on sexual behaviors of young people throughout the world', *Journal of Adolescent Health*, 40(3), 2007, 206-217; Kirby et al., 'The Effectiveness of Sex Education'; Wellings, K., et al., 'Sexual Behaviour in Context: A global perspective', *The Lancet*, 368, 2006, 1706 - 1728. doi: 10.1016/S0140-6736(06)69479-8

¹⁴⁸ Lee, Chen & Kaur, 'Premarital Sexual Intercourse'; Low, Ng, Fadzil & Ang, 'Sexual Issues'.

¹⁴⁹ Curriculum Development Centre, *Perlaksanaan Pendidikan Kesihatan Reproduktif dan Sosial (PEERS) melalui Kurikulum Pendidikan Kesihatan*, Putrajaya: Curriculum Development Centre, Ministry of Education, 2011.

¹⁵⁰ Ibid.; Lee, M.H.S., *Case Study Malaysia: Communication and advocacy strategies adolescent reproductive and sexual health*, Bangkok: UNESCO PROAP, 1999, 27; Lee, M.H.S. & Cheng, L.S., *Addressing the Unmet Need For Family Planning Among Young People of Malaysia*, Kuala Lumpur, 2012, 46.

correction centres – still call for the implementation of a formal programme specifically to teach sex and sexuality in schools.

PEERS advocates a harm-reduction approach with a strong emphasis on “abstinence is the best policy”. Students are taught about the risks of premarital sexual intercourse, with a focus on religious beliefs and cultural values. PEERS teaches that a person who is sexually active before marriage is likely to experience a bleak future. Students are taught how to delay the first sexual encounter before marriage and how to resist sexual coercion, as well as the most common STIs, disease prevention and disease presentation (symptoms), and common myths associated with STIs. PEERS contains elements that focus on the importance of safe sex and how it functions as an effective disease-prevention method; however, the programme does not cover pregnancy prevention other than a brief mention with respect to married couples and family planning. The programme emphasizes sexual abstinence until marriage and, if sex occurs, the use of condoms.

It should be noted that while PEERS touches on unwanted teen pregnancies, specifically discussing related morbidity and mortality, none of its seven modules include abortion. The omission of abortion and pregnancy prevention, and the minimal coverage of the other topics, can be attributed to the influence of Malaysian culture, moral values and diverse religious teachings, all of which reject the concept of any sexual activity outside of marriage. It must also be emphasised that the main aim of sex education in Malaysia is to prevent the spread of HIV/AIDS, and that most HIV/AIDS cases are attributed to injecting drug users.

PEERS is a well-structured programme that is available to all schools that use the national health education curriculum, but low knowledge of some areas of SRH such as STIs might be due to limitations stemming from the implementation of the programme. Studies have indicated that the PEERS programme has faced challenges in areas such as policy, curriculum implementation, content and timetabling, as well as teachers’ inability to teach the curriculum.¹⁵¹ This points to the problem of policy not translating neatly into practice, and findings also suggest that current sex education programmes do not reach all adolescents.

¹⁵¹ Mohamad Mokhtar, M., et al., ‘Bridging the Gap: Malaysian youths and the pedagogy of school-based sexual health education,’ *Procedia - Social and Behavioral Sciences*, 85, 2013, 236-245; Mohamad Mokhtar, M., et al., *How Knowledgeable are Young Malaysians on Contraception, and Do They Know Enough?*, Paper presented at the 13th International Union on Sexually Transmitted Infections World Congress, 2012, Australasian Society for HIV Medicine (ASHM), Australia; Talib, J., et al., ‘Analysis on Sex Education in Schools Across Malaysia’, *Procedia - Social and Behavioral Sciences*, 59, 2012, 340-348. doi: 10.1016/j.sbspro.2012.09.284.

It should be noted that the growing number of adolescents who are forced into marriage actually initiated premarital sexual intercourse after dropping out of school. Indeed, from the interviews and analysis of shariah court files, it is found that most married adolescents are school dropouts. Data from the Malaysia Millennium Development Goals Report 2010 reveal that between 2005 and 2009, approximately 17,000 schoolchildren in Malaysia dropped out annually without proceeding to secondary education, with low household income identified as the main contributing factor. As they did not attend school past Primary 6 (or in some cases Forms 1 to 3 in secondary school), these adolescents have not received SRH information, which is part of General Sciences and Biology taught only in Form 4. However, the Malaysian Government is aware of this situation and is taking steps with the community to meet these needs.

National policy for SRH education

Many Malaysian Government policies focus on improving the general health and wellbeing of adolescents, and recent measures have aimed to reduce high-risk behaviour as part of a harm-minimization approach to halt the upward trend of unsafe premarital sexual activity and HIV/AIDS. The Government tackles issues such as teen pregnancies, STIs and HIV/AIDS in various policies formed by its ministries, including the 1996 National Family Planning Policy, the National Adolescent Health Policy 2001 and the National Strategic Plan on HIV/AIDS (NSP) 2006-2010. The implementation of several policies by different ministries was designed to increase the probability of success for the targeted groups.

Despite these efforts, Malaysia still has unclear policies when it comes to sex education. Too many SRH policies are in place, causing difficulties in evaluating the effects of the various programmes, and existing policies fail to acknowledge the need for comprehensive SRH services, including education. In terms of current measures, Malaysia has various national policies¹⁵² intended to improve the health and wellbeing of adolescents and youths, such as the National Adolescent Health Plan of Action 2006-2020 and the National Policy on Reproductive Health and Social Education. Many current policies tend to disregard the basics of SRH, specifically the need for contraception among youths and the provision of access to health services. Most policies focus only on improving the general health and wellbeing of youths, and the only policy that focuses primarily on providing youths educational access to SRH is the November 2009 National Policy on Reproductive Health and Social Education and its Action Plan. Access to

¹⁵² UNESCO Bangkok, *Review of Policies and Strategies to Implement and Scale Up: Sexuality education in Asia and the Pacific*, Bangkok, Thailand: UNESCO Bangkok, Asia and Pacific Regional Bureau for Education, 2012.

information, health services and the promotion of healthy and responsible behaviour are all included in this policy.¹⁵³ However, there is no integration between policies; they are often not circulated to related agencies as well as stakeholders but are instead limited to specific bodies such as the Ministry of Health, government clinics and hospitals.¹⁵⁴

Challenges in implementing SRH education in Malaysia

Many factors contribute to the challenges of managing SRH education in Malaysia:

Lack of government interest

For over a decade, the Ministry of Education and the Ministry of Women, Family and Community Development have made very slow progress in implementing improvements to sex education in schools. In April 2010, the former Deputy Education Minister, Dr Mohd Puad Zarkashi, told the Dewan Negara (the Malaysian Senate) that sex education was unnecessary and would not be introduced as a specific subject in Malaysian schools. He justified this by saying that reproductive health was already being taught in subjects such as biology, science, moral studies and religious education.¹⁵⁵ This is one of many examples of the Government's attempts to 'shield' students from the topic of sex and reproduction to (theoretically) avoid arousing their interest in sex. Similarly, NGOs such as the Malaysian AIDS Council, which organises talks in schools, have been warned against speaking about things such as condoms and contraceptive methods.

Parents' attitudes

Malaysian parents harbour mixed feelings when it comes to SRH education. Some research shows that they are apprehensive regarding the teaching of knowledge they are uncomfortable talking about. However, research also shows considerable public approval for the PEERS programme.¹⁵⁶ Other studies indicate that the majority of parents accept the idea of SRH education in schools, but the small sample sizes mean they might not accurately represent the entire population of Malaysian parents.¹⁵⁷

Opposition from religious leaders

¹⁵³ Mohd. Dun, A., *Country Statement (Malaysia)*, Paper presented at the Sixth Asian and Pacific Population Conference, Bangkok, 2013.

¹⁵⁴ Lee & Cheng, *Addressing the Unmet Need*.

¹⁵⁵ Kaur, J., 'Sex education: Piecemeal attempt won't help', 28 Oct 2012, retrieved from <http://malaysiansmustknowthetruth.blogspot.com/2012/10/sex-education-piecemeal-attempt-wont.html>

¹⁵⁶ Kaur, M., 'Allow sex education', in *New Straits Times*, 17 February 2010.

¹⁵⁷ Ibid.; Makol-Abdul, P.R., et al., 'Parents' Attitudes Towards Inclusion of Sexuality Education in Malaysian Schools', *Parents in Education*, 3(1), 2009, 42-56; Siti Nor, Y., et al., 'Factors Related to Sexual Knowledge Among Malaysian Adolescents', *Journal Kemanusiaan*, 16, 2010, 21-32.

Ongoing opposition from religious leaders harbouring negative attitudes¹⁵⁸ towards SRH education has stalled the integration of sex education in the school curriculum. A well-known politician and Muslim cleric, the late Datuk Nik Aziz Nik Mat, stated that sex education in schools would encourage teenage sexual promiscuity, reflecting the views of the conservative section of Malaysian society. In May 2010 Nik Aziz was quoted as saying: "The best way to resolve this phenomenon is to instil greater Islamic values (in young people)."¹⁵⁹ As for politicians, some support the implementation of sex education,¹⁶⁰ while others are against it. Constant policy changes and the changing of ministers in the relevant ministries further complicate this situation.

Inadequate number of health centres

Malaysian NGOs encourage youths to visit their health centres in an effort to educate and spread knowledge to end the rising number of STIs and unwanted pregnancies. However, the small number of health centres, mainly situated in urban locations, is not enough to service the entire population, and many youths fear the social stigma attached to visiting these establishments. Youths are also unaware of the existence and availability of such services within their communities, effectively guaranteeing that their needs continue to be unmet.¹⁶¹ Furthermore, government and NGO reproductive health services exercise discretion (i.e. maintain confidentiality) for a very limited spectrum of contraceptive services.¹⁶²

Opposition from teachers

Teachers' association representatives report that teachers resist the teaching of sex-related matters in school. Teachers fear that the sex education programme has been implemented too hastily, potentially causing problems in the future.¹⁶³ In addition, many teachers feel embarrassed, ill-prepared and held back by cultural and religious beliefs when it comes to teaching sexual health.

¹⁵⁸ Curriculum Development Centre, *Perlaksanaan; Lee, Case study Malaysia*.

¹⁵⁹ Kuppasamy, B., 'Malaysia: Debate on sex education rises with teen pregnancies', 2010, retrieved from www.ipsnews.net/2010/07/malaysia-debate-on-sex-education-rises-with-teen-pregnancies/

¹⁶⁰ Curriculum Development Centre, *Perlaksanaan*

¹⁶¹ Lim, H.M., 'Country Profile on Universal Access to Sexual and Reproductive Health: Malaysia', 2015, Kuala Lumpur: FRHAM, ARROW. Retrieved from: <http://arrow.org.my/wp-content/uploads/2015/04/Country-Profile-SRH-Malaysia.pdf>

¹⁶² Abdullah, R., *Increasing Access to the Reproductive Right to Contraceptive Information and Services, SRHR Education For Youth and Legal Abortion*, 2009, Kuala Lumpur, Malaysia: Asian-Pacific Resource and Research Centre for Women (ARROW).

¹⁶³ Abdullah, S.C., 'Pertubuhan guru bantah kena ajar pendidikan seks; Perlaksanaan terburu-buru timbulkan banyak masalah,' *Berita Harian*, 22 April 2010; Curriculum Development Centre, *Perlaksanaan*.

Compounding this is the fact that some Malaysian adolescents have acknowledged the use of sexually-explicit media to supplement their SRH knowledge.¹⁶⁴ This widens the possibility for negative health outcomes, as poor knowledge and inaccurate depictions of sexual content steer youths further away from crucial information such as contraception, the cause of pregnancy and STIs. The negative outcomes in question include early initiation of sexual intercourse, which will likely be unprotected, and those who have had sex at an early age are also more likely to have more than one lifetime sexual partner. They are likely to have reduced self-efficacy when negotiating safe sex with their companions, and are prone to coercion.

These factors combined will usually cause unwanted pregnancies, leading to illegal abortions and/or 'baby-dumping'. Thus, most unwed adolescents who are pregnant or were previously pregnant will be forced into marriage by Malaysian cultural and religious obligations. This situation also applies to adolescents who have been discovered as having already initiated premarital sex, and the following assumptions are made for such actions:

- a) The burden of responsibility for the safety, financial security and honour will no longer be borne by the adolescent daughter's family, but instead by her husband and his family.
- b) The reputations of both families will be preserved as long as the reason for marriage is not disclosed outside the family circle.
- c) The adolescents themselves are able to recognize their responsibilities as sons/daughters-in-law in addition to becoming young parents and adults.

However, early marriage hinders adolescents from furthering their education. For a significant portion of them – especially those from financially-marginalised families – marriage entails full-time management of the newly-formed family, as well as the immediate need to start working in order to sustain the family economy. This leaves very little room for educational fulfilment, and these adolescents will most likely continue to lack sufficient SRH knowledge that can assist them well into adulthood, such as family planning, the availability of health services, as well as civil rights and liberties.

Any attempt to address child marriage in Malaysia at its roots must therefore include greater awareness of SRH issues for young people.

¹⁶⁴ Mohamad Mokhtar, M., et al., *Sexual Health Information: Mass media access and usage patterns of Malaysian youths*, Paper presented at the AicE-Bs2013 'From Research to Practice', London, 2013.

Child Marriage in Malaysia

While socio-cultural tradition or religious values are often indicated as drivers of child marriage in Malaysia, information gathered from interviews in this study indicate that issues such as low household income, lack of access to education, and obstacles in obtaining information and sexual and reproductive health services are the key drivers on child marriage.

An analysis of the interviews suggests that in order to stop child marriage in Malaysia, sexual and reproductive health services and education must be encouraged and supported to ensure that young people, including very young adolescents, have access. Children in Malaysia need to be empowered with the appropriate level of sex education to avoid unsafe sex and early and unwanted pregnancy. There is also an urgent need for the Government to make schools both affordable and accessible to all. Addressing these two issues, along with undertaking other measures such as legal reform and social empowerment, will constitute a long-term investment in ending child marriage in Malaysia.

The Malaysian Government's initiatives to support families with SRH

The Ministry of Women, Family and Community Development (MWFCDD), through the NPFDB, has implemented various programmes to address sexual and reproductive health issues in the family institution. While there is no specific initiative to stop child marriage, some of the measures by NPFDB support the child couple.

These include programmes to equip couples with the knowledge and skills to face the challenges of married life, to discipline and maintain good relationships with their children in the age of information technology, and to learn household management and financial planning skills.

In 2009, the Government unveiled a National Reproductive and Social Health Action Plan to produce individuals who are knowledgeable and who have a positive attitude in the field of reproductive and social health. NPFDB has also implemented its Reproductive and Sexual Health Education programme (PEKERTI) in 2011 with the cooperation of various parties including government agencies, the private sector, NGOs as well as community leaders.

In 2013 the Government established a taskforce to scrutinize and develop a comprehensive action plan specifically to address the practice of child marriage in Malaysia. The taskforce was initiated by the MWFCDD through its Coordinating Council for the Protection of Children, consisting of related government agencies, academics and

children's rights activists. A summary of the action plan and the status of its initiatives can be seen in the table below:

Recommendations of 2013 Child Marriage Taskforce (Quoted and translated from Action Plan on Child Marriage Issue in Malaysia)¹⁶⁵

No.	Issues	Proposed Actions	Status of action plan
1.	Marriageable age for children.	<ul style="list-style-type: none"> i. Maintain provisions in Section 8 of the Islamic Family Law regarding the age of child marriage (16 years for girls and 18 years for boys).¹⁶⁶ ii. Create guidelines to assist Shariah Court judges in their decisions. For example, judges may consider social reports by the Child Protection Officer, psychiatric reports and other relevant reports in their deliberations. iii. Amend the Child Act 2001 so that the definition of “Courts” should include “Shariah Courts”, with appropriate changes to Section 17 as well.¹⁶⁷ iv. Amend of Section 12(2) of the Islamic Family Law enactments to include: “Child marriage couples must attend pre-marriage and post-marriage courses.” 	<ul style="list-style-type: none"> i. No progress reported. ii. The Department of Shariah Judiciary, Malaysia, is currently developing standard procedures for judges to process child marriage applications. iii. No progress reported.
2.	Proposal to lower the age threshold for	The current age threshold for statutory rape is to be maintained based on the following justifications:	No progress reported.

¹⁶⁵ A roundtable discussion on “Social Issues relating to Children and Adolescent” was recently organized by MWFCDC through the Department of Social Welfare on 12 April 2018 which discussed some of the issues proposed by the Child Marriage Taskforce, in particular, SRH issues.

¹⁶⁶ Please note that this is not UNICEF’s stance which advocates for minimum age of marriage to be set at 18 years of age, in line with international conventions.

¹⁶⁷ The Shariah Court also has jurisdiction over children (persons under age of 18) and some of the sentences or orders imposed under Islamic legal statutes may contravene the provisions of the Child Act 2001 (i.e. some states have no discretion to grant community orders and can only mete sentences of imprisonment, fines or whipping). In this regard, the aim of the recommendation is to bring Shariah Court’s orders in line with the Child Act.

<p>statutory rape (Section 375(G) of the Penal Code).</p>	<ul style="list-style-type: none"> i. An NPFDB study found that only 8% of teenagers engaged in premarital sexual intercourse at the age of 12 years. ii. Out of 2,000 statutory rape cases, 780 were cases of premarital sexual intercourse, of which 62% involved children aged 13 to 15. Of this number, 83% were Muslim while the remaining 17% were non-Muslim. iii. Police data show that 35% of the national population (27 million) are teenagers (no year stated). The number of suspects accused of rape who were aged 13 to 18 years old was 3,451. The number of victims below the age of 18 years old was 13,085. The majority of suspects were above 18 (21,287 people). iv. Of all nationwide marriage applications by Muslims, only 2% of the applications involved those below 16 years old, of which either one or both applicants were underage. v. A special committee has been established within the Attorney-General's Chambers to oversee the issue of statutory rape. 	
<p>3. Sexual and Reproductive Health (SRH) Education and Child Rights Awareness in schools not</p>	<ul style="list-style-type: none"> i. Include SRH education and religious and moral education in the curriculum for teachers at the Malaysian Institute of Teacher Education (IPGM). ii. Study the effectiveness of SRH education in schools. 	<p>No progress reported.</p>

	implemented wholly or comprehensively.	<ul style="list-style-type: none"> iii. Empower policies promoting a caring and loving culture. iv. Introduce children rights and parental responsibility in the school curriculum. v. Establish a taskforce to study all existing SRH modules. vi. Establish a taskforce to study and prepare a curriculum for future teachers in public universities and IPGM. 	
4.	Establish special schools for pregnant unmarried girls.	<ul style="list-style-type: none"> i. Create a taskforce to study the process that would allow pregnant girls to continue their studies (which covers academic, vocational, health and spiritual aspects). ii. Allow pregnant girls to defer schooling and studies until the appropriate time. iii. Organize special programmes to enhance the girls' recovery and reintegration process. iv. Prevent the suspension or expulsion of pregnant girls from school. Instead, they should be allowed to sit for their exams. v. Cooperate with the private sector to create jobs for those who do not intend to pursue further education. 	No progress reported.
5.	Guideline for permitted abortion cases (three months and below).	<ul style="list-style-type: none"> i. Develop a guideline to manage permitted abortions (three months and below). 	No progress reported.

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| 6. | Use of social media to protect children from immoral exposure. | <ul style="list-style-type: none"> ii. This guideline should be extended to all public and private medical practitioners, counsellors and advisory service officers. i. Upload the existing video produced by The Ministry of Health on the prevention of pregnancy and premarital sexual intercourse on YouTube. ii. Obtain cooperation from statutory rape victims to share their experiences and upload them on electronic media in order to prevent teenagers from being involved in immoral acts. iii. Advertise existing helpline services such as Talian Nur/Teledera. iv. Include issues involving children (as mentioned above) in Friday sermons in mosques, IKIM fm, Forum Perdana and other platforms. | No progress reported. |
| 7. | Parenting skills, premarital and post-marriage course. | <ul style="list-style-type: none"> i. Create committees to coordinate the implementation of existing modules by the Malaysian Islamic Development Department (Jabatan Kemajuan Islam Malaysia, JAKIM), NPFDB, etc. ii. Propose that JAKIM review its premarital module to include child rights. iii. Develop a policy to allow full paid leave for attending premarital and post-marriage courses. | No progress reported. |

8. Involving the Ministry of Education and other relevant agencies in advocacy programmes in schools.	<ul style="list-style-type: none"> iv. Organize seminars and workshops to increase media awareness of child rights and legal issues relating to children, parenting and families. i. Expand the PEKERTI@SEKOLAH module. ii. Build cooperation between the Ministry of Health and the Ministry of Education, NPFDB and Family Planning Malaysia. iii. Ensure that more teachers involved in sex education attend teacher-training programmes to teach SRH education. iv. Produce SRH videos for broadcast during school assembly. v. Provide legal literary lectures and talks in schools to convey information to children about abuse, rape and kidnapping. vi. Organize regular programmes in shopping complexes with the cooperation of artistes/public figures/GLCs/banks to educate the public about infectious diseases such as HIV/AIDS and hepatitis. vii. Review the teaching of Science to include premarital pregnancy prevention and sexually transmitted diseases at primary level (for Primary 5). viii. For religious classes in primary schools, teach the relationship between <i>mahram</i> (prohibited degrees of marriage) and marriage. 	The Ministry of Education and NPFDB are regularly conducting programmes for (i), (iii) and (v). There is no progress reported for the rest of the proposed action plan.
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Chapter 3

Child Marriage in the Malaysian Legal System

Malaysia's plural legal system recognizes the civil and criminal jurisdiction of the common law-based civil Court, as well as Islamic law, which is the jurisdiction of the Shariah Court in each state. With respect to marriage, two sets of laws govern Muslims and non-Muslim marriages respectively. For non-Muslims the major statute is the Law Reform (Marriage and Divorce) Act 1976 (LRA), while marriage for Muslims is governed by the individual Islamic Family Law Enactment or Ordinance of each state. For Orang Asli of Peninsular Malaysia and Bumiputera of Sabah and Sarawak, their religion determines which laws they are bound by (if they are Muslim, they marry in accordance with Islamic law, and if they are non-Muslim, they may choose to marry under the LRA or according to customary law).

However, there is no uniform minimum age of marriage in these laws, which presents several problems in the context of civil law, criminal law, Islamic law and international human rights.

Background to the Malaysian legal framework regulating marriage

The Federal Government and individual state governments make laws according to the division of power contained in the Federal Constitution. The Malaysian Parliament legislates on all matters within the jurisdiction of the Federal Government as specified in the Federal List and the Concurrent List contained in the Ninth Schedule of the Federal Constitution. On the other hand, the Second List of the Ninth Schedule gives individual state governments jurisdiction over Islamic law, and personal and family law for Muslims in that state.

As such, there are 14 enactments and ordinances in Malaysia that regulate Muslim marriages, each originating in each of the 11 states in the Peninsula, as well as the Federal Territories and Sabah and Sarawak. Malaysia's legal system is unique where it recognizes various sources of law made by various organs with legislative capacity, and these are enforceable by the respective court system with its own judicial capacity and hierarchy.

Thus, two sets of family law apply in Malaysia. The LRA applies to all non-Muslims resident in Malaysia, as well as those who are all citizens of or domiciled in Malaysia but

are residing abroad,¹⁶⁸ and specifically excludes Muslims or persons who are married under the Islamic law. Any marriage contracted under the LRA must be monogamous and must be registered under the Act. However, the Act does not apply to any native of Sabah or Sarawak or any aborigine of West Malaysia whose marriage and divorce is governed by native customary law or aboriginal custom, unless that person chooses to marry under the LRA (which came into force on 1 March 1982), and the earlier statutes that have now been repealed: the Christian Marriage Ordinance 1956 or the Church and Civil Marriage Ordinance 1952.

Muslim marriages fall under the Religious Affairs Department of the state government and are governed by enactments of the state legislative assembly, while the Federal Territories are governed by Parliamentary legislation – the Islamic Family Law (Federal Territories) Act 1984 applies to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya. The states began enacting Islamic family laws for their jurisdictions in 1983 and since then they have legislated on the administration of Islamic law, Islamic evidence, Islamic civil procedure, Islamic criminal procedure and Islamic criminal law. While these enactments seek to create a uniform law throughout Malaysia, each statute must be passed by each state legislature. In the process, the statutes undergo a number of changes, which is why they differ slightly from state to state. Each state also has its own Shariah Court with judges, prosecutors, registrars and officers employed by the state government.

Malaysia's ratification of international conventions

The Government of Malaysia ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995. CEDAW sets out a definition of discrimination against women, and outlines the obligations of the state and the measures to be taken by the state to eliminate discrimination. However, Malaysia placed reservations to several articles of the Convention due to concerns that they might conflict with the provisions of Islamic law and the Federal Constitution. There is also no domestic application of CEDAW in the form of federal law, but Malaysia has incorporated some of the Convention's principles in domestic legislation as well as in Article 8(2) of the Federal Constitution¹⁶⁹.

¹⁶⁸ Pillai, K.M.G., *Family Law in Malaysia*, Kuala Lumpur: LexisNexis, 2009.

¹⁶⁹ Article 8(2) of the Federal Constitution states: "Except as expressly authorized by this Constitution, 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."

The Government has also ratified the United Nations Convention on Rights of the Child (CRC), the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and the Optional Protocol on the Involvement of Children in Armed Conflict. Again, Malaysia has placed reservations to some articles of the CRC, but recognition of the Convention as a whole has brought significant changes to the development of the rights of children in Malaysia. For example, Parliament enacted the Child Act 2001, which came into force in 2002, and made further amendments in 2016.

It is important to note that the Malaysian courts view international conventions such as CEDAW and CRC to be persuasive in nature but not necessarily binding unless they are translated into domestic legislation. In the event of a conflict between an international convention and domestic law, the Malaysian court will lean towards upholding local legislation, even if this may constitute a direct contravention of the provisions of the international convention. There have been situations where the court has refused to take cognizance of international human rights conventions,¹⁷⁰ thus creating uncertainty about the enforcement of conventional human rights protection. However, the establishment of the Malaysian Human Rights Commission (SUHAKAM) in 1999 via an Act of Parliament indicates Malaysia's commitment towards human rights and empowerment.

Also, the High Court has attempted to enforce and apply CEDAW directly in a case brought before it.¹⁷¹ Such incidents may be seen as an attempt to persuade Parliament to make the appropriate legislation endorsing these conventions. Scholars have argued that international conventions on human rights should not exist as soft laws that are merely persuasive in nature with little or no effective method for enforcement.¹⁷²

Who is a child in Malaysia?

The CRC defines 'child' to mean every human being below the age of 18 unless majority is attained under the law applicable to the child. However, in Malaysia, the definition of a child varies from one statute to another – and since Malaysia has a plural legal system, the definition of a child also varies in civil, criminal and Islamic law.

For example, Section 2 of the Child Act 2001 defines a 'child' as person under the age of 18." Likewise, the LRA and the Age of Majority Act 1971 define a child as a person under the age of 18, and the definition adopted in the latter Act has general application

¹⁷⁰ E.g., *Lim Jen Hsian & Anor v Ketua Pengarah Jabatan Pendaftaran Negara & Ors* [2016] 7 CLJ 590 and *Subramaniam Subakaran v. PP* [2007] 1 CLJ 470.

¹⁷¹ *Noorfadilla bte Ahmad Saikin v Chayed bin Basirun & Ors* [2012] 1 CLJ 769.

¹⁷² Atoyan, N., 'Ineffective Protections and Guarantees of Human Rights Conventions of Women and Children', *The Whittier Journal of Child and Family Advocacy*, Vol. 12, 2012, 105.

throughout the country for Muslims and non-Muslims alike. However, the Guardianship of Infants Act 1961 defines a child differently for Muslim and non-Muslim communities: for Muslims, a child is a person under the age of 18, and for non-Muslims, a child is someone under the age of 21. Furthermore, the Adoption Act 1952 defines a child as anyone under the age of 21, including a female who has been divorced.

It should be noted that each definition of 'child' in these Acts sought to enhance the protection of children at the time the Act was passed, and almost all Malaysian laws define 'child' as a person under the age of 18 and do not conflict with the CRC.

In Islamic law, each state adopts the definition of a child as expressed in classical Islamic jurisprudence, that is: a child is a person who has yet to attain puberty. Negeri Sembilan and Sabah define 'puberty' as 12 lunar years, while the other states define it as 15 lunar years.

Minimum age of marriage in Malaysia

For non-Muslims in Malaysia, the LRA specifies that the minimum age of marriage is 18 years for men and a full and complete 16 years for women, and all parties below 21 years must obtain parental consent. However, girls between the age of 16 to below 18 must obtain special permission from the Chief Minister of their state, and an application must be made to the Registrar of Marriage under the LRA. No marriage is allowed if the parties are below the minimum age requirement, and any marriage solemnized between persons below the required age is considered void.

For Muslims, all state Islamic laws set the age of marriage at 18 for Muslim boys and 16 for Muslim girls. Notwithstanding this, however, marriage below these minimum ages may be allowed provided that permission from the Shariah Court is obtained beforehand.¹⁷³

With respect to the minimum age for permission to be given for underage marriage, the position in each state's Islamic laws can differ from the LRA. For non-Muslims, permission may be given for girls to marry below the age of 18, but the girl must be above the age of 16. For Muslims, there is no minimum age of marriage – theoretically, the Shariah Court may allow a girl as young as 11 or lower to marry after interviewing her and being satisfied that she understands what she is doing and has attained puberty (*baligh*) in accordance with Islamic law.

¹⁷³ See for example: Islamic Family Law Enactment of Selangor 2003 (Enakmen Undang-Undang Keluarga Islam (Negeri Selangor) 2003).

Laws regulating non-Muslim marriage

For non-Muslims, there are three legally recognized ways to marry under Sections 22 to 26 of the LRA: solemnization by the Registrar of Marriage, marriage by licence granted by the Chief Minister of a state, and marriage by custom and religion other than Islam (where the marriage celebrant acts as a district Assistant Registrar of Marriage).

In each case, the LRA requires that parties to the marriage must be of the minimum age. However, an exemption to this may be granted if the girl is under the age of 18 and not less than 16, and she may marry with the permission of the Chief Minister of the state (or the Federal Territories Minister, acting in the same capacity for the Federal Territories), who may issue a marriage licence upon being satisfied that all legal requirements (including consent) have been met. There is no hearing in this application and the Chief Minister has absolute discretion in deciding whether or not to allow the parties to marry. On the other hand, boys who wish to marry must be aged 18 and above, and a boy who is under 18 has no capacity to marry under the LRA.¹⁷⁴

Laws regulating native customary and Hindu marriage

Native customary marriage refers to marriage conducted according to the customs of the Orang Asli of Peninsular Malaysia, the Bumiputera of Sabah and Sarawak and Hindu communities. These particular communities are not subjected to the marriage requirements of the LRA, and thus the minimum age of marriage does not apply. The Bumiputera of Sabah or Sarawak and the Orang Asli of Peninsular Malaysia may marry according to custom at an age younger than the statutory minimum age (16 for girls and 18 for boys). There is also no requirement for these marriages to be registered, and thus the protection of rights under the written legal framework in Malaysia may not be available to those marrying under customary law. In the legal context, customary marriages are legally valid and it may be argued that while rights under such marriage are not enforceable in a civil court, they may be enforced in the Native Court.

Hindu customary marriage is religious in nature and is codified under Section 11 and 24 of the LRA. For example, Section 11 provides that a marriage between an uncle and his niece is permitted as part of Hindu custom. In order for the marriage to be valid, it must be solemnised in accordance with Section 24. Hindu marriages may also involve young brides as it is customary for young girls and boys to be engaged. However, it should be observed that the LRA imposes a minimum age for marriage, as mentioned above, and any marriage below those ages is void. Despite this, there are Hindus who marry under

¹⁷⁴ Suhor, S., *Panduan Akta Membaharui Undang-Undang (Perkahwinan dan Penceraian)*, Edisi kedua. Kuala Lumpur: Dewan Bahasa Dan Pustaka, 1976.

the marriageable age in accordance with Hindu rites and only register the marriage upon attaining the age of majority. This is to ensure that the rights of the parties are protected under written law.

Laws regulating Muslim marriages

Procedures for Muslim marriage are provided in each state's Islamic law enactments, and brides and grooms make their marriage applications directly to the Registrar of Marriage, Divorce and Reconciliation (*Rujuk*) in each of their respective districts without going through the Shariah Court. For the purposes of this study, reference will be made to the Islamic Family Law Enactment of Selangor 2003 (EUKIS), which has similar provisions with all the other 13 enactments in each state.¹⁷⁵ The application must be made by both groom and bride, and must then be served at least seven days before the wedding.

When permission to marry is granted by the *wali* (legal guardian), the wedding ceremony must be performed either by a *wali* or a representative of the *wali* before the Registrar. The marriage is solemnized when the groom accepts the *aqad* during the ceremony or delegates someone to receive the *aqad*. After the *aqad*, the marriage ceremony is completed and the groom is required to read the pronouncement of *taklik* – the legal effect of which poses certain conditions on the marriage. If those conditions are fulfilled, the marriage is to be dissolved. Having completed this process, the parties will be given a certificate of marriage and the marriage will be registered under the state's Islamic law.

It must be pointed out that Section 8 of EUKIS provides that the minimum age for marriage is 18 for boys and 16 for girls, while those under the minimum age require the permission of a Shariah Court judge.¹⁷⁶ Once the application is filed, the applicant will be given a date for mention before the Assistant Registrar of the Shariah Court. The aim of this is to ensure that all documents to be used during the trial are complete. The assistant registrar will then fix a date for the hearing before a judge, who will normally conduct the proceedings *in camera*.¹⁷⁷

¹⁷⁵ For example, Section 16 of EUKIS states that: "(1) Whenever it is desired to solemnize a marriage in the State of Selangor each of the parties to the intended marriage shall apply in the prescribed form for permission to marry to the Registrar for the *kariah masjid* in which the woman is resident. (2) If the man is resident in a *kariah masjid* different from that of the woman or is resident in any State, his application shall bear or be accompanied by a statement of the Registrar of his *kariah masjid* or by the proper authority of the State, as the case may be, to the effect that as far as he has been able to ascertain the matters stated in the application are true."

¹⁷⁶ Mohd Nadzri Haji Abdul Rahman Ibrahim, *Undang-Undang Tatacara Mal Mahkamah Sharia: Prinsip & Amalan*, Nilai: Karya Kreatif Resources Sdn. Bhd., 2010.

¹⁷⁷ A judicial proceeding is said to be heard *in camera* either when the hearing is held before the judge in his or her private chambers or when all spectators are excluded from the courtroom.

Parties such as the guardian, bride and groom, the groom's parents and any other interested individual will be invited to attend the hearing. The judge will conduct an investigation to analyse every aspect of why the marriage of the parties involved should be approved. This usually includes asking for the opinions of the guardian and parents of the groom, and question about the bride's ability, the couple's future plans and more. The judge will emphasize the welfare and the future of the couple and, if the judge is satisfied with the information given, an order authorizing the marriage may be issued according to Section 18(2) of EUKIS.

Child marriage in the context of criminal law

In Malaysian criminal law, girls under 16 are regarded as being incapable of consenting to sexual intercourse, and whoever engages in sexual intercourse with her will be found guilty of rape under Section 375 of the Penal Code.¹⁷⁸ It must also be pointed out that according to Section 82 of the Penal Code, a child under the age of 10 is incapable of forming the intention to commit a crime and under Section 113 of the Evidence Act, a boy under the age of 13 is incapable of rape.

Since child marriage is permitted under Islamic law, the motive for an application to marry under the minimum age should be analysed: if there has been sexual intercourse, the male in question may have to face criminal prosecution for statutory rape. The pertinent question – to which the answer is still unclear in Malaysia – is whether a Shariah Court judge who hears such an application for underage marriage has a legal duty to inform the Public Prosecutor if it is clear that statutory rape has occurred.

If the answer is “yes”, then young partners may be prevented from using marriage as recourse to avoid rape charges, and this may deter premarital sexual intercourse (as a cause for underage marriage) in the future. However, if the answer is “no”, this may lead to the abuse of marriage as a means of circumventing the criminal legal process. Perpetrators of statutory rape may use marriage as a way of escaping criminal liability, resulting in the girl being legally married to the person who raped her. Thus, it is of the utmost importance that permission must be obtained from the Shariah Court for any marriage involving female Muslims minors, and that competent authorities evaluate the motives for such marriage.

¹⁷⁸ See *Brabakaran v Public Prosecutor* [1965] 1 LNS 12.

Conflict of jurisdictions

The jurisdiction of the Shariah Court emerges from the state government powers contained in the State List of the Federal Constitution, while the administration of criminal law is a Federal matter by virtue of the Federal List. This can create conflicting jurisdictions.

For example, a legal problem arises when consensual premarital sexual intercourse (*zina*, which is a major sin in Islam) is adduced in the proceedings of two Muslims applying for marriage, particularly if such an act has been done intentionally to support the application. As mentioned earlier, does the Shariah Court judge have a legal obligation to bring the matter to the attention of the Police or the Public Prosecutor for the purpose of initiating a criminal investigation for statutory rape under section 375 of the Penal Code? Furthermore, can the Shariah Court judge omit the inclusion of such evidence in hearing the application for underage marriage? Also, can the parties be prosecuted under the Islamic criminal law if they admit to *zina* in their application for permission to marry?

A study of the literature on this subject indicates that the legal burden does not exist, and that it may be concluded that the Shariah Court judge does not have an obligation to compel the parties to be subjected to civil criminal proceedings. It is unclear whether the Shariah Court judges may omit the evidence of *zina* in hearing the marriage application because of the lack of any express provision in the states' Islamic law that imposes such a duty on the Shariah Court judge. As such, the third question may also be answered in the negative.

In these situations, child marriage not only serves as a shield against prosecution, but may also work as a 'trump card' against a criminal conviction or a 'discount card' for a lighter sentence if a conviction is secured.¹⁷⁹

Child marriage and legislation in Malaysia

There is no national law to prevent or limit child marriage *per se*. However, there are a number of statutes that discourage child or curb its occurrence indirectly. These are:

The Penal Code

Most relevant would be its provision for statutory rape (Section 375 of the Penal Code). Even for Muslims, if the girl was raped or had sexual relations with a man, the man may be punished for statutory rape as well as for offences under Islamic criminal enactments.

¹⁷⁹ E.g., *NorAfizal Azizan v PP* [2012] CLJ 370.

However it should be noted that this provision is not gender neutral and does not apply to a male child victim under the age of 16.

Islamic criminal enactments

It is an offence to have an extra-marital relationship under Islamic law, even if the parties are underaged and have applied to marry. If found guilty, parties may be punished with imprisonment not exceeding three years, a fine not exceeding RM5,000 and may be whipped up to 12 strokes. However, if the underaged girl is raped, she will not be punished.

Islamic family law enactments

Under these enactments, any person who solemnises a marriage without the permission of the Religious Department is guilty of an offence and may be punished with a fine not exceeding RM2,000 or imprisonment not exceeding six months. Consent of both parties is crucial to a marriage and a marriage may be nullified for lack of consent. If a father marries off his child without her consent, the marriage may be nullified and dissolved by the Shariah court.¹⁸⁰

The Child Act 2001

Child marriage itself is not addressed in this Act, although there are references to child sexual abuse under Sections 17 and 31. However, 'sexually abused' is defined vaguely and confusingly as "[taking] part...in any activity which is sexual in nature for the purposes of [child pornography] or sexual exploitation by any person for that person's or another person's sexual gratification", making it unlikely that consensual sex with a child (to whom a man is legally married) would be interpreted by the courts as "sexual exploitation".

Furthermore, Section 17 provides a definition of 'sexual abuse' that only authorizes the Department of Social Welfare to take protective action – it does not create an offence or prohibit conduct. Also, the offence of child sexual abuse under Section 31 applies only to a person "having the care of a child" (i.e. a parent or guardian) and thus does not prevent sex with a child other than by a caregiver. It is therefore clear that there are no express prohibitions against child marriage in this Act.

¹⁸⁰ Under Islamic law, a female requires the consent of her guardian to marry and according to Shafie school of thought, her father who is a "wali mujbir" may solemnised her marriage without her consent. However, she may apply to nullify such marriage for lack of consent. Men, if he did not consent to the marriage, may pronounce talaq or divorce and the marriage shall be dissolved.

Shariah Court decisions on child marriage

The concept of childhood in Islam must be considered prior to any discussion of child marriage in this context. According to Islamic law, jurists define children as individuals who have not reached puberty (*baligh*). This in turn signifies a person's qualification to perform his or her duties as required by Islamic law, such as performing the five daily prayers and fasting during Ramadan,¹⁸¹ as well as liability for any crimes they might commit.

Puberty is not a prerequisite for the validity of a marriage in Islam. Any child may be married before they reach the age of puberty, and because women and children cannot marry of their own accord, jurists have determined that only a guardian (*wali*) has the authority to enable them to marry. Under Islamic law, a marriage is valid and effective only when all five of its conditions are fulfilled, namely: the presence of a husband, a wife, witnesses, a *wali* and a valid contract.

The *wali mujbeer* is normally the father or grandfather¹⁸² of the bride and has the full authority to force the child, without her consent, to marry a man he considers well-matched in terms of status and background.¹⁸³ This concept of guardianship is tied to the conduct of Abu Bakar who married off his daughter, Aisha, to the Prophet when she was six years old. Jurists such as al-Nawawi,¹⁸⁴ a 12th-century Syrian Shafie scholar, Ibn Abd al-Bar,¹⁸⁵ an Andalusian Maliki scholar of the 11th century, and Ibn Hazm,¹⁸⁶ an Andalusian Zahiri scholar of the 11th century, contend that Abu Bakar did not ask Aisha to agree to the marriage since she was too young to be asked. This illustrates that a father in his capacity as a guardian may use his authority to marry off his young daughter who has not yet reached puberty without her consent.¹⁸⁷ Ibn Qudamah, a leading Hanbali scholar of the 11th century, also cites the actions of the Companions who married off their underaged daughters: Ali ibn Abi Talib married off his daughter, Ummu Kalthum, to Umar al-Khattab, and Zubair ibn al-Awwam married off his daughter to Qudamah ibn

¹⁸¹ Ibn 'Abidin, M.A., *Hashiah Ibn 'Abidin* 'Alim al-Kutub, 2003.

¹⁸² NB. The Hanbali School expands the definition of *wali mujbeer* even further to include judges of the Shariah Court, who may marry off a person, including a child, if it is in that person's best interests (see: al-Jaziri, A.R., *al-Fiqh 'ala al-Mazahib al-Arba'ah*, Beirut: Dar al-Fikr, 1993). In this situation, the judge may determine the child's 'best interests' by questioning the child who wishes to be married or the child's guardian during the application in court.

¹⁸³ Sharaf al-Nawawi, A. Z. Y., *Rawdah al-Talibin*, Beirut: Dar al-Kutub al-Ilmiyyah, 2000, and al-Mawardi, A. H., *al-Hawi al-Kabir fi Fiqh Mazhab Imam Shafie*, Beirut: Dar Kutub al-Ilmiyah, 1999.

¹⁸⁴ Sharaf al-Nawawi, A. Z. Y., *Sahih Muslim bi syarh al-Nawawi*, Bait al-Afkar al-Dawliyah, 2013.

¹⁸⁵ Ibn Abd al-Bar al-Qurtubi, *al-Istizkar al-Jami' li mazhab Fuqaha' al-Amsar*, Beirut: Dar Kutub al-Ilmiyah, 2000.

¹⁸⁶ Ibn Hazam, *al-Muhalla*, Beirut: Dar Fikr, n.d.

¹⁸⁷ Sharaf al-Nawawi, *Sahih Muslim*

Matghun.¹⁸⁸ However, all jurists stress the prioritization of the best interests of the child, and are of the opinion that the guardian must obtain the consent of a girl who has attained puberty before she can marry.¹⁸⁹ Other jurists argue that Muslims should cease practising this concept of guardianship altogether.¹⁹⁰

In Malaysia, some Shariah Court judges view child marriage applications as trivial compared to other cases. The justification is that Islamic law as enunciated by the majority of jurists allows child marriage and neither party is in court to dispute his or her rights. These cases are also usually settled in a relatively short time and do not involve many witnesses. Moreover, a large amount of the information is recorded in the pleading documents, such as the application form and the affidavit, all of which the assistant court registrar verifies and approves even though some of it appears to be standardized. As such, the court does not feel the need to ask for further details and gives approval in accordance with the law without considering the possibility that the marriage negatively affects the child's best interests.

These judges believe that the Shariah Court is bound only by Islamic law – international conventions do not apply to them – and ignore the fact that Malaysia has ratified international conventions such as CEDAW and CRC. Furthermore, some Shariah Court judges see child marriage as a non-issue and uphold the majority view of classical scholars on the legal ruling of such marriages, especially since they were trained using the same interpretation under Islamic law. Here, the majority of jurists allow a *wali* to marry off children before they reach puberty, and some even state that this is a consensus of the *ulama* (Muslim scholars) that cannot be opposed.¹⁹¹

The judges also take the view that child applicants come to court because of 'problems', i.e. they had sexual intercourse or are pregnant out of wedlock. The court sees its power to grant permission to marry as a way of solving these 'problems' and, in cases of pregnancy, of saving the unborn baby from illegitimacy. The judges therefore believe they are choosing the lesser evil of marriage compared to the greater one of continued illicit sexual intercourse.

Analysis of the Shariah Court's decisions on child marriage applications

¹⁸⁸ Abd Muhammad Abdallah bin Ahmad bin Muhammad Ibn Qudamah, *al-Mughni*, Egypt: Maktabah al-Qahirah, n.d.

¹⁸⁹ Jurists such as al-Shawkani, al-Awza'iy, al-Thawry, Malik, al-Layth, Ibn Abi Layla, Ahmad, Ishak and Ibn Taimiyah consider a marriage to be invalid if the girl does not agree to it or does not give her permission.

¹⁹⁰ al-Qaradawi, Y., *Fatawa al-Muasarah*, Beirut: Maktabah al-Islamiy, 2000.

¹⁹¹ Ibn Hajar al-Asqalani, *Fath al-Bari*, Cairo: Maktabah al-Safa, 2003.

Based on an analysis of case files drawn from the Shariah Courts of seven states, only 10 cases were rejected out of a total of 2,143 applications. This study analysed the factors that Shariah Court judges took into consideration when deciding the applications for child marriage that came before them.

What Shariah Court judges considered

Shariah Court judges took into account three main issues before allowing an application: sexual and reproductive health, the children’s preparedness for marital life and family matters (see Table 4.1). Sexual and reproductive health issues were the main points of consideration that resulted in judges allowing applications of marriage, illustrating the urgent need for international agencies, the Government of Malaysia and civil society movements to begin initiatives to address this issue to curb child marriage in Malaysia.

Table 4.1: Matters the Shariah Court considered in approving child marriage applications

Matters the court considered	Quotes from judges
Sexual and reproductive health issues	<ol style="list-style-type: none"> 1. Applicant was pregnant 2. Applicant had pre-marital sexual intercourse 3. To avoid <i>zina</i> (pre-marital sex) 4. Applicant was too socially active and free 5. Applicant had almost committed pre-marital sex 6. To prevent illegitimate pregnancy 7. Applicant had reached reproductive maturity (menstruation)
Maturity	<ol style="list-style-type: none"> 1. Applicant displayed

	<p>mature behaviour and action</p> <p>2. Applicant can manage household</p> <p>3. Applicant understands the concept of marriage</p> <p>4. Applicant wants to be responsible</p> <p>5. The couple is working and earning an income</p>	<p>children are only young in terms of number of years, but are quite grown up in their actions.”</p> <p>Judge 7: “...the woman’s ability to manage the household such as cooking and cleaning the house.”</p> <p>Judge 8: “Most of them have had pre-marital sex. They want to be responsible. Then, after marriage they want to stay at their parents’ house.”</p> <p>Judge 9: “We consider if the male partner is working or not. Even if he’s underage, is he ready and able to provide financial support? Can he feed his spouse?”</p>
Family matters	<p>1. Applicant seeks to cover their shame</p> <p>2. Applicant faces pressure from the other family</p> <p>3. Applicant’s guardian agrees</p> <p>4. Applicant seeks legitimacy for their unborn child</p>	<p>Judge 5: “If they’ve reached the end (of the pregnancy term) and we approve, we look at which solution can reduce their shame. If they have already had the child and only now want to get married, I think that the ‘shame’ has already happened.”</p> <p>Judge 5: “There are some who say they are forced to. Because the family on the other side is pressuring them.”</p> <p>Judge 5: “These youths who engage in pre-marital sex, the issue is the problem that arises from the baby’s lineage. We know that the baby has no legitimacy here. But from the aspect of their shame, the surrounding community will see [it when] the baby is born.”</p>

Judges did reject marriage applications for reasons such as the presence of coercion, the lack of parental permission and child applicants not having enough religious knowledge, being unprepared for marital life, being unemployed or having a criminal record. An analysis of the case files indicated that the parents' decisions were a significant influence on the court's decision. Even though it is parents who usually bring the case to court, they may have second thoughts during the hearing when answering the judge's many questions. This shows how important it is for the judge to hold a question-and-answer session with parents to discover the circumstances behind the application.

In the majority of cases studied, judges noted that no one had forced the children to marry and that both the children and the parents agreed to the marriage. This is questionable, however, as an analysis of the case files showed that the Shariah Court still allowed the application even if a child informed the court that he or she was being forced to marry to take responsibility for impregnating his partner or for getting pregnant. Interviews with several Shariah Court judges in East Malaysia revealed that some children or parents did not admit to any element of coercion during the hearing, but later said they were being coerced when the judge approached them outside of chambers. In one case in 2016 in West Malaysia, a 16-year-old boy testified in court that "the girl's family was furious" and that his partner's father had slapped him. Pressure from the girl's family resulted in his being forced to agree to marry her. Despite the court being informed that the applicant was not coerced into marriage, the case files showed that the element of force was traceable in the parents' and children's testimony.

Overemphasis on children's knowledge of Islam in court proceedings

Research findings showed that the Shariah Court overemphasized questions on the basics of Islam, such as the *Shahadah* (declaration of faith) and the *Fatihah*, the pillars of Islam, the pillars of faith, and how to perform the five daily prayers and ritual cleansing. Most judges believe that when a child knows or memorizes these basics of Islam, they are duly prepared for marriage and can live in matrimony. Judges believe that performing the five daily prayers is the most important religious duty in ensuring a harmonious marriage, and assume that individuals who do not perform the daily prayers invite problems into their married life. Working from this belief, the majority of judges and assistant registrars ask child applicants about the daily prayers and how to perform them.

The majority of applicants did not know or did not memorize the answers to most of these questions, which may be linked to the fact that many of them did not finish school. The Shariah Court in East Malaysia provides pamphlets that contain the basic knowledge of Islam that applicants must memorize before meeting the judge. Most cases are postponed if child applicants fail to do so, and they must be able to answer all questions

correctly during the second hearing. A judge in East Malaysia said that the procedure gave children from rural areas a chance to acquire religious knowledge since they did not attend school to learn it. This emphasis on religious basics, however, puts pressure on child applicants, especially those from remote rural areas, which ends up delaying the court process.

After marriage: Support and divorce

In almost all marriage applications studied, judges asked parents about the kind of support that they would provide to their soon-to-be married children. In fact, many judges made post-marriage parental support of the couple a prerequisite for the court's approval of the application. The judges' perspectives illustrated the court's role in compelling parents to continue fulfilling their parental responsibilities. Judges inquired about where the child would live after marriage, if the parents were willing to support their child and their spouse, and if the parents were willing to bear the consequences of the marriage.

Judges believe that parents who promise to provide support will also be able to oversee the development and progress of their children's marriage. If and when the children have marital problems, these parents will therefore be there to advise and guide them. Many judges indicated that the court would not approve the application if parents were unwilling to support their children.

However, these parents' promises were sometimes unrealistic, especially when their own financial status was unstable. It is therefore possible that some parents promise to support their children just to ease the process and obtain the court's approval. When the promised support isn't available, the child faces the challenge of navigating marriage alone. In some cases, this results in divorce.

Understanding the judges' mindset

Although the law empowers the court to process child marriage applications, judges must use their discretion in either approving or rejecting them. However, as one judge in East Malaysia said, "The Shariah Court has no guidelines, standards of procedure or methodology of determining the applicant's qualification for approval. Everything is improvised by the judge, using his best knowledge and judgment. A lot of it is based on Islamic legal principles."

Another Shariah Court judge in East Malaysia said that judges had preconceived ideas about approving child marriages. Since Islamic law permits marriage, the court only needs to evaluate if the child is ready for marriage, provided there is consent from all parties. Many judges believe the benefits of child marriage include avoiding the birth of illegitimate children, avoiding illicit contact and behaviour, relieving the family's financial burden, helping children become more responsible, protecting a daughter's reputation, controlling daughters and making it easy to deal with childbirth. Rejecting an application for marriage raises the concern that the child will continue engaging in sexual activities that are considered sinful in Islam. This causes judges to feel duty-bound to allow the marriage: in the judge's eyes, the child has a right to marry because the conditions for a valid marriage have been fulfilled. Rejecting an application is therefore a denial of this right and a grievance that a judicial institution must avoid.

However, some judges believed child marriage had both positive and negative implications, which placed the court in a dilemma. One judge in East Malaysia said, "The implication of underage marriage is like a saw blade: it will eat whether you push or pull. There's good and bad." A East Malaysia court official said that the court had to allow these applications: "We are concerned that if there is no room or provision for us to allow them to marry while they are underage, there will be more pre-marital sexual activity and more illegitimate children. We just want to curb it, you know? In the end, the babies are born with no mum or dad, or are aborted or even thrown away. To me, letting them marry underage is one way to stop babies being dumped. Most of us don't want to allow it. It's a guilty feeling, letting a child under 13 years old get married." Shariah Court judges were well aware that approving these marriages invited criticism from society.

There were also judges who saw the negative implications of child marriage as including a high incidence of divorce, a higher possibility of domestic violence as the child-wife would be more submissive, young families being unable to deal with the high cost of living, children not being prepared for married life and the marriage leading to children stopping their schooling. One judge in West Malaysia wrote in his judgment notes for a 2013 case: "Underage marriage is not encouraged in Malaysia, but may take place with the permission of the court. It involves the image of our nation on the international stage. The court can give approval, but it needs to be extremely thorough before it does." A female court official in East Malaysia said, "In my personal opinion, it's better if child marriage wasn't allowed. I tell them to finish school instead because it's a shame – they're so young and want to live a domestic life. I tell them: married life isn't easy. But that's just it; perhaps our mindset is different from their parents." Delving further into how child marriage can harm a child's wellbeing, and relating this to the Islamic legal concept of protecting a child's best interests can heighten awareness of the negative implications of child marriage within the Shariah Court.

Conclusion

Child marriage among Muslims in Malaysia is a complex issue. The drivers largely involve socioeconomic and sexual and reproductive health factors, so addressing these root causes will be productive in the long term. The Shariah Court can be actively involved in the effort to prevent child marriage. This study suggests that the main weakness in the Shariah Court system is the absence of a standard operating procedure to unify and standardize the application process for child marriage throughout Malaysia, as well as the absence of training programmes that can guide judges and court officials when handling child marriages. These provisions will be pivotal in preventing any party from manipulating the system to obtain easy approval for child marriage without proper consideration.

In civil law, while the Government of Malaysia is committed to protecting the rights of children, this intention has yet to be fully manifested in the form of statutory provisions that empower conventional rights to have legal effect as well as to be enforceable in a court of law. No domestic law has been passed to implement CEDAW, for example, and Malaysia still retains reservations on a number of Articles of CEDAW and the CRC. Also, the Malaysian civil judiciary does not appear to be prepared to apply international conventions directly in Malaysian law without Parliamentary authorization in the form of legislation. In the case of the CRC, which directly affects the rights of children, the Child Act 2001 was passed to enable the provisions of the CRC to be implemented and enforced. It is unfortunate that there is no specific provision on preventing child marriage under the Child Act 2001 even though it violates the fundamental rights of children.

With its plural society, Malaysia provides different legal frameworks for Muslims, non-Muslims, the Bumiputera of Sabah and Sarawak and the Orang Asli of Peninsular Malaysia. This has created different legal conditions when dealing with child marriage. Therefore, as a first step towards addressing the resulting gaps, a clear minimum age for marriage that is in conformity with international standards (18 years of age) must be set in legislation for all legal frameworks.

Chapter 4

Lived Realities of Married Children

In order to gain insight into the practice of child marriage, this study interviewed 120 married participants from different backgrounds, ethnicities, genders, religions, geographic locations and economic statuses in Malaysia, including Rohingya refugees, and 20 participants who were pregnant but not married. All of those interviewed were married between 2012 and 2016 while still children and under the legal age of marriage,¹⁹² according to Malaysian law. The research findings are qualitative, and significant in that they gave married children an opportunity to tell their stories and provide insight into their daily realities.

Factors that led to the participants' marriage

Low household income

The study found that low household income was a driver of child marriage for participants of every ethnicity. Unable to continue their children's education, parents from low-income households chose for their children to be married. The interviews revealed that the fathers of child brides were typically employed in low-income positions. Most of the mothers were not employed outside the home, although some had small businesses with low remuneration. The majority of these jobs paid less than RM2,000 a month.

The families' economic situation directly influenced the participants' decision to marry after leaving school. A girl from an Indonesian immigrant family in Selangor who married at 15 said, "Financial problems are a normal thing, every family has them. My parents matched me with my husband when I was 12. I guess that's why I do as my Mum tells me – I'm the youngest, see." Both her siblings also married at a young age. The girl married a 22-year-old man from an Indonesian immigrant family who earned more than RM2,000 a month working at a factory. He gave her half the money for general expenses, and the rest was given to the parents. In this case, the parents benefited financially from their daughter's child marriage.

Others interviewed also gave money to their parents after they married. A Bumiputera girl from Sabah, whose parents' income was below the poverty line, married an older employed man and subsequently gave money to her parents every month. These examples demonstrate that poor parents may take their future son-in-law's occupation into consideration when deciding to marry off their underage child.

¹⁹² Please refer to Chapter 3 for the various legal ages of marriage and their exceptions under the different legal frameworks.

Not attending school

The majority of those interviewed did not attend school; this was attributed to their low household income (47 participants) and to pregnancy (26 participants). Although government schools in Malaysia do not charge school fees, there are additional expenses such as transportation, school uniforms, books and additional fees. Some participants left school as early as Primary 5, and could not even write their names, thus demonstrating their lack of education.

A Bumiputera girl from the Sarawak interior only attended school until Primary 6 because she did not want to burden her father, who earned RM900 a month as a lorry driver. She said, "I quit school because I saw that my father couldn't afford the school money." Her parents had initially insisted on sending her to school because they had high hopes that she would excel in her studies and further her education in another state. The girl, however, realized that she was not academically inclined and decided not to go to secondary school, abandoning her ambition to be a teacher. Two years later, she married a man she met on a social networking site. In such cases, the children saw their education as an economic burden on their family and opted to leave school and marry in an effort to relieve that burden.

Some children chose or were forced to work to alleviate the financial strain on their family. A girl in Sabah said she decided to leave school after Primary 6 when she was 12 years old to help her father at work. She tapped rubber and earned up to RM500 a month to supplement the family's income. An Orang Asli Semai participant, the youngest of nine children, said she was forced to work as a strawberry picker to cover her own expenses. "Sometimes, I don't want to trouble my dad. I buy my own clothes because my whole family is like that. We buy our own clothes, our own shoes," she said.

Access to schools was a particular problem among Orang Asli participants and among the Bumiputera of Sabah; there were fewer schools – or none at all – near their homes. There was also no means of transport and it was too far for them to walk. One Bumiputera girl from the Sabah interior said that she had to live in the school dormitory as her family had no transport to make the 30-minute journey by land vehicle. The girl's father was a farmer who earned around RM600 a month. She was the fifth of nine children and her second and third sisters, who had been working for some time, paid for her schooling expenses.

Children from poor families who were not academically inclined or interested in learning were more likely to be taken out of school by their families. This possibility increased if the child had many siblings, or in the case of more traditional families, if their parents made gender-based decisions on which of their children went to school.

A small number of participants stopped schooling due to pregnancy. Those who became pregnant left school because their teachers would not let them attend, because they worried about disciplinary action from the school, or because they were embarrassed and stigmatized by society. One Bumiputera girl from Sabah said, “I quit school because I found out I was pregnant. I was afraid that if I went to school while pregnant, the teachers would tell me to leave anyway. I was ashamed. Whenever my friends saw me, they wanted to hang out. Once, one of my teachers said that my belly was big. At school, I was sick, vomiting and dizzy.”

Many participants who left school ultimately decided to marry. This underlines the need to empower children, especially girls, to receive better education and finish secondary school. When children are given better educational opportunities and can focus on their studies without having to think about the cost of school and their families’ livelihoods, they might stay in the school system, which can prevent them from marrying while still underage.

Lack of access to sexual and reproductive health (SRH) education and services

Participants identified the lack of SRH education, information and services, such as family planning support, as a key driver of child marriage.¹⁹³ Many of those interviewed had premarital sex – some as young as 13 years old – and ended up becoming pregnant. Their parents then usually insisted on their marriage, primarily to avoid social stigma and to ensure legitimacy for the child.

A lack of accurate SRH information meant that the majority of participants did not take necessary precautions to avoid pregnancy and were ignorant of the consequences of unsafe sex. Some had received sexual advice from their peers, but this information was not always accurate.

A Muslim Bumiputera girl in Sarawak said that she had had sex for money to alleviate her poverty. A subsequent relationship with a boyfriend resulted in pregnancy. She said she had not known that sex could lead to pregnancy, and felt “dejected and full of regret” when she discovered she was pregnant. After failing to abort her foetus by eating a combination of pineapples and paracetamol, she married her boyfriend, despite not wanting to and being unprepared for marriage.

Social pressure

¹⁹³ See Chapter 2, footnote 54 to refer to questions asked of participants on knowledge about SRH.

Analysis of the data suggests that participants married to be 'responsible'. This perspective was rooted in tradition, religion and the values that some participants and their families upheld. Interviews with the majority of the participants suggested that this meant taking responsibility for having sex before marriage, and being responsible for children born as a result of premarital sex, who must have a father to claim paternity from and to provide financial support. For many participants, marriage fulfilled both of these responsibilities. Forty-two female participants agreed to get married in order to 'be responsible' for their pre-marital sexual activities. Twenty-five participants opted to marry in order to avoid the social stigma attached to pre-marital sex and pregnancy.

A Malay girl in Selangor married at 15 after becoming pregnant by her older boyfriend. She said that she "...had no choice; what's done is done". She married after the birth of her child, at her family's insistence: "My Mum said, 'Just get married, as long as you're responsible.'" This narrative illustrates the concept of 'responsibility' as it is understood by the more conservative segment of Malaysian society with regard to children having pre-marital sex.

Such pressure is not unique to Islamic communities and is also a factor among the Bumiputera in East Malaysia. A Christian Bumiputera girl from the Sabah interior decided to get married after having sex with an older boy. She felt that she had to marry him afterwards because she was "...afraid of getting pregnant out of wedlock", and that if she did not marry, "I might be shamed and cursed by the whole village."

A Bumiputera girl in Sarawak said that when she became pregnant, her mother was shocked and insisted that she get married shortly after learning of the pregnancy. When asked why she had married, she said, "I didn't want people to know I was pregnant," and "I feel sorry for the baby if it doesn't have a father. I was embarrassed to face the village, people talking here and there."

Some children and their parents faced the dilemma of choosing between filing a police report for statutory rape and opting for marriage. A Chinese girl from Sarawak said that her boyfriend had forced her the first time they had sexual intercourse. The incident left her angry and upset, and with her mother's help she contacted a relative, who was a police officer. The relative advised her to file a police report, but she decided in the end to marry the boy because she was pregnant.

A teenage Bumiputera male in Sarawak who admitted that he knew statutory rape was a crime had his first experience of sexual intercourse in a field during a night-time festival with an underage Form 3 student. He said that the girl had agreed to have sex.

When the girl became pregnant, the school arranged for the parents of the children to meet and resolve the situation. They chose not to file a police report but to have the couple marry instead.

In another interview, a homemaker in the Sarawak interior said, “If I file a police report, my son-in-law will go to jail. Who will feed my daughter and grandchildren?”

Drivers of child marriage among Rohingya refugees

Limited education opportunities

Rohingya children have limited access to education both in their own country, Myanmar, and upon their arrival in Malaysia, where they are unable to integrate into the national school system. Armed with only religious education, many of the participants did not possess basic literacy skills, had never studied academic subjects such as science and mathematics, and had no knowledge of sexual and reproductive health.

Poverty

This study points to poverty as the main reason why Rohingya participants engage in underage marriage, be it in Myanmar or Malaysia. According to participants, they married to reduce the financial burden on their parents and to ensure their own survival. One Rohingya girl said “I was happy to reduce [my parents’] burden. If they are happy, then I am happy. When I look at my Dad work, I feel sad. Dad’s work isn’t even enough for my siblings. We are poor and things are difficult.” Another participant however, said that her father forced her to marry due to their difficult conditions. She said that if she ate more than her portion of rice, her father would chide her by saying “Go and get married!” She was still in school at the time, but her father beat her regularly so that she would marry.

Refugees who had no family in Malaysia saw marriage as a survival and security mechanism. One Rohingya girl who arrived in Malaysia at the age of 16 said, “I had no choice. So, because of that, when someone wanted to take care of me, I accepted him.” ‘Take care’ in this context referred to getting married, even though her husband was twice her age. She went on to say that as she could not speak Malay, had no idea what kind of work she could do and had no one in Malaysia to help her, she believed marriage was her only option: “If I had the money I would have waited until I was 25 or 30. If I didn’t have money, I needed to get married.”

Bride trafficking to Malaysia

Several female participants said that they had emigrated to Malaysia to marry male Rohingya refugees who had been living in the country for some time. When a male

Rohingya refugee in Malaysia wanted to marry, he would ask his family in Myanmar to find him a suitable partner. When asked why he had insisted on marrying a Rohingya girl from Myanmar, a participant said that women there were more chaste, i.e. they had never had sex before marriage.

In several other interviews, Rohingya girls described how they had been trafficked into Malaysia over land and sea routes in journeys that ranged between 10 days to more than a month. One girl said, “Actually, I was afraid to come to Malaysia. Also I heard so many people die on the ship. The ship sink in the water. Even though I worried about that, I decide to come to Malaysia because I have six younger sisters, so I worried for them.”

Why some chose not to marry

This study also interviewed an additional 20 underage female participants who were pregnant but did not marry and who were staying at various shelter homes. The study found that the decision about marriage was often made collectively within the family and was not monopolised by a male voice, such as the child’s father. The influencers did not consider marriage to be a solution to the child’s pregnancy and influenced the child’s guardian, usually the father, not to go through with the child’s marriage. Ten out of the 20 participants revealed that the individual was always female – usually a mother, sister or aunt – who was of the opinion that they were too young, or needed to continue their studies or get a job. In all these instances, opposition to the marriage came exclusively from women, demonstrating the importance of gender roles and attitudes towards child marriage.

The participants’ views on their partners’ backgrounds and personal characteristics also influenced their decisions not to marry. One Malay girl said: “At first I thought I wanted to get married, you know? But when I stayed at the shelter home, I started thinking about it. Surely not with that guy. He was using drugs. His case was just closed in 2013. In the beginning, I didn’t know. But after a while, I got closer to him and his family told me.” Another participant also said that her family decided not to let her marry in the end: “If we got married, what’s that guy really like? His morals and religion? It’s better to look after the baby, stay at the shelter home and change, be a better person.”

Access to contraceptives and family planning

Thirty-four girls interviewed indicated that they were worried about their pregnancies and were not ready for pregnancy or motherhood. Fourteen participants said that

they had thought of or attempted to have an abortion, but some were forced to accept the baby in the end.

Fifty-three female participants said that they had received advice about contraceptives and family planning services from district medical centres and city hospitals, particularly before or after the birth of their first child. Some said that they made their own decisions (without advice or pressure from their husbands) to obtain oral or injectable contraceptive services. Some male participants said that they didn't object to their wives taking contraceptives, citing reasons such as being unprepared for parenthood, their low-income status, wanting a small family, having difficulty in raising the children they already had and their wives' level of physical health.

Rohingya participants were committed to practising family planning largely due to the high medical costs of pregnancy and childbirth. Given their unstable economic situation and refugee status, all the Rohingya participants stated that they were more committed to using contraceptives after the birth of their first child than the Malaysian participants were.

Challenges faced during marriage

A number of stories emerged from the interviews that revealed the day-to-day life of girls who married as children. One Malay girl who struggled to manage her family said that no girl should marry young and should stay in school instead. The 15-year-old said that marriage had proven to be challenging for her due to her lack of experience in managing a home.

The majority of participants indicated that marriage worsened their economic status and quality of life, and that their cost of living increased dramatically when they had children. The most difficult issue they faced after marriage was managing their finances.

Some participants had never imagined how hard life could be after marriage, and had assumed that marriage would lead to an easy life. "I figured that if I got married, life would be easier," said a Rohingya male who married at 16. "But the truth is, it's harder now...If there's no work, I go home and (my wife and I) start fighting because we have no money. "

Some participants lived with their parents, or other relatives as a temporary option until their economic status could stabilise through a job or completion of studies.

Continuing education after marriage

Four participants out of 140 interviewed returned to school after marriage, including primarily those who did not have children, or were from families who were financially better off, and thus received support to continue their schooling. Six other participants expressed their interest to attend school again. Educated parents appeared to have a higher awareness of the beneficial role of education in their children's lives.

Regretting marriage

This study found that 21 out of the 120 children regretted their marriage because of the resulting loss of educational opportunities, the commitments of childcare, the pressures of family life and the loss of their youth and innocence. A girl in the Sabah interior said that had she stayed in school, she would have been able to get a good job: "I could send money to my father in the village, who is in a bit of trouble right now. I got married too early. Now I have a baby."

A Bumiputera girl in Sarawak said that she was exhausted from looking after her children: "Sometimes they have fever and get sick...they always get up in the middle of the night." She also said she would not have married at such a young age, given the choice, and saw her marriage as a burden.

When researchers asked some male and female participants if they would allow their children to marry at a young age, they all said that they would not.

CHAPTER 5

Understanding Child Marriage Data

Muslim children: Sourced from the Department of Syariah Judiciary, Malaysia

The Department of Syariah Judiciary, Malaysia, recorded 6,584 cases of marriage among Muslim children from 2011 to October 2016 (see *Tables 5.1 and 5.2*). The highest number of cases was recorded in 2013 (1,192 cases), followed by 2012 (1,182 cases) and 2015 (1,145 cases). The lowest number of cases was recorded in 2016, with 797. From 2011 to October 2016, Sarawak had the highest reported number of cases (1,284), followed by Kelantan (1,010 cases) and Sabah (955 cases). The lowest number of cases was reported in Pulau Pinang, with only 104 reported cases. From 2011 to October 2016, there were 3,416 cases involving male Muslim children across all states (*Table 5.2*). The highest number of cases involving male children was reported in 2013 (643 cases), followed by 2012 (629 cases) and 2014 (600 cases). Sarawak had the highest accumulated number of cases with 826 cases, followed by Sabah (696 cases) and Kelantan (446 cases). Perlis reported the lowest accumulated number of cases since 2011 until October 2016 with only 44 reported cases.

The number of cases involving female Muslim children recorded from 2011 to 2016 across all states stood at 3,618. The highest number of cases was reported in 2011 (659 cases), followed by 2012 (656 cases) and 2013 (645 cases). Kelantan had the highest accumulated number of cases with 673, followed by Sabah (505 cases) and Sarawak (466 cases). Pulau Pinang reported the lowest accumulated number since 2011 until October 2016 with only 54 cases reported. The data indicates that child marriage was highest among Kelantanese Muslim girls.

Non-Muslim female children (from 16 to 18 years old): Sourced from the National Population and Family Development Board, citing the National Registration Department.

As the National Registration Department (NRD) declined to share their data, researchers obtained the statistics from the National Population and Family Development Board, which in turn cited data from the NRD. The total number of child marriages among non-Muslim female children (16 to 18 years old) from 2005 to October 2015 was 5,215 (see *Table 5.3*). The highest number of cases was recorded in 2010 (553 cases) followed by 2005 (551 cases) and 2009 (539 cases). The lowest number of cases was recorded in October 2015 with 284 cases. Sarawak reported the highest number of cases with 1,609 cases, followed by Johor (845 cases) and Selangor (449 cases).

Orang Asli: Sourced from the Department of Orang Asli Development

The Department of Orang Asli Development's 2010 Orang Asli Census recorded 196 married children out of 63,883 married couples that year (see *Table 5.4*).

Table 5.1: Incidence of child marriage among Muslims (2011 to Oct 2016), according to state

State	2011	2012	2013	2014	2015	2016	Total
Johor	56	90	111	84	90	76	507
Kedah	43	62	38	76	105	64	388
Kelantan	182	189	195	182	155	107	1,010
Melaka	23	20	19	17	22	10	111
Negeri Sembilan	46	25	36	25	37	21	190
Pahang	110	91	75	73	66	69	484
Perak	47	41	42	64	54	37	285
Perlis	24	24	19	13	27	18	125
Pulau Pinang	17	20	23	13	10	21	104
Sabah	159	151	180	178	151	136	955
Sarawak	229	284	245	213	207	106	1,284
Selangor	64	55	72	68	91	57	407
Terengganu	107	94	96	89	93	53	532
Federal Territories	30	36	41	36	37	22	202
Total	1,137	1,182	1,192	1,131	1,145	797	6,584

(Source: Department of Syariah Judiciary, Malaysia)

Table 5.2: Number of Muslim children who married (2011 to Oct 2016), according to gender and state

State	2011		2012		2013		2014		2015		2016		Total
	M	F	M	F	M	F	M	F	M	F	M	F	
Johor	29	34	52	62	66	64	43	56	55	57	40	48	606
Kedah	8	32	21	41	15	23	26	50	39	64	23	36	378
Kelantan	64	129	81	133	91	125	83	120	83	98	44	68	1,119
Melaka	18	11	15	12	11	17	15	14	14	17	4	8	156
Negeri Sembilan	19	27	7	18	19	17	12	13	20	17	13	8	190
Pahang	46	64	42	49	34	41	30	43	27	39	29	38	482
Perak	14	33	15	26	21	21	28	36	22	32	15	21	284
Perlis	9	15	8	16	5	14	4	9	11	16	7	9	123
Pulau Pinang	8	9	10	10	10	13	6	7	4	6	9	9	101
Sabah	122	87	118	75	119	107	135	98	101	77	101	61	1,201
Sarawak	146	86	189	100	165	81	134	79	125	82	67	38	1,292
Selangor	24	40	21	34	36	36	40	28	44	47	22	15	387
Terengganu	34	73	31	63	31	65	27	62	30	59	15	27	517
Federal Territories	11	19	19	17	20	21	17	20	19	16	9	10	198
Total	552	659	629	656	643	645	600	635	594	627	398	396	7,034
Total in Year	1,211		1,285		1,288		1,235		1,211		794		

Source: Department of Syariah Judiciary, Malaysia

Table 5.3: Number of female non-Muslim children (aged 16 to 18) who married (2005 to Oct 2015), according to state

State	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Oct 2015	Total
Johor	39	58	101	112	108	96	72	75	82	58	44	845
Kedah	6	8	11	18	12	16	15	18	22	18	7	151
Kelantan	5	4	5	7	15	19	16	15	11	12	2	111
Melaka	11	12	17	9	9	10	9	6	10	14	5	112
N.Sembilan	9	13	20	22	12	18	25	23	25	13	9	189
Pahang	18	11	34	20	18	27	18	20	28	13	18	225
P.Pinang	2	16	24	28	28	35	26	26	19	12	12	228
Perak	20	24	48	32	45	37	22	25	27	23	31	334
Perlis	2	0	0	3	3	3	3	3	1	3	1	22
Selangor	34	39	43	40	53	43	46	49	48	35	19	449
Terengganu	2	1	2	0	0	0	1	2	0	1	0	9
Sabah	9	24	18	20	15	17	21	16	12	9	6	167
Sarawak	56	66	116	139	181	191	196	172	200	175	117	1,609
F. T. Kuala Lumpur	23	31	31	26	33	33	22	13	22	17	11	262
F. T. Labuan	0	0	1	0	0	0	2	0	0	0	0	3
F. T. Putrajaya	4	2	1	4	5	7	6	5	6	7	2	49
Others	311	131	2	0	2	1	2	0	1	0	0	450
Total	551	440	474	480	539	553	502	468	514	410	284	5,215

(Source: National Population and Family Development Board, citing the National Registration Department)

Table 5.4: Number of married Orang Asli children (under 18 years old)

Type of spouses	Total	Percentage	Total number of married Orang Asli
Married children with underage spouse	33	0.05%	63,883
Married children with adult spouse	163	0.26%	63,883
Total of married children	196	0.31%	63,883

Source: Orang Asli Census 2010, Department of Orang Asli Development

Chapter 6

Drivers of Child Marriage and Key Recommendations Towards Ending the Practice

This study identified four main drivers that influence the occurrence of child marriage in Malaysia.

- Low household income: Many children were reportedly married due to low household income.
- Lack of Parenting Support Interventions (PSI): PSIs can better guide families to discourage child marriage.
- Access to Education: Many of the children justified their early marriage by noting that they were either no longer in school or had never attended school.
- Lack of access to Sexual and Reproductive Health (SRH) education / information: Many of the children interviewed in the survey indicated that they were not informed about sexual and reproductive health concerns, including family planning options. They had thus engaged in premarital sex without protection, resulting in unplanned and unwanted pregnancies. In many of these cases, child marriage provided a more socially acceptable option, as parents believed that marriage would “resolve” the situation.

A number of recommendations were thus identified in the Tables that follow to address these “drivers” of child marriage.

In addition, it was noted that a priority call to action should be on legislation, recognizing that a supportive legal framework is needed to end child marriage, and that a clear minimum age for marriage must be set for girls and boys at 18, without exceptions in legislation for all legal frameworks in Malaysia (for Muslims, non-Muslims, Bumiputera of Sabah and Sarawak and the Orang Asli of Peninsular Malaysia).

Table 6.1: Recommendations to address the main drivers of child marriage in Malaysia

No.	Recommendation	Duration	Action by
1.	<p>Driver 1: Low household income</p> <ul style="list-style-type: none"> • Create special fund for children from ‘Bottom 40’ families to pay for extra schooling costs 	Long term	<ul style="list-style-type: none"> • Ministry of Education • Department of Social Welfare • State <i>zakat</i> institutions
2.	<p>Driver 2: Lack of Parenting Support Interventions</p> <ul style="list-style-type: none"> • Hold seminars or workshops for parents of adolescent children, emphasizing the importance of keeping children in school, and also ensuring that children have access to information and services regarding with sexual and reproductive health (SRH) issues • Provide counselling services for parents who have children with SRH issues 	Short term	<ul style="list-style-type: none"> • National Population and Family Development Board • Department of Social Welfare • Department of Islamic Development, Malaysia
3.	<p>Driver 3: Lack of Access to Education and Poor School Attendance</p>		

<ul style="list-style-type: none"> • Ensure access to quality education for children • Create an effective policy to empower pregnant girls at school • Improve the quality and availability of education for girls 	Long term	<ul style="list-style-type: none"> • Ministry of Education • UNICEF •
4. Driver 4: Lack of Access to SRH Information/Education and Services		
<ul style="list-style-type: none"> • Invest in quality sexual and reproductive education for children 	Long term	<ul style="list-style-type: none"> • Ministry of Education
<ul style="list-style-type: none"> • Revisit and review the implementation of the PEERS programme provide comprehensive school-based sexual health education 	Medium term	<ul style="list-style-type: none"> • Ministry of Education • Ministry of Health
<ul style="list-style-type: none"> • Increase access to health information and services for children 	Short term	<ul style="list-style-type: none"> • Ministry of Health / District health clinics / Hospitals
<ul style="list-style-type: none"> • Disseminate health information through multilingual mass media campaigns 	Short term	<ul style="list-style-type: none"> • Ministry of Health • Mainstream TV and radio channels • UNICEF

- | | | |
|--|------------|---|
| <ul style="list-style-type: none">• Address Social Norms that do not encourage dialogue on SRH by initiating community dialogue and engagement with children, families and leaders | Short term | <ul style="list-style-type: none">• Ministry of Women, Family and Community Development• Ministry of Health• Department of Social Welfare |
| <ul style="list-style-type: none">• Educate parents, family and community on child marriage | Long term | <ul style="list-style-type: none">• Ministry of Women, Family and Community Development• Ministry of Health• UNICEF |
-

Driver 1: Low household income

Recommendation: Cash transfers

Many married children said that they had not attended school because of household financial constraints. Parents from lower income status ('Bottom 40' families) preferred that their children marry rather than send them to school. This option eased their financial burden, also noting the potential to gain financially from the marriage. In this case, child marriage is recognized as an acceptable *Social Norm* for poorer households and a coping mechanism or economic strategy for survival.

Although the Government subsidizes school fees, parents must pay for school uniforms, books and stationery, etc. and many cannot afford these. Cash transfers for poorer households would pay for these extra schooling expense and thus help children – particularly girls – to either attend and remain in school.

Driver 2: Lack of parenting support interventions

Recommendation: Seminars/workshop for parents, targeting parents of adolescents, to provide guidance to encourage them to keep children in school and promote SRH.

This study found that **parents played an important role in determining when a child married**. Most children who lacked attention and were not monitored by their parents were more inclined to be involved in behaviour that could lead to child marriage. When parents were bound to work commitments to make ends meet and could not monitor their children effectively, some children were more likely to engage in unsafe sex, with some resulting in pregnancy. Unable to think of another solution, parents sometimes opt to have their children marry.

Seminars or workshops can help parents guide their children to avoid child marriage, including attention to SRH issues in a more effective manner. Such seminars or workshops should include modules on engaging with high-risk children, avoiding early pregnancy, understanding the impact of marriage on underage children, and topics related to sexual and reproductive health.

Recommendation: Support services for parents

Counselling services act as a follow-up to the seminars or workshops above to ensure that parents understand how to support and guide their children, including on their children's SRH issues, and appreciate the negative consequences of child marriage. Most importantly, the counselling sessions will also ensure that parents do not opt for marriage as a solution to these issues, and are aware of better alternatives.

Driver 3: Lack of access to education

Recommendation: Create effective policy to empower pregnant girls at school

This study recommends that the Ministry of Education (MOE) create a guideline for national schools specifically to address pregnant girls. This study shows that pregnant children tend to drop out of school in order to hide their pregnancies because Malaysian society frowns on sexual relations and pregnancy outside marriage for cultural and religious reasons. These children and their parents believed that leaving school was the only option to avoid public shame. The MOE's guideline for national schools will help these children continue their studies and sit for standardized national examinations such as the PT3 and SPM. One way to ensure the continuity of these girls' education is to allow them to take a gap year from school. When they resume their education, they can also be given the option of transferring to another school without having their histories revealed.

Recommendation: Improve quality and availability of SRH education for children

Girls must have access to good SRH education in a supportive school environment. This will help them make informed decisions regarding matters such as puberty, physical interactions and relationships, and can lead them to consider marriage only at a much later and more appropriate time in their lives.

Driver 4: Lack of access to SRH education and information

Recommendation: Invest in quality sexual and reproductive education for children

The study shows that Malaysian children yearn to learn about SRH matters, but the current curriculum must be modified and expanded to ensure its effectiveness. Also, a supplementary programme can focus on clarity in the dissemination of information rather than the amount of information provided. Sex education must be relevant to children's real lives – in addition to scientific facts, the information should focus on life-based topics (such as relationships) that can better prepare children to deal with life issues both now and in the future.

Recommendation: Revisit and review the implementation of the current PEERS programme to provide comprehensive school-based sexual health education

Children must acquire accurate knowledge about sexual and reproductive health in school, and literature reviews in this study show that current sex education programmes are inadequate in equipping children with appropriate knowledge and helping them understand sexuality. In addition, most of this study's participants and applicants did not finish school, which meant that they had to depend on unreliable sources instead. It is therefore crucial to have a comprehensive sex education (CSE) programme that is accompanied by clear national policies, guidelines and a detailed plan of action.

This implies a drastic departure from current practices, and such a CSE programme must also account for the rights of children and reflect the realities that they face

daily in a multi-faceted society. Besides the biological issues of sex education, the programme must also include Life Skills-Based Education (LSBE) that can help delay sexual debut. It must be noted that LSBE topics that are necessary for this – such as declining sexual offers from partners, the social implications of teenage pregnancy, and sexual desire and pleasure – are not included in the current PEERS syllabus.

To complement the CSE approach, a standalone subject must be established to cover issues that are more gender-specific. This subject must contain scientific and factual information about sensitive topics such as sexual intimacy, and must be delivered holistically within religious and cultural contexts. The information should be structured so that the delivery of important topics is age-appropriate, as it is crucial to educate children before they reach the age where risky sexual activity becomes more likely.

Activities that impart sex education must be designed with careful consideration and creativity. They must incorporate multiple activities that reflect the culture, developmental age and sexual experience of the target groups. Such activities can, for example, use participatory learning methods such as ‘edutainment’ as well as group discussions to facilitate communication and information-sharing, role-playing to create hypothetical scenarios, brainstorming to encourage prompt responses and the analysis of real-life cases. These methods help impart good knowledge in a more positive learning environment, instil positive interest in sensitive topics, encourage good behavioural skills and prevent students from being pushed away whenever they require further information. Additionally, activities can be designed to take place outside the classroom.

Also, a better teaching approach is required as current methods are less than effective. Changing from conventional sex education programmes to a more structured and theory-based approach has been proven to increase knowledge, cultivate positive attitudes and increase positive sexual behaviour among youths, although exposure to knowledge and information should be age-appropriate.

Recommendation: Increase children’s access to health information and services

All children, including married and unmarried children and those at risk of child marriage, should have access to age-appropriate SRH information such as contraceptive services and psychosocial care. Access to health information and services – as well as health initiatives that reach out to families – will enable girls to have a better quality of health. Coupled with social protection efforts, this will empower girls to take charge of their own decisions based on the life skills they acquire through education. Information and services should include (but are not limited to) access to confidential services and counselling with regard to children’s

health, increased availability of contraceptive services in local government clinics and hospitals, and health policies and programmes focusing on the prevention of early pregnancy.

This study found that a lack of publicity prevented some participants from gaining access to Family Planning Clinic services before they engaged in pre-marital sex. Although the Ministry of Health provides adolescent health services in 642 health clinics around the country, the management of these services is very much challenged by policies, regulations and religious beliefs. Contraceptive services were provided only on a case-by-case basis to unmarried young people who were considered to be in the high-risk group. This study found that participants received proper advice on contraceptives from health professionals in government hospitals and health clinics only after they married. Such limited access reduces children's capacity to be self-regulating, which contradicts the fundamentals of a comprehensive sex education. Information on comprehensive and accessible sexual health services should therefore be made available in schools and local government health clinics.

Recommendation: Disseminate health information through multilingual mass media campaigns

Children today are tech-savvy, which provides new opportunities to disseminate information and create health interventions. Multiple media can be used to reach larger groups of children who are out of school, and assist in reinforcing health messages in a cost-effective manner.

Malaysian children constantly access broadcast media, which can be a good platform to advertise community service reminders. 'Edutainment' can also embed positive health messages and has a greater potential to reach a larger crowd of young people. With media advocacy, public health practitioners can also influence both the Government and the general public to be more accepting of educating the younger generation about healthy SRH practices.

Secondly, the promotion of sexual health through social media platforms such as Facebook, Instagram and Twitter has gained popularity among many agencies with the growth of Internet penetration. Social media can be used as platforms for multilingual SRH campaigns to advertise services available to youths. Participation can also be encouraged through social media, online chatting or brainstorming sessions, with teachers or other adults acting as moderators.

Thirdly, text messaging or messaging apps such as WeChat or WhatsApp can promote reliable sexual health messages in a more discreet and personal way to

youths. The majority of this study's participants and applicants owned simple smartphones, so creating messaging apps for children like them can be a useful tool for public health campaigns.

Lastly, government agencies and NGOs should consider implementing 'telemedicine' initiatives to connect children to health services information. Children can consider using virtual communications as a way of maintaining anonymity, as personal messaging systems can extend help privately. These programmes should target children residing in urban areas, and it is important to note that similar approaches may not work for young people in rural parts of Malaysia due to the lack of Internet access.

Recommendation: Address social norms that accept child marriage through community dialogue and engagement with children, families and leaders

All relevant parties – children, teachers, parents, schools, health professionals, members of the community, and religious as well as political leaders – must collaborate to develop, train, fund and implement awareness programmes on the negative implications of child marriage. It is imperative that authorities and stakeholders conduct dialogue sessions with various members of the community, such as traditional and religious leaders and/or politicians, on the impact of child marriage and ways to curb the practice. In this regard, parents and community members should be educated and mobilized into action.

Children should be able to reach out to all levels of the community to debate and discuss solutions to end the practice of child marriage. Sexually active children and married children should be able to share their experiences, opinions, and even practical suggestions for health services, as well as other interventions that specifically focus on their health and wellbeing. Acting bodies need to harness this potential by creating appropriate channels for children make their needs known. Children will then know that their voices are being heard and that their opinions matter. Policymakers can create effective intervention by first understanding children's needs, since children are better equipped to recognize the appropriate solutions to their problems. Their feedback should therefore be included in the decision-making that leads to policies and programmes that affect them.

Parents and the local community must also be informed about sex education programmes in school. Schools should be required to inform parents on the current sex education policy, as many members of society are unaware of the existing sex education programme and what it entails. Parents in Malaysia should be reassured that good SRH education provides the knowledge, skills and confidence for their

children to make informed and safe choices on issues such as sex and relationships, thus curbing the risky sexual behaviour that can lead to child marriage.

Recommendation: Educate parents, family and community against child marriage

A comprehensive programme that takes a multidimensional and intersectional approach needs to be developed and implemented for families and communities to raise their awareness of the negative consequences of early marriage. The study found that some female participants chose not to marry after female relatives informed them of the reality of marriage and the negative implications of not completing their education. This finding is significant as it means educating more parents, families and communities about the impact of child marriage can have a positive effect.

Stakeholders should constantly advocate against child marriage because of its negative impact on the physical and psychological health of adolescent girls, with the aim of eradicating this practice altogether. The awareness campaign should involve community and religious leaders (as well as Muftis and Shariah Court judges) so they can better understand the need to stop child marriage once and for all.

When designing a new programme or making changes to an existing one, however, it is important to account for Malaysia's social, cultural and religious norms and sensitivities. New or amended initiatives should also specifically include gender perspectives particularly on issues related to female children as this study found that they were often seen to lack self-control and the ability to make sound sexual decisions. Programmes therefore need to focus on ways to empower adolescent girls.

Legal reform

In addition to the above recommendations, a supportive legal framework is needed to end child marriage. In this regard, a clear minimum age for marriage must be set for girls and boys at 18 without exceptions in legislation for all legal frameworks in Malaysia (for Muslims, non-Muslims, Bumiputera of Sabah and Sarawak and the Orang Asli of Peninsular Malaysia). This is in line with international human rights standards. As demonstrated by this Study, the current legal framework is not sufficient to protect and prevent girls and boys from entering into marriage and is vulnerable to abuse, despite the requirement of judicial or ministerial consent for exceptions below the current minimum ages stipulated by the different statutes. Furthermore, there is no minimum age requirement for native customary marriages.

At the 69th Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) session in Geneva, Switzerland in February 2018, the committee pointed out that child marriages continue to be permitted under both the Law Reform (Marriage and Divorce) Act and the Islamic Family Law, despite the withdrawal of Malaysia's reservation of article 16 (2) of the Convention.¹⁹⁴ The Committee also observed that the rate of child marriages in Malaysia is increasing.¹⁹⁵ In response, the Committee reiterated its previous recommendation that the minimum age for marriage should be increased to eighteen years for women and men for both civil and Muslim marriages and that the full consent of women be given for any marriage.

Further, the recently elected Alliance of Hope government ('Pakatan Harapan') has incorporated this recommendation in its election manifesto, that is, the introduction of a law that sets 18 as the minimum age of marriage. This is part of its commitment to ensuring that legal system protects women's rights and dignity under their section on "Special Commitment for Women".¹⁹⁶

It is therefore urged in light of Malaysia's international and national commitments, that the minimum age of marriage is set at 18 in all legal frameworks alongside the above recommendations, and to this extent, urgent legal reform is recommended as part of the solutions to ending child marriage in Malaysia.

Potential future study

Future research must be conducted on child marriage, including greater data/evidence on the prevalence with statistics to indicate numbers and causes, for example, data from the Population and Housing Census which was not made available for the period of the research of this Study.

Further, this should include data involving married pregnant girls below 18 years old who present at hospitals and district health clinics, which are a good source of data as these girls will be seen regularly for treatment and follow-ups during and after pregnancy. With the permission of the Ministry of Health, a long-term study on the effect child marriage in terms of health, reproduction, psychology and wellbeing can yield more accurate results.

¹⁹⁴ Article 16(2) of CEDAW states: "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."

¹⁹⁵ Committee on the Elimination of Discrimination against Women, 'Concluding observations on the combined third to fifth periodic reports of Malaysia', adopted by the Committee at its 69th session (19 February-9 March 2018)

¹⁹⁶ Pakatan Harapan, 'Buku Harapan; Rebuilding our nation fulfilling our hopes', 2018, p.141.

Research should also be conducted into child marriage among female non-Muslims aged 16 to 18 who seek to register their marriages at the National Registration Department (NRD). For this study, the NRD declined to give researchers access to application files made by non-Muslims. Potential future collaboration between UNICEF and NRD can make these files accessible for the purpose of analysing trends and drivers for child marriage among non-Muslims in Malaysia.

ANNEX

Categories of Children Interviewed for this Study

Married children

Researchers conducted in-depth interviews with 140 participants who were married as children between 2012 and 2016. The interviews explored the children's backgrounds before and after marriage, their experience throughout the formal legal process of obtaining permission to marry from the Shariah Court (for Muslim children), the children's perspectives on child marriage, as well as their family backgrounds, access to education, household management skills, reproductive health, access to family planning and any incidence of domestic violence.

The main consultant trained research assistants to conduct interviews (each lasting 40 to 60 minutes) with children to obtain narratives that could provide answers to the research questions. Research assistants informed participants about the background and objectives of the study before each interview session. Furthermore, a consent form was read to each participant to obtain his or her consent before the interview. The interview was recorded only if the participant agreed, and the participant was informed that the interview data was confidential – names and identities would not appear in the final report. Research assistants, who were committed to ensuring the accuracy and confidentiality of the information, transcribed all interviews verbatim.

Below are the categories of the participants:

- a. Married Muslim participants (14 individuals aged 15 to 22). Participants from seven states were selected by the snowball technique and interviewed via telephone or in person.
- b. Orang Asli participants (25 individuals aged 15 to 22) from the Temiar, Temuan, Jakun, Semakberi, Jahut and Mahmeri communities in Pahang, Kelantan, Perak and Selangor. Researchers used the snowball technique to obtain names and information about children from the respective *tok batin*.
- c. Bumiputera of Sabah (17 individuals aged 15 to 20) and Sarawak (20 individuals aged 15 to 20). Using the snowball technique based on suggestions from community leaders, researchers obtained names and information about children who married while underaged.
- d. Refugees (20 individuals aged 16 to 20). The purpose of these interviews was to obtain refugees' perspectives on child marriage, especially the factors that led to such marriage. Using the snowball technique, researchers obtained participants' details from several NGOs that managed schools for Rohingya children (such as Angkatan Belia Islam Malaysia's Rohingya schools in Klang and Kuantan), as well as NGOs working with Rohingya women. The main

challenge for researchers was that most of the Rohingya children were unable to converse fluently in Malay or English. For this reason, researchers engaged Rohingya interpreters for the interviews.

- e. Indian Malaysians (20 individuals aged 16 to 20). Researchers employed the snowball technique to interview Indian Malaysian participants in Perak and Selangor (NB: there are no institutions that record customary marriages in the Indian community).
- f. Chinese Malaysians (two individuals aged 17 to 18). Using the snowball technique, researchers obtained details of participants from a Resident Office in Kuching and Sibu, Sarawak (See '1.5 Limitatons' below).

Unmarried pregnant female adolescents

Researchers interviewed unmarried pregnant Malay and Bumiputera adolescents (20 individuals) in shelter homes managed by the Department of Social Welfare and private organizations in Selangor, Kuala Lumpur, Perak and Sabah. The purpose of these interviews was to obtain insights from participants into how they became pregnant and why their families did not choose to seek marriage for them.

Abbreviations & Acronyms

CRC	Convention on the Rights of the Child
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CSE	Comprehensive sex education
EUKIS	Enakmen Undang-Undang Keluarga Islam (Negeri Selangor) 2003 (Islamic Family Law Enactment of Selangor, 2003)
JAG	Joint Action Group for Gender Equality
JAKIM	Jabatan Kemajuan Islam Malaysia (Malaysian Islamic Development Department)
JKSM	Jabatan Kehakiman Syariah Malaysia (Department of Shariah Judiciary, Malaysia)
LRA	Law Reform (Marriage and Divorce) Act 1976
LSBE	Life Skills-Based Education
MOE	Ministry of Education
MWFCD	Ministry of Women, Family and Community Development
NPFDB	National Population and Family Development Board
NRD	National Registration Department
OSTPC	One-Stop Teenage Pregnancy Centre
PAS	Parti Agama Islam SeMalaysia (Pan-Malaysian Islamic Party)
PSI	Parenting Support Intervention
SIS	Sisters in Islam
SRH	Sexual and reproductive health
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia (Malaysian Human Rights Commission)
UMNO	United Malays National Organisation
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
WAO	Women's Aid Organisation

