

2. Malaysia



Statistics

GENERAL

Population

- Total population (millions): 25.3.¹
- Population by sex (thousands): 12,251.4 (female) and 12,625.0 (male).²
- Percentage of population aged 0–14: 33.3.³
- Percentage of population aged 15–24: 18.2.⁴
- Percentage of population in rural areas: 36.⁵

Economy

- Annual percentage growth of gross domestic product (GDP): 6.2.⁶
- Gross national income per capita: USD 3,780.⁷
- Government expenditure on health: 2% of GDP.⁸
- Government expenditure on education: 4.1% of GDP.⁹
- Percentage of population below the poverty line: Information unavailable.

WOMEN'S STATUS

- Life expectancy: 76.0 (female) and 71.4 (male).¹⁰
- Average age at marriage: 23.5 (female) and 26.6 (male).¹¹
- Labor force participation: 39.4 (female) and 35.7 (male).¹²
- Percentage of employed women in agricultural labor force: Information unavailable.
- Percentage of women among administrative and managerial workers: 23.¹³
- Literacy rate among population aged 15 and older: 87% (female) and 93% (male).¹⁴
- Percentage of female-headed households: 18.¹⁵
- Percentage of seats held by women in national government: 10.¹⁶
- Percentage of parliamentary seats occupied by women (2005): 9.¹⁷

CONTRACEPTION

- Total fertility rate: 2.78.¹⁸
- Contraceptive prevalence rate among married women aged 15–49: 55% (any method) and 30% (modern method).¹⁹
- Prevalence of sterilization among couples: 6.8% (total); Gender breakdown unavailable.²⁰
- Sterilization as a percentage of overall contraceptive prevalence: 14.1.²¹

MATERNAL HEALTH

- Lifetime risk of maternal death: 1 in 630 women.²²
- Maternal mortality ratio per 100,000 live births: 41.²³
- Percentage of pregnant women with anemia: 56.²⁴
- Percentage of births monitored by trained attendants: 97.²⁵

ABORTION

- Total number of abortions per year: Information unavailable.
- Annual number of hospitalizations for abortion-related complications: Information unavailable.
- Rate of abortion per 1,000 women aged 15–44: Information unavailable.
- Breakdown by age of women obtaining abortions: 10.2% (under 20); 22.3% (age 20–24); 25.0% (age 25–29); 14.2% (age 30–34); 12.2% (age 35–39); 16.2% (40 or older).²⁶
- Percentage of abortions that are obtained by married women: 91.2.²⁷

SEXUALLY TRANSMISSIBLE INFECTIONS (STIS) AND HIV/AIDS

- Number of people living with sexually transmissible infections: Information unavailable.
- Number of people living with HIV/AIDS: 52,000.²⁸
- Percentage of people aged 15–49 living with HIV/AIDS: 0.1 (female) and 0.7 (male).²⁹
- Estimated number of deaths due to AIDS: 2,000.³⁰

CHILDREN AND ADOLESCENTS

- Infant mortality rate per 1,000 live births: 10.³¹
- Under five mortality rate per 1,000 live births: 11 (female) and 15 (male).³²
- Gross primary school enrollment ratio: 93% (female) and 93% (male).³³
- Primary school completion rate: 87% (female) and 87% (male).³⁴
- Number of births per 1,000 women aged 15–19: 18.³⁵
- Contraceptive prevalence rates among married female adolescents: Information unavailable.
- Percentage of abortions that are obtained by women younger than age 20: 10.2.³⁶
- Number of children under the age of 15 living with HIV/AIDS: Information unavailable.

ENDNOTES

1. See UNITED NATIONS POPULATION FUND (UNFPA), THE STATE OF WORLD POPULATION 2005, at 112 (estimate for 2005).
2. See UNITED NATIONS POPULATION FUND (UNFPA), COUNTRY PROFILES FOR POPULATION AND REPRODUCTIVE HEALTH: POLICY DEVELOPMENTS AND INDICATORS 2003 (2003), <http://www.unfpa.org/profile/default.cfm>. [hereinafter UNFPA, COUNTRY PROFILES]
3. See THE WORLD BANK, WORLD DEVELOPMENT INDICATORS 2004, at 39 (2004), <http://www.worldbank.org/data/> (estimate for 2002). [hereinafter The World Bank].
4. See UNFPA, COUNTRY PROFILES, *supra* note 2.
5. See UNFPA, THE STATE OF WORLD POPULATION 2005, *supra* note 1, at 112.
6. See THE WORLD BANK, *supra* note 3, at 183 (estimate for 1990–2002).
7. See THE WORLD BANK, WORLD DEVELOPMENT INDICATORS 2004: DATA QUERY, <http://devdata.worldbank.org/data-query/> (statistical figure obtained through the Atlas method) (estimate for 2003).
8. See UNFPA, THE STATE OF WORLD POPULATION 2005, *supra* note 1, at 112.
9. UNITED NATIONS CYBERSCHOOLBUS, INFO NATION: GOVERNMENT EDUCATION EXPENDITURE (2004), http://www.un.org/Pubs/CyberSchoolBus/infonation/e_infonation.htm (estimate for 1997).
10. See UNFPA, THE STATE OF WORLD POPULATION 2005, *supra* note 1, at 108.
11. See UNFPA, COUNTRY PROFILES, *supra* note 2.
12. See *Id.*
13. See SOCIAL AND DEMOGRAPHIC STATISTICS BRANCH, UNITED NATIONS STATISTICS DIVISION, THE WORLD'S WOMEN 2000: TRENDS AND STATISTICS (2000) (estimate for 2003).
14. See UNFPA, COUNTRY PROFILES, *supra* note 2.
15. See SOCIAL AND DEMOGRAPHIC STATISTICS BRANCH, *supra* note 13, at 48 (estimate for 1991/1997).
16. See SAVE THE CHILDREN, STATE OF WORLD'S MOTHERS 2004, at 38 (2004), http://www.savethechildren.org/mothers/report_2004/images/pdf/SOWM_2004_final.pdf (estimate for 2004).
17. See UNITED NATIONS STATISTICS DIVISION, MILLENNIUM INDICATORS DATABASE (2005), http://unstats.un.org/unsd/mi/mi_series_results.asp?rowId=557 (last updated Mar. 16, 2005) (estimate for 2005).
18. See UNFPA, THE STATE OF WORLD POPULATION 2005, *supra* note 1, at 112 (estimate for 2000–2005).
19. See *Id.* at 108.
20. See ENGENDERHEALTH, CONTRACEPTIVE STERILIZATION: GLOBAL ISSUES AND TRENDS, tbl. 2.2, at 47 (2002) (estimates for 1988).
21. See *Id.* at tbl. Supp. 2.5, at 56.
22. See WORLD HEALTH ORGANIZATION ET AL., MATERNAL MORTALITY IN 1995: ESTIMATES DEVELOPED BY WHO, UNITED NATIONS CHILDREN'S FUND (UNICEF), UNITED NATIONS POPULATION FUND (UNFPA) 44 (2000) (estimate for 1995).
23. See UNFPA, THE STATE OF WORLD POPULATION 2005, *supra* note 1, at 108.
24. See SAVE THE CHILDREN, *supra* note 16, at 38 (estimate for 1989–2000).
25. See UNFPA, THE STATE OF WORLD POPULATION 2005, *supra* note 1, at 112.
26. See Akinrinola Bankole et al., *Characteristics of Women who Obtain Induced Abortion: A Worldwide Review*, 25 INT'L FAM. PLANNING PERSP. 68–77 (1999), <http://www.guttmacher.org/pubs/journals/2506899.html> (statistical figure obtained through ad hoc surveys and hospital records) (estimates for 1981).
27. See *Id.*
28. See JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS (UNAIDS) et al., UNAIDS/WORLD HEALTH ORGANIZATION (WHO) EPIDEMIOLOGICAL FACT SHEETS ON HIV/AIDS AND SEXUALLY TRANSMITTED INFECTIONS – 2004 UPDATE: VIETNAM 3 (2004), http://www.who.int/GlobalAtlas/PDFFactory/HIV/EFS_PDFs/EFS2004_MY.pdf (estimates for 2003).
29. See UNFPA, THE STATE OF WORLD POPULATION 2005, *supra* note 1, at 108.
30. See JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS (UNAIDS) et al., *supra* note 28 (estimates for 2003).
31. See UNFPA, THE STATE OF WORLD POPULATION 2005, *supra* note 1, at 108.
32. See UNFPA, COUNTRY PROFILES, *supra* note 2.
33. See UNFPA, THE STATE OF WORLD POPULATION 2005, *supra* note 1, at 108. The ratio may be more than 100 because the figures remain uncorrected for individuals who are older than the level-appropriate age due to late starts, interrupted schooling or grade repetition.
34. See *Id.*
35. See *Id.*
36. See Bankole et al., *supra* note 26.

Malaysia lies in the heart of central Southeast Asia; Peninsular Malaysia (directly south of Thailand) and East Malaysia (the northern third of the island of Borneo) are separated by approximately 400 miles of the South China Sea.¹

The Malays were ruled by the Buddhist kingdom of Srivijaya from the ninth through the thirteenth centuries, and by the Hindu kingdom of Majapahit in the fourteenth century; they were converted to Islam with the rise of the state of Malacca in the fifteenth century.² With its strategic maritime location along the Pacific trade routes, Malaysia was the target of conquest first by the Portuguese empire in 1511, then by the Dutch empire in 1641, and by the British empire in 1795.³ British colonial rule lasted well into the twentieth century, although it was temporarily interrupted by the Japanese occupation in 1942–1945 during World War II.⁴ In 1957, Malaysia negotiated independence from Britain, and joined the former British colonies of Singapore (an island located just to the south of Peninsular Malaysia) and Sabah and Sarawak (territories in the northern third of the island of Borneo) in 1963 to form the Federation of Malaysia.⁵ Singapore subsequently withdrew from the federation in 1965 to become an independent state.⁶ In 2003, Abdullah Badawai succeeded Mahathir Mohamed as prime minister and initiated a series of changes, including stricter policies against corruption in the public sector (i.e., among police and government officials); greater judicial independence; and a more moderate and progressive interpretation of Islam (*Hadhari*) that emphasizes religious tolerance.⁷

Malaysia has one of the more prosperous economies in the region. Despite a brief recession during the Asian financial crisis in 1998,⁸ Malaysia's economy once again boasts a robust growth rate.⁹

The total population of Malaysia is over 26 million,¹⁰ approximately half (49.4%) of whom are female.¹¹ Ethnic groups include, among others, Malays (50.3%), Chinese (23.8%), non-Malay indigenous peoples (11.0%), and Indians (7.1%).¹² The official language is Bahasa Melayu (Malay), although English, various Chinese dialects, Tamil, Telugu, Malayalam, Punjabi, Thai, and several indigenous languages are also spoken.¹³ Islam, the national religion,¹⁴ is practiced by about 60% of the population;¹⁵ other faiths include Buddhism, Taoism, Hinduism, Christianity, Sikhism, and Shamanism.¹⁶

Malaysia has been a member of the United Nations since 1957.¹⁷ It is a member of the Commonwealth of Nations, the Organization of the Islamic Conference, the Non-Aligned Movement, Asia-Pacific Economic Cooperation, the World Trade Organization, and the Association of Southeast Asian Nations.¹⁸

I. Setting the Stage: The Legal and Political Framework of Malaysia

Fundamental rights are rooted in a nation's legal and political framework, as established by its constitution. The principles and goals enshrined in a constitution, along with the processes it prescribes for advancing them, determine the extent to which these basic rights are enjoyed and protected. A constitution that upholds equality, liberty, and social justice can provide a sound basis for the realization of women's human rights, including their reproductive rights. Likewise, a political system committed to democracy and the rule of law is critical to establishing an environment for advancing these rights. The following section outlines important aspects of Malaysia's legal and political framework.

A. THE STRUCTURE OF NATIONAL GOVERNMENT

The Federal Constitution of Malaysia, enacted in 1957 and amended in 1963, establishes Malaysia as a constitutional monarchy and a federal parliamentary democracy with a separation of powers between the executive, legislative, and judicial branches of government.¹⁹ The federal constitution states that Islam is the religion of Malaysia, but other religions may also be practiced.²⁰ It provides for a division of powers between federal and state authorities.²¹

Executive branch

Executive power is vested in the Yang di-Pertuan Agong (the king), who is the supreme head of the federation and commander of the armed forces.²² The consort of the Yang di-Pertuan Agong, known as the Raja Permaisuri Agong (queen of Malaysia), comes after the Yang di-Pertuan Agong in the hierarchy of the federation.²³ The Yang di-Pertuan Agong is elected by the Majlis Raja-Raja (Conference of Rulers), a body made up of the state rulers (sultans) and state Yang di-Pertua Negeri (governors), for a term of five years.²⁴ In the event of vacancy or inability to serve in the office of the Yang di-Pertuan Agong, the Timbalan Yang di-Pertuan Agong (deputy supreme head) assumes the position.²⁵ The Yang di-Pertuan Agong has sole discretion in appointing a Perdana Menteri (prime minister) from among members of the majority party in the House of Representatives.²⁶ The Perdana Menteri advises the Yang di-Pertuan Agong in selection of the Jemaah Menteri (Cabinet of Ministers) from among members of either house in Majlis (Parliament), and presides over this body.²⁷ The Jemaah Menteri advises the Yang di-Pertuan Agong in the exercise of his functions and is collectively responsible to Parliament.²⁸

Among other powers, the Yang di-Pertuan Agong may convene, prorogue, or dissolve the Parliament,²⁹ and grant pardons, reprieves, and respites for offenses that are tried by courts-martial, in Syariah courts (courts that apply Muslim law), or are committed in the Federal Territories (Kuala Lumpur, Labuan, and Putrajaya).³⁰ The Yang di-Pertuan Agong is not liable to judicial proceedings in regular courts of law.³¹

Legislative branch

Majlis (Parliament) consists of two houses—the Dewan Rakyat (House of Representatives) and the Dewan Negara (Senate).³² The Dewan Rakyat, the lower house, has 219 elected members serving five-year terms,³³ of whom about 10% are women.³⁴ The Dewan Negara, the upper house, consists of 26 members who are elected by the state Legislative Assemblies (two per state), and 44 members who are appointed by the king.³⁵ In 2004, women comprised about 35% of the Dewan Negara.³⁶ Senate members serve no more than two consecutive three-year terms.³⁷

The Majlis has the authority to make laws for the whole or part of the federation.³⁸ Bills may originate in either house, with the exception of money bills, which must originate in the lower house.³⁹ Once a bill passes in the originating house, it is sent to the other house for approval.⁴⁰ Bills passed by both houses are presented to the king; they then may pass into law either upon his approval or by his failure to act on the bill for 30 days.⁴¹ The king may also object to the bill within 30 days and remand it to the originating house, where the process begins again.⁴²

The federal constitution provides for “legislative lists” enumerating the scope of federal, state, and concurrent legislative powers. Matters exclusive to the federal legislature include external affairs (international treaties and their implementation); civil and criminal law and the administration of justice (under the federal constitution and all courts except Syariah courts, and the ascertainment of Islamic law and other personal laws for purposes of federal law); citizenship and naturalization; surveys, record keeping (registration of births and deaths; registration of marriages; registration of adoptions), and research (censuses and vital statistics registration); education; medicine and health (health facilities and maternal and child welfare); labor and social security (health insurance, pensions, and maternity benefits); and the welfare of indigenous peoples.⁴³ The federal legislature shares concurrent jurisdiction with states in matters of social welfare; social services in accordance with federal and state legislative lists; protection of women and children; and public health, sanitation, and disease prevention.⁴⁴

Judicial branch

The Malaysian judicial system is based upon the English model of common law.⁴⁵ The federal constitution provides

for a Federal Court (Mahkamah Agung, or Supreme Court), a Court of Appeal, a Special Court, two High Courts (one in Peninsular Malaysia and one in Sabah and Sarawak), and lower courts as decreed by federal laws.⁴⁶ There is also a separate system of Syariah courts at the state level.

The Federal Court is the highest judicial authority and the final court of appeal.⁴⁷ It has original jurisdiction over constitutional matters,⁴⁸ disputes between states or between the federal government and a state,⁴⁹ and appellate jurisdiction over the Court of Appeal and the two High Courts.⁵⁰ The Federal Court is headed by the chief justice⁵¹ and consists of the president of the Court of Appeal, two chief justices from each High Court, and seven other judges.⁵² Judges serve until the age of 65.⁵³

The Court of Appeal consists of a president and 15 judges⁵⁴ and serves as the “final court of appeal” for decisions of the High Court on civil and criminal matters.⁵⁵ Of the two High Courts, the one in Peninsular Malaysia consists of a chief judge and 47 judges, and the other in Sabah and Sarawak consists of a chief judge and ten judges.⁵⁶ High Courts hear appeals from lower courts⁵⁷ and also have original jurisdiction over serious felonies and major civil cases.⁵⁸ Judges of the Federal Court, the Court of Appeal, and the High Courts are appointed by the Yang di-Pertuan Agong on the advice of the Perdana Menteri in consultation with the Majlis Raja-Raja.⁵⁹

The Special Court was established pursuant to an amendment to the federal constitution in 1993, and has exclusive jurisdiction over civil and criminal actions against the Yang di-Pertuan Agong or any of the nine state rulers.⁶⁰ The court is chaired by the chief justice of the Federal Court, the chief judges of the two High Courts, and two appointees by the Majlis Raja-Raja.⁶¹ Decisions of the Special Court are final and cannot be challenged in any court for any reason.⁶²

Below these are subordinate courts consisting of the Sessions Courts and the Magistrates’ Courts, which are courts of first instance for criminal and civil cases.⁶³ In 2001, a Court for Children was established for adjudicating criminal proceedings of persons under the age of 18 years.⁶⁴

The federal constitution provides for a system of Syariah courts with exclusive jurisdiction over the application of Islamic laws for Muslims.⁶⁵ Syariah courts exist in all states within Malaysia;⁶⁶ their makeup, organization, and procedures are determined solely by the states.⁶⁷ Such courts have jurisdiction over family matters relevant to succession and wills; marriage (including betrothals and dowries) and divorce; child and spousal maintenance; custody, guardianship, and adoption; matrimonial property and trusts (gifts); and certain matrimonial and religious criminal offenses, such

as polygamy, illicit sex (i.e., incest and sodomy), indecent dress and behavior, violations of the pillars of Islam, and apostasy.⁶⁸ Such courts do not have jurisdiction in criminal matters, which belong solely to federal courts.⁶⁹

Islamic law falls under the purview of the states and, thus, the power to enact legislation pertaining to Islam and the well-being of Muslims falls under the state authorities.⁷⁰ Each state has its own set of Islamic laws as well as its own Islamic court system.⁷¹ Under this feature of Malaysian Islamic law, which is unique among Muslim countries, states differ in their enforcement and interpretations of Muslim law. Consequently, the decision of one state's Syariah court is not enforceable in another.⁷² In addition, Syariah law does not apply to non-Muslims,⁷³ and a court order issued by a Syariah court is not enforceable by a civil court.⁷⁴

Other state-level courts are native courts, which exist in Sabah and Sarawak.⁷⁵ They have jurisdiction only in cases arising from indigenous or customary law, and where the parties are indigenous peoples.⁷⁶

B. THE STRUCTURE OF LOCAL GOVERNMENTS

The Federation of Malaysia comprises 13 states and the federal territories of Kuala Lumpur, Labuan, and Putrajaya.⁷⁷ The three Federal Territories are centrally administrated by the federal government. Nine of the 13 Malaysian states are headed by hereditary Islamic rulers, while the remaining four—Malacca, Penang, Sabah, and Sarawak—are headed by Yang di-Pertua Negeri (governors), who are appointed by the Yang di-Pertuan Agong for four-year terms.⁷⁸ The ruler of each state acts in accordance with the advice of the Executive Council, which is made up of four to eight members from the state's legislative body, called the Legislative Assembly, and is directly accountable to that body.⁷⁹ The ruler appoints a Menteri Besar (chief executive) from among the members of the majority in the state Legislative Assembly to preside over the Council and advise on the appointment of its members.⁸⁰

The legislature at the state level consists of the ruler or the governor and the Legislative Assembly.⁸¹ Members are elected for five-year terms, at the end of which the entire body dissolves, unless the ruler dissolves it sooner.⁸² The number of members of each Legislative Assembly is determined by law.⁸³ In 2004, about 5% of the state legislature members were women.⁸⁴ As enumerated in the federal constitution, state legislatures have exclusive power in their territories over matters, among others, that involve Islamic law and personal and family law; land; agriculture, including agricultural loans; and local government.⁸⁵ If a state law contravenes a federal law, the federal law shall prevail.⁸⁶

C. THE ROLE OF CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS (NGOS)

Nonprofit organizations in Malaysia are governed by the Societies Act 1966, the Societies Regulations 1984, and the Societies (Application for Vesting Order) Regulations 1993, as implemented and enforced by the Registry of Societies under the Ministry of Home Affairs, which has the primary task of registering NGOs.⁸⁷ In 1998, 29,574 societies were registered,⁸⁸ including religious groups, clubs, charities, political parties, mutual benefit societies, and advocacy groups.⁸⁹

NGOs may receive government funds or incentives to provide public services. In the national budget for 2005, RM 141.6 million (USD 37,269,000) was appropriated to finance various NGO activities in AIDS prevention, women and family development, health programs, and services for the disabled.⁹⁰ Furthermore, the government provided RM 66.7 million (USD 17,555,000) for upgrading and maintaining institutions run by NGOs that offer social services to families, children, the elderly, and the disabled.⁹¹

D. SOURCES OF LAW AND POLICY

Domestic sources

Sources of domestic law include the federal and state constitutions, federal and state legislation and regulations, case law, Syariah (Islamic) and Hindu personal laws, *adat* (customary law applicable to Malays), English common law, and numerous government policies, such as the Eighth Malaysia Plan.⁹²

The federal constitution is the supreme law of Malaysia.⁹³ It guarantees a number of fundamental rights, including protection from arbitrary deprivation of life or liberty;⁹⁴ freedom from slavery and all forms of forced labor;⁹⁵ equality before the law and equal protection of the law;⁹⁶ freedom of religion, subject to permissible restrictions on the propagation of Islam;⁹⁷ and protection against the deprivation of property except in accordance with the law.⁹⁸

The federal constitution was amended in 2001 to include gender-based discrimination among the prohibited types of discrimination.⁹⁹ The revised article provides that "there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth, or gender . . . in any law relating to the acquisition, holding or disposition of property, or the establishment or carrying on of any trade, business, profession, vocation, employment, or in public education."¹⁰⁰ The nondiscrimination article, however, does not extend to provisions regulating personal laws, the employment of persons of a certain religious group, or any provision for the protection, well-being, or advancement of indigenous peoples, including issues of ancestral domain and quotas for public office.¹⁰¹ The federal constitution also guarantees all citizens

the right to freedom of speech, expression, assembly, and association, subject to restrictions in the interest of national security or “public order or morality.”¹⁰²

Under the federal constitution, legislative powers over different matters are designated to the federal government, the state government, or both. Matters pertaining to civil and criminal laws and procedures, such as codification of the penal code and the Criminal Procedure Code, fall under the authority of the federal government.¹⁰³

Among areas under the legislative authority of states are Syariah laws for Muslims, and native personal or customary laws for indigenous peoples and tribal groups.¹⁰⁴ Although Malaysia’s legal system is structured according to English common law, Islamic law and customary law form a vital part of the legal system.¹⁰⁵ Syariah law applies only to Muslims with regard to issues that come under family law; non-Muslims are subject to the civil law in all instances. Thus, Muslims in Malaysia must refer to Syariah courts for adjudication of matters concerning marriage, divorce, inheritance, maintenance, custody of children, child support, and in some cases, sexuality, sexual acts, and rape. (See “Judicial branch” for more information on Syariah courts.) Under the Administration of Islamic Law (Federal Territories) Act 1993, religious *fatwas* (Islamic decrees) issued by the National Council for Islamic Affairs may become legally binding if they are adopted by state governments through implementing legislation.¹⁰⁶ The National Council for Islamic Affairs coordinates the Islamic Councils of each state.¹⁰⁷ Islamic law is dominant in the peninsular states, while customary law plays an important role in the eastern states of Sarawak and Sabah.¹⁰⁸

Due to the complicated nature of the legal system, there are numerous discrepancies and inconsistencies in the way the laws are applied. Syariah law is applied inconsistently because of diverse enactments of laws by various states. Furthermore, there is some overlap between Syariah law on the one hand, and civil and criminal law on the other, which causes complications, particularly when laws are adapted and amended.¹⁰⁹

Malaysia’s legal framework is complemented by national and state policies enumerated in successive long-term (10 to 20 years) Outline Perspective Plans, and medium-term (five years) development plans. Currently, the Third Outline Perspective Plan (OPP3) for 2001–2010 and the Eighth Malaysia Plan for 2001–2005 are operative.¹¹⁰ The OPP3 outlines Malaysia’s development strategies and policies for the current decade, and is based upon the National Vision Policy (NVP), which was adopted in 1991 and sets forth strategic development goals for 2020.¹¹¹ The Eighth Malaysia Plan is the first phase in the implementation of the OPP3.¹¹²

International sources

The federal constitution authorizes the federal legislature to ratify treaties, agreements, and conventions with other countries.¹¹³ Treaties become part of Malaysian law only upon passage of implementing legislation by the Parliament.¹¹⁴ Ratification of a treaty does not allow it to take precedence over national laws. Rather, once ratified, a treaty is often accepted with reservations, and the treaty may eventually be modified to accommodate coexisting national laws.¹¹⁵

Malaysia has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹¹⁶ and the Convention on the Rights of the Child.¹¹⁷ Malaysia ratified CEDAW with reservations to several articles on the grounds that they conflict with Syariah law and the federal constitution.¹¹⁸ Although the government partially withdrew its reservations in 1998, it upheld reservations on the articles on eliminating social and cultural discrimination against women;¹¹⁹ on providing women equal rights to participate in government¹²⁰ and to extend citizenship to their children;¹²¹ and on assuring equal rights in marriage, divorce, and custody.¹²² The government of Malaysia has not signed or ratified other major treaties, such as the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the International Convention on the Elimination of All Forms of Racial Discrimination.

Malaysia has participated in several key international conferences, and endorsed the development goals and human rights principles contained in the resulting consensus documents. International consensus documents the government has adopted include the 1993 Vienna Declaration and Programme of Action; the 1994 International Conference on Population and Development (ICPD); the 1995 Beijing Declaration and Platform for Action; and the 2000 United Nations Millennium Declaration and the Millennium Development Goals.¹²³

II. Examining Reproductive Health and Rights

In general, reproductive health matters are addressed through a variety of complementary, and sometimes contradictory, laws and policies. The scope and nature of such laws and policies reflect a government’s commitment to advancing the reproductive health status and rights of its citizens. The following sections highlight key legal and policy provisions that

together determine the reproductive rights and choices of women and girls in Malaysia.

A. GENERAL HEALTH LAWS AND POLICIES

The federal constitution of Malaysia does not formally guarantee the right to health. It provides that the federal and state governments share legislative powers over public health, sanitation, and disease prevention.¹²⁴ However, the federal government has exclusive authority over legislative and regulatory matters relating to hospitals, clinics, and dispensaries; health insurance; the medical profession; prescription drugs; and maternal and child welfare.¹²⁵

Malaysia's health policies are formulated as part of the federal government's five-year development plans and its annual budget. They may also be shaped by programs designed to address specific concerns or problems in greater detail than do the plans or budgets.¹²⁶ The Eighth Malaysia Plan contains the country's current health policy.¹²⁷ The plan's health objectives fit within the broader framework of the OPP3.¹²⁸ The Ministry of Health formulated the Vision for Health for 2020, in tandem with its National Vision Policy, as a guiding principle for all its strategies.¹²⁹

Objectives

According to the OPP3, the objectives of health services are to alleviate the negative consequences of poverty on health; improve quality of life; promote and develop health tourism; and contribute to better health, longevity, and citizens' well-being.¹³⁰ The plan sets forth various goals and strategies to improve health services, including the following:

- expanding health services in both urban and rural areas;
- emphasizing promotive and preventive health care and healthy lifestyle campaigns in the public, private and nongovernmental sectors;
- strengthening programs on immunization, food and nutrition, water quality, and sanitation;¹³¹
- continuing to ensure that the needs of poor and low-income households are met in implementing health programs;¹³²
- facilitating the entry of foreigners and their families seeking medical services in Malaysia; and
- increasing foreigners' use of Malaysian health facilities and expanding clientele bases through the promotion overseas of Malaysian private hospitals and health facilities.¹³³

Strategies for implementing the health goals of the OPP3 are outlined in the Eighth Malaysia Plan, which provides that the objective of health services is to raise and continuously improve "the health status of individuals, families and com-

munities," paying special attention to those in straitened circumstances; the plan also calls for the optimal use of resources in the provision of health care.¹³⁴ As with prior development plans, the Eighth Malaysia Plan focuses on developing the primary health-care system and improving the quality and equity of health services.¹³⁵ To that end, priority is placed on the following areas:

- developing and expanding the service capacity of primary, secondary, and tertiary health facilities;
- enhancing the delivery of health services through information technology;
- improving the quality and quantity of health-care personnel; and
- furthering medical research and development.¹³⁶

The plan also sets forth strategies for health-sector development, including the following:

- provide affordable and quality health care;
- expand the wellness (healthy lifestyle) program;
- coordinate and collaborate between public- and private-sector health-care providers;
- increase the number of health-care workers;
- strengthen the telehealth system¹³⁷ to further Malaysia's reputation as a regional center for health services;
- improve health-care research capacity and capability;
- develop and institute a health-care financing scheme; and
- strengthen governance over the health sector (e.g., implement regulations for traditional practitioners and medical products).¹³⁸

The agenda within the plan's strategies for health-sector development covers the following specific areas:

- provide promotive and preventive health services that include national health education and awareness campaigns, such as the healthy lifestyle campaign, and programs on immunization, school health services, food and nutrition, safe water, and occupational health and safety;¹³⁹
- offer medical services, such as the treatment of noncommunicable diseases (e.g., cardiovascular diseases, diabetes mellitus, and cancer); upgrade trauma management and maternal and perinatal health services; strengthen diagnostic pathology and imaging services; construct specialized hospitals and health facilities in urban and rural areas; expand private-sector medical services; promote health tourism; and introduce cost-sharing concepts through health-care financing schemes;
- raise the quality of health services manpower by improving health professionals' education and train-

ing; encouraging postgraduate specialization in various areas of medicine; and recruiting all types of health personnel in the public health sector; and

- raise the level of medical research and development by intensifying research in clinical health systems, health management and promotion, epidemiology, and biomedical technology; and by strengthening the research capacity of the National Institutes of Health.¹⁴⁰

The long-term goal of Vision for Health 2020 is to create “a nation of healthy individuals, families, and communities through a health system that is equitable, affordable, efficient, technologically appropriate, environmentally adaptable, and consumer friendly.”¹⁴¹ The vision statement emphasizes quality, innovation, health promotion, and respect for human dignity, and encourages individual responsibility and community participation in the enhancement of the quality of life.¹⁴²

Infrastructure of health-care services

Government facilities

The Ministry of Health is the main government agency responsible for formulating health policies and delivering health care.¹⁴³ At the federal level, the ministry develops policies, programs, procedural standards, and techniques for various medical specialties.¹⁴⁴

The ministry is headed by the minister of health, who is assisted by a deputy minister, the parliamentary secretary, and the director general of health.¹⁴⁵ The director general of health manages the overall administration of the ministry and reports directly to the minister.¹⁴⁶

The Public Health Department of the Ministry of Health has several divisions, including those covering family health development, disease control, dental services, food quality, and health education.¹⁴⁷ The Family Health Development Division is further subdivided into subsections of family health, nutrition, and primary health care.¹⁴⁸ The primary function of the Family Health Development Division is to manage the delivery of health services through planning, implementing, monitoring, and evaluating activities related to family health at all levels of the health system, including matters of reproductive health.¹⁴⁹

The Medical Services Department of the ministry includes divisions for medical development and medical practice.¹⁵⁰

The Research and Technical Support Services component of the ministry includes several agencies: among them are the Institute for Medical Research, which is the research arm of the ministry, as well as the National Pharmaceutical Control Bureau, which oversees quality control of pharmaceutical products.¹⁵¹

At the state level, a director of medical and health services is responsible for planning and executing medical and

health programs in accordance with federal health policies and objectives.¹⁵² All state health plans and programs must undergo review by the federal Ministry of Health prior to being submitted to the government for approval.¹⁵³

At the district level, the deputy director of health (medical) oversees the medical officer for health or the senior health official who is responsible for the administration of all health-related programs and matters in the district.¹⁵⁴

The ministry recently took over the provision of some areas of primary, secondary, and tertiary public health care from local authorities.¹⁵⁵ Services are provided through a nationwide network of hospitals; community, mobile, and maternal and child health clinics; and specialized institutions.¹⁵⁶ Service provision is facilitated through a hierarchical referral system with hospitals providing the highest level of care.¹⁵⁷

The Ministry of Health operates 124 government hospitals throughout the country.¹⁵⁸ Other government health facilities include 172 urban health clinics, 94 maternal and child health clinics, 168 mobile health units,¹⁵⁹ and 2,620 rural community health clinics.¹⁶⁰ Secondary and tertiary medical services delivered through the country's network of public health facilities include emergency services; outpatient and ambulatory services; and diagnostic, curative, and rehabilitative services.¹⁶¹

One of the key goals and strategies of the OPP3 for improving health services in Malaysia is to create an efficient and client-friendly network of hospitals and clinics by incorporating information and communication technology.¹⁶² The plan also aims to address the shortage of health professionals by prioritizing human resource development through investments in education and training, and by stemming the flow of health professionals from the public to the private sector by improving working conditions and career prospects in the public sector.¹⁶³

The National Population and Family Development Board (NPFDB), which is under the purview of the newly created Ministry of Women, Family and Community Development, is the main government body providing sexual and reproductive health services, including family planning.¹⁶⁴ (See “Reproductive Health Laws and Policies” for more information.) The board is also responsible for implementing population and development activities. (See “Population” for more information.)

Health facilities are generally equally distributed among all states, with the exception of the eastern states of Sabah and Sarawak.¹⁶⁵ The National Health Morbidity Survey II of 1996 revealed that 97% of the overall population had access to health facilities.¹⁶⁶

Although regional variations exist,¹⁶⁷ there were approximately 8,946 doctors in the public sector nationwide as of 2003, with a doctor-to-population ratio of about 1 to 2,800.¹⁶⁸ Unofficial sources indicate that as of March 2004, 23% of medical officer posts and 30% of specialist posts in public-sector health facilities were unfilled because of shortages of qualified medical personnel.¹⁶⁹ There are similar shortages of nurses in public hospitals. As a temporary measure, the government is recruiting hundreds of foreign doctors and specialists to serve in public facilities.¹⁷⁰ Retired specialists, private practitioners, surgeons, and anesthesiologists are also being employed in public-sector health facilities on a contractual or consultancy basis.¹⁷¹ In addition, the Eighth Malaysia Plan provides for the construction of 11 new nursing colleges and 16 allied health professional training centers, and the expansion of eight existing colleges and centers.¹⁷² Thus far, four private institutions of higher education and 14 private sector training institutions have been set up or expanded to provide training for medical undergraduates and allied health personnel.¹⁷³ Ultimately, the government's long-term goal under the OPP3 is to achieve a target doctor-to-population ratio of 1 to 800 by 2010.¹⁷⁴

Privately run facilities

Expanding curative care services in the private sector and strengthening the regulation of private-sector health providers are two key strategies of the OPP3 for improving health services in Malaysia.¹⁷⁵ To realize these goals, one of the main thrusts of the Eighth Malaysia Plan is to integrate health services across the private and public sectors, with complementary referral systems that ensure efficiency and optimal utilization of resources.¹⁷⁶

There were 219 private hospitals in Malaysia in 2002, with a capacity of 10,405 beds.¹⁷⁷ Most (97.8%) of these hospital beds are located in urban areas.¹⁷⁸ There are also about 9,245 private practitioners in the health sector, with a doctor-to-population ratio of 1 to 2,709.¹⁷⁹

Estate hospitals are private hospitals or dispensaries maintained by employers on large agricultural estates or plantations for their laborers' treatment.¹⁸⁰ Such work sites must have their own health facilities, as most are located in isolated areas far from the nearest government health facilities.

Traditional medicine in the Malay, Chinese, and Indian traditions is also widely practiced in Malaysia. As of 2001, there were 3,374 registered traditional practitioners.¹⁸¹ However, the actual number of such practitioners may be higher, given the popularity of traditional medicine for its accessibility and the long-held belief in the curative powers of traditional practitioners.¹⁸²

The Private Healthcare Facilities and Services Act 1998¹⁸³

governs the private health sector with regulations on the development, standards, quality, and activities of all types of private health-care facilities and services.¹⁸⁴ The act defines the types of private health-care facilities that can be established and the services they may provide. The act further stipulates that private health-care facilities must be planned and approved by the Ministry of Health.¹⁸⁵ The act will become effective pending finalization of its implementing regulations.¹⁸⁶ Once ready, the act will include a fee schedule that regulates both professional and hospital charges. The act will also impose zoning requirements to provide a more equitable distribution of private health facilities and services.¹⁸⁷

Financing and cost of health-care services

Government financing

About 6.9% of the national budget, or RM 7.55 billion (USD 1.99 billion) was allocated to the Ministry of Health in 2002.¹⁸⁸ In the same year, government funds accounted for 53.8% of overall national expenditure on health. In the Mid-term Review of the Eighth Malaysia Plan in 2003, the federal government increased its budgetary allocation to the Ministry of Health for implementing the health sector component of the plan from RM 5.5 billion (USD 1.45 billion) to RM 9.5 billion (USD 2.5 billion), which makes up about 6% of the entire plan's budget.¹⁸⁹ About 80% of these funds go toward construction of new hospitals, and upgrading and renovating public health facilities.¹⁹⁰ This represents an increase from the RM 2.6 billion (USD 684 million) committed in the Seventh Malaysia Plan (1996–2000).¹⁹¹

In an effort to improve the quality and affordability of health services, the Seventh Malaysia Plan called for the privatization of several public hospitals,¹⁹² including the National Heart Institute.¹⁹³ However, hospital fees increased in the aftermath of privatization.¹⁹⁴

Private and international financing

Private expenditures accounted for 46.2% of total national spending on health in 2002.¹⁹⁵ The majority (92.8%) of private spending was in the form of out-of-pocket expenses, and the remainder (7.2%) was through pre-paid plans.¹⁹⁶ Generally, although individuals with more disposable income tend to receive medical services in private facilities at their own expense, they are also likely to rely on the subsidized public system for higher-cost procedures.¹⁹⁷

Malaysia practices a policy of national self-reliance and generally refrains from seeking international funding, although it does receive technical support for health programs from several international development agencies.¹⁹⁸ Due to Malaysia's relatively advanced state of development, assistance from international agencies focuses on a few areas, such as collaborations between the government and the United Nations

Children's Fund (UNICEF) and the World Health Organization (WHO) to develop sexuality and HIV/AIDS education and activities for youth.¹⁹⁹

Cost

Fees for public health services are regulated by the Fees Act 1951.²⁰⁰ Public health services are heavily subsidized by the government, with the patient responsible for about 10% of the actual cost. Certain fees can be waived for eligible low-income and rural individuals.²⁰¹ Noncitizens²⁰² (such as migrant workers) may also receive services in public facilities, but at a higher rate of fees.²⁰³ Providers' fees in the private sector are guided by the 2002 Fee Schedule issued by the Malaysian Medical Association,²⁰⁴ while hospital charges such as room, board, and medicines are determined by individual hospital boards.²⁰⁵

The Employees' Provident Fund, established under the Employees Provident Fund Ordinance 1951, is a government health insurance scheme.²⁰⁶ Required monthly contribution is 12% for employers, and 9% for employees, of their monthly salaries, regardless of the age of the employee.²⁰⁷ The scheme covers treatment of critical illnesses for members and their immediate family members,²⁰⁸ and also offers old-age benefits to members upon retirement.²⁰⁹ The Social Security Organization, which pays for work-related illnesses, medical benefits, disability allowances, maternity benefits, and pensions, was established in 1969.²¹⁰ The Government Pension Scheme for Civil Servants is a "non-contributory social security scheme for government employees."²¹¹ This scheme serves not only as security for old age, but is also designed to provide financial assistance to dependents, should a government employee die in service or retire.²¹² It is a safety net for widowed spouses and is particularly beneficial in providing for wives, who generally survive longer than husbands.²¹³ However, in terms of coverage, less than 1% of the population is protected by this safety net.²¹⁴

Voluntary private medical insurance, which is offered by private insurance companies such as ING Insurance and Prudential, is also available to the general public.²¹⁵ These companies offer plans that cover women's sexual and reproductive health conditions, such as pregnancy; treatment for reproductive, cervical, and breast cancers; and other specific conditions.²¹⁶

A national health-financing scheme, which was proposed in the Seventh Malaysia Plan, would contain basic health-care packages, such as secondary-care treatment, out-patient treatment, and preventive care treatment.²¹⁷ In 2001, the health minister proposed the establishment of the National Health Financing Authority to oversee the national scheme.²¹⁸ As of mid-2005, both proposals have yet to be finalized.²¹⁹

The Ministry of Health recently submitted a proposal to

the Parliament for the establishment of a Medical Assistance Fund (Tabung Bantuan Perubatan), with a starting budget of RM 25 million (USD 6.58 million). The fund is designed to provide coverage for the poor and the disabled for the cost of treatment, drugs, and medical appliances that are not available at government hospitals, and for medical expenses incurred from chronic diseases.²²⁰

Two important goals of the OPP3 are to implement a health-care financing scheme for universal coverage and to ensure "appropriate sharing of costs by private and public health-care providers and consumers."²²¹

The Eighth Malaysia Plan calls for the establishment of a regulatory mechanism to ensure that quality health care is provided at a reasonable cost in both the public and private sectors.²²² In the Midterm Review of the Eighth Malaysia Plan, the government committed itself to ensuring that cost-effective medical technologies are available in both the public and private sectors.²²³

Regulation of drugs and medical equipment

The registration of all drugs imported by or manufactured in Malaysia is overseen by the National Pharmaceutical Control Bureau in accordance with the Control of Drugs and Cosmetics Regulations 1984.²²⁴ Under the regulations, drug manufacturers are required to obtain appropriate licensure to produce drugs, and drug retailers may only sell, supply, or import products that are registered by the bureau.²²⁵ Licenses and registrations are issued upon the bureau's evaluation of the quality, efficacy, and safety of drugs after pharmaceutical, microbiological, and toxicological tests are performed.²²⁶ The bureau may also suspend, cancel, or revoke the registration or license of any drugs "at any time and without assigning any reason."²²⁷

Regulation of health-care providers

The Malaysian Medical Council, a statutory body constituted under the Medical Act 1971, regulates medical practice in Malaysia by registering and establishing standards of practice of medical practitioners, and investigating and disciplining instances of professional misconduct.²²⁸ After five or six years of specialized study, newly graduated medical students must complete a 12-month residency, or "housemanship," followed by a three-year period of compulsory service in the public health agencies as a medical officer.²²⁹ Doctors may become licensed as specialists after an additional two to three years of training through service in the public sector.²³⁰ Practicing doctors must also fulfill continuing medical education requirements.²³¹ Obtaining registration by fraud or misrepresentation is deemed a punishable act under the Medical Regulations 1974.²³² The council has a Code of Professional Conduct that establishes minimum standards of medical practice for professional health-

care providers in the government and the private sectors.²³³ Providers in breach of the code for “infamous conduct in any professional respect”²³⁴ may be subject to disciplinary proceedings under the Medical Regulations 1974.²³⁵

The professions of nursing,²³⁶ midwifery,²³⁷ and pharmacy²³⁸ are regulated by specific acts and corresponding statutory boards. Nurses are registered under the Nurses Act 1950²³⁹ and are governed by the Nursing Board.²⁴⁰ The Midwives Act 1966 regulates the conduct and practice of midwifery.²⁴¹ The Registration of Pharmacists Act 1951 provides for the registration of pharmacists and the establishment of the Pharmacy Board, which monitors compliance with pharmacology training and examination requirements.²⁴² Pharmacists are bound by the Code of Conduct for Pharmacists and Bodies Corporate, as adopted by the board.²⁴³ The Estate Hospital Assistants (Registration) Act 1965 regulates medical assistants working at private estate hospitals and provides for the establishment of the Estate Hospitals Assistants Board.²⁴⁴

Practitioners of traditional medicine are not specifically regulated by the Medical Act 1971, although the act does prohibit such practitioners from representing themselves as modern health-care providers and from using syringes, stethoscopes, and other modern medical equipment for which specialized training is required.²⁴⁵ Since 1992, the National Pharmaceutical Control Bureau of the Ministry of Health has accepted applications for the registration of traditional medicines; regulations were imposed on domestic manufacturers and importers of such medicines in 1998 and 1999, respectively.²⁴⁶ Practitioners of traditional medicine are encouraged to register with various associations, although they are not legally required to do so. The Ministry of Health is now drafting a Traditional and Complementary Medicine Act, which would create a regulatory council similar to that of other medical professions.²⁴⁷ The ministry has also drafted a National Policy on Traditional and Complementary Medicine, which aims to ensure the availability of safe and high-quality traditional and complementary medicine practices and products for the public at large, and to facilitate the integration of such practices and products into the national health-care system.²⁴⁸ The National Committee for Research and Development in Herbal Medicines, whose formation was outlined in the Eighth Malaysia Plan, provides guidance on the practice of traditional and complementary medicine and on related products and training.²⁴⁹

Patients' rights

Malaysia's legal system operates according to common law principles and allows damages to be recovered for medical malpractice under tort.²⁵⁰ The amount of damages that may be awarded in a personal injury claim is limited by the Civil Law

Act 1956, which was amended in 1984 to further cap any damages awarded.²⁵¹ The Medical Act 1971 does not specifically address medical negligence.²⁵² There are no official statistics on medical negligence litigation, although a survey conducted from 1986 through 1990 documented 61 negligence cases against the Ministry of Health, or an average of approximately 12 cases per year.²⁵³ Statistics indicate that a great number of doctors do not have malpractice insurance.²⁵⁴

Patients may also bring grievances to the Malaysian Medical Council, which has discretionary jurisdiction to investigate and discipline certain instances of professional misconduct, even if the conduct does not rise to the level of a criminal offense or tort liability. The Malaysian Medical Council's Code of Medical Ethics outlines the following doctors' duties toward their patients:

- to obtain the patient's consent for medical examination and treatment;
- to charge reasonable fees, according to the Malaysian Medical Association's schedule of fees;
- to maintain patient confidentiality; and
- to recognize patients' rights to access their medical records.²⁵⁵

The council may revoke a physician's license and order reimbursement of legal fees, but may not award damages.²⁵⁶

In 1995, the Federation of Malaysian Consumers Associations, the Malaysian Medical Association, the Malaysian Dental Association, and the Malaysian Pharmaceutical Society signed the Patient's Charter,²⁵⁷ a nonbinding document intended to educate health-care providers and patients about their respective rights and ethical responsibilities. The charter establishes that patients have the rights to the following:

- health care and humane treatment, regardless of age, sex, ethnic origin, religion, political affiliation, economic status or social class;
- choice of care;
- acceptable safety;
- adequate information and consent;
- redress of grievances;
- participation and representation;
- health education; and
- a healthy environment.²⁵⁸

The charter also includes a list of patients' responsibilities,²⁵⁹ including the responsibility to “accept all the consequences of the patient's own informed decision.”²⁶⁰

B. REPRODUCTIVE HEALTH LAWS AND POLICIES

Malaysia currently has no government policy or legislation specifically addressing reproductive health.²⁶¹ However, many of the government's current policy objectives for wom-

en's health and reproductive health are generally described in the Eighth Malaysia Plan.²⁶² One of the plan's broad strategic goals for women and development is improving women's health status through the national Family Health Program, which was introduced in 1996 and addresses various areas of women's overall health and reproductive health.²⁶³ The program covers maternal and child health care; immunizations; family planning; early cancer detection; nutrition; the prevention of sexually transmissible infections (STIs), including HIV/AIDS; and the identification of risk factors for noncommunicable diseases, such as cancer, mental illness, and cardiovascular disease.²⁶⁴ The plan also calls for the provision of health education programs for women, which focus on promoting healthy lifestyles and good nutrition.²⁶⁵ In recognition of the "peculiarities of illnesses confronting women, such as . . . those related to reproductive health," and in an effort to improve the quality of women's health care, the plan commits to establishing a special women's hospital that will serve as a national referral center, and to conducting research on various aspects of women's health, with an emphasis on biomedical, socio-behavioral, and clinical research.²⁶⁶

Regulation of reproductive health technologies

Multiple forms of assisted reproductive technology are available in Malaysia, including artificial insemination and in vitro fertilization.²⁶⁷ More sophisticated procedures are offered in three flagship public hospitals, while simpler fertility assistance procedures are available in most general hospitals of the public system.²⁶⁸ In the private sector, 21 centers offer assisted reproductive technologies.²⁶⁹ The Ministry of Health foresees such technologies as a potential area for medical tourism.²⁷⁰

Family planning

General policy framework

There is currently no national family planning policy per se.²⁷¹ However, the government has in the past formulated strategies to guide implementation of family planning and population activities.²⁷² Following the ICPD in 1994, the government formulated a new strategy to enhance population at the macro level and family development at the micro level, which includes the following components:

- enhancing the quality and standards of contraceptive services in the country through the provision of voluntary family planning services by medical, paramedical, and specially trained personnel, which include supportive and follow-up services such as specialist and specialized counseling services (e.g., genetic counseling and infertility evaluation and therapy);
- providing family life and population education and services under the social development program to

facilitate better family life and the complete development of the individual person, and improve the socioeconomic status of women, which will lead to fertility decline and decline in population growth;

- supporting quality-of-life enhancement programs and activities including those for health, welfare, family development, and improvement of women's status;
- integrating family life education and population education into formal and nonformal education curriculums;
- advising government and nongovernmental agencies on the relationship between population and family planning issues and development; and
- researching population issues, especially the relationship between medicine, biology, socioeconomic status, and culture on fertility patterns, population growth, and overall socioeconomic development.²⁷³

Among the providers of family planning services in Malaysia as of 2000 are 2,826 Ministry of Health clinics, 82 NPFDB clinics, nine army clinics, and 307 clinics run by the Federation of Family Planning Associations of Malaysia.²⁷⁴

Contraception

According to the most recent Malaysian Population and Family Survey, which was conducted in 1994, the contraceptive prevalence rate among currently married women aged 15–49 years was 54.5%.²⁷⁵ Of these users, 54.7% used modern methods and 45.3% used traditional methods.²⁷⁶ Among women who did not use contraceptives, the survey found that 58.7% had never practiced contraception, while the remainder had discontinued use for various reasons.²⁷⁷

The most popular contraceptive method used in Malaysia is the pill, as evidenced by the fact that between 1996 and 2000, it was by far the most chosen method of contraception among new family planning acceptors. In 2000 alone, 74.0% of new family planning acceptors chose the pill as their method of contraception. Condom use and tubal ligation are the next most commonly chosen methods (9.0% and 4.7%, respectively).²⁷⁸

There is a continuing belief among some rural Muslim Malays that family planning is completely prohibited in Islam,²⁷⁹ which may explain why Malay women have lower contraceptive prevalence rates than women of other ethnic groups. The 1994 Malaysian Population and Family Survey found that 22% of married Malay women aged 15–49 used a modern method, compared with 47% of Chinese women and 33% of Indian women, respectively.²⁸⁰

Contraception laws and policies

There is no statute banning or restricting the use of contraceptives in Malaysia, or legal requirements for spousal con-

sent or parental authorization. The National Essential Drugs List, issued by the Pharmaceutical Services Division within the Ministry of Health, lists approved drugs for marketing in Malaysia, including contraceptives.²⁸¹

Despite the absence of laws prohibiting sterilization in Malaysia, the National Council for Islamic Affairs in 1981 issued a *fatwa* (opinion based on points of law in religious matters) that forbids the sterilization of men and women on the premise that any form of permanent contraception is *haram* (illegal); this *fatwa*, however, permits temporary methods of contraception for health and economic reasons.²⁸² *Fatwas* may become legally binding in states that adopt such opinions through state legislation.²⁸³

There are no legal provisions governing the use of emergency contraception. Although emergency contraception is generally not provided in the public health system, an attending medical specialist may prescribe it in cases of sexual violence such as rape or incest.²⁸⁴

Although sterilization is not a commonly used method of contraception overall, tubal ligation is much more prevalent than vasectomy.²⁸⁵ Among new users of family planning methods in 2000, for example, 6.3% chose tubal ligation and virtually none chose vasectomy (0.003%).²⁸⁶

The eligibility criteria for female and male sterilization in government clinics include the following:

- having two or more children of each sex;
- having achieved a desired family size; and
- having a medical contraindication to other types of contraception.²⁸⁷

In addition, spousal consent is required “to ensure matrimonial harmony between husband and wife.”²⁸⁸

Regulation of information on contraception

The Medicines (Advertisement and Sale) Act 1956 prohibits advertisements of contraceptives.²⁸⁹ However, the prohibition does not apply to advertisements issued by the federal government, state governments, local or public authorities, the governing body of a public hospital, or persons authorized by the minister of health to publish such advertisements.²⁹⁰

Government delivery of family planning services

Family planning services in the public sector are provided by the Ministry of Health and the NPFDB, with the latter being the primary government body responsible for providing family planning and other sexual and reproductive health services.²⁹¹ These two bodies provide services and contraceptives through various outlets and clinics, including maternal and child health clinics run by the Ministry of Health, and clinics operated by the NPFDB.²⁹² As of 2000, almost all Ministry of Health clinics (997%) had integrated family planning into their provision of services.²⁹³ Pursuant to the Eighth Malaysia

Plan's Kompleks KASIH Keluarga program, a certain number of specialized clinics are being established nationwide, while other facilities are being upgraded to provide family planning services²⁹⁴ with the long-term goal of developing these clinics into a “one-stop family service centre of excellence.”²⁹⁵ Furthermore, the nationwide Nur Sejahtera: Sihat dan Segak program (*Wellness: Healthy and Smart program*) is being implemented to increase reproductive health awareness among the middle-aged population.²⁹⁶ As the main provider of family planning services, the NPFDB is responsible for providing sterilization procedures, which are performed in the board's clinics, whereas Ministry of Health clinics refer such procedures to hospitals.²⁹⁷

Family planning services provided by NGOs and the private sector

In addition to the Ministry of Health and the NPFDB, the Federation of Family Planning Associations of Malaysia is the third main implementing agency of family planning services in the country.²⁹⁸ The federation is a nonprofit association that provides family planning services through a network of about 307 clinics to mostly low-income and marginalized women, including those in indigenous communities and urban areas.²⁹⁹ The federation also operates a community-based project initiated in 1980 called the Community Clinic Extension Family Planning program.³⁰⁰ The program provides family planning services to clients in underserved areas through a network of 423 outlets that are staffed with doctors and community-based agents.³⁰¹

A wide network of private medical practitioners also plays a main role in the delivery of family planning services in Malaysia.³⁰² The private sector is responsible for about 44.8% of family planning and contraceptive service provision.³⁰³ Unmarried individuals generally seek family planning services outside of the government sector, choosing to go to private gynecologists and pharmacies instead.³⁰⁴

Maternal health

Malaysia's maternal mortality ratio has fallen dramatically from 148 maternal deaths per 100,000 live births in 1970, to 30 deaths per 100,000 live births in 2002.³⁰⁵ Improvements in access to health care in rural areas, the development of professional midwifery, the installment of a highly efficient referral system, and the provision of free transportation to medical centers are among the reasons for this significant drop in maternal mortality.³⁰⁶ Seventy percent of pregnant women receive prenatal care, which is provided free of charge in government facilities.³⁰⁷ It is estimated that women make an average of seven prenatal visits per pregnancy.³⁰⁸ Although most deliveries occur in health facilities, more than 95% of all deliveries, even those that take place at home, are assisted

by skilled attendants.³⁰⁹ The average proportion of deliveries that are considered to be “safe”—i.e., those assisted by trained personnel—is highest in Peninsular Malaysia and Sarawak (about 99% and 98%, respectively), and lowest in Sabah (about 81%).³¹⁰ Conditions originating in the perinatal period are responsible for about 5% of maternal deaths in government hospitals, and these rank eighth out of ten in the principle causes of maternal mortality in government hospitals.³¹¹

Laws and policies

The government has demonstrated a high degree of political will in undertaking efforts to reduce maternal mortality and improve the status of maternal health over the past several decades.³¹² Although there is currently no single comprehensive national law or policy addressing maternal health per se, government activities and services in this area have typically been implemented through the framework of various national programs and initiatives promoting maternal health and safe motherhood.³¹³

Some of the government’s current strategies to reduce maternal mortality and improve maternal health include the following:

- training traditional birth attendants;
- utilizing a risk approach strategy, which was implemented in 1986, that identifies women at high risk of pregnancy- or delivery-related complications to give them the necessary level of care and provide referrals;³¹⁴
- increasing access to family planning services and facilities;
- developing a plan of action for community participation;
- strengthening resources and capacity at operational levels;
- using Home-Based Maternal Health Cards, a system introduced in 1994 in which cards are retained by the women, rather than kept on file at health facilities, to improve the exchange of health record information among providers and assure continuity of care;³¹⁵
- establishing “low-risk delivery centers” in urban areas and “alternative birthing centers” in rural areas for low-risk women in order to reduce the number of low-risk deliveries in hospitals and free up more hospital beds, staff, and other scarce resources for high-risk pregnancies requiring specialized care;³¹⁶
- providing “Alternative Birthing Centres (ABC)” which function as half-way centers as an alternative for mothers from very remote areas; and
- establishing a confidential inquiry system for maternal deaths to identify preventable contributing factors

and make recommendations for remedial measures at all levels of care.³¹⁷

In addition to these efforts, the government launched the Safe Motherhood Initiative in 1989, which was inspired by the Safe Motherhood Conference held in Nairobi, Kenya, in 1987.³¹⁸ The initiative’s strategies include redressing social inequalities facing women, ensuring access to family planning, developing community-based maternity care, and providing back-up and support services at the primary health-care level.³¹⁹

Nutrition

The National Coordinating Committee on Food and Nutrition formulated the National Plan of Action for Nutrition (NPAN) of Malaysia in 1995 to implement its commitments under the World Declaration and Plan of Action for Nutrition, which was adopted at the International Conference on Nutrition in Rome in 1992.³²⁰ The Malaysia plan addresses nine major nutrition areas proposed at the conference, including the following six:

- promotion of breast-feeding;
- services for populations that are socially, economically, or nutritionally vulnerable;
- prevention and treatment of specific micronutrient deficiencies;
- development of policies and legislation that promote nutritional development;
- promotion of healthy lifestyles and dietary practices; and
- fielding of surveys of the national nutrition situation.³²¹

Several outcomes have resulted from the national nutrition plan, including the development of National Dietary Guidelines for Malaysians, the creation of a nutrition tool titled Recommended Nutrient Intake for Malaysia,³²² the enactment of the Food and Nutrition Policy, the fielding of the Malaysian Food Consumption Survey, and the inclusion of a nutrition component in the Seventh and Eighth Malaysia Plans.³²³

In 1997, the government introduced the Nutrition Rehabilitation Program for Pregnant Mothers to improve the health status of pregnant women, specifically low-income women, through the provision of adequate nutrition.³²⁴ Other government efforts targeted at improving the nutritional status of mothers and pregnant women include:

- nutrition education;
- supplementary feeding programs;
- iron and vitamin supplements for pregnant women; and
- efforts to address specific deficiencies, such as iodizing salt to address iodine deficiency.³²⁵

The OPP3 includes endorsing the adoption of better nutritional practices to improve health status as one its key strategies.³²⁶

Safe abortion

There is a dearth of data regarding the prevalence of abortion in Malaysia.³²⁷ An unofficial report issued in the 1980s estimated that one in three live births end in abortion.³²⁸ Abortion ratios have reportedly more than doubled since then, with ratios in urban areas being three times higher than those in rural areas.³²⁹ Other unofficial sources estimate the rate of illegal abortions to be 0.1% of 500,000 live births per year.³³⁰ A confidential government study of maternal deaths in 1991 did not list unsafe abortion as a major cause of maternal death.³³¹ The Ministry of Health's Information and Documentation System Unit reported 33,759 induced abortions, and nine deaths resulting from abortions, in 2002.³³² However, more recently in 2004, the government has publicly recognized the problem of unsafe abortion in Malaysia, and its link to maternal mortality and morbidity.³³³

Abortion laws and policies

The principal source of law on abortion in Malaysia is the penal code. The main code provision dealing with abortion, which was amended in 1989, permits abortion upon the good-faith opinion of a registered medical practitioner who asserts that continuation of the pregnancy would pose a greater risk to the woman's life or mental or physical health than termination of the pregnancy.³³⁴ Prior to the amendment, abortion was permitted only if performed in good faith for the purpose of saving the woman's life.³³⁵

Abortion performed in violation of the penal code with the woman's consent carries punishment of up to seven years' imprisonment and a fine for both the provider and the woman if she is "quick with child";³³⁶ the punishment is up to three years' imprisonment or a fine, or both, if she is not "quick with child."³³⁷ Abortion performed without the woman's consent, irrespective of whether she is "quick with child," carries a punishment of up to 20 years' imprisonment and a fine for the provider.³³⁸ If an abortion results in the woman's death and she has consented to the procedure, the provider is subject to up to ten years' imprisonment and a fine; if she has not consented, the penalty is up to 20 years' imprisonment.³³⁹ The penalties for illegal abortion under the penal code did not change as a result of the 1989 amendment to the code.

The term "abortion" is not actually defined under the laws of Malaysia. Rather, the penal code refers to the procedure as "causing miscarriage," which is also undefined under the code. However, Malaysia accepts the legal definition of miscarriage from a 1955 Indian court case, *In re Malayara Seethu*, as the "premature expulsion of the product of conception, an

ovum or a foetus, from the uterus, at any period before the full term is reached."³⁴⁰

In 2002, the National Fatwa Committee issued a *fatwa* setting forth the conditions for permissible abortion. The committee declared that an abortion after 120 days' gestation is considered murder unless the mother's life is at stake, or in cases of fetal impairment.³⁴¹ The parliamentary secretary of the prime minister's department revealed that the national government had decided not to publicize the *fatwa* when it was issued for fear that it could be misused.³⁴² A *fatwa* must be adopted by state governments before it can be legally enforced.³⁴³

According to the Malaysia Medical Council's Code of Medical Ethics, abortions performed for other than therapeutic reasons are considered "infamous conduct" and physicians who perform such acts are subject to disciplinary action in addition to any criminal liability they may incur under the penal code.³⁴⁴

According to senior medical personnel in public hospitals, abortions are performed in accordance with standard operating procedures under a uniform approach to dealing with requests for termination of pregnancy.³⁴⁵ These standardized procedures were compiled at the initiative of a public hospital in the city of Ipoh, which resulted in the publication of the *Clinical Practice Guideline: Termination of Pregnancy*. According to this publication, which is based on guidelines issued by the Royal College of Obstetricians and Gynaecologists, United Kingdom,³⁴⁶ a request for termination of pregnancy can be accommodated at public facilities for medical or psychiatric conditions.³⁴⁷ The practice guidelines recommend that doctors obtain a second medical opinion before proceeding with the abortion, which should be performed by a doctor who was not involved in the decision-making process.³⁴⁸ The guidelines also instruct doctors to provide counseling to women seeking abortion, with the involvement of a psychiatrist, medical social worker, and other personnel, for the following purposes:

- to determine the reason for the abortion request and the implications of the termination;
- to determine the appropriate method of termination (depending on age of gestation) and its possible complications;
- to provide emotional support; and
- to discuss future pregnancies and contraceptive use.³⁴⁹

The guidelines also provide for postabortion care.³⁵⁰

Regulation of information on abortion

The Medicines (Advertisement and Sale) Act 1956 prohibits individuals from taking part in the publication of adver-

tisements relating to abortion.³⁵¹ First-time contravention of the act carries a maximum prison term of one year or a fine of up to RM 3,000 (USD 790), or both;³⁵² the penalty for subsequent offenses is imprisonment of up to two years or a fine of up to RM 5,000 (USD 1,316), or both.³⁵³ Individuals charged under the act may avoid punishment in certain situations, such as if the abortion-related advertisement appeared in a technical publication intended for circulation among health-related professionals, including registered medical practitioners, dentists, pharmacists, and individuals in training for such professions.³⁵⁴

Government delivery of abortion services

Legal abortions may be performed in public facilities in accordance with standard clinical guidelines. According to senior medical personnel in government facilities, public hospitals will perform abortions as long as two doctors can prove that continuing the pregnancy would result in detriment to the mental or physical health of the woman concerned.³⁵⁵

The private sector provides abortion services at costs that vary from one facility to another. The Federation of Family Planning Associations of Malaysia provides only referrals for abortion.³⁵⁶

HIV/AIDS and other sexually transmissible infections (STIs)

Excluding HIV, syphilis is the most common STI in Malaysia, followed by gonorrhea and chancroid.

The cumulative number of HIV/AIDS cases reported to the Ministry of Health as of December 2002 was 51,256.³⁵⁷ The majority of HIV infections in Malaysia are transmitted via needle sharing among injecting drug users (76.3%), followed by heterosexual contact (12.1%), other or unknown causes (10.1%), and homosexual or bisexual contact (0.9%).³⁵⁸ By gender, men account for the majority of HIV/AIDS cases, although the rate of HIV infection among women increased from 1.2% of cases (nine) in 1990 to 9% (629 cases) in 2002.³⁵⁹ During 2002 alone, the reported number of HIV infections among women increased by 70% (from 370 to 629 cases).³⁶⁰ Mother-to-child transmission of HIV has also been steadily increasing.³⁶¹ By occupation, the largest percentage of infected women are housewives (26.3%), with industrial workers (4.1%) and sex workers (2.8%) representing smaller percentages of infected women.³⁶²

Laws and policies

The Prevention and Control of Infectious Diseases Act 1988 requires a person infected or affected by an infectious disease, or a medical practitioner who becomes aware of the existence of or treats such a disease, to notify the appropriate authorities.³⁶³ The act also prohibits infected individuals from behaving in a manner likely to expose others to the

risk of infection or lead to the spread of the disease.³⁶⁴ The First Schedule of the act lists the applicable infectious diseases, which include chancroid, all forms of gonococcal infections, syphilis, and HIV.³⁶⁵ The penalties for offenses committed under the act include imprisonment of two to five years or a fine, or both.³⁶⁶ The act does not offer legal protections for people living with HIV/AIDS in cases of discrimination.³⁶⁷

In addition, the penal code contains provisions criminalizing negligent³⁶⁸ or malignant³⁶⁹ acts “likely to spread infection of any disease dangerous to life.” It stipulates a punishment of up to six months’ imprisonment or a fine, or both, for negligent acts, and imprisonment extendable to two years or a fine, or both, for malignant acts.³⁷⁰

Furthermore, the Action Plan on the Prevention of HIV/AIDS in the Workplace was formulated during the implementation of the Eighth Malaysia Plan.³⁷¹ The highest policy-making body in relation to HIV/AIDS prevention and control is the Ministerial Level Committee on AIDS, which was established in 1992.³⁷² The committee is chaired by the minister of health and is made up of members from various ministries, including education, youth and sports, national unity and social development, culture and tourism, rural development, and the prime minister’s office.³⁷³ There are two subcommittees under the main committee—the National Technical Committee on AIDS, which develops and monitors the technical aspects of national HIV/AIDS prevention and control measures; and the National Coordinating Committee on AIDS, which serves as a forum for governmental agencies and NGOs to discuss various social, economic, cultural, religious, legislative, and other issues relating to the prevention and control of HIV/AIDS in Malaysia.³⁷⁴

In addition to comprehensive national plans and programs, several Ministry of Health guidelines address discrete aspects of HIV/AIDS prevention, control, and treatment, including the following:

- counseling about HIV infection and AIDS;
- AIDS education;
- management of HIV infection in Malaysia;
- management of nursing care for people infected with HIV/AIDS;³⁷⁵
- management of infected health-care workers;³⁷⁶ and
- universal infection control precautions.

The Ministry of Human Resources has also developed policy recommendations relating to HIV/AIDS. In 2001, it issued the Code of Practice on the Prevention and Management of HIV/AIDS in the Workplace.³⁷⁷ The code’s main goal is to reduce the spread of HIV/AIDS by providing guidance on prevention and management issues in the workplace, promoting education and awareness on HIV/AIDS, and

encouraging a nondiscriminatory work environment.³⁷⁸

The Malaysian AIDS Council serves as a liaison between the government and NGOs involved in AIDS-related work. The council itself is an umbrella organization composed of over 30 NGOs and community-based organizations, through which the government channels funds for AIDS-related projects in the nonprofit sector. Among the council's notable efforts was the publication of the Malaysian AIDS Charter in 1995, a nonbinding policy document that outlines the rights and responsibilities of all sectors of the population in relation to HIV/AIDS.³⁷⁹ The charter asserts that all individuals have the right to be treated with "care, consideration, respect and dignity without discrimination of any kind"; to anonymous testing and informed consent to testing; confidentiality; and to marry, provided that the infected party's HIV status is disclosed to the partner.³⁸⁰

The government and NGO sectors have made efforts to improve access to antiretroviral treatment and alleviate financial hardship for people living with HIV/AIDS. In November 2002, the Pharmaceutical Services Division obtained cabinet approval to import generic versions of patented antiretrovirals from India under governmental approval to conduct this trade.³⁸¹ In addition, the Malaysian AIDS Foundation, the fundraising arm of the Malaysian AIDS Council, assists individuals in obtaining antiretroviral therapy through a drug assistance scheme launched in 1998.³⁸² The foundation also sponsors programs that provide monthly financial aid to children with HIV/AIDS, and interest-free loans to people living with HIV/AIDS to assist them in setting up or strengthening small-scale businesses.³⁸³

Regulation of information on HIV/AIDS and other STIs

The Indecent Advertisements Act 1953 defines advertisements relating to venereal disease and sexual intercourse as matters of an "indecent nature" and restricts their publication.³⁸⁴ Syphilis, gonorrhea, soft chancre, and bubo (*lymphogranuloma inguinale*) are included within the definition of venereal disease.³⁸⁵ The act prescribes a maximum punishment of imprisonment for one year and a fine of up to RM 500 (USD 130).³⁸⁶ The act does not apply to advertisements relating to venereal disease that are published or authorized by the federal or state governments, or any local or public authority.³⁸⁷

The Malaysian AIDS Charter affords every individual the right to accurate and unambiguous information on HIV/AIDS; the federal and state governments are charged with responsibility for the public dissemination of such information.³⁸⁸ The charter establishes a national public AIDS resource center that consolidates information from the government, private sector, NGOs, and other related agencies.³⁸⁹

Adolescent reproductive health

Adolescents aged 10–19 years account for 20.4% of Malaysia's total population.³⁹⁰ Girls in that age-group comprise about 10% of the total population.³⁹¹ Data on Malaysian adolescents' health overall, and on their reproductive health in particular, are not readily available,³⁹² and there are few comprehensive studies on the subject; a study conducted in 1994 by the NPFDB with a sample of 2,366 adolescents aged 10–19 still serves as a common source of information on adolescent sexual and reproductive health.³⁹³ Of the total number of HIV/AIDS cases as of June 2002, adolescents accounted for 1.6%.³⁹⁴

Laws and policies

There is no specific national policy on adolescent reproductive health. In 1995, upon the adoption of the Beijing Declaration and Platform for Action, the government stated the following official position on adolescent reproductive health:

...while agreeing that adolescent health is an area requiring attention due to increasing problems of unwanted teenage pregnancies, unsafe abortions, sexually transmitted diseases and HIV/AIDS, we believe that parental guidance should not be abdicated and that sexual permissiveness and unhealthy sexual and reproductive practices by adolescents should not be condoned.³⁹⁵

The government established the Adolescent Health Program under the Family Health Development Division of the Ministry of Health in 1995.³⁹⁶ Three separate divisions were created in the program in response to a 1996 national health survey that found existing health activities to be too general for the needs of adolescents and recommended targeted health promotion and prevention services for adolescents.³⁹⁷ The three divisions focus on policy development, health personnel training, and pilot projects.³⁹⁸

In 2001, the government introduced the National Adolescent Health Policy, which aims to promote the development of adolescents by ensuring that they take responsibility for their health, and by empowering them with the knowledge and skills to practice healthy behaviors.³⁹⁹ The policy focuses on preventing the negative health consequences of risk behaviors and enabling adolescents to make sound choices, develop risk-management skills, and adopt responsible healthy lifestyles.⁴⁰⁰

Delivery of adolescent reproductive health services by NGOs

As of 2001, there were about 170 government health clinics across the country that provided services to adolescents, including medical treatment, screening, and health promotion.⁴⁰¹ It is the government's operational policy not to

provide certain services, such as family planning methods, to unmarried adolescents.⁴⁰² However, anecdotal evidence suggests that some private-sector providers offer pregnancy tests and contraceptives to adolescents.⁴⁰³ In addition, the condom is widely available over the counter in convenience stores and pharmacies, with no restrictions on purchasers.⁴⁰⁴

The government has developed programs addressing specific aspects of adolescent reproductive health, with HIV/AIDS as a particular area of attention. Through the Program Sihat Tanpa AIDS Untuk Remaja (*Staying Healthy Without AIDS program for adolescents*, known as PROSTAR), an AIDS education and prevention program, the government has established 458 PROSTAR clubs in 339 schools and 119 districts.⁴⁰⁵ The clubs involve about 23,780 adolescents who serve as peer group tutors.⁴⁰⁶ The Eighth Malaysia Plan proposed to train 20,000 additional peer group tutors to reach 2.6 million adolescents in 2001.⁴⁰⁷ Such programs reflect the government's recognition of young women's particular vulnerability to HIV/AIDS, and its emphasis on providing AIDS information and education.⁴⁰⁸

C. POPULATION

Malaysia's policies on population have always been closely linked with the economic development of the nation. The First Malaysia Plan (1966–1970) identified the country's high population growth rate as a problem for national development, and made reduction of the birthrate a key development goal.⁴⁰⁹ In 1966, Malaysia passed the Population and Family Development Act, which created the National Family Planning Board, an agency responsible for implementing the national family planning program.⁴¹⁰ At the time, the board's objective was to encourage couples to have fewer children in order to reduce the annual growth rate, from 3% to 2%, within 20 years.⁴¹¹

The Midterm Review of the Fourth Malaysia Plan (1981–1985) in 1984 established a new policy direction on population in which moderate growth was viewed as economically desirable in order to promote a larger consumer base.⁴¹² That review identified a specific population size of 70 million as an ideal target toward which to strive over the long term (115 years).⁴¹³

In 1984, the National Family Planning Board was renamed the National Population and Family Development Board (known by its acronym, NPFDB) to reflect the new policy's focus on birth spacing and family welfare rather than limiting births.⁴¹⁴ Incentives were also developed to encourage childbearing, such as offering tax breaks for each child in a family.⁴¹⁵

Subsequent development plans have continued to

emphasize the link between population growth and economic development.⁴¹⁶

Laws and policies

There is no separate population policy per se. Population goals are addressed in the country's development plans and are articulated by the NPFDB.

According to the data presented in the Eighth Malaysia Plan, the population—currently over 26 million—is growing at an annual rate of 2.3%.⁴¹⁷ This rate is lower than that registered during the Seventh Malaysia Plan period (i.e., 1996–2000), because fertility rates continue to decline as more women pursue higher education and professional training.⁴¹⁸

According to the NPFDB, the thrust of the government's current policy on population is to strategize to meet the needs of citizens up to the year 2020 in a manner that supports the goals of the National Vision Policy, which stresses resource development and the creation of an economically strong and competitive community.⁴¹⁹ This requires an emphasis on the quality of the population, human resource development, and enabling couples to plan their families according to their resources.⁴²⁰ The main aim of the policy is to achieve a population growth rate that is in balance with available resources and sustainable development.⁴²¹ At the macro level, achieving this aim will require better integration of population factors within development planning processes, and at the micro level, it will mean strengthening the family unit to improve the quality of the population.⁴²²

Implementing agencies

The NPFDB is charged with overseeing the current population policy and with performing the following functions:

- formulate policies and methods to increase knowledge and promote practices relating to population and family development in order to promote maternal and child health and the welfare of the family;
- program, direct, administer, and coordinate population and family development activities nationwide;
- train personnel providing services in relation to population and family development;
- conduct research on medical and biological issues related to population and family development;
- promote research on the interrelations between social, cultural, economic, and population changes, especially concerning the nation's fertility patterns; and
- establish an evaluation system to assess the effectiveness of population programs and track the progress toward attaining their objectives.⁴²³

(See “Infrastructure of health-care services” for more information.)

Under the Eighth Malaysia Plan, about RM 8 million (USD 2.13 million) was allocated to the NPFDB for the period covered by the plan (2001–2005).⁴²⁴

III. Legal Status of Women and Girls

The health and reproductive rights of women and girls cannot be fully understood without taking into account their legal and social status. Laws relating to their legal status not only reflect societal attitudes that shape the landscape of reproductive rights, they directly impact their ability to exercise these rights. A woman or adolescent girl's marital status, her ability to own property and earn an independent income, her level of education, and her vulnerability to violence affect her ability to make decisions about her reproductive and sexual health and access to appropriate services. The following section describes the legal status of women and girls in Malaysia.

A. RIGHTS TO EQUALITY AND NONDISCRIMINATION

The federal constitution of Malaysia prohibits discrimination against citizens on the grounds of religion, race, descent, place of birth, and gender in any law; in appointments to any public office or employment; in the administration of any law relating to property matters; or in the establishment of or engagement in a trade or employment.⁴²⁵ Gender was included as an additional ground as a result of a 2001 amendment to the constitution; however, it does not extend to provisions regulating personal laws applicable to women.⁴²⁶

The rights of Malaysian women are governed by provisions in the federal constitution, Malaysian legislation, religious and customary laws, and international conventions to which Malaysia is a party.

The federal constitution and specific national legislation guarantee women formal rights in a number of different spheres, including political participation, employment, education, health care, marriage, and divorce.⁴²⁷ In addition, over the last ten years and largely due to the efforts of the women's movement, specific legislation has been enacted or amended to address gender violence and promote gender equality. These include the Domestic Violence Act 1994 (DVA)⁴²⁸ and amendments to the penal code's rape provisions.⁴²⁹

However, the recent case of *Beatrice Fernandez v. Sistem Penerbangan Malaysia & Anor* illustrates the limitations of having only formal expressions of the right to equality. In that case, the Court of Appeal held that constitutional rights and guarantees, including the right to equality, were enforceable by private citizens against the state only, and not between private

citizens themselves.⁴³⁰ This case involves discrimination against a woman by her employer based on pregnancy.

There are no constitutional guarantees against discrimination on the ground of sexual orientation. Homosexual acts are punishable offenses under civil, criminal, and Islamic laws. The penal code criminalizes "unnatural offences," which are interpreted to include homosexuality.⁴³¹ A relevant provision of the code was invoked for the first time against a former deputy prime minister in a case involving alleged homosexual activity between two consenting adults.⁴³² Transsexuals are often arrested and charged under the Minor Offences Act 1955⁴³³ for "indecent behavior."⁴³⁴ Under the tenets of Islam, homosexuality is considered morally worse than adultery because it is against nature and the divine objective of creation and reproduction.⁴³⁵ *Liwat* (sexual relations between male persons) and *musahaqah* (sexual relations between female persons) are punishable offenses under the Syariah Criminal Offences (Federal Territories) Act 1997.⁴³⁶

The government formulated the National Policy on Women in 1989, which recognizes poverty, lack of education, and, at times, culture and tradition, as obstacles to women's progress.⁴³⁷ The policy's primary objectives are the following:

- ensure that men and women share equitably in the acquisition of resources, information, opportunities, and the benefits of development; and
- integrate women into all sectors of development in accordance with their capabilities and needs to enhance the quality of life; eradicate poverty, ignorance, and illiteracy; and ensure a peaceful, harmonious, and prosperous nation.⁴³⁸

One visible outcome of the policy was the inclusion of a chapter on Women in Development in the Sixth Malaysia Plan (1991–1995). This was the first time the role of women in Malaysia's development was formally recognized and highlighted in a national development plan.⁴³⁹ The implementation of that chapter of the plan was originally the responsibility of the Women's Affairs Secretariat (known as HAWA),⁴⁴⁰ but is now under the Ministry of Women, Family and Community Development.⁴⁴¹

The National Action Plan for the Advancement of Women⁴⁴² was formulated to implement the women's development policy, and was approved by the cabinet in 1997. The action plan draws largely from the Beijing Platform for Action and outlines strategies and programs in areas of critical concern for women's roles in the spheres of health, education and training, the economy, law, power-sharing, the media, religion, culture, sports, and the family. The main objectives of the Malaysian action plan are the following:

- strengthening the national mechanisms for women's advancement;
- increasing awareness and sensitivity of the public and

the government to women's issues; and

- activating NGOs to improve the efficiency and effectiveness of socioeconomic programs.⁴⁴³

The action plan identifies different ministries, agencies, and NGOs that are responsible for instituting affirmative action policies and other incentives to increase women's opportunities for participation in social and economic life. The recommendations contained in the action plan are in line with the broader policies of national development plans.⁴⁴⁴

The strategic thrusts of the Eighth Malaysia Plan in the area of women and development are the following:

- increasing women's participation in the labor market;
- providing more education and training for women to meet the demands of a knowledge-based economy and facilitating women's upward mobility in the labor market;
- fostering women's involvement in business;
- reviewing statutory measures that inhibit the advancement of women;
- improving women's health status;
- reducing the poverty rate among female-headed households;
- strengthening research activities that seek to increase women's participation in society and enhance their well-being; and
- enhancing the national mechanisms and institutional capacity for the advancement of women.⁴⁴⁵

Formal institutions and policies

The government established the Ministry of Women and Family Development in 2001 as the national agency for promoting the advancement of women in the country.⁴⁴⁶ Among the ministry's responsibilities are formulating and monitoring policies and programs that address issues relating to women and families; sensitizing policymakers about such issues; and engaging in legal literacy and awareness-raising campaigns for women and the public at large.⁴⁴⁷ The ministry also oversees implementation of the National Action Plan for the Advancement of Women.⁴⁴⁸

The ministry was merged with the Ministry of National Unity and Social Development in May 2004 to form the new Ministry of Women, Family and Community Development (The Women's Ministry).⁴⁴⁹ Among the bodies within the Women's Ministry are the Department for Women's Development, the Community Welfare Department, the NPFDB, the Community Welfare Foundation, and the Social Institute of Malaysia.⁴⁵⁰ The Women's Ministry also includes the advisory bodies of the National Advisory Council on Women and the National Council for Women and Family Development.⁴⁵¹

Prior to the establishment of the Women's Ministry, the Women's Affairs Secretariat, created in 1983, was the lead government agency on women's issues and was responsible for ensuring the integration of women into the national development process.⁴⁵² It also served as the secretariat for the National Advisory Council on Integrating Women in Development, the oldest national institutional body for the advancement of women. The advisory council was established in 1976 in response to the World Plan of Action for the Advancement of Women adopted at the First World Conference on Women in 1975,⁴⁵³ which advocated the integration of women into the development process.⁴⁵⁴ The advisory council is a multisectoral body made up of government and NGO representatives; it serves as a coordinating, consultative, and advisory body to the government, and between the government and NGOs, on matters relating to women in development planning and implementation.⁴⁵⁵

In addition to setting up mechanisms and policies specifically addressing women's affairs, the government established the Human Rights Commission of Malaysia in 1999.⁴⁵⁶ The commission has no enforcement powers, but has, in certain cases, brought to the government's and the public's attention what needs to be done to comply with human rights norms.⁴⁵⁷

B. CITIZENSHIP

The federal constitution grants mothers and fathers the right to confer citizenship to their children born in Malaysia.⁴⁵⁸ However, in the case of children born outside of the country, the child is considered a citizen at birth only if his or her father is a citizen at the time of the birth.⁴⁵⁹

The federal constitution discriminates against foreign spouses of Malaysian women who want to acquire citizenship. Whereas it provides that a foreign wife of a Malaysian man may apply for citizenship, there is no similar provision allowing a foreign husband to acquire citizenship as a result of his marriage to a Malaysian woman.⁴⁶⁰

This dual treatment is premised on the view that upon marriage, a woman should follow her husband and not vice versa.⁴⁶¹ Some reprieve has been given to foreign husbands of Malaysian women who are professionals and have applied for work permits.⁴⁶² Furthermore, the Immigration Department has recently announced that foreign wives who hold social visit passes for at least three years are now allowed to work in Malaysia.⁴⁶³ Unfortunately, this policy has not been extended to foreign husbands.

C. MARRIAGE

The laws relating to marriage and family matters in Malaysia are governed by two distinct legal systems—civil law, which is

applicable to non-Muslims, and Islamic or Syariah law, which applies only to Muslims.

The Law Reform (Marriage and Divorce) Act 1976 is the principal piece of legislation governing marriage and divorce for non-Muslims. The act recognizes monogamous marriages⁴⁶⁴ and prescribes procedures for the solemnization and registration of such marriages. It does not affect the validity of any marriage solemnized under any law, religion, or custom prior to the date the act came into force, on March 1, 1982.⁴⁶⁵

The minimum age for marriage under the act is 18 years for both males and females.⁴⁶⁶ However, females who have attained the age of 16 may obtain permission to marry from the chief minister of their state.⁴⁶⁷ The act also stipulates that individuals under the age of 21 cannot marry without their father's permission.⁴⁶⁸

The act outlaws polygamy.⁴⁶⁹ There is no legal recognition of marriage between two persons of the same sex in Malaysia.

Under the Married Women and Children (Maintenance) Act 1950, a married woman is entitled to claim reasonable maintenance from her husband for herself and her children during marriage if the husband neglects to support her, or refuses to provide for the family.⁴⁷⁰ Upon proof of either of the above situations, a court may order the husband to pay a monthly allowance as maintenance, with consideration for the husband's means, the family's financial means, any physical or mental disability of the wife, and the standard of living enjoyed by the family.⁴⁷¹ An illegitimate child is also entitled to claim maintenance from his or her father under the act.⁴⁷²

Marriage between Muslims

The Islamic Family Law (Federal Territories) Act 1984 applies to matters of marriage among Muslims in the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya.⁴⁷³ Although each Malaysian State has its own set of Islamic laws, the basic principles are the same in all jurisdictions with regard to family law for Muslims, and are enshrined in the various state legislations. The Islamic Family Law (Federal Territories) Act 1984 establishes a minimum age for marriage of 18 for males and 16 for females. However, females under the age of 16 may marry under "certain circumstances" with the written permission of a Syariah court judge;⁴⁷⁴ the act does not define the "certain circumstances" under which such a marriage would be permitted, however.

Generally, a valid Islamic marriage requires the consent of both parties. The states of Kelantan, Kedah, and Melaka, however, legally recognize the marriage of a young woman forced to marry by her father or paternal grandfather, according to the doctrine of *ijbat*.⁴⁷⁵

Laws in various states permit Muslim men to marry up to four wives. Women are not allowed to take more than one

husband. Official sources indicate that only 5% of Muslim marriages in Malaysia are polygamous.⁴⁷⁶ NGOs estimate the figure to be closer to 20%.⁴⁷⁷

Generally, the man must obtain his existing wife's written consent before entering into another marriage, as well as permission from the relevant Syariah court.⁴⁷⁸ In a number of states, four conditions must be fulfilled before a man may take another wife:

- the proposed marriage must be "just and necessary";
- the husband must have sufficient financial means;
- the husband must agree to accord equal treatment to the existing wife or co-wives; and
- the proposed marriage will not cause *darar syarie* (danger or harm) to the existing wife or co-wives.⁴⁷⁹

The conditions for polygamy vary from state to state. In the state of Perak, for example, the husband need only make a declaration before a Syariah court judge that "he shall be fair to his wives" and obtain a certificate from the judge.⁴⁸⁰ In the states of Kelantan and Terengganu, permission from the Syariah court is the only requirement.⁴⁸¹ Recently, the state of Perlis relaxed its polygamy laws, allowing Muslim men to enter into polygamous marriages without the consent of their existing wives.⁴⁸² Perlis's polygamy registration fees have also been made more affordable, and men need not undergo new marital instruction courses before marrying again, a requirement that is customary in other states.⁴⁸³ The state government of Selangor, on the other hand, has recently tightened the procedure for polygamous marriages,⁴⁸⁴ and requires that courts receiving applications for polygamy hear testimony from the applicant husband, his existing wife, his future wife, and her *wali* (male guardian) so the judge can determine whether the proposed marriage is "just or necessary."⁴⁸⁵

In an attempt to give Muslim Malaysian women additional protection in marriage, the Islamic Family Law (Federal Territories) Act 1984 allows women to include a stipulation (*ta'liq*) in their marriage contract, such as a "no-polygamy" clause.⁴⁸⁶ With that stipulation, a woman is entitled to a divorce if her husband takes another wife.⁴⁸⁷

Native customary or aboriginal law governs marriages between indigenous peoples, unless they elect to marry under the Law Reform (Marriage and Divorce) Act 1976.⁴⁸⁸ Some customary laws provide indigenous women with stronger legal status than that accorded by civil law. For example, according to *adat*, the customary law of the Iban indigenous people of Sarawak, marriage is by mutual consent and no dowry is paid.⁴⁸⁹ Bigamy is also prohibited, and the fine imposed for the offense of bigamy is the same for both men and women.⁴⁹⁰

D. DIVORCE

Under the Law Reform (Marriage and Divorce) Act of 1976, married couples may petition for divorce either by mutual consent or by contested petition. The act requires all divorces to be registered.⁴⁹¹ In order to obtain a divorce by mutual consent (by way of joint petition),⁴⁹² the parties generally must have been married for at least two years and domiciled in Malaysia at the time of the petition.⁴⁹³ The marriage must also be registered under the act or a law that provides for monogamous marriage.⁴⁹⁴

Either party to a marriage may also petition for a divorce on the ground that the marriage has irretrievably broken down.⁴⁹⁵ The marriage duration, domicile, and registration requirements in these types of divorces are similar to those for divorce by mutual consent.⁴⁹⁶ In addition, the party must prove at least one of the following as proof of marital breakdown:

- one party has committed adultery and the other party finds it intolerable to live with his or her spouse;
- one party has behaved in such a way that the other cannot reasonably be expected to live with him or her;
- one party has deserted the other party for a continuous period at least two years before the date of his or her petition; or
- both parties have lived apart from each other for a continuous period of at least two years before the date of the petition.⁴⁹⁷

A man or woman may also petition for divorce if his or her spouse has converted to Islam, so long as the petition is presented before three months from the date of the conversion.⁴⁹⁸ However, there is no requirement that the marriage has to have lasted for at least two years.⁴⁹⁹

In general, the petitioner also needs a certificate from a conciliatory body or marriage tribunal attesting that reconciliation has been attempted and failed.⁵⁰⁰ Exemptions may apply under certain circumstances specified in the act.⁵⁰¹

The Law Reform (Marriage and Divorce) Act 1976 provides for the right of a wife or former wife to receive maintenance from her husband during proceedings for judicial separation or divorce.⁵⁰² The court may order the husband to pay an amount of maintenance according to the “means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband.” The court also considers the degree of responsibility of each party for the breakdown of the marriage.⁵⁰³ The right to receive maintenance ceases upon the wife’s remarriage or her commission of adultery.⁵⁰⁴

Divorce laws governing Muslims

Muslim women or men who seek divorce may petition a

Syariah court under the procedure established by the Islamic Family Law (Federal Territories) Act 1984⁵⁰⁵ and various state Islamic Family Laws.⁵⁰⁶ The court summons both parties and inquires into the matter, after which the divorce will be registered and effective upon the court’s consent.⁵⁰⁷

Syariah family law, as codified in the Islamic Family Law (Federal Territories) Act 1984, allows a marriage to be dissolved by several types of divorce, some initiated by either spouse, and some by only the husband or the wife. These include *talaq* (repudiation by the husband), *khul’* (payment by the wife in return for her release from the marriage contract), *ta’liq* (delegated repudiation by the wife as stipulated in the marriage contract), or *fasakh* (judicial dissolution of the marriage).⁵⁰⁸ Divorce by *lian* (accusation of adultery), where the husband affirms under oath that his wife committed adultery and she affirms under oath to the contrary, is also provided for under the act.⁵⁰⁹

The most common procedure for divorce is *talaq*. A man may divorce his wife with a unilateral pronouncement of *talaq* with the permission of the court.⁵¹⁰ If the wife does not consent to the divorce, or where it appears to the court that there is a reasonable possibility of reconciliation, the court will appoint a conciliatory committee.⁵¹¹ In practice, Syariah law is often disregarded and men regularly pronounce *talaq* without the court’s permission. Although this constitutes an offense,⁵¹² such pronouncements of *talaq* outside the court may still effectively terminate a marriage and may be recognized by the courts.⁵¹³ The offense is punishable under the act with a fine of up to RM 1,000 (USD 263) or imprisonment of up to six months, or both,⁵¹⁴ although punishment is rarely meted out.⁵¹⁵

There are three main ways in which a woman may seek to dissolve her marriage. The first is divorce by *khul’*, whereby the woman pays her husband *tebus talaq*, an amount of money to reimburse him for the dowry that was paid to her when they were married.⁵¹⁶ This form of divorce is only available where both parties agree to a divorce. A woman cannot herself effectuate a *khul’* divorce but must do so through the court.

Under a *ta’liq* divorce, a woman has the right to divorce her husband if he violates one of the conditions listed in the *ta’liq* agreement (stipulations in the marriage contract) agreed upon at the time of the marriage.⁵¹⁷ These conditions may include desertion, failure to pay maintenance, and harm caused to the wife’s person. Upon a woman’s petition, a court will make an inquiry into the validity of the divorce and, if satisfied, confirm and record the divorce.⁵¹⁸

Fasakh is the dissolution or rescission of a contract of marriage by judicial decree.⁵¹⁹ There are 12 grounds upon which a

married woman is entitled to obtain a *fasakh* divorce,⁵²⁰ including when her marital consent was coerced or invalid, cruelty by the husband, the husband's impotence or refusal to have sexual intercourse after at least four months of marriage or for at least a year, and the husband's infection with an STI.⁵²¹ The grounds for *fasakh* may vary among states.⁵²² Under Islamic Family Law (State of Selangor) Enactment No. 2 of 2003, husbands have been afforded the right to a *fasakh* divorce, in addition to their traditional right to *talaq* divorce.⁵²³

A controversial recent decision by a Syariah court to allow a Muslim man to pronounce *talaq* via a mobile telephone text message has been condemned by women's groups and the head of the Ministry of Women, Family and Community Development.⁵²⁴ The prime minister has indicated that laws may need to be amended to discourage men from divorcing their wives by means of electronic messages.⁵²⁵ Another new development is the decision of Jabatan Kemajuan Islam Malaysia (Department of Islamic Development Malaysia) and the State Religious Departments to introduce a mandatory sentence against husbands who divorce their wives outside the court.⁵²⁶

A divorced Muslim woman is entitled under Syariah law, as codified in the Islamic Family Law (Federal Territories) Act 1984 and state Islamic Family Laws, to reasonable maintenance from her husband.⁵²⁷ This right is afforded only during the period of *iddah* (the generally three-month period following the dissolution of marriage during which the legal rights and obligations of the spouses are not wholly extinguished and, particularly, where a widow or divorcee is not allowed to remarry⁵²⁸), and terminates earlier if the woman is living in adultery.⁵²⁹ The act's provisions are similar to those of the Law Reform (Marriage and Divorce) Act 1976—i.e., maintenance is assessed mainly on the means and needs of the parties, regardless of the relationship the maintenance amount bears to the income of the husband.⁵³⁰ A wife is not entitled to maintenance where she is *nusyuz*, that is, where she unreasonably refuses to obey the lawful wishes of her husband.⁵³¹ Under Syariah law in Malaysia, the concept of *nusyuz* is applicable only to women, although the Quran refers to *nusyuz* by the husband as well.⁵³²

In addition to the right to apply for maintenance, the Islamic Family Law (Federal Territories) Act 1984 provides that a woman who has been divorced without just cause may apply to the court for *mut'ah* (compensation).⁵³³ The amount is normally agreed upon by both parties. In the absence of such an agreement, the judge will determine the amount in consideration of the financial position and circumstances of the wife and the family's financial and social standing.⁵³⁴

Divorce laws governing indigenous peoples

Native customary or aboriginal law governs divorce among indigenous peoples, unless they elected to marry under the Law Reform (Marriage and Divorce) Act 1976.⁵³⁵ Customary laws are often much more liberal in the rights they afford than civil law. Among the Batek peoples, for example, either spouse can initiate divorce simply by leaving.⁵³⁶

Parental rights

Under the Law Reform (Marriage and Divorce) Act 1976, courts may, at any time, place a child in the custody of either parent.⁵³⁷ Where there are exceptional circumstances making it undesirable for the child to be placed with either parent, the child may be placed in the custody of a relative, another suitable person, or a child welfare organization.⁵³⁸ In determining the most suitable guardian, the foremost consideration of the court is the welfare of the child.⁵³⁹ The court next considers the wishes of the parents, and then the wishes of the child, if he or she is capable of having an independent opinion.⁵⁴⁰ Where a child is under the age of seven, the presumption of custody is with the mother, unless she is proven to be unfit.⁵⁴¹ Older children's wishes may be considered if the court finds the children to be mature enough to understand the implications of their decision.⁵⁴²

In awarding custody, a court may impose certain conditions, including conditions of residence, education and religion; temporary guardianship with someone other than the legal guardian; and mandated visits and rights to access the child for the parent or relatives who are not granted custody.⁵⁴³ The granting of custody may also prohibit the legal guardian from taking the child out of Malaysia.⁵⁴⁴

Amendments to the Guardianship of Infants Act 1961 in 1999 granted equal rights to mothers as the guardians of the infant's person and property.⁵⁴⁵ The act applies to non-Muslims, although it is stipulated that it can apply to Muslims in states that adopt this federal act.

Parental rights laws governing Muslims

The Islamic Family Law (Federal Territories) Act 1984 includes provisions relating to the custody of children in cases of divorce among Muslims.⁵⁴⁶ Under the act, custody of a child below the age of *mummaiyyiz* (puberty) goes to the mother, while a child above the age of *mummaiyyiz* has the right to choose between the mother and father.⁵⁴⁷ The act enumerates several circumstances where the mother loses her *hadanah* (custody of a child), including where the mother has remarried and her remarriage would affect the welfare of the child.⁵⁴⁸ In contrast, men do not lose custody under any circumstances if they remarry. The woman's right of *hadanah* is also lost by her gross and open immorality,⁵⁴⁹ by her changing residence to prevent the father from exercising supervision

over the child,⁵⁵⁰ by her abjuration of Islam,⁵⁵¹ and by her neglect of or cruelty to the child.⁵⁵² In the case of illegitimate children, the right of custody lies solely with the mother.⁵⁵³ Fathers are not required under the act to maintain their “illegitimate” children.⁵⁵⁴

The Islamic Family Law (Federal Territories) Act 1984 also addresses parental rights issues outside of custody matters.

For example, it grants fathers the exclusive and unconditional right to make decisions about the person and property of their minor children.⁵⁵⁵ The mother cannot be the guardian of her child unless she is appointed by the father’s will or a court order.⁵⁵⁶ In practical terms, this has caused many difficulties for women who have custody of their children upon divorce.⁵⁵⁷ Because of women’s lack of guardianship rights over their children, formal matters that require the consent and signature of legal guardians, such as registering children for school and applying for identity cards, can become problematic for divorced mothers.⁵⁵⁸ The states of Johor, Selangor, Negeri Sembilan, and Pahang have announced their decision to adopt the amendment from the Guardianship of Infants Act 1961 that gave women equal guardianship rights into their respective Syariah legislation.⁵⁵⁹ If enacted, this amendment will grant legal recognition to the parental rights of mothers.⁵⁶⁰

A cabinet directive issued in 2000 gives Muslim and non-Muslim mothers the right to sign all documents related to their children,⁵⁶¹ although it does not confer the same rights of guardianship on Muslim women as does the amended Guardianship of Infants Act 1961.

E. ECONOMIC AND SOCIAL RIGHTS

Ownership of property and inheritance

The federal constitution prohibits discrimination against citizens “... in any law ... or in the administration of any law relating to the acquisition, holding or disposition of property ...”⁵⁶² Inheritance for non-Muslims is generally governed by the Inheritance (Family Provision) Act 1971 and the Distribution Act 1958.⁵⁶³ The Distribution Act was amended in 1997 so that both husband and wife have equal inheritance rights.⁵⁶⁴ The 1997 amendments removed the distinction between wives and husbands in the distribution to the surviving spouse of the estate of an intestate.⁵⁶⁵ Prior to the amendment, a wife who survived her husband was entitled to only one-third of her husband’s estate, whereas a surviving husband was entitled to his wife’s entire estate.

In the Islamic system of succession, while the surviving parents, spouse, and offspring of a deceased all inherit, the amounts they inherit differ.⁵⁶⁶ The general rule is that the share of a man is double that of a woman in the same degree of relationship.⁵⁶⁷

A woman’s right to inheritance is also determined by her marital status. Under the Islamic Family Law (Federal Territories) Act 1984, a divorced Muslim woman may claim her share in any property jointly acquired during the marriage upon dissolution of the marriage.⁵⁶⁸ The general rule is that if the woman has directly contributed to the acquisition of the property, she is entitled to one-half, as illustrated in the 1982 case of *Mansjur v. Kamariah* (Federal Territory Syariah Board of Appeal).⁵⁶⁹ However, if she has contributed indirectly, she is entitled to one-third of the property, as shown in the 1985 High Court decision of *Boto v. Jaafar*⁵⁷⁰ and the 1989 Special Appeal Committee decision of *Rokiah v. Mohd. Idris* (Federal Territory Syariah Board of Appeal).⁵⁷¹ Syariah courts have the power to divide any assets that were jointly acquired by the couple during their marriage, or to order the sale of the assets and the division of the proceeds between the couple.⁵⁷²

Generally, women in Malaysia have the same rights as men to own, acquire, manage, and dispose of property; these rights do not change upon marriage.⁵⁷³ For both men and women, disposal of property requires the consent of the spouse only if the wife has a share or interest in the property.⁵⁷⁴

Rights to agricultural land

Rural women in Malaysia have the right to own and inherit land.⁵⁷⁵ Muslim women are eligible to inherit land based on Syariah law.⁵⁷⁶ Under the Land (Group Settlement Areas) Act 1960, a wife or ex-wife is entitled to co-own land that was developed under the Federal Land Development Agency land reform program,⁵⁷⁷ which was established in 1956 to alleviate increasing rural poverty by granting agricultural holdings to the rural landless.⁵⁷⁸ However, the agency grants land titles only to men as household heads.⁵⁷⁹

Labor and employment

According to 2003 data, women constitute approximately 35.9% of the labor force.⁵⁸⁰ Among women who work, 17.7% hold clerical jobs; 17.4% are service workers in shop and market sales; 12.1% are plant and machine operators and assemblers; 10.4% are skilled agricultural and fishery workers;⁵⁸¹ and 6.4% are professionals.⁵⁸² Experts have noted that women are still disproportionately concentrated in the lower rungs of the workplace hierarchy and perform lower level work.⁵⁸³ Unequal career opportunities for women, gender stereotyping, sexual harassment, lack of child-care facilities, and inflexible working hours have been cited as impediments to women’s full participation in the workforce.

Migrant workers constitute a significant proportion of the workforce. The Immigration Department estimates that there are over two million foreign workers in Malaysia, 160,000 of whom are domestic workers.⁵⁸⁴ Female migrant workers are reportedly the most marginalized and unprotected labor

group in the country.

The federal constitution prohibits discrimination against citizens in any law or appointment to any office or employment under a public authority, or in establishing or engaging in any trade, business, profession, vocation, or employment. There is no specific legislation to protect against gender-based discrimination in the recruitment, placement, remuneration, training, and promotion of women in jobs in the public sector.⁵⁸⁵

The Employment Act 1955 provides the main legal framework governing matters such as wages, hours of work, benefits, and other work-related matters.⁵⁸⁶ The act does not make reference to gender, although some provisions apply exclusively to women. For example, the act prohibits the employment of women for night work, unless permitted by the director general of the Labour Department on the basis of an employer's request.⁵⁸⁷ It also generally prohibits underground work for women.⁵⁸⁸

Under the Employment Act 1955, a female employee in the public or private sector is entitled to 60 consecutive days of maternity leave.⁵⁸⁹ Unless she is receiving her monthly wages during maternity leave, a female employee is entitled to a maternity allowance at a rate of either her ordinary pay or at least RM 6 per day (USD 1.6), whichever is higher.⁵⁹⁰ However, a woman with five or more children is not entitled to any maternity allowance.⁵⁹¹ The act also prohibits employers from dismissing a female employee while she is on maternity leave.⁵⁹² Despite these provisions for maternity leave,⁵⁹³ however, observers have noted that Malaysian employment laws are inadequate in terms of requiring employers in the public sector to provide nursing breaks and care facilities for nursing mothers, and crèches at workplaces. The government has provided tax relief incentives to the private sector to encourage the provision of on-site child-care facilities.⁵⁹⁴ However, such facilities are not mandatory.⁵⁹⁵

The Employment Act was amended in 1988 to provide for flexible working hours and allow benefits for part-time workers similar to those for full-time workers.⁵⁹⁶

The government has attempted to introduce gender equality at all levels of employment through its policies on labor and the workforce. Government policy calls for increased opportunities for women in training and professional advancement, equal pay for work of equal value, the integration of women into the mainstream of development, and women's increased participation in the job market.⁵⁹⁷

Foreign workers who wish to obtain a work permit in Malaysia must undergo a full medical test.⁵⁹⁸ All foreign workers also need a mandatory annual medical exam to renew their work permit,⁵⁹⁹ pursuant to the Immigration Act 1959.⁶⁰⁰

The Immigration Department approves, renews, or rejects applications for a work permit on the basis of these medical test results. Any worker who tests positive for any of the listed diseases (including HIV/AIDS), pregnancy, or illicit drugs does not obtain a renewal and faces immediate deportation.⁶⁰¹

Access to credit

The Banking and Financial Institution Act 1989⁶⁰² and other related banking financial legislation do not formally discriminate on the basis of gender. Loan and credit schemes operated by banks are not gender-biased and are based on the evaluated risk of applicants, both men and women. Nevertheless, according to an unofficial country study, women appear to take out comparatively smaller loans than men; this implies that women have less access to credit facilities,⁶⁰³ presumably due to the requirement of collateral, which can be an obstacle for women seeking loans. Furthermore, women in business in the informal sector⁶⁰⁴ have little or no access to loan capital from financial institutions due to requirements and procedures that favor the formal sector and are biased against women.⁶⁰⁵

The Amanah Ikhtiar Malaysia project was initiated in 1987 as Malaysia's first microcredit scheme. Membership is restricted to low-income individuals⁶⁰⁶ and the project's interest-free loans favor women. Small loans of up to RM 10,000 (USD 2,632) are given with no requirements for collateral or a guarantor.⁶⁰⁷ One specific loan project targets single mothers who are either divorced or widowed to help them support their children through operating their own businesses.⁶⁰⁸

Other loans for women are made available through the Loan Fund for Hawkers and Petty Traders and the Small Entrepreneur Fund managed by the Credit Guarantee Corporation to provide assistance to small and micro-enterprises.⁶⁰⁹

Under the Special Assistance Scheme, administered by the Ministry of International Trade and Industry, businesses owned or headed by women receive soft loans and financial assistance for projects in the form of fixed assets and working capital.⁶¹⁰ Furthermore, the Micro-Credit Scheme of Bank Simpanan Nasional offers training and guidance for women entrepreneurs.⁶¹¹

Other microcredit programs are operated by bodies such as Yayasan Usaha Maju (The Development Foundation) and the Yayasan Pemnbagunan Terengganu (Terengganu Development Foundation).⁶¹²

Education

According to the 1991 Population and Housing Census, 90% of males were literate, compared with 80% of females.⁶¹³ Among young people aged 15–24 years, the literacy gap between the sexes is almost nonexistent, with discrepan-

cies between the sexes increasingly more pronounced in older age groups.⁶¹⁴ Official data from 2000 indicate that the proportion of students who are female in government schools increases from 48.6% of total enrollment at the primary-school level to 52.8% at the upper secondary-school level.⁶¹⁵ This gender gap continues and even widens in institutions of higher education. As of June 2000, there were 1.4 million females in public primary schools, compared with 1.5 million males;⁶¹⁶ 984,444 were enrolled in public secondary schools, compared with 958,152 males;⁶¹⁷ and 189,000 females were studying in public tertiary institutions, compared with 155,000 males.⁶¹⁸ Over 20% of the annual national budget is allocated to education.⁶¹⁹

Although access to education in general is not a problem for women, gender segregation arising from stereotyping is still apparent in specific courses. Experts have noted that women are still more likely to enroll in courses traditionally considered more suitable for women, such as service-oriented courses linked to the hotel and catering industry, tourism, and public relations.⁶²⁰ Women are grossly underrepresented in the disciplines of science, technology, and engineering.⁶²¹ The management and policymaking levels of the education system also remain male dominated, although the gender composition of teachers and lecturers shows that the majority at all levels are female (more than 70%),⁶²² and that many female teachers are increasingly more qualified than male teachers.⁶²³

The federal constitution guarantees free basic education for both boys and girls.⁶²⁴ The Ministry of Education provides 11 years of free basic education.⁶²⁵ The Education Act 1996, as amended in 2002, makes primary education compulsory for all children who have attained the age of six years, regardless of their sex.⁶²⁶ Parents who fail to enroll their children in school are subject to a fine of RM 5,000 (USD 1,316) or imprisonment of six months.⁶²⁷

The Eighth Malaysia Plan articulates some of the current policy objectives of the government in the area of education. Education is generally addressed in the context of investing in human capital in order to ensure the growth and strength of the economy.⁶²⁸ The plan's key policy thrusts relating to education include the following:

- increasing accessibility to quality education and training to enhance income generation capabilities and quality of life;
- improving the quality of education and training to ensure that the manpower supply is in line with technological change and market demand;
- promoting lifelong learning to enhance the employability and productivity of the workforce; and

- intensifying efforts to develop and promote Malaysia as a regional center of educational excellence.⁶²⁹

Proposed strategies and activities to support these goals include the following:

- expanding and upgrading existing educational and training institutions, and establishing new institutions in the public and private sectors;⁶³⁰
- increasing the involvement of the private sector in the provision of education and training;⁶³¹
- undertaking efforts to increase the accessibility of education to students in rural areas;⁶³²
- reassessing programs at the primary-school level that target low-income students—e.g., programs offering food supplements, loans of textbooks, and financial assistance—to ensure that these students are benefiting from the programs;⁶³³
- providing women with more opportunities in education and training to facilitate their upward mobility into higher-paying positions;⁶³⁴ and
- implementing career counseling programs to encourage more women to pursue nontraditional fields of study, such as science, engineering, and vocational and technical education.⁶³⁵

Sex education

Adolescent sexual and reproductive health education has been integrated into the school curriculum, and elements of it are taught through existing courses such as physical and health education, science, biology, and moral and Islamic education.⁶³⁶ The Ministry of Education introduced elements of “family health education” to primary-school children in physical and health education classes in 1994.⁶³⁷ The aim of such education is to enable students to obtain knowledge regarding the physical, emotional, and social changes they undergo; the instruction also gives them the skills to cope with these changes and maintain healthy relationships with family members, friends, and other members of the community in which they live.⁶³⁸ Health education strives to provide students with the knowledge, skills, and values to prepare them for the responsibilities and rigors of adult life, marriage, and parenthood, and to deal with social relationships in the context of family and society.⁶³⁹ The three main topic areas in family health education are the human body, personal and family health, and moral and religious values.⁶⁴⁰

In practice, teachers have shied away from teaching family health education or are not skilled in dealing with what are deemed sensitive issues. Such education is also assigned to teachers who are untrained in this subject area, which often means they neglect to teach it.⁶⁴¹

F. PROTECTIONS AGAINST PHYSICAL AND SEXUAL VIOLENCE

The penal code, the DVA, and the Syariah Criminal Offences (Federal Territories) Act 1997 provide the substantive legal framework for crimes of violence against women and girls. The first two apply to non-Muslims and Muslims alike, while the last applies only to Muslims. Certain forms of physical and sexual violence are addressed through two or more of the above stated laws. The federal constitution is clear in that where the Syariah Court has jurisdiction, the “civil” courts shall have no jurisdiction.⁶⁴² However, in practice, crimes such as rape and incest tend to be prosecuted in civil courts.

Rape

The penal code defines and prescribes the punishments for rape, while the Criminal Procedure Code and the Evidence Act 1950 provide the procedural and evidentiary rules for the prosecution of rape.

The penal code defines rape as sexual intercourse by a man with a woman under any of the following circumstances:

- against her will or without her consent;
- through consent obtained through coercion or fraud, or uninformed consent; or
- with or without her consent when she is under the age of 16 (except where the irrebuttable presumption of law applies in which a boy under the age of 13 is incapable of committing rape),⁶⁴³ or where the rapist is the victim’s lawful husband.⁶⁴⁴

Only vaginal penetration by the penis constitutes rape under the definition of the penal code. If objects other than the penis are used, the act is deemed to be “assault with intent to outrage modesty,”⁶⁴⁵ which carries a lighter punishment than rape.⁶⁴⁶

The penal code does not recognize marital rape as a criminal offense. The code provides that “sexual intercourse by a man with his wife by a marriage which is valid under any written law for the time being in force, or is recognised in the Federation as valid, is not rape.”⁶⁴⁷ However, there are three instances in which a man who has nonconsensual sex with his wife can be charged with rape:

- where the wife is living separately from her husband under a decree of judicial separation;
- where the wife has obtained an injunction restraining her husband from having sexual intercourse with her; and
- in the case of a Muslim woman living separately from her husband during the period of *iddah*, which is approximately three months.⁶⁴⁸

There are no provisions under the penal code for aggravated rape (e.g., gang rape or the rape of a pregnant woman).

The legal penalties for rape are mandatory imprisonment of 5–20 years and whipping.⁶⁴⁹

The evidentiary requirements for rape make it difficult for the prosecution to secure a conviction. It is a well-established rule of practice in Malaysia that evidence presented by a complainant in a sexual offense case must be corroborated,⁶⁵⁰ although there is no such statutory requirement. The law does, however, require corroboration of evidence given by a young child; uncorroborated evidence by such a witness is not sufficient for conviction.⁶⁵¹ Generally, in order to establish the issue of consent, the burden of proof falls on the victim to prove that she put up some form of resistance or struggled with the offender during the rape.⁶⁵² Where there is no evidence of physical injury, the assumption is that the rape did not occur.⁶⁵³

In 1988, the Evidence Act was amended to disallow the examination of the rape victim’s past sexual history or the introduction of evidence of her past sexual practices.⁶⁵⁴ However, the act still permits the accused person’s counsel to cross-examine the victim on previous sexual activity between the victim and the accused.

In July 2002, a controversial bill on *hudud* (Islamic criminal law) was passed in the state of Terengganu. Under this bill, which has been given the royal assent by the state’s sultan but has yet to be enforced, the burden of proof for rape is shifted from the perpetrator to the victim, who must produce four credible witnesses (four “good” Muslim males) to prove her innocence. If she is unable to do so, she may be found guilty of “slandorous accusations” and punished with 80 lashes.⁶⁵⁵ An unmarried woman who is pregnant is assumed to have committed *zina* (unlawful carnal intercourse or illicit sex), even if she has been raped, and faces a punishment of 100 lashes. A married woman convicted of *zina* may be stoned to death.⁶⁵⁶

In order to protect rape victims under the age of 18 from media attention or exploitation, the Subordinate Courts Act 1948⁶⁵⁷ allows rape cases to be held *in camera* and prevents the victim’s identity and personal details from being revealed in the press.

Incest

The penal code and the Syariah Criminal Offences (Federal Territories) Act 1997 both criminalize incest. The penal code was amended in 2001 to include the crime of incest, which is defined as sexual intercourse between two individuals who are within the prohibited degrees of relationship for marriage under the “law, religion, custom, or usage” applicable to them.⁶⁵⁸ The offense is punishable with imprisonment of 6–20 years and perpetrators “shall also be liable to whipping.”⁶⁵⁹ The code affords the accused a defense if it

is proved that he or she was unaware that the person with whom he or she had sexual intercourse was within the prohibited degree of relationship for marriage, or that the act of sexual intercourse was nonconsensual.⁶⁶⁰ The code deems a female under the age of 16 and a male under age 13 incapable of giving consent.⁶⁶¹ Like rape, incest has been given a narrow interpretation to cover acts of sexual intercourse only.

In January 2003, the government announced its decision to amend the penal code and increase the punishment for incest to 15–30 years in prison and 10 lashes.⁶⁶² To improve the reporting of incest, the code is also being further amended to punish individuals who fail to report incest with imprisonment of three years.⁶⁶³ The Registration of Criminals and Undesirable Persons Act 1969 is also being amended to provide for the registration of incestuous rape and incest offenders.⁶⁶⁴ According to media reports, yet another proposed amendment seeks the death penalty for incest that results in the victim's death.⁶⁶⁵

The Syariah Criminal Offences (Federal Territories) Act 1997 punishes incest with a maximum penalty of three years' imprisonment, a whipping of six lashes, a fine of RM 5,000 (USD 1,316), or any combination thereof.⁶⁶⁶

Domestic violence

The DVA was enacted specifically to provide recourse for persons suffering from domestic violence.⁶⁶⁷ It offers protection for victims of domestic violence pending investigation or other criminal proceedings in court.⁶⁶⁸ It is applicable to non-Muslims and Muslims, but its protection does not specifically extend to foreign domestic workers.⁶⁶⁹

The act does not make domestic violence a separate crime punishable with new penalties. Rather, it enumerates various behaviors that constitute domestic violence, and stipulates that the DVA should be read together with relevant provisions of the penal code to assess the appropriate punishment.⁶⁷⁰

Under the DVA, a victim of domestic violence can be an immediate, former, or de facto spouse;⁶⁷¹ a child; an "incapacitated" adult;⁶⁷² or any other member of the family. Among the acts that constitute domestic violence are the following:

- willfully or knowingly placing, or attempting to place, the victim in fear of physical injury;
- causing physical injury to the victim by such an act that is known, or ought to have been known, to result in physical injury;
- compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;
- confining or detaining the victim against his or her will; and

- causing mischief, or destruction of or damage to property, with intent to cause or knowing that it is likely to cause distress or annoyance to the victim.⁶⁷³

Victims of dating violence are not protected under the DVA.

Given that the act is to be read with the penal code, and that the penal code does not recognize marital rape, married Malaysian women are left with the anomalous position of being protected from domestic violence but not marital rape. Also, mental, psychological, and emotional forms of domestic violence do not fall within the ambit of the DVA.⁶⁷⁴

Most of the domestic violence cases in Malaysia are classified by the police as Section 323 offenses under the Criminal Procedure Code, or as "non-seizable"⁶⁷⁵ offenses.⁶⁷⁶ Consequently, the police may not investigate such cases without specific orders from the deputy public prosecutor, nor can they arrest offenders without a warrant nor obtain an interim protection order.⁶⁷⁷

An interim protection order and a protection order are two possible forms of protection for victims of domestic violence. The former may be issued against an offender while investigations are pending, while the latter is appropriate when the offender is undergoing criminal proceedings.⁶⁷⁸ The DVA outlines the circumstances under which either order may be sought.⁶⁷⁹ A protection order offers the more comprehensive protection of the two, since it protects the victim against violence by the perpetrator and third parties,⁶⁸⁰ and prohibits all communication and access to the victim's residence or place of employment, school, or other institution.⁶⁸¹ If the court is satisfied that the offender is likely to cause physical injury to the victim, it may attach an arrest warrant to the order.⁶⁸² Instead of or in addition to issuing a protection order, the court may also order the parties to undergo counseling and attempts at conciliation.⁶⁸³

Under the DVA, a victim may claim compensation for any personal injury, property damage, or financial loss resulting from domestic violence.⁶⁸⁴ In considering such a claim, the court may take into account the victim's pain and suffering, the extent of any physical or mental injury suffered, the cost of medical treatment for any injuries, any loss of earnings, the value of any property damage, and the necessary and reasonable expenses incurred by the victim in cases where the victim and the offender must be separated as a result of domestic violence.⁶⁸⁵

Women's groups have expressed concern about the effective implementation of the act, and have submitted recommendations for amendments to the government.⁶⁸⁶ However, the government has yet to take any action to review the act despite promises to do so.⁶⁸⁷

Sexual harassment

There is no specific legislation addressing sexual harassment. Acts relating to sexual harassment are dealt with under the penal code. The code makes it a crime to intentionally “insult the modesty of any woman” through words, sounds, gestures, or by exhibiting any object. The offense is punishable with imprisonment of up to five years or a fine, or both.⁶⁸⁸ Another provision of the penal code criminalizes assault or the use of force toward another person with the intent to “outrage the modesty” of that person.⁶⁸⁹ This crime is punishable with imprisonment of up to ten years, a fine or whipping, or any two of these punishments.

The burden of proof for a charge of harassment lies with the prosecution, who must prove the act and the harasser’s intention beyond a reasonable doubt.⁶⁹⁰

Complainants of sexual harassment may also seek civil legal redress under industrial law or tort law. Neither the Employment Act 1955 nor the Industrial Relations Act 1967 explicitly refers to “sexual harassment.” Complainants must thus pursue redress through an existing cause of action, such as for misconduct. In the landmark 1998 case of *Lilian Therera De Costa v. Jennico Associates Sdn. Bhd.*,⁶⁹¹ the Industrial Court⁶⁹² held, among other things, that in industrial matters, the burden of proof is on the complainant, and allegations of sexual harassment must be corroborated.⁶⁹³

In 1999, the Ministry of Human Resources issued the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace.⁶⁹⁴ This code defines sexual harassment as “any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological, or physical harassment (i) that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her/his employment; or (ii) . . . an offence, humiliation, or a threat to her/his well-being, but has no direct link to her/his employment.”⁶⁹⁵ The code of practice also provides general guidelines on penalties and disciplinary rules for offenses; it requires that offenders be disciplined,⁶⁹⁶ and that the nature and type of penalty depend upon the severity of the offense.⁶⁹⁷

Although the code of practice has been effective in broadening awareness about the issue of sexual harassment, it has no legal force and its implementation has not been widespread. Only 1.125% of the 400,000 registered companies in the country have adopted the code.⁶⁹⁸ The code recommends the establishment of a separate complaint or grievance procedure, which should include a step-by-step procedure for reporting and processing a complaint in a timely fashion, and investigation and appeals procedures.⁶⁹⁹

In response to the lack of adequate existing laws and pro-

cedures for sexual harassment victims, the Joint Action Group against Violence against Women,⁷⁰⁰ a coalition of women’s organizations, launched a campaign for a sexual harassment law. The campaign culminated in the submission of the proposed Sexual Harassment Bill to the Ministry of Human Resources in March 2001.⁷⁰¹ The bill requires employers to prevent sexual harassment and provides victims with concrete access to legal redress.

Commercial sex work and sex-trafficking

The penal code and the Syariah Criminal Offences (Federal Territories) Act 1997 deal with crimes relating to prostitution. Under the penal code, an individual who “solicits or importunes” for the purpose of prostitution or “any immoral purpose” in any place is subject to punishment of one year’s imprisonment or a fine, or both.⁷⁰² The Syariah Criminal Offences (Federal Territories) Act 1997 specifically outlaws prostitution. It prescribes punishments for women who work as prostitutes,⁷⁰³ as well as other persons who prostitute their wife or a female child under their care, or cause or allow their wife or a female child under their care to prostitute themselves.⁷⁰⁴ Both offences are punishable with imprisonment of up to three years, a fine of up to RM 5,000 (USD 1,316), a whipping of up to six lashes, or any combination thereof.⁷⁰⁵

There are no comprehensive anti-trafficking laws in Malaysia, although the federal constitution prohibits slavery⁷⁰⁶ and all forms of forced labor.⁷⁰⁷ There are also provisions in the penal code that criminalize trafficking-related acts. For example, the code criminalizes the import, export, removal, buying, selling, disposing of a person as a slave, or habitually trafficking or dealing in slaves;⁷⁰⁸ the exploitation of any person for the purpose of prostitution;⁷⁰⁹ the act of knowingly living on the earnings of another person’s prostitution;⁷¹⁰ the act of keeping, managing, or assisting in the management of a brothel, as well as knowingly allowing any place to be used as a brothel;⁷¹¹ and forced labor.⁷¹²

The Immigration Act 1959/1963,⁷¹³ the Restricted Residence Act 1933 (Revised 1989),⁷¹⁴ and the Internal Security Act are among the laws that are used to prosecute traffickers. It has been reported, however, that rather than prosecuting traffickers, police generally arrest or deport individual women who are trafficked for the purpose of prostitution.⁷¹⁵ NGOs report that Malaysian authorities often fail to distinguish between trafficking victims and other undocumented migrants, and deport these victims rather than help them.⁷¹⁶ These women are treated as illegal immigrants and are subject to harsh penalties under the terms of the Immigration (Amendment) Act 2002.⁷¹⁷ Penalties under that act include imprisonment of up to five years, whipping and heavy fines.⁷¹⁸ According to NGO reports, many foreign women currently

serving terms in Malaysia's prisons for illegal immigration are actually victims of trafficking.⁷¹⁹

At the Fifth Asian-African Legal Consultative Committee General Meeting held in Nigeria in July 2002, the Malaysian government disagreed with the position that all persons who are trafficked should be considered victims in need of protection and immune from prosecution.⁷²⁰ During that meeting, Malaysia reported that it was considering a more comprehensive Witness Protection Act for persons who have been classified as "victims of trafficking" according to the Malaysian criteria. Presently, a trafficked person is considered a victim only if he or she makes a police report that he or she has been victimized.⁷²¹

Customary forms of violence

Female genital mutilation is practiced in Malaysia, especially among the Muslim community. However, little research is available in this area,⁷²² and thus the prevalence of the practice is not accurately known. The custom is largely cultural and there is no law or policy regulating it. The prevalent form of female genital mutilation in Malaysia is clitoridectomy, which involves the removal of the clitoral prepuce, as opposed to infibulation practiced by many African communities.⁷²³

Sexual offenses against minors

The Child Act 2001,⁷²⁴ the penal code, and the Syariah Criminal Offences (Federal Territories) Act 1997 are the key pieces of legislation with provisions addressing sexual offenses against minors.

The penal code includes provisions for statutory rape (i.e., of girls under the age of 16) and incest. (See "Rape" for more information.)

The Child Act 2001 makes it an offense to engage or hire minors for prostitution and immoral purposes, and imposes penalties for both first time and repeat offenders.⁷²⁵ Depending on the nature of the offense, first-time offenders may be subject to a fine of up to RM 50,000 (USD 13,160) or imprisonment of 3–15 years, or both;⁷²⁶ their punishment may also include whipping of up to six lashes.⁷²⁷ Repeat offenders receive 6–10 lashes.⁷²⁸

The Child Act 2001 also criminalizes the unlawful transfer or the possession, custody, or control of a child, and the unlawful harboring of a child.⁷²⁹ Such offenses are punished with imprisonment of up to five years or a fine of up to RM 10,000 (USD 2,632), or both.⁷³⁰ A possible defense may be that the transfer of a child was pursuant to a bona fide marriage or adoption, and that at least one of the child's natural parents or guardians had expressly consented to the marriage or adoption.⁷³¹ The Child Act 2001 does not apply to foreign underage girls who are illegally trafficked into the country.⁷³²

The Child Act 2001 provides that an exploited child may,

under certain circumstances, be deemed in need of "protection and rehabilitation,"⁷³³ such as when the child is habitually in the company of or controlled by brothel keepers or persons connected with the business of prostitution.⁷³⁴ In such cases, the child will be sent to a place of refuge⁷³⁵ subject to the Court for Children's approval.⁷³⁶

The Syariah Criminal Offences (Federal Territories) Act 1997 prescribes punishment for individuals who prostitute a female child under their care, or cause or allow such a child to prostitute herself.⁷³⁷ The offense is punishable with a fine of up to RM 5,000 (USD 1,316), imprisonment of up to three years, whipping of up to six lashes, or any combination thereof.⁷³⁸

ENDNOTES

1. The island of Borneo is divided among three countries. The East Malaysian states of Sabah and Sarawak occupy most of the northern coast; the Sultanate of Brunei takes up a small section of that coast; and the lower two-thirds of the island belong to Indonesia. See CENTRAL INTELLIGENCE AGENCY (CIA), U.S. GOVERNMENT, *Malaysia, in THE WORLD FACTBOOK* (2005), <http://www.cia.gov/cia/publications/factbook/geos/my.html> (last modified Apr. 24, 2005); COMMONWEALTH SECRETARIAT, COMMONWEALTH, COUNTRY PROFILES: MALAYSIA, <http://www.thecommonwealth.org/Templates/YearbookHomeInternal.asp?NodeID=138656> (last visited May 11, 2005).
2. BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, U.S. DEPARTMENT OF STATE, BACKGROUND NOTE: MALAYSIA (Jan. 2005), <http://www.state.gov/r/pa/ci/bgn/2777.htm>.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: MALAYSIA 2004 (2005), <http://www.state.gov/g/drl/rls/hrrpt/2004/41649.htm>. Islam *Hadhair* or Civilizational Islam is a form of government in accordance with Islamic principles.
8. BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, *supra* note 2.
9. *Id.*
10. DEPARTMENT OF STATISTICS, GOVERNMENT OF MALAYSIA, POPULATION CLOCK, <http://www.statistics.gov.my/> (last visited May 13, 2005).
11. WORLD BANK GROUP, GENDERSTATS: SUMMARY GENDER PROFILE FOR MALAYSIA (2002), <http://genderstats.worldbank.org/genderRpt.asp?rpt=profile&cty=MYS,Malaysia&hm=home>.
12. BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, *supra* note 2.
13. *Id.*; CENTRAL INTELLIGENCE AGENCY (CIA), *supra* note 1.
14. MALAY. CONST. art. 3(1).
15. DEPARTMENT OF STATISTICS, GOVERNMENT OF MALAYSIA, POPULATION AND HOUSING CENSUS 2000, § 12, http://www.statistics.gov.my/English/frameset_pressdemo.php; BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, *supra* note 2.
16. CENTRAL INTELLIGENCE AGENCY (CIA), *supra* note 1.
17. UNITED NATIONS (UN), LIST OF MEMBER STATES, <http://www.un.org/Overview/unmember.html> (last visited Mar. 4, 2005).
18. COMMONWEALTH SECRETARIAT, *supra* note 1; ORGANIZATION OF THE ISLAMIC CONFERENCE, MEMBERS, <http://www.oic-oci.org/english/main/member-States.htm> (last visited May 11, 2005) (member since 1969, chair of 10th Summit in October 2003); NON-ALIGNED MOVEMENT (NAM), MEMBER STATES, <http://www.nam.gov.za/background/members.htm> (last visited May 11, 2005) (Malaysia chaired the 13th Summit in February 2003); ASIA-PACIFIC ECONOMIC COOPERATION (APEC), MEMBER ECONOMIES, http://www.apecsec.org.sg/apec/member_economies.html (last visited May 11, 2005) (member since 1993); WORLD TRADE ORGANIZATION, MALAYSIA – MEMBER INFORMATION, http://www.wto.org/english/thewto_e/countries_e/malaysia_e.htm (last visited May 11, 2005) (member since 1995); ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN), MEMBER COUNTRIES, <http://www.aseansec.org/74.htm> (last visited May 11, 2005).
19. *Consideration of reports submitted by States parties under article 18 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Combined initial and second periodic reports of States parties, Malaysia*, CEDAW Committee, para. 31, U.N. Doc. CEDAW/C/MYS/1-2 (2004).
20. MALAY. CONST. art. 3(1).
21. *Id.* arts. 73(a)–(b), 74(1)–(4).
22. *Id.* at arts. 32(1), 39, 41.
23. *Id.* art. 32(2).
24. *Id.* arts. 32(3), 38(1), (2a), 5th sched., art. 1.
25. *Id.* art. 33(1), (3).
26. *Id.* art. 43(2), (2)(a).
27. *Id.* arts. 43(2)(a)–(b), 44.
28. *Id.* art. 43(1), (3).
29. *Id.* art. 55(1)–(2).
30. *Id.* art. 42(1), (10).
31. *Id.* art. 32(1). He is liable only to proceedings in the Special Court established in 1993.
32. *Id.* art. 44.
33. *Id.* arts. 46, 55(3); PARLIAMENT OF MALAYSIA, GOV'T OF MALAYSIA, HOUSE OF REPRESENTATIVES: GENERAL INFORMATION, <http://www.parlimen.gov.my/eng-dR-maklumatumum.htm> (last visited May 9, 2005).
34. See COMMONWEALTH PARLIAMENTARY ASSOCIATION, DATA ON WOMEN IN COMMONWEALTH PARLIAMENTS AND LEGISLATURES 17 (2005), http://www.cpahq.org/WomenintheCPA_pdf_media_public.aspx (data from 2004 shows 20 of 219 members were female).
35. MALAY. CONST. art. 45; PARLIAMENT OF MALAYSIA, *supra* note 33.
36. See COMMONWEALTH PARLIAMENTARY ASSOCIATION, *supra* note 34.
37. MALAY. CONST. art. 45(3), (3A); PARLIAMENT OF MALAYSIA, *supra* note 33.
38. *Id.* art. 73(a).
39. *Id.* arts. 66(1), 68(1)–(8).
40. *Id.* arts. 66(1), 68(1)–(8).
41. *Id.* art. 66(4A), (4B).
42. *Id.* art. 66(3), (4A). If the bill is passed in the originating house by a two-thirds vote in the case of a constitutional amendment and a simple majority in other cases, then it is sent to the other house for similar approval. *Id.* art. 66(4A). The bill then passes into law upon the assent of the king or his inaction for 30 days. *Id.* art. 66(4A), (4B).
43. *Id.* 9th sched., list I, arts. 1, 4, 12–16.
44. *Id.* list III, arts. 1–9A.
45. BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, *supra* note 2.
46. MALAY. CONST. arts. 121(1), (1B), (2), 122AA(1), 182. The Supreme Court was created on Jan. 1, 1985 and was renamed the Federal Court in 1994. The Court of Appeal was established in 1994, and the Special Court was established in 1993; EDITORIAL COMM., MALAYSIAN COURTS OF MALAYSIA, INAUGURAL REPORT OF THE SUPERIOR AND SUBORDINATE COURTS IN MALAYSIA 16, 31, 35 (2004), http://www.kehakiman.gov.my/buku_laporan/buku_laporan.html; MALAY. CONST. 9th sched., list III, arts. 1–9A.
47. *Id.* art. 128(2), (3).
48. The Federal Court is empowered by the constitution to make determinations on any questions “as to the effect of any provision of [the] Constitution...” arising before any court, or referred to it by the king for its opinion. *Id.* arts. 128(2), 130. It may also adjudicate whether a federal or state law is invalid on the ground that the legislative body that enacted the law was not constitutionally empowered to do so. *Id.* art. 128(1)(a).
49. *Id.* art. 128(1)(b).
50. *Id.* arts. 121(2)(a)–(c), 128(1)–(3), 130. The Federal Court may adjudicate appeals against decisions of Court of Appeals in criminal cases or important civil cases initially decided by the High Court in exercise of its original jurisdiction. Courts of Judicature Act 1964, No. 7, §§ 87, 96(a)–(b) (1964) (Malay).
51. *Id.* pt. IX, art. 122(1). The Chief Justice was known as the Lord President prior to the amendment to the Federal Constitution in 1994.
52. *Id.* pt. IX, art. 122(1); EDITORIAL COMM., *supra* note 46, at 16. The king, under the advice of the Chief Justice may appoint additional members to the Federal Court. MALAY. CONST. pt. IX, art. 122(1A).
53. MALAY. CONST. art. 125(1).
54. *Id.* art. 122A(1). The *Yang di-Pertuan Agong* ordered the number of judges to be increased to fifteen through the 2002 amendment to the constitution. EDITORIAL COMM., *supra* note 46, at 35.
55. MALAY. CONST. pt. IX, art. 121(1B)(a); Courts of Judicature Act 1964, No. 7, §§ 50(1)–(2), 87, 96 (1964) (Malay); EDITORIAL COMM., *supra* note 46, at 40–43. http://www.kehakiman.gov.my/buku_laporan/buku_laporan.html (Aug. 5, 2004).
56. MALAY. CONST. pt. IX, arts. 121(1), 122AA(1); EDITORIAL COMM., *supra* note 46, at 54.
57. Not all decisions of subordinate courts may be tried at the High Courts, exceptions include civil cases not involving a question of law where the amount in dispute is less than RM 10,000. Courts of Judicature Act 1964, No. 7, §§ 26–29 (1964) (Malay); EDITORIAL COMM., *supra* note 46, at 64.
58. EDITORIAL COMM., *supra* note 46, at 55, 59.
59. MALAY. CONST. pt. IX, art. 122B(1), (2), (4). The Prime Minister consults the Chief Justice and the Chief Judge of the relevant Court before rendering his advice to the king.
60. *Id.* art. 182. However, actions against the king or state rulers over anything done or not done in his personal capacity may only be initiated with the consent of the Attorney General. *Id.* arts. 182(3), 183; EDITORIAL COMM., *supra* note 46, at 31.
61. MALAY. CONST. art. 182(1). Appointees must be current or past judges of the Federal Court or the High Court. *Id.*
62. EDITORIAL COMM., *supra* note 46, at 32.
63. *Id.* at 91–92, 95, 115, 119. See Subordinate Courts Act 1948, No. 92, §§ 63–65, 85, 90 (1948) (Malay).
64. The Child Act 2001, No. 611, § 2 (2001) (Malay); EDITORIAL COMM., *supra* note 46, at 124.
65. MALAY. CONST. pt. IX, art. 121(1A). Civil courts have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts. *Id.*
66. CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19, para. 39.
67. MALAY. CONST. 9th sched., list I, art. 4(a), list II, art. 1.
68. *Id.* 9th sched., list II, art. 1. Twelve Malaysian states have adopted a version of the Syariah Criminal Offences Act. It is pending approval from the senate in the 13th state, the Federal Territories. *Malaysian States Standardize Shariah Laws*, SPIRITHIT NEWS, Apr. 15, 2005, http://news.spirithit.com/index/asia_pacific/print/malaysian_states_standardize_shariah_laws/.
69. MALAY. CONST. 9th sched., list II, art. 1. States have authority over the “...creation and punishment of offences by persons professing the religion of Islam ... except in regard to matters included in the Federal list.” However, there have been efforts by state governments to expand jurisdiction to these matters, such as the enactment of the Syariah Criminal Offences Act in many States. Communication with Syrin Junisya & Rashidah Abdullah, Asian-Pacific Resource & Research Centre for Women (ARROW), *Women of the World: Laws and Policies Affecting Their Reproductive Lives- Malaysia (draft)* 25 (Oct. 17, 2003) (on file with the Center for Reproductive Rights).
70. *Id.* 9th sched., list II, item 1; ZAITOON DATO OTHMAN, ISLAM IN MALAYSIA TODAY AND IT'S IMPACT: THE PRACTICE OF SHARIAH LAWS IN MALAYSIA, <http://www.muslim-lawyers.net/news/datoothman.html>. See also CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19.
71. CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19.

72. Anwar, Zainah, *Modern and Moderate Islam*, ASIAWEEK, Sept. 16, 1997, at 19.
73. *Id.*
74. *Id.*
75. POVERTY REDUCTION AND SOCIAL DEVELOPMENT DIVISION, ASIAN DEVELOPMENT BANK, SOCIOLEGAL STATUS OF WOMEN IN INDONESIA, MALAYSIA, PHILIPPINES, AND THAILAND 21 (2002), http://www.adb.org/Documents/Studies/Sociolegal_Status_Women/.
76. *Id.*
77. BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, *supra* note 2. Kuala Lumpur, Labuan, and Putrajaya were turned into Federal Territories on Feb. 1, 1974, Apr. 16, 1984 and Feb. 2001, respectively. MALAY. CONST. 9th sched., list I, art. 27, list II, arts. 2–5.
78. MALAY. CONST. pt. V, art. 71, 8th sched., pt. I, art. 19A(1)–(2).
79. *Id.* 8th sched., pt. I, arts. 1(1), 2(1), 2(2)(b), (5).
80. *Id.* arts. 1(2)(a), 2(2)(a)–(b).
81. *Id.* art. 3.
82. *Id.* art. 9(2)–(3).
83. *Id.* at 4(1).
84. See COMMONWEALTH PARLIAMENTARY ASSOCIATION, *supra* note 34.
85. MALAY. CONST., 9th sched., list II.
86. *Id.* art. 75.
87. HAJI KASWUIR BIN KEMAN, THE REGISTRY OF SOCIETIES, MESSAGE FROM THE REGISTRAR OF SOCIETIES, <http://www.jpmmros.gov.my/speech01.htm> (last visited May 13, 2005).
88. *Id.*
89. Section 2 of the Societies Act 1966 defines society as “any club, company, partnership or association of seven or more persons whatever its nature or object, whether temporary or permanent...” ASIAN PACIFIC PHILANTHROPY CONSORTIUM, PHILANTHROPY AND THE THIRD SECTOR IN ASIA AND THE PACIFIC: DEFINITIONS AND FORMS: MALAYSIA, <http://www.asianphilanthropy.org/countries/malaysia/definition.html> (last modified Jan. 20, 2005).
90. Y.A.B. Dato’ Seri Abdullah bin Haji Ahmad Badawi, Malaysian Prime Minister and Minister of Finance, The 2005 Budget Speech to the Dewan Rakyat (Sept. 10, 2004) (transcript available at <http://www.pmo.gov.my/website/webdb.nsf/vALLDOC/332D53485BFFB11548256F0C0003EB02>).
91. ECONOMIC PLANNING UNIT, GOVERNMENT OF MALAYSIA, MID-TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, § 12.71, at 404 (2003), <http://www.epu.jpm.my/New%20Folder/development%20plan/midterm-RM8.htm>.
92. Tay & Partners, *Laws of Malaysia*, <http://www.loc.gov/law/guide/malaysia.html>; See also CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19, para. 380.
93. MALAY. CONST. art. 4(1).
94. *Id.* art. 5(1).
95. *Id.* art. 6(1)–(2).
96. *Id.* art. 8(1).
97. *Id.* art. 11(1), (4). The practice of Islamic beliefs other than Sunni Islam has been restricted significantly by the government. U.S. DEP’T OF STATE, *supra* note 7, § 2(c).
98. MALAY. CONST. art. 13(1).
99. HONEY TAN LAY EAN, WOMEN’S CENTRE FOR CHANGE, MEASURING UP TO CEDAW: HOW FAR SHORT ARE MALAYSIAN LAWS AND POLICIES?, in HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM), REPORT ROUNDTABLE DISCUSSION: RIGHTS AND OBLIGATIONS UNDER CEDAW 91–92 (2004), http://www.suhakam.org.my/docs/document_resource/Report_RTD_CEDAW.pdf (last visited May 12, 2005). The inclusion of gender was specific to art. 8(2), and did not amend art. 12 of the Constitution, which provided for non-discrimination in access to education. *Id.*
100. MALAY. CONST. art. 8(2).
101. *Id.* art. 8(5)(a)–(f), pt. XII (General and Miscellaneous), art. 153.
102. *Id.* art. 10.
103. *Id.* 9th sched., list I, art. 4. See Penal Code, No. 574 (1997) (Malay); Criminal Procedure Code (F.M.S. Cap. 6).
104. With exception to the Federal Territories. *Id.* art. 74(2), 9th sched., list II, art. 1.
105. Myint Zan, *Additional Material: The Three Nixon Cases and Their Parallels in Malaysia*, 13 ST. THOMAS L. REV. 743, 744 (2001).
106. Administration of Islamic Law (Federal Territory) Act of 1993, No. 505, § 34 (1993) (Malay).
107. Pusat Pungutan Zakat Wilayah Persekutuan [Zakat Collection Center], Majlis Agama Islam Wilayah Persekutuan [Federal Territories Islamic Religious Council], Zakat Organization in Malaysia, <http://www.zakat.com.my/english/news/news-4-0903.shtml> (last visited May 13, 2005).
108. *Id.*
109. See WOMEN’S AID ORGANISATION (WAO), WOMEN’S EQUALITY IN MALAYSIA: STATUS REPORT (March 2001), available at <http://www.wao.org.my/news/20010301statusreport.htm> (last visited Jun. 19, 2003).
110. ECONOMIC PLANNING UNIT, GOVERNMENT OF MALAYSIA, THE THIRD OUTLINE PERSPECTIVE PLAN 2001–2010 (2001).
111. THE THIRD OUTLINE PERSPECTIVE PLAN 2001–2010 (2001), *supra* note 110, ch. 1, § I, para. 1.01–1.03, at 3; ECONOMIC PLANNING UNIT, GOVERNMENT OF MALAYSIA, EIGHTH MALAYSIA PLAN 2001–2005, ch. 1, § I, para. 1.01, at 3 (2001).
112. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, ch. 1, § I, para. 1.01, at 3.
113. MALAY. CONST. 9th sched., list I, art. 1(a)–(b), (d).
114. *Id.* 9th sched., list I, art. 1(b); INTERNATIONAL COMM. OF THE RED CROSS ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, GENERAL COMMENT: MALAYSIA, <http://www.icrc.org/ihl-nat.nsf/162d151af444ded44125673e00508141/96f1b4396a4d41dbce1256aa700413a7b?OpenDocument> (last visited May 13, 2005).
115. HONEY TAN LAY EAN, *supra* note 99, at 91. “Treaties to which Malaysia is a party may either require subsequent legislation, in which case they become the law of the land as soon as the necessary laws are enacted or, they may not, in which case they remain within a category of Malaysia’s international law, binding only herself vis-à-vis the other parties to the treaties, but having no effect as such on Malaysian subjects.” TUNKU SOFIAN JEW, PUBLIC INTERNATIONAL LAW: A MALAYSIAN PERSPECTIVE 35 (1996).
116. Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) (entered into force Sept. 3, 1981) (accession with reservations and declaration by Malaysia Aug. 4, 1995). See also United Nations High Commissioner for Human Rights (UNHCHR), Ratification Status by Country: Convention on the Rights of the Child: Malaysia, <http://www.unhchr.ch/tbs/doc.nsf/Statusfset?OpenFrameSet> (last visited May 9, 2005); Declarations and reservations to the CRC: Malaysia, <http://www.ohchr.org/english/law/crc-reserve.htm> (last visited May 9, 2005).
117. Convention on the Rights of the Child (CRC), adopted Nov. 20, 1989, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989), reprinted in 28 I.L.M. 1448 (entered into force Sept. 2, 1990) (accession by Malaysia Mar. 19, 1995). See also UNHCHR, *supra* note 116.
118. U.N. Division for the Advancement of Women (DAW), Dept of Economic and Social Affairs, Declaration, Reservations and Objections to CEDAW, Malaysia, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (last visited May 9, 2005). Malaysia initially ratified CEDAW with reservation to articles 2(f), 5(a), 7(b), 9, 11, and 16. In 1998, Malaysia withdrew its reservation with respect of article 2(f), 9(1), 16(1)(b), (d), (e), (h).
119. CEDAW, *supra* note 116.
120. *Id.* art. 7(b).
121. *Id.* art. 9(2).
122. *Id.* art. 16(1)(a), (c), (f).
123. Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, Austria, June 14–25, 1993, U.N. Doc. A/CONF.157/23 (1993); Programme of Action of the International Conference on Population and Development, Cairo, Egypt, Sept. 5–13, 1994, U.N. Doc. A/CONF.171/13/Rev.1 (1995); Beijing Declaration and the Platform for Action, Fourth World Conference on Women, Beijing, China, Sept. 4–15, 1995, U.N. Doc. A/CONF.177/20 (1995); Millennium Declaration, Millennium Assembly, New York, United States, Sept. 6–8, 2000, U.N. GAOR, 55th Sess., U.N. Doc. A/Res/55/2 (2000).
124. MALAY. CONST. 9th sched., list III, art. 7. Sanitation in the federal capital (Kuala Lumpur) is under the jurisdiction of the federal government exclusively. *Id.* 9th sched., list I, art. 14.
125. *Id.* 9th sched., list I, arts. 14(a), (c), 15(b).
126. FADIL AZZIM ABBAS, U.N. ECONOMIC AND SOCIAL COMMISSION FOR WESTERN ASIA, SOCIAL POLICIES IN MALAYSIA 8 (2003), <http://www.escwa.org.lb/information/publications/ssd/docs/ssd-03-1.pdf>. Each five-year plan since the First Malaysia Plan (1966–1970) has included a chapter relating to health policy. *Id.* at 11.
127. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, at 477–498.
128. *Id.* para. 1.01, at 3.
129. MINISTRY OF HEALTH MALAYSIA, GOVERNMENT OF MALAYSIA, HEALTH IN MALAYSIA: ACHIEVEMENTS AND CHALLENGES 12 (Tan Sri Dato’ Dr. Abu Bakar Dato’ Suleiman & Dato’ Dr. M. Jegathesan eds., 2000).
130. THE THIRD OUTLINE PERSPECTIVE PLAN 2001–2010 (2001), *supra* note 110, paras. 1.22, 3.21, 4.06, 4.14–4.15.
131. *Id.* para. 7.51–7.52, at 182.
132. *Id.* paras. 4.06, at 85, 7.54, at 182.
133. *Id.* para. 6.19, at 156.
134. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, paras. 17.01, at 477, 17.27, at 490.
135. *Id.* para. 17.02, at 477. Primary health-care services are the first point of contact and include maternal child health-care, dental services, school health services and support services such as clinical and imaging facilities, pharmacy and registration. *Id.* at 484 tbl. 17–2.
136. *Id.* para. 17.02, at 477.
137. Telemedicine is defined as the practice of medicine using audio, visual and data communications. Telemedicine Act 1997, No. 563, § 2 (1997) (Malay).
138. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, para. 17.28, at 477.
139. *Id.* paras. 17.29–17.36, at 491–493 (2001), http://www.epu.jpm.my/RM8/c17_cont.pdf.
140. *Id.* paras. 17.29–17.49, at 491–497 (2001), http://www.epu.jpm.my/RM8/c17_cont.pdf.
141. MINISTRY OF HEALTH MALAYSIA, GOVERNMENT OF MALAYSIA, VISION FOR HEALTH, § 2, <http://www.pharmacy.gov.my/html/nedl.htm>.
142. *Id.*
143. Siti Norazah Zulkifli et al., *Gender, Sexuality and Reproductive Health Malaysia*, in 1 GENDER, SEXUALITY AND REPRODUCTIVE HEALTH IN SOUTH EAST ASIA 88 (Pilar Ramos-Jimenez & Celeste Maria V. Condor eds., 2001).
144. *Id.*
145. *Id.*
146. *Id.*
147. PUBLIC HEALTH DEPARTMENT, MINISTRY OF HEALTH MALAYSIA, <http://dph.gov.my/> (last visited May 16, 2005); See also REGIONAL OFFICE FOR THE WESTERN PACIFIC, WORLD

- HEALTH ORGANIZATION (WHO), MALAYSIA: COUNTRY HEALTH INFORMATION PROFILE 175 (2004), <http://www.wpro.who.int/NR/rdonlyres/8AD8E3AE-B205-4587-BA50-7AAED9C1FFC7/137/maa.pdf>.
148. MINISTRY OF HEALTH MALAYSIA, GOVERNMENT OF MALAYSIA, ANNUAL REPORT 2000, at 49 (2001).
149. *Id.* at 49, 51.
150. REGIONAL OFFICE FOR THE WESTERN PACIFIC, WORLD HEALTH ORGANIZATION (WHO), MALAYSIA, *supra* note 147.
151. MINISTRY OF HEALTH MALAYSIA, GOVERNMENT OF MALAYSIA, ANNUAL REPORT 1999, at 236 (2000); NATIONAL PHARMACEUTICAL CONTROL BUREAU, MINISTRY OF HEALTH MALAYSIA, ANNUAL REPORT 2002, at 1, 6 (2003), <http://www.bpfk.gov.my/pdfworddownload/bpfk2002.pdf>. The NPCB operates under the Pharmaceutical Services Division (PSD) of the Ministry of Health Malaysia. PSD, MINISTRY OF HEALTH MALAYSIA, ANNUAL REPORT 2002, http://www.pharmacy.gov.my/html/annual_report2002.htm.
152. Siti Norazah Zulkfli et al., *supra* note 143.
153. *Id.*
154. *Id.*
155. WHO, MALAYSIA: COUNTRY COOPERATION STRATEGY, § 2.3 (2002) available at http://www.who.int/countries/en/cooperation_strategy_mys_en.pdf (last visited May 16, 2005). During the Seventh Malaysia Plan, primary health-care services were expanded, decentralizing hospital outpatient departments to health clinics. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, para. 1708, at 480.
156. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, paras. 1713–1715, at 482–484; FADIL AZZIM ABBAS, *supra* note 126, at 19.
157. FADIL AZZIM ABBAS, *supra* note 126.
158. MID–TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, at 383 tbl.12-1.
159. Mobile units refer to dispensary services, village health teams, flying doctor services and mobile dental services. *Id.*
160. Total extrapolated from 1,934 rural community clinics and 686 rural health clinics. *Id.*
161. *Id.* at 484 tbl.17-2. Basic secondary care services are provided by resident medical officers and visiting specialists in areas of general medicine, surgery, obstetrics and gynecology and pediatrics. Full secondary care services comprise all components of basic secondary care services, with additional services in orthopedics, anesthesiology, psychiatry, dermatology, medical rehabilitation, pathology, imaging, dental, ophthalmology and geriatrics, provide by medical officers and resident specialists. Tertiary care services are highly specialized care in the areas of cardiology, cardiothoracic, pediatric and neurosurgery, geriatrics, neurology, respiratory medicine, urology and nephrology, plastic surgery and burns, maxillofacial, hematology, radiotherapy and oncology, and endocrinology. *Id.*
162. THE THIRD OUTLINE PERSPECTIVE PLAN 2001–2010 (2001), *supra* note 110, para. 753, at 182.
163. *Id.* para. 754, at 184. WHO, MALAYSIA: COUNTRY COOPERATION STRATEGY, *supra* note 155, § 2.4.
164. NATIONAL POPULATION AND FAMILY DEVELOPMENT BOARD (NPFDB), MINISTRY OF WOMEN, FAMILY AND COMMUNITY DEVELOPMENT, ANNUAL REPORT 2001, at 8 (2002). NPFDB, MINISTRY OF WOMEN, FAMILY AND COMMUNITY DEVELOPMENT, HISTORY, at <http://www.lppkn.gov.my/History.htm> (last visited May 18, 2005).
165. REGIONAL OFFICE FOR THE WESTERN PACIFIC, WORLD HEALTH ORGANIZATION (WHO), MALAYSIA, *supra* note 147, at 166.
166. *Id.*
167. WHO, MALAYSIA: COUNTRY COOPERATION STRATEGY, *supra* note 155, § 2.4, at 7. *E.g.*, the ratio of doctors to population is 1:1465 in Kuala Lumpur, while the ratio is 1:4120 in Sabah. *Id.*
168. INFORMATION AND DOCUMENTATION SYSTEM UNIT, MINISTRY OF HEALTH MALAYSIA, HEALTH FACTS 2003 (PRELIM), [http://www.moh.gov.my/Facts/2003\(prelim\).htm](http://www.moh.gov.my/Facts/2003(prelim).htm).
169. YB Dato' Dr. Chua Soi Lek, Speech at the Dialogue with Malaysian Medical Students ¶ 4 (May 24, 2004) (transcript available at <http://www.moh.gov.my/speech/menteri/240504.htm>).
170. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, para. 1722, at 487.
171. *Id.*; MID–TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, § 12.17, at 387, § 12.22, at 389.
172. *Id.* para. 17.23, at 488. Other strategies include increasing the number of students sent abroad, and outsourcing training to the private sector. MID–TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, § 12.17, at 387.
173. MID–TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, § 12.17, at 387, § 12.22, at 389.
174. THE THIRD OUTLINE PERSPECTIVE PLAN 2001–2010 (2001), *supra* note 110, para. 6.19, at 156.
175. *Id.* para. 751, at 182.
176. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, para. 1.48, at 17; MID–TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, § 12.22, at 389; WHO, MALAYSIA: COUNTRY COOPERATION STRATEGY, *supra* note 155, § 2.4.
177. INFORMATION AND DOCUMENTATION SYSTEM UNIT, *supra* note 168.
178. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, para. 17.17, at 486.
179. INFORMATION AND DOCUMENTATION SYSTEM UNIT, *supra* note 168.
180. Estate Hospital Assistants (Registration) Act 1965, No. 435, § 1A (1965) (Malay) (amended 1990).
181. NATIONAL POPULATION AND FAMILY DEVELOPMENT BOARD (NPFDB), *supra* note 164, para. 48.2, at 55.
182. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 69, at 9.
183. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, para. 17.17, at 486.
184. Private Healthcare Facilities and Services Act 1998, No. 586, § 74(1) (1998) (Malay).
185. DATO' CHUA JUI MENG, HEALTH MINISTER SPEAKS ON HEALTHCARE AND MANAGED CARE ORGANISATIONS, http://www.allianz.com.my/PressCentre/Newsletter/News_HealthCare_CJM1.htm (last visited June 13, 2005).
186. S.M. Mohamed Idris, *Make them report death, illness rates*, NEW STRAITS TIMES, Sept. 22, 2004, at 13; *Enforce act for treatment cost control, government told*, BERNAMA–MALAYSIAN NATIONAL NEWS AGENCY, June 7, 2004.
187. PRIMARY CARE DOCTORS' ORGANIZATION MALAYSIA, THE PRIVATE HEALTHCARE FACILITIES AND SERVICES ACT 1998, HEALTHCARE PROFESSIONAL'S GUIDE § 6.1 (1998), <http://www.pcdom.org.my/common/phcfs98.htm> (summarizing the Private Healthcare Facilities and Services Act 1998).
188. INFORMATION AND DOCUMENTATION SYSTEM, *supra* note 168; WHO, NATIONAL EXPENDITURE ON HEALTH – MALAYSIA (2005), <http://www.who.int/nha/country/MYS.xls>.
189. MID–TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, at 137 tbl.5-1, 430 tbl.12-5. See EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, para. 17.50, at 497.
190. MID–TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, at 430 tbl.21-5. (total amount set aside for this purpose is RM 7703.5 million).
191. ECONOMIC PLANNING UNIT, GOVERNMENT OF MALAYSIA, SEVENTH MALAYSIA PLAN 1996–2000, para. 17.61, at 551 (1996), <http://www.epu.jpm.my/New%20Folder/development%20plan/RM7.htm>.
192. *Id.* para. 17.25, at 540.
193. *Id.* paras. 7.34–7.35, at 216, 17.25, at 540, 17.56, at 546.
194. Chan Chee Khoo, *The Political Economy of Healthcare Reforms in Malaysia, in RESTRUCTURING HEALTH SERVICES: CHANGING CONTEXTS & COMPARATIVE PERSPECTIVES* 206 (Katuri Sen ed., 2003).
195. NATIONAL EXPENDITURE ON HEALTH – MALAYSIA (2005), *supra* note 188.
196. *Id.*
197. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 69.
198. WHO, MALAYSIA: COUNTRY COOPERATION STRATEGY, *supra* note 155, § 3.1. National self-reliance is part of Malaysia's Vision 2020 policy. Developmental Aid from Japan, Denmark and Germany has ceased since 1998. Meanwhile, Malaysia continues to seek technical advice from international institutions (e.g. The World Bank, Asian Development Bank, WHO) but remains self-sufficient as it is able to pay for advice or develop its own expertise. *Id.*
199. *Id.*; MINISTRY OF HEALTH MALAYSIA, GOVERNMENT OF MALAYSIA, ANNUAL REPORT 1999, at 89 (2000).
200. Fees Act, No. 209 (1951) (Malay).
201. Fees (Medical) Order 1982, P.U. (A) 359/82, § 16 (1985) (Malay).
202. Fees (Medical) (Amendment) Order (No. 2) 1994, P.U. (A) 468/94, § 2 (1994) (Malay). "Foreign person" means a person who is not a citizen of Malaysia but does not include a non-citizen who holds an identity card issued under paragraph 5(3)(b) or (c) of the National Registration Regulations 1990 and, in the case of a child, one who holds a Malaysian birth certificate and whose father is the holder of any such identity card. *Id.* § 2.
203. *Id.*
204. MALAYSIAN MEDICAL ASSOCIATION (MMA), MMA SCHEDULE OF FEES (2002), http://www.mma.org.my/current_topic/fee.htm (Sept. 2, 2002).
205. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 69.
206. Employees Provident Fund Ordinance 1951, No. 21 (1951) (Malay), amended by Employees Provident Fund Act 1991, No. 452, § 24(1) (1991), <http://www.kwsp.gov.my/index.php?ch=100&pg=162> (last visited May 19, 2005). The Fund covers all employee(s), interpreted by the Act as person(s) "employed under a contract of service or apprenticeship, whether written or oral and whether expressed or implied, to work for an employer." *Id.* § 2.
207. *Id.* § 43, 3rd sched. (1951) (Malay). As of the end of December 1999, the total number of members was 954 million, comprising 478 million (50.1 per cent) active members. Ong Fon Sim, *Aging in Malaysia: A Review of National Policies and Programmes, AGEING AND LONG-TERM CARE: NATIONAL POLICIES IN THE ASIA-PACIFIC*, ch. 4 (David R. Phillips & Alfred C.M. Chan eds., 2002), http://web.idrc.ca/es/ev-26511-201-1-DO_TOPIC.html.
208. Employees Provident Fund Act 1991, No. 452, § 54(6)(f) (1991) (Malay), amended by Employees Provident Fund (Amendment) Act 2001, No. 1123 (2001) (Malay). Portions of a member's entitlements may be withdrawn for "medical financing." The total sum of a member's entitlements under the Fund may be withdrawn if the member has died, reached 55 years old, become physically or mentally disabled, or plans to depart Malaysia permanently. *Id.* § 54(1)(a)–(e). See also EMPLOYEES PROVIDENT FUND, MEMBERS: WITHDRAWAL SCHEME, <http://www.kwsp.gov.my/index.php?ch=139> (last visited May 19, 2005).
209. Employees Provident Fund Ordinance 1951, No. 21 (1951) (Malay), amended by Employees Provident Fund Act 1991, No. 452, § 24(1) (1991), <http://www.kwsp.gov.my/index.php?ch=100&pg=162> (last visited May 19, 2005). These benefits are available to employees upon compulsory or optional retirement or retirement based on medical reasons, as provided in the employment contract. *Id.* § 2.

210. YB Dato' Dr. Chua Soi Lek, Speech at the Launch of "Allianz Care" at the Mandarin Oriental Hotel, Kuala Lumpur, ¶ 4 (Jan. 11, 2005) (transcript available at <http://www.moh.gov.my/speech/menteri/2005/110105%20Allianz%20Care.htm>). In 2000, the SOCSO paid 209,820 workers, and the program expanded to include compensation for workers injured en route to or from workplace. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, para. 17.12 at 481.
211. Ong Fon Sim, *supra* note 207.
212. *Id.*
213. *Id.*
214. *Id.*
215. Communication with Syrin Junisya & Rashidah Abdullah, Asian-Pacific Resource & Research Centre for Women (ARROW), *Women of the World: Laws and Policies Affecting Their Reproductive Lives- Malaysia (draft)* 12 (Dec. 2, 2004) (on file with the Center for Reproductive Rights).
216. *Id.*
217. SEVENTH MALAYSIA PLAN 1996–2000, *supra* note 191, para. 17.34, at 544.
218. Chan Chee Khoo, *supra* note 194.
219. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 215, at 13.
220. YB Dato' Dr. Chua Soi Lek, Speech at the Launch of "Allianz Care" at the Mandarin Oriental Hotel, *supra* note 210, ¶¶ 9, 11–12.
221. THE THIRD OUTLINE PERSPECTIVE PLAN 2001–2010 (2001), *supra* note 110, para. 7.54, at 183.
222. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, para. 1.48, at 17.
223. MID-TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, § 12.103, at 414.
224. Control of Drugs and Cosmetics Regulations, P.U. (A) 223/84, art. 7 (1984) (Malay). Unregistered drugs may be imported for the treatment of any person suffering from a life-threatening illness upon NPCB's approval. *Id.* art. 15(6).
225. *Id.* arts. 7(1)(a), (b), (2) (1984) (Malay).
226. MINISTRY OF HEALTH MALAYSIA, ANNUAL REPORT 2002, *supra* note 151, at 10.
227. Control of Drugs and Cosmetics Regulations, P.U. (A) 223/84, art. 17(1)–(3) (1984) (Malay).
228. Medical Act 1971, No. 50, § 3 (1971) (Malay); MALAYSIAN MEDICAL COUNCIL (MMC), OVERVIEW OF THE FUNCTION AND ORGANIZATION OF THE MMC, <http://www.moh.gov.my/mmc/overview.htm> (last visited June 1, 2005).
229. MALAYSIAN MEDICAL ASSOCIATION, MEDICINE AS A CAREER (2002), <http://www.mma.org.my/info/career.htm>.
230. *Id.*
231. *Id.*
232. MALAYSIAN MEDICAL COUNCIL, CODE OF MEDICAL ETHICS, pt. III, § 1.1(c) (2002), http://www.mma.org.my/charters/Ethical_code2.pdf.
233. MALAYSIAN MEDICAL COUNCIL, THE CODE OF PROFESSIONAL CONDUCT, <http://www.moh.gov.my/mmc/codeprolist.htm> (Dec. 9, 1986); OVERVIEW OF THE FUNCTION AND ORGANIZATION OF THE MALAYSIAN MEDICAL COUNCIL, *supra* note 228.
234. This is defined as "no more than serious misconduct judged according to the rules, written or unwritten, governing the profession" and acts "which will be reasonably regarded as disgraceful or dishonorable by his professional brethren...." THE CODE OF PROFESSIONAL CONDUCT, *supra* note 233, pt. I. Specific acts include "neglect or disregard of professional responsibilities.... [a]buse of professional privileges and skills.... [c]onduct derogatory to the reputation of the medical profession.... [a]dvertising, canvassing and related professional offenses." *Id.* pt. II.
235. Laws of Malaysia: Medical Regulations 1974, reg. 27; Medical Act 1971, No. 50, § 29(2) (1971) (Malay).
236. Nurses Act 1950, No. 14 (1950) (Malay) (amended 1999) (establishing the Nursing Board).
237. Midwives Act 1966, No. 436 (1966) (Malay) (establishing the Midwives Board).
238. Registration of Pharmacists Act 1951, No. 371, § 3 (2001) (Malay) (establishing the Pharmacy Board); PHARMACEUTICAL SERVICES DIVISION, MINISTRY OF HEALTH MALAYSIA, PHARMACY BOARD, http://www.pharmacy.gov.my/html/pharmacy_board_f.htm (last visited May 19, 2005).
239. Nurses Act 1950, *supra* note 236.
240. *Id.* § 3.
241. Midwives Act 1966, *supra* note 237.
242. Registration of Pharmacists Act 1951, No. 371, §§ 3, 5–6 (1951) (Malay).
243. *Id.* § 3; PHARMACY BOARD OF MALAYSIA, CODE OF CONDUCT FOR PHARMACISTS AND BODIES CORPORATE (1989).
244. Estate Hospital Assistants (Registration) Act, No. 435, §§ 2–3 (1965) (Malay) (establishing the Estate Hospitals Assistants Board).
245. Medical Act 1971, No. 50, §§ 33–34 (1971) (Malay). Practitioners of traditional medicine may not, for example, represent themselves as doctor, general practitioner or physician, or represent their practice as a clinic, dispensary or hospital. *Id.*
246. NATIONAL PHARMACEUTICAL CONTROL BUREAU, MINISTRY OF HEALTH, REGISTRATION OF TRADITIONAL MEDICINES IN MALAYSIA (1999), <http://www.bpfk.gov.my/berita%20-%20berita/April%201999%20registration.htm>.
247. Yb Dato' Chua Jui Meng, Speech at the National Homeopathy Conference ¶ 19 (Aug. 22, 2003), (transcript available at <http://www.moh.gov.my/speech/menteri/220803.htm>).
248. MINISTRY OF HEALTH, NATIONAL POLICY ON TRADITIONAL/COMPLEMENTARY MEDICINE § 6.1 (2001).
249. MID-TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, § 12.20, at 388.
250. See Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 182, at 15.
251. Civil Law Act 1956, No. 67, §§ 7–8, 28A (1956) (Malay). The act was amended in light of concerns that the availability of high damages awards would encourage personal injury lawsuits and turn Malaysia into a "litigious society," and that society, rather than insurance companies, would have to shoulder the economic burden of large awards. See S. SANTHANA DASS, IS THERE A NEED FOR REVIEW AFTER A DECADE OF THE CIVIL LAW (AMENDMENT) ACT 1984 ON DAMAGES?, 11TH MALAYSIAN LAW CONFERENCE (Nov. 8–10, 2001), <http://www.mlj.com.my/free/articles/santhana.htm>.
252. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 215, at 15.
253. S. RADHAKRISHNAN, MEDICAL NEGLIGENCE LITIGATION: IS DEFENSIVE MEDICINE NOW THE NORM? (1999), <http://www.mlj.com.my/free/articles/Radakrishnan.htm>. (presented at the 12th Commonwealth Law Conference at Kuala Lumpur in September 1999).
254. *Id.*
255. Medical Act 1971, No. 50, § 3 (1971) (Malay). THE CODE OF PROFESSIONAL CONDUCT, *supra* note 233; MALAYSIAN MEDICAL COUNCIL, CODE OF MEDICAL ETHICS (2002), http://www.mma.org.my/charters/Ethical_code2.pdf.
256. THE CODE OF PROFESSIONAL CONDUCT, *supra* note 233, pt. III, § 3.
257. MALAYSIAN MEDICAL ASSOCIATION, MEMORANDUM OF UNDERSTANDING, THE PATIENT'S CHARTER (2002), <http://www.mma.org.my/charters/patient.htm>.
258. MALAYSIAN MEDICAL ASSOCIATION, PATIENT'S RIGHTS (2002), http://www.mma.org.my/charters/patient_right.htm.
259. MALAYSIAN MEDICAL ASSOCIATION, THE PATIENT'S RESPONSIBILITIES (2002), http://www.mma.org.my/charters/patient_responsibilities.htm.
260. *Id.*
261. UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION (UNESCO), COUNTRY PROFILE: MALAYSIA 75, http://portal.unesco.org/education/en/file_download.php/05b5675b08404d56f464c0f9ca1a551Malaysia.pdf (last visited May 18, 2005).
262. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, ch. 20.
263. *Id.* paras. 20.18, at 563, 20.28, at 566.
264. *Id.* paras. 20.18, at 563, 20.28, at 566, 20.35, at 568.
265. *Id.* para. 20.35, at 568.
266. *Id.* para. 20.36, at 569.
267. YB Dato' Chua Jui Meng, Speech at the Launch of the Malaysian Twins Support Group at the Damansara Fertility Centre ¶ 6 (June 3, 2003) (transcript available at <http://www.moh.gov.my/speech/menteri/030603.htm>); NPFDB, ASSISTED CONCEPTION TECHNOLOGY, <http://www.lppkn.gov.my/assisted.htm> (last visited May 18, 2005).
268. YB Dato' Chua Jui Meng, Speech at the Launch of the Malaysian Twins Support Group at the Damansara Fertility Centre, *supra* note 267, ¶ 7. Simpler procedures include assessing hormonal status, laparoscopic evaluation, seminal fluid evaluation, and intra-uterine insemination. *Id.*
269. *Id.* ¶ 8.
270. See *Id.* ¶ 23.
271. See Deborah Loh, *46pc rise in AIDS from unprotected sex*, NEW STRAITS TIMES, Apr. 16, 2003 (quoting Datuk Seri Shahrizat, Minister for Women and Family Development).
272. See MALAYSIA NATIONAL POPULATION AND FAMILY DEVELOPMENT PROGRAMME, FACTS AND FIGURES § 4.6 (1982).
273. Letter from Ms. Khoo Swee Kheng, Deputy Director, National Population and Family Development Board, to Syrin Junisya, Programme Officer, ARROW (July 28, 2003) (on file with the Center for Reproductive Rights) (referring to Malaysia National Population and Family Development Programme, Facts and Figures, 1982).
274. NPFDB, MINISTRY OF WOMEN, FAMILY AND COMMUNITY DEVELOPMENT, NUMBER OF CLINICS PROVIDING FAMILY PLANNING SERVICES BY IMPLEMENTING AGENCIES AND STATE, MALAYSIA: 2000, <http://www.lppkn.gov.my/popmal/content63.html>; See FEDERATION OF FAMILY PLANNING ASSOCIATION, ANNUAL REPORT 2002, at 12 (2002).
275. NATIONAL POPULATION AND FAMILY DEVELOPMENT BOARD, POPULATION PROFILE MALAYSIA 84 fig.5.4.
276. *Id.*
277. *Id.* at 89 fig.5.7. Reasons cited for discontinuation were planning for pregnancy (37.9%), side effects (26%), medical advice (76%), method failure (4.7%), husband's objections (2.4%) and others (21.4%). *Id.*
278. DEPARTMENT OF STATISTICS MALAYSIA, SOCIAL STATISTICS BULLETIN MALAYSIA 2001, at 187 tbl.418 (2002) (figures pertain to methods chosen by new family planning acceptors in 2000, data source NPFDB).
279. INTERNATIONAL PLANNED PARENTHOOD FEDERATION (IPPF), COUNTRY PROFILE: MALAYSIA, http://ippfnet.ippf.org/pub/IPPF_Regions/classic/IPPF_CountryProfile.asp?ISOCODE=MY (last visited May 19, 2005).
280. NATIONAL POPULATION AND FAMILY DEVELOPMENT BOARD, POPULATION PROFILE MALAYSIA 87 fig.5.5.
281. See PHARMACEUTICAL SERVICES DIVISION, MINISTRY OF HEALTH MALAYSIA, NATIONAL DRUGS LIST, http://www.pharmacy.gov.my/html/pharma_care_ned_f.htm (last visited May 19, 2005). The approved drugs follow the WHO's definition of "essential drugs" as drugs that meet the health-care needs of the majority of the population, and should thus be easily available in adequate quantities and in suitable dosages. *Id.*
282. Reasons given by the Council are "1) Sterilisation is *haram* (forbidden) because it makes the sterilised person forever incapable of continuing the lineage, i.e. the effect of sterilisation is permanent; 2) Contraception to limit the number of offspring is *haram* (forbidden) unless under *hurus* (permissible) individual circumstances. Contraception that

- is not permanent in nature is permissible when several conditions are met; 3) to space the children for reasons of health, education and family happiness, using other methods than (1) and (2) is *haram* (permissible).” Nik Noraini & Nik Badli Shah, *Islam, Reproductive Health and Women's Rights in Malaysia*, in ISLAM, REPRODUCTIVE HEALTH AND WOMEN'S RIGHTS 179 (Zainah Anwar & Rashidah Abdullah eds., 2000).
283. Administration of Islamic Law (Federal Territories) Act 1993, No. 505, § 34(1)–(4) (1993). *Fatwas* are taken to be law after publication in the *Gazette*. *Id.*
284. Telephone interview with Dr. Ravindran Jegasothy, Senior Consultant and Head, Department of Obstetrics and Gynaecology, Seremban Hospital (Nov. 10, 2003); Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 215, at 20.
285. Nik Noraini & Nik Badli Shah, *supra* note 282.
286. DEPARTMENT OF STATISTICS MALAYSIA, *supra* note 278, at 187 tbl.4.
287. Letter from Ms. Khoo Swee Kheng, *supra* note 273.
288. *Id.*
289. Medicines (Advertisement & Sale) Act 1956, No. 290, § 3(b) (1956) (Malay), amended by Medicine (Advertisement & Sale) (Amendment) Act 1980, No. 778 (1983) (Malay), <http://www.pharmacy.gov.my/html/legislations/medicines%20act.doc>. Advertisements include any notice, circular, report, commentary, pamphlet, label, wrapper or other document, and any announcement made orally or by any means of producing or transmitting light or sound. *Id.* § 2. Medicine Advertisement Board (MAB), MINISTRY OF HEALTH MALAYSIA, GUIDELINES ON MEDICAL ADVERTISEMENTS (FOR PRODUCTS), § 4.1, http://www.pharmacy.gov.my/html/MAB/advertisement_board_guidelines.htm#Guidelines%20on%20Medical%20Advertisements (last visited May 19, 2005).
290. Medicines (Advertisement & Sale) Act 1956, *supra* note 289, § 3.
291. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 215, at 22. The National Population and Family Development Board was established through the Population and Family Development Act 1966. Population and Family Development Act 1966, No. 352, § 3(1) (1966) (Malay).
292. MID-TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, at 383 tbl.12-1; NATIONAL POPULATION AND FAMILY DEVELOPMENT BOARD, MINISTRY OF WOMEN, FAMILY AND COMMUNITY DEVELOPMENT, GOVERNMENT OF MALAYSIA, ACHIEVEMENTS, <http://www.lppkn.gov.my/achieve.htm> (last visited May 14, 2005).
293. NATIONAL POPULATION AND FAMILY DEVELOPMENT BOARD (NPFDB), *supra* note 164, para. 2.51, at 48; MINISTRY OF HEALTH MALAYSIA, ANNUAL REPORT 2000, at 69 (2001).
294. The KASIH clinics also provide services for menopause and andropause, family counseling and parenting training. MID-TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, § 12.65, at 402–403. Services also include: providing expertise and knowledge of parenthood and family issues to families; education, counseling, management and treatment in the area of human reproduction; research and development on psychosocial and biomedical aspects of the family; and collecting and disseminating information concerning population and the family, at all stages and levels. NATIONAL POPULATION AND FAMILY DEVELOPMENT BOARD (NPFDB), FAMILY SERVICE COMPLEX, <http://www.lppkn.gov.my/kasih.htm> (last visited May 18, 2005).
295. NPFDB, STRATEGY, <http://www.lppkn.gov.my/strategy.htm> (last visited May 18, 2005).
296. The program comprises health screening campaigns and lectures. MID-TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, § 12.65, at 402–403.
297. Letter from Ms. Khoo Swee Kheng, *supra* note 273.
298. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 215, at 22; INTERNATIONAL PLANNED PARENTHOOD FEDERATION (IPPF), *supra* note 279.
299. See FEDERATION OF FAMILY PLANNING ASSOCIATION, ANNUAL REPORT 2002, at 12 (2002).
300. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 182, at 13.
301. FEDERATION OF FAMILY PLANNING ASSOCIATION, *supra* note 299.
302. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 215, at 23; INTERNATIONAL PLANNED PARENTHOOD FEDERATION (IPPF), *supra* note 279.
303. See NATIONAL POPULATION AND FAMILY DEVELOPMENT BOARD, POPULATION PROFILE MALAYSIA 92 fig.5.9.
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305. National Library of Medicine, *Mortality rates decline in Malaysia* [Abstract], 200 POPULATION HEADLINES, http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=12284509&dopt=Abstract (last visited June 13, 2005); INFORMATION AND DOCUMENTATION SYSTEM UNIT, *supra* note 168. (MMR of .03 per 1000 live births in 2002).
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307. CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19, paras. 270–271.
308. *Id.*
309. *Id.*
310. NATIONAL POPULATION AND FAMILY DEVELOPMENT BOARD (NPFDB), *supra* note 164, at 60 tbl.2.1.
311. INFORMATION & DOCUMENTATION SYSTEM UNIT, MINISTRY OF HEALTH MALAYSIA, 10 PRINCIPLE CAUSES OF DEATH IN GOVERNMENT (MOH) HOSPITALS, MALAYSIA, 2002, <http://www.moh.gov.my/indicators.HTM> (last visited May 18, 2005).
312. See ARROW, *Combating Maternal Mortality: The Malaysian Experience*, 7 ARROWS FOR CHANGE 4 (2001).
313. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 215, at 25.
314. MINISTRY OF HEALTH, NATIONAL CONFERENCE ON SAFE MOTHERHOOD: A SHARED RESPONSIBILITY, IN CONJUNCTION WITH WHO 50TH ANNIVERSARY § 4.1.1, at 6 (1998); ARROW, *supra* note 312; CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19, para. 271.
315. NATIONAL CONFERENCE ON SAFE MOTHERHOOD, *supra* note 314, § 4.6, at 8; CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19, para. 271(h).
316. NATIONAL CONFERENCE ON SAFE MOTHERHOOD, *supra* note 314, § 4.7, at 8; CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19.
317. NATIONAL CONFERENCE ON SAFE MOTHERHOOD, *supra* note 314, § 4.5, at 7; CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19. A confidential inquiry was established in 1991.
318. *Id.* § 4.3, at 6.
319. CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19, para. 272.
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337. *Id.*; In *Roe v. Wade*, the opinion referenced “quickening” in common law, American law, and English statutory law in coming up with the viability concept. See *Roe v. Wade*, 410 U.S. 113, 132–140 (1973).
338. Penal Code, No. 574, § 313 (1997) (Malay), amended by Penal Code (Amendment) Act, No. 727 (1989) (Malay).
339. *Id.*
340. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 215, at 33.
341. Deborah Loh & Sheridan Mahavera, *Fatwa on when abortions allowed*, NEW STRAITS TIMES, Oct. 18, 2002, at 8.
342. *Id.*
343. *Id.*; Administration of Islamic Law (Federal Territories) Act 1993, No. 505, § 34 (1993) (Malay).
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345. Telephone interview with Dr. Ravindran Jegasothy, Senior Consultant and Head, Department of Obstetrics and Gynaecology, Seremban Hospital (Nov. 10, 2003); Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 215, at 29.
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348. *Id.* § 2.1(i).
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351. “[N]o person shall take any part in the publication of any advertisement referring to any article, or articles of any description, in terms which are calculated to lead to

- the use of that article or articles of that description for procuring the miscarriage of women.” Medicines (Advertisement & Sale) Act 1956, *supra* note 289, § 4; Medicine Advertisement Board (MAB), MINISTRY OF HEALTH MALAYSIA, GUIDELINES ON MEDICAL ADVERTISEMENTS (FOR PRODUCTS), § 4.1.d, http://www.pharmacy.gov.my/html/MAB/advertisement_board_guidelines.htm#Guidelines%20on%20Medical%20Advertisements.
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373. *Id.*
374. *Id.* at 14–15 (2004).
375. MINISTRY OF HEALTH, AIDS SERIES 4, GUIDELINES FOR NURSING MANAGEMENT OF PEOPLE INFECTED WITH HIV/AIDS (1995).
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377. DEPARTMENT OF OCCUPATION SAFETY AND HEALTH, MINISTRY OF HUMAN RESOURCES, CODE OF PRACTICE ON PREVENTION AND MANAGEMENT OF HIV/AIDS AT THE WORKPLACE (2001).
378. *Id.* at 2, 6 (2001).
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400. *Id.* at 10–11.
401. NATIONAL POPULATION AND FAMILY DEVELOPMENT BOARD (NPFDB), *supra* note 164, at 22 tbl.2.7.3.
402. Communication with Syrin Junisya & Rashidah Abdullah, Asian-Pacific Resource & Research Centre for Women (ARROW), *Women of the World: Laws and Policies Affecting Their Reproductive Lives- Malaysia (draft)* 2–3 (June 13, 2004) (on file with the Center for Reproductive Rights).
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404. *Id.*
405. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, para. 1706, at 479.
406. *Id.*
407. *Id.* para. 17.30, at 492.
408. *Id.* para. 20.19, at 563.
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412. *See* NPFDB, POPULATION POLICY IN MALAYSIA: THE FACTS, *supra* note 409, ¶ 3.
413. *See Id.* ¶ 7; Siti Norazah Zulklifi et al., *supra* note 143.
414. NPFDB, HISTORY, *supra* note 164. *See* Siti Norazah Zulklifi et al., *supra* note 143.
415. Income Tax Act 1967, No. 53, § 48 (1967) (Malay) (amended 1971). In 1991, tax breaks were offered for the first five children. This was amended in 1995 to provide tax breaks for each child.
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436. Syariah Criminal Offences (Federal Territory) Act 1997, No. 559, §§ 25–26 (1997) (Malay). There are similar provisions in the Syariah Laws of Johor and Melaka.
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455. *Id.*
456. HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM), ABOUT SUHAKAM, http://www.suhakam.org.my/en/about_history.asp (last visited June 12, 2005).
457. For example, on March 17, 2003, SUHAKAM organized the "SUHAKAM Roundtable Discussion: Rights and Obligations under CEDAW." There were newspaper and television reports, followed by the publication of the "Report: Roundtable Discussion: Rights and Obligations under CEDAW." See HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM), REPORT, ROUND TABLE DISCUSSION: RIGHTS AND OBLIGATIONS UNDER CEDAW § 2.1.3, annex 6 (2004), http://www.suhakam.org.my/docs/document_resource/Report_RTD_CEDAW.pdf; HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM), FUNCTIONS AND POWERS, http://www.suhakam.org.my/en/about_functions.asp (last visited June 12, 2005).
458. MALAY. CONST. 2nd sched., pt. II, § 1(a) (pursuant to Article 14(1)(b)).
459. ID. 2nd sched., pt. II, § 1(b)–(c) (pursuant to Article 14(1)(b)).
460. MALAY. CONST. art. 15(1).
461. Communication with Syrin Junisyia & Rashidah Abdullah, *supra* note 434, at 12.
462. *Id.* at 12–13.
463. According to ARROW, this happened through an administrative decision by the Immigration Department. Sheridan Mahavera, *Foreign Wives Hail Relaxing of Ruling*, NEW STRAITS TIMES, May 5, 2003.
464. Law Reform (Marriage and Divorce) Act 1976, No. 164, §§ 5–8 (1976) (Malay).
465. *Id.* § 4(a) (1976) (Malay). In other words, if a woman has been lawfully married under Chinese customary marriage prior to this date, such a marriage is deemed registered under the Act.
466. The age of majority under the Age of Majority Act 1971 is 18. Age of Majority Act 1971, No. 21, § 2 (1971) (Malay).
467. Law Reform (Marriage and Divorce) Act 1976, No. 164, pt. III, § 10 (1976) (Malay).
468. *Id.* pt. III, § 12(a).
469. *Id.* pt. II, § 5–8.
470. Married Women and Children (Maintenance) Act 1950, No. 263, § 3(1) (1950) (Malay).
471. Law Reform (Marriage and Divorce) Act 1976, No. 164, § 78 (1976) (Malay).
472. Married Women and Children (Maintenance) Act 1950, No. 263, § 3(2) (1950) (Malay), amended by Law Reform (Marriage and Divorce) Act 1976, No. 164 (1982) (Malay).
473. Islamic Family Law (Federal Territory) Act 1984, No. 303 (1984) (Malay).
474. *Id.* § 8 (1984) (Malay).
475. Nik Noraini & Nik Badli Shah, *supra* note 282, at 188. The doctrine of *ijbat*, or compulsion, is followed in Kelantan, Kedah and Melaka. See e.g., Islamic Family Law Enactment 1983, Kelantan Enactment No. 1, § 13(2) (1983) (Malay).
476. [Polygamy] *Women Campaign Against Polygamy*, RELIGION NEWS BLOG, Mar. 17, 2003, <http://www.religionnewsblog.com/archives/00002762.html>.
477. *Id.*
478. Nik Noraini & Nik Badli Shah, *supra* note 282, at 185; See Islamic Family Law (Federal Territory) Act 1984, No. 303, § 23(1) (1984) (Malay); Islamic Family Law (State of Selangor) Enactment 2003, Selangor Enactment No. 2, § 23(1) (2003) (Malay).
479. Islamic Family Law (Federal Territory) Act 1984, No. 303, § 23(4)(a)–(d) (1984) (Malay); Islamic Family Law (State of Selangor) Enactment 2003, Selangor Enactment No. 2, § 23(5)(a)–(d) (2003) (Malay).
480. WOMEN'S AID ORGANIZATION, KNOW YOUR RIGHTS: POLYGAMY, http://www.wao.org.my/news/20030103knowrights_polygamy.htm (last visited June 6, 2005).
481. *Id.*
482. Sean Yoong, *Malaysian state promotes itself as polygamist paradise*, HUMAN RIGHTS WITHOUT FRONTIERS INTERNATIONAL, Jan. 3, 2003, http://www.hrwf.net/html/malaysia_2003.html#Malaysiaatpromoteitselfaspol.
483. *Id.*
484. Islamic Family Law (State of Selangor) Enactment 2003, Selangor Enactment No. 2, § 23(1)–(10) (2003) (Malay).
485. *Id.* § 23(5).
486. Jacqueline Ann Surin, *Muslim wives can make clear about polygamy in marriage contract*, THE STAR, Jan. 17, 2003; Islamic Family Law (Federal Territory) Act 1984, No. 303, § 22(1) (1984) (Malay); See also Islamic Family Law (State of Selangor) Enactment 2003, Selangor Enactment No. 2, § 26(2) (2003) (Malay).
487. *Malaysian Muslim women told they could include 'no-polygamy clause'*, THE STRAITS TIMES, Jan. 19, 2003.
488. Law Reform (Marriage and Divorce) Act 1976, No. 164, § 3(4)(a) (1976) (Malay).
489. Haw Cheng Sim, *Cultural Conceptions of Gender Among the Iban of Sarawak*, in GENDER, CULTURE, AND RELIGION: EQUAL BEFORE GOD, UNEQUAL BEFORE MAN 76 (Norani Othman & Cecilia Ng eds., 1995).
490. *Id.*
491. Law Reform (Marriage and Divorce) Act 1976, No. 164, § 107(1)–(4) (1976) (Malay).
492. *Id.* § 52.
493. *Id.* §§ 48(1)(c), 50(1).
494. *Id.* § 48(1)(a)–(b).
495. *Id.* § 53.
496. *Id.* § 50(1).
497. *Id.* § 54(1)(a)–(d).
498. *Id.* § 51(1).
499. *Id.* § 51(3).
500. *Id.* § 106(1)–(5).
501. Exceptions include cases where the petitioner alleges that he/she has been deserted by the other spouse and does not know his/her whereabouts; the petitioner's spouse is imprisoned for a term of five years or more; the petitioner alleges that his/her spouse is suffering from an incurable mental illness; or the Court is satisfied that there are exceptional circumstances which make reference to a conciliatory body impracticable. *Id.* § 106(1)(i)–(vi).
502. *Id.* § 77(1).
503. *Id.* § 78.
504. *Id.* § 82(1)–(2).
505. Islamic Family Law (Federal Territory) Act 1984, No. 303, § 47(1)–(16) (1984) (Malay).
506. See e.g. Islamic Family Law (State of Selangor) Enactment 2003, Selangor Enactment No. 2, § 47(1)–(17) (2003) (Malay).
507. Islamic Family Law (Federal Territory) Act 1984, No. 303, § 47(1)–(16) (1984) (Malay).
508. *Id.* §§ 47(3)–(4), 49–50, 52.
509. *Id.* § 50A.
510. *Id.* § 47(3). "If the other party consents to the divorce and the Court is satisfied after due inquiry and investigation that the marriage has irrevocably broken down, the Court shall advise the husband to pronounce one *talaq* before the Court." See also Islamic Family Law (State of Selangor) Enactment 2003, Selangor Enactment No. 2, § 57(1)–(3) (2003) (Malay).
511. Islamic Family Law (Federal Territory) Act 1984, No. 303, § 47(5) (1984) (Malay).
512. *Id.* § 124.
513. *Id.* § 55A. *Talaq* pronounced outside the Court is valid if the husband reported to the Court within 7 days, or ascertained as valid according to Islamic law by the Court. *Id.* § 55A(1)–(3).
514. *Id.* § 124.
515. SISTERS IN ISLAM, VIOLATION OF MUSLIM WOMEN'S HUMAN RIGHTS: FURTHER DISCRIMINATION AGAINST MUSLIM WOMEN UNDER THE SELANGOR ISLAMIC FAMILY LAW BILL 2003 THROUGH SELECTIVE GENDER NEUTRAL PROVISIONS (2003), <http://www.muslimtents.com/sistersinislam/memorandums/29052003.htm>.
516. Islamic Family Law (Federal Territory) Act 1984, No. 303, § 49(1)–(4) (1984) (Malay). The amount of *tebus talaq* is either agreed upon by both parties or where the parties cannot agree, determined by the Court. *Id.* § 49(1), (3). Similar provisions are provided for under the Kelantan Islamic Family Law Enactment No. 1 of 1983 in section 36(1)–(3) and the Islamic Family Law (State of Selangor) Enactment 2003 in section 49(1)–(4).
517. Islamic Family Law (Federal Territory) Act 1984, No. 303, § 50(1) (1984) (Malay). There are similar provisions in state Islamic Family Laws. E.g., Islamic Family Law (State of Selangor) Enactment 2003, Selangor Enactment No. 2, § 50(1) (2003) (Malay); Islamic Family Law Enactment 1983, Kelantan Enactment No. 1, § 37 (1983) (Malay).
518. Islamic Family Law (Federal Territory) Act 1984, No. 303, § 50(2) (1984) (Malay).
519. AHMAD IBRAHIM, FAMILY LAW IN MALAYSIA AND SINGAPORE 219 (1978).
520. Islamic Family Law (Federal Territory) Act 1984, No. 303, § 52(1) (1984) (Malay).
521. *Id.* § 52(1)(d)–(i).
522. See Islamic Family Law (State of Selangor) Enactment 2003, Selangor Enactment No. 2, § 53(1) (2003) (Malay); Islamic Family Law Enactment 1983, Kelantan Enactment No. 1, § 38 (1983) (Malay).
523. Islamic Family Law (State of Selangor) Enactment 2003, Selangor Enactment No. 2, § 53(1)–(5) (2003) (Malay); SISTERS IN ISLAM, VIOLATION OF MUSLIM WOMEN'S HUMAN RIGHTS: FURTHER DISCRIMINATION AGAINST MUSLIM WOMEN UNDER THE SELANGOR ISLAMIC FAMILY LAW BILL 2003 THROUGH SELECTIVE GENDER NEUTRAL PROVISIONS (2003), <http://www.muslimtents.com/sistersinislam/memorandums/29052003.htm> (May 29, 2003).
524. Jonathan Kent, *Malaysia Reviews Texting Divorce*, BBC NEWS, July 31, 2003, <http://news.bbc.co.uk/2/hi/asia-pacific/3112151.stm>.

525. Kazi Mahmood, *SMS Divorce Raises Controversy in Malaysia*, ISLAM ONLINE, Aug. 3, 2003, <http://www.islamonline.org/English/News/2003-08/03/article04.shtml>.
526. SISTERS IN ISLAM, MANDATORY JAIL SENTENCE FOR DIVORCE OUTSIDE THE COURT, <http://www.muslimtents.com/sistersinislam/PressStatements/09082003.htm> (Aug. 9, 2003).
527. Section 59(1) of the Islamic Family Law (Federal Territory) Act 1984 empowers the court to order a man to pay maintenance to his wife or former wife.
528. Nik Noraini & Nik Badli Shah, *supra* note 282, at 266.
529. Islamic Family Law (Federal Territory) Act 1984, No. 303, § 65(1) (1984) (Malay). See section 65(2) for information about the right to receive a *pemberian* (present).
530. *Id.* § 61.
531. *Id.* § 59(2). Instances of *musyuz* as given in the sub-section are: (a) when she withholds her association with her husband; (b) when she leaves her husband's home against his will; or (c) when she refuses to move with him to another home or place; without any valid reason according to *Hukum Syara*.
532. NIK NORIANI NIK BADLI SHAH, MARRIAGE AND DIVORCE UNDER ISLAMIC LAW 49 (2001).
533. Islamic Family Law (Federal Territory) Act 1984, No. 303, § 56 (1984) (Malay).
534. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434, at 17.
535. Law Reform (Marriage and Divorce) Act 1976, No. 164, § 3(4)(a) (1976) (Malay).
536. VINCENT LYON-CALLO, MALAYSIA AND THE ORANG ASLI, <http://vms.cc.wmich.edu/~lyoncallo/MALAYSIA.html> (last visited June 8, 2005). The Bateks were driven out of the rainforest by massive logging and development in the 1970s and 1980s. *Id.*
537. Law Reform (Marriage and Divorce) Act 1976, No. 164, § 88(1) (1976) (Malay).
538. *Id.*
539. *Id.* § 88(2).
540. *Id.* § 88(2)(a)–(b).
541. *Id.* § 88(3).
542. *Id.* § 88(2)(b).
543. *Id.* § 89(1)–(2)(a)–(d).
544. *Id.* § 89(2)(e).
545. Guardianship of Infants Act 1961, No. 351, § 5(1)–(2) (1961) (Malay), *amended by* Guardianship of Infants (Amendment) Act 1999, No. A1066 (1999) (Malay).
546. Islamic Family Law (Federal Territory) Act 1984, No. 303, §§ 88–91 (1984) (Malay).
547. Islamic Family Law (Federal Territory) Act 1984, §§ 82, 83, 84.
548. *Id.* § 83(a).
549. *Id.* § 83(b).
550. *Id.* § 83(c). A divorced wife may take her own child to her birth-place.
551. *Id.* § 83(d).
552. *Id.* § 83(e).
553. *Id.* § 85.
554. This requirement under the former § 80(2) was abolished from the IFLA in 1994. See *Id.* § 80(2).
555. *Id.* § 88(1). A person shall be deemed to be a minor unless he or she has completed the age of 18 for the purposes of guardianship of person and property. Islamic Family Law (Federal Territory) Act 1984, § 88(4).
556. *Id.* § 91. Section 91 of the Islamic Family Law (Federal Territory) Act 1984 states, "A mother, whether a Muslim or a *Kitabiyah*, may be validly appointed executrix of the father, and in that case she may exercise her powers as a testamentary guardian or, in the absence of a legal guardian, she may be appointed legal guardian by the Court, but in the absence of such appointment she shall not deal with the minor's property."
557. SISTERS IN ISLAM, GUARDIANSHIP LAW AND MUSLIM WOMEN 22 (2002).
558. *Id.*
559. WOMEN'S AID ORGANISATION, KNOW YOUR RIGHTS: GUARDIANSHIP ACT, http://www.wao.org.my/news/20020701knowrights_guardianship.htm (last visited June 9, 2005).
560. Guardianship of Infants Act 1961, No. 351, § 5(1)–(2) (1961) (Malay), *amended by* Guardianship of Infants (Amendment) Act 1999, No. A1066 (1999) (Malay).
561. WOMEN'S AID ORGANISATION, KNOW YOUR RIGHTS: GUARDIANSHIP ACT, http://www.wao.org.my/news/20020701knowrights_guardianship.htm (last visited June 9, 2005).
562. MALAY. CONST. art. 8(2).
563. See CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19, para. 437.
564. *Id.*
565. Distribution Act 1958, No. 300, § 6(1) (1958) (Malay), *amended by* Distribution (Amendment) Act 1997, No. A1004, § 3 (1997) (Malay).
566. CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19, para. 438.
567. *Id.*
568. Islamic Family Law (Federal Territory) Act 1984, No. 303, § 58 (1984) (Malay). See also *id.* § 2.
569. Mansjur v. Kamariah (1982) 4 JH 73; Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434 at 20.
570. Boto v Jaafar (1985) 2 MLJ 98; Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434 at 20.
571. Rokiah v Mohd. Idris. (1989) 3 MLJ ix; Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434 at 20.
572. Islamic Family Law (Federal Territory) Act 1984, No. 303, § 58(1) (1984) (Malay).
573. CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19, para. 440.
574. *Id.*
575. *Id.* para. 344.
576. *Id.*
577. *Id.*
578. MERETE LIE & RAGNHILD LUND, GLOBALISATION, PLACE AND GENDER 10 n.iii (1999), http://www.skk.uit.no/WV99/papers/Lie_Merete.pdf.
579. United Nations Global Strategy For Shelter To The Year 2000 (GSS), http://www.unhabitat.org/programmes/housingpolicy/gss_monitoring.asp
580. MINISTRY OF WOMEN, FAMILY AND COMMUNITY DEVELOPMENT, MALAYSIA, STATISTICS ON WOMEN, FAMILY AND SOCIAL WELFARE 2004 at 13 (2004).
581. *Id.* at 10.
582. *Id.* at 14.
583. GANAMBAL MOSSES & IRENE XAVIER, WOMEN WORKERS IN MALAYSIA: A COUNTRY REPORT (1997), <http://www.members.tripod.com/~cawhk/9810/9810art02.htm> (Nov. 1997).
584. WOMEN'S AID ORGANISATION, U.N. CONFERENCE ON RACISM, DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE (WCAR), WAO'S PARTICIPATION AT THE ASIA/MIDDLE EAST NGO FORUM, TEHRAN, IRAN 17–18 FEBRUARY (2001), <http://www.wao.org.my/news/20010301wcar.htm> (Mar. 1, 2001). Domestic servants are not defined as employees and therefore do not benefit from the Employees Provident Fund Act 1991, and the Employees' Social Security Act 1969; HONEY TAN LAY EAN, *supra* note 99, § 2.1.3, *reprinted in* HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM), REPORT, ROUND TABLE DISCUSSION: RIGHTS AND OBLIGATIONS UNDER CEDAW annex 6 (2004), http://www.suhakam.org.my/docs/document_resource/Report_RTD_CEDAW.pdf.
585. ANEETA KULASEGARAN, WOMEN'S AND CHILDREN'S RIGHTS—AND THE PROTECTION OFFERED BY DOMESTIC LAW (1999), <http://www.mlj.com.my/articles/Aneeta.htm>.
586. CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19, para. 206.
587. Employment Act 1955, No. 265, § 34(1) (1995) (Malay).
588. *Id.* § 35.
589. *Id.* § 37(1)(a).
590. *Id.* § 37(2); MINISTRY OF HUMAN RESOURCES, EMPLOYMENT OF WOMEN §3, <http://www.moh.gov.my/mygov/makluman/women.htm> (last visited June 9, 2005).
591. Employment Act 1955, No. 265, § 37(1)(c) (1995) (Malay).
592. *Id.* § 40(3).
593. As a result of *Beatrice's* case, it would appear that parties may contract out of the Employment Act, e.g. by providing in a Collective Agreement that a female employee may not have children, thereby bypassing the requirement for maternity leave and benefits. WOMEN'S AID ORGANIZATION (WAO), JOINT PRESS STATEMENT, FEDERAL COURT TO DECIDE WHETHER TO HEAR EMPLOYMENT DISCRIMINATION CASE, BEATRICE FERNANDEZ v. SISTEM PENERBANGAN MALAYSIA & ANOR (2005), <http://www.wao.org.my/news/20050103mas.htm> (June 12, 2005).
594. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, § 2009, at 560.
595. HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM), REPORT, ROUND TABLE DISCUSSION: RIGHTS AND OBLIGATIONS UNDER CEDAW § 2.1.3 annex 6 (2004), http://www.suhakam.org.my/docs/document_resource/Report_RTD_CEDAW.pdf.
596. Employment Act 1955; CEDAW, *Combined initial and second periodic reports of States parties: Malaysia*, *supra* note 19, para. 212.
597. YB Dato' Chua Jui Meng, Speech at the Official Opening of National Seminar on Gender Equality at Work (Aug. 26, 2002) (transcript available at <http://www.moh.gov.my/mygov/makluman/spm260.htm>).
598. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434 at 33.
599. *Id.*
600. Immigration Act 1959/63, No. 155, § 8(3)(a)–(o) (1963) (Malay). The Act bars the right of entry of "prohibited immigrants"; among this category are people with "a contagious or infectious diseases which makes his presence in Malaysia dangerous to the community." *Id.* § 8(3)(b).
601. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434 at 33.
602. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434, at 24.
603. ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC, REPORT OF THE EXPERT GROUP MEETING ON ALLEVIATING THE FEMINIZATION OF POVERTY, BANGKOK, APR. 14–16, 1997, at 7 (1997).
604. Identifying characteristics as developed by the International Research and Training Institute for the Advancement of Women (INSTRAW) include (i) simple technology; (ii) very little capital; (iii) no fixed place of business; (iv) quasi-legality or lack of registration; and (v) little record keeping. Lee Lee Loh Ludher, *The Greatness Which Might Be Theirs: Women in the Informal Sector in Malaysia*, in *THE GREATNESS WHICH MIGHT BE THEIRS*, ch. 4 (1995), <http://www.bic-un.bahai.org/95-08264.htm>.
605. Lee Lee Loh Ludher, Bahá'í Topics: An Information Resource, Women in the Informal Sector in Malaysia, <http://www.bahai.org/article-17-6-12.html> (last visited June 6, 2005).
606. GWYN WANSBROUGH, THE GRAMEEN BANK: AN INTERESTING ALTERNATIVE FOR DEVELOPING COUNTRIES, <http://ssmu.mcgill.ca/journals/latitudes/2grameen.htm> (last visited June 10, 2005).
607. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION & ASIA AND PACIFIC REGIONAL BUREAU FOR EDUCATION, FINAL REPORT OF THE REGIONAL WORKSHOP ON CONTINUING EDUCATION PROGRAMMES FOCUSING ON SMALL-SCALE ENTERPRISE FOR NEO-LITERATE THROUGH COMMUNITY LEARNING CENTRES 2002, at 52–53 (2002); AMANAH IKHTIAR MALAYSIA, <http://aim.gov.my>.

608. MID-TERM REVIEW OF THE EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 91, § 12.87, at 409; Grameen Dialogue, *AlMing at Single Mothers, Fishermen*, BULLETIN BOARD, <http://asp.grameen.com/dialogue/dialogue35/Bbd2.html> (last visited June 10, 2005).
609. MINISTRY OF HOUSING AND LOCAL GOVERNMENT, ISTANBUL+5 SPECIAL SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 6–8 JUNE 2001, COUNTRY REPORT OF MALAYSIA 35 (2001).
610. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, § 12.86, at 409.
611. *Id.* § 12.87, at 409.
612. MINISTRY OF WOMEN AND FAMILY DEVELOPMENT, FINAL DRAFT, REPORT OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) § 146(i) (2003).
613. FINAL DRAFT, REPORT OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), *supra* note 612, at 217 § 10.4.
614. FINAL DRAFT, REPORT OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), *supra* note 612, at 218 tbl.10.5.
615. DEPARTMENT OF STATISTICS, GOVERNMENT OF MALAYSIA, SOCIAL STATISTICS BULLETIN MALAYSIA 2001, at 126, 134 (2002).
616. *Id.* at 126.
617. *Id.* at 130, 134.
618. *Id.* at 155 (2002).
619. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, § 4.127, at 127.
620. AMINAH AHMAD, *supra* note 438, at 42.
621. ROSNAH MOHD.YUSUFF & MOHD.AMIN MOHD. SOOM, WOMEN IN ENGINEERING EDUCATION AND TRAINING: A CAUSE FOR CONCERN?, <http://www.eng.upm.edu.my/~feic/buletin/womenec.html> (last visited June 10, 2005).
622. GANAMBAL MOSSES & IRENE XAVIER, WOMEN WORKERS IN MALAYSIA: A COUNTRY REPORT (1997), <http://www.members.tripod.com/~cawhk/9810/9810art02.htm> (Nov. 1997).
623. FINAL DRAFT, REPORT OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), *supra* note 612, at 222 tbl.10.21; Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434 at 38.
624. MALAY. CONST. art. 12(1).
625. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434, at 5.
626. Education Act 1996, No. 550, § 29A(1) (1996) (Malay), amended by Education Amendment Act 2002, No. A1152, § 7 (2002) (Malay); SOUTHEAST ASIAN MINISTERS OF EDUCATION ORGANIZATION (SEAMEO), MALAYSIA- EDUCATION DATA, http://www.seameo-innotech.org/resources/seameo_country/educ_data/malaysia.asp (last visited June 10, 2005).
627. Education Act 1996, No. 550, § 29A(4) (1996) (Malay).
628. EIGHTH MALAYSIA PLAN 2001–2005, *supra* note 111, at 87–129.
629. *Id.* § 465, at 111–112.
630. *Id.* § 466, at 112.
631. *Id.* § 468, at 112–113.
632. *Id.* § 469, at 113.
633. *Id.* § 4.101, at 122.
634. *Id.* § 20.30, at 567.
635. *Id.* § 20.30, at 567.
636. SHARIFAH MAIMUNAH BT SYED ZIN, SEMINAR PAPER: SEXUAL AND REPRODUCTIVE HEALTH OF YOUNG PEOPLE: MOVING FROM POLICIES TO PROGRAMMES, FAMILY HEALTH EDUCATION IN MALAYSIAN SCHOOLS 3 (2002) (presented at the National Youth Seminar on Youth-Friendly Sexual and Reproductive Health Programme – The National Youth Agenda with International Perspectives).
637. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434, at 6.
638. See MARY HUANG SOO LEE, COMMUNICATION AND ADVOCACY STRATEGIES: ADOLESCENT REPRODUCTIVE AND SEXUAL HEALTH, CASE STUDY: MALAYSIA 6 (1999).
639. *Id.*
640. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434, at 6.
641. *Id.*
642. *Id.*
643. Evidence Act 1950, No. 56, § 113 (1950) (Malay).
644. Penal Code, No. 574, § 375(a)–(f) (1997) (Malay).
645. *Id.* § 374. This offence carries a maximum sentence of ten years' imprisonment, fines, or whipping or any combination of two such punishments. *Id.*
646. *Id.* The narrow definition of rape under the Penal Code does not encompass other forms of acts of violation such as forced cunnilingus, fellatio and anal penetration. In such cases, the unnatural offences under Sections 377, 377A, 377B, 377C, and 377D of the Penal Code will be applicable.
647. *Id.* § 375, Exception.
648. *Id.* § 375, Exceptions 1–2.
649. *Id.* § 376.
650. WOMEN'S CRISIS CENTRE, PENANG, SHAME, SECRECY AND SILENCE: STUDY OF RAPE IN PENANG 104 (Rohana Ariffin ed., 1997).
651. Evidence Act 1950, No. 56, § 133A (1950) (Malay).
652. WOMEN'S CRISIS CENTRE, PENANG, *supra* note 650, at 177.
653. ALL WOMEN'S ACTION SOCIETY (AWAM), WORKING TOGETHER TOWARDS BETTER SERVICES FOR RAPE SURVIVORS, DRAFT REPORT 12 (1999).
654. Evidence Act 1950, No. 56, § 146A (1950) (Malay).
655. Press Statement, Women's Centre for Change (WCC), Penang, Hudud in Terengganu (May 9, 2002), <http://www.wccpenang.org/newsrelease2.htm>.
656. WOMEN'S AID ORGANISATION, WAO STATEMENT, TERENGGANU HUDUD LAWS (2002), <http://www.wao.org.my/news/20020601waohudud.htm> (June 7, 2002).
657. Subordinate Courts Act 1948, No. 92, § 101 (1948) (Malay).
658. Penal Code, No. 574, § 376A (1997) (Malay).
659. *Id.* § 376B(1).
660. *Pe Id.* § 376B(2).
661. *Id.* § 376B, Exception.
662. Sujatani Pooaparajah, *Cabinet Agrees to Gallows, Long Sentences for Child Rapists*, NEWS STRAITS TIMES, Jan. 9, 2003, <http://www.corpun.com/myj00301.htm>.
663. *Id.*
664. *Id.*
665. *Laws Should Protect As Well As Punish*, THE STAR, Jan. 12, 2003, <http://www.corpun.com/myj00301.htm>; *Tough laws for incest*, SMART NEWS NETWORK INTERNATIONAL, Jan. 9, 2003, http://www.snni.org/cgi-bin/snni2/list_item.cgi?archives/2003_01_10/malaysia/st1001_1.txt. These amendments will be found in Section 376C of the Penal Code.
666. Syariah Criminal Offences (Federal Territory) Act 1997, No. 559, § 20 (1997) (Malay).
667. Domestic Violence Act 1994, No. 521 (1994) (Malay).
668. The court may issue a protection order prohibiting the accused from using domestic violence against the victim. Domestic Violence Act 1994, No. 521, §§ 4(1), 5(1)(a)–(c), 12–13 (1994) (Malay).
669. An analysis of media coverage of foreign domestic worker abuse has revealed that abuse of foreign domestic workers is a recurring phenomenon in Malaysian society. WOMEN'S AID ORGANISATION, WAO RESEARCH AND ADVOCACY, FOREIGN DOMESTIC WORKER ABUSE: THE GROWING PROBLEM OF FOREIGN DOMESTIC WORKER ABUSE IN MALAYSIA, <http://www.wao.org.my/research/fdw.htm> (last visited June 10, 2005).
670. Domestic Violence Act 1994, No. 521 § 3 (1994) (Malay); LAURA HEBERT, MONITORING THE DOMESTIC VIOLENCE ACT 1994 MALAYSIA § 2 (1997).
671. *De facto* spouse is interpreted as “a person who has gone through a form of ceremony which is recognized as a marriage ceremony according to the religion or custom of the parties concerned, notwithstanding that such ceremony is not registered...” Domestic Violence Act 1994, No. 521 § 2 (1994) (Malay).
672. An incapacitated adult means a “person who is wholly or partially incapacitated or infirm, by reason of physical or mental disability or ill-health or old age...” *Id.*
673. *Id.*
674. For a comprehensive exposition on the limitations of the Domestic Violence Act, see Memorandum prepared by the Women's Centre For Change, Penang at http://www.wccpenang.org/s_legal_00.htm (last visited June 10, 2005).
675. Criminal Procedure Code (F.M.S. Cap. 6), § 2 (Year) (Malay).
676. *Id.* 1st Sched.
677. Domestic Violence Act 1994, No. 521 § 4 (1994) (Malay).
678. *Id.* §§ 4(1), 5(1), 12–13.
679. *Id.* §§ 12–13.
680. The court may include a provision in a protection order prohibiting the person against whom the order is made from inciting “any other person to commit violence against the protected person or persons.” *Id.* § 5(2).
681. *Id.* § 6(1)(a)–(f).
682. *Id.* § 7(1).
683. *Id.* § 11.
684. *Id.* § 10(1).
685. *Id.* § 10(2)(a)–(e).
686. Email from Zarizana Abdul Aziz, Chairperson, Legal Reform Sub-Committee of Women's Crisis Centre Penang, to Asian-Pacific Resource & Research Centre for Women (general address) (Mar. 8, 1999, 5:44 PM) (on file with the Center for Reproductive Rights).
687. ONLINE WOMEN IN POLITICS, WOMEN'S HUMAN RIGHTS SITUATION IN MALAYSIA 2, <http://www.onlinewomeninpolitics.org/womensit/mlly.pdf> (last visited June 10, 2005).
688. Penal Code, No. 574, § 509 (1997) (Malay).
689. *Id.* § 354.
690. See Forensic Medicine for Medical Students, Burden of Proof, http://www.forensimed.co.uk/burden_of_proof.htm (last visited June 14, 2005). The meaning of beyond reasonable doubt was discussed in *Miller v. Minister of Pensions* (1947) 2 All ER 372. *Id.*
691. High Court Decision 3 CLJ 583 [1998] Malaysian High Court; Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434, at 35.
692. Industrial Court Award No. 606 of 1996 and High Court Decision 3 CLJ 583. In that case, the Complainant made 2 allegations of sexual harassment of her by the Managing Director. The Judge found, *inter alia*, that not informing her husband of one of the allegations of sexual harassment was an unusual act. Further, the fact that the Complainant took some time before telling someone about the allegations of sexual harassment also worked against her; Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434, at 35.
693. The case is currently pending in the Court of Appeal on an appeal by the claimant. Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434, at 35 n.147.
694. MINISTRY OF HUMAN RESOURCES, CODE OF PRACTICE ON THE PREVENTION AND ERADICATION OF SEXUAL HARASSMENT IN THE WORKPLACE (1999).
695. *Id.* art. 4.
696. *Id.* art. 18.
697. *Id.* art. 19.
698. Zarizana Abdul Aziz & Cecelia Ng, *Combating Sexual Harassment: The Way Forward* (2001) (presented at 11th Malaysian Law Conference, Nov. 8–10, 2001, Kuala Lumpur), http://www.wccpenang.org/r_sex_h_05a.htm.

699. CODE OF PRACTICE ON THE PREVENTION AND ERADICATION OF SEXUAL HARASSMENT IN THE WORKPLACE, *supra* note 694, arts. 15, 18.
700. The Joint Action Group Against Violence Against Women (JAG-VAW) is a fluid group of women's organisations working in coalition nationally on certain issues. On the issue of sexual harassment, the JAG-VAW group consists of Women's Centre for Change (WCC) (the Chair), Women's Development Collective (WDC), All Women's Action Society (AWAM), Women's Aid Organisation (WAO), Sisters in Islam (SIS), Malaysian Trades Union Congress (Women's Wing) (MTUC), Persatuan Sahabat Wanita (PSWS) and Women's Candidacy Initiative (WCI). See JOINT ACTION GROUP AGAINST VIOLENCE AGAINST WOMEN (J.A.G.), A MEMORANDUM ON PROPOSED SEXUAL HARASSMENT BILL (2001), http://www.wccpenang.org/ir_sex_har_memo_02.htm (March 30, 2001) (presented to Yang Berhormat Dr. Haji Abdul Latiff Ahmad, Deputy Minister of Human Resources).
701. JOINT ACTION GROUP AGAINST VIOLENCE AGAINST WOMEN (J.A.G.), *supra* note 700.
702. Penal Code, No. 574, § 372B (1997) (Malay).
703. Syariah Criminal Offences (Federal Territory) Act 1997, No. 559, § 21(1) (1997) (Malay).
704. *Id.*
705. *Id.* § 21(1)–(2).
706. MALAY. CONST. art. 6(1).
707. *Id.* art. 6(2). Except compulsory service for national purposes prescribed by federal law which is never invoked.
708. Penal Code, No. 574, §§ 370–371 (1997) (Malay).
709. *Id.* § 372.
710. *Id.* § 372A.
711. *Id.* § 373.
712. *Id.* § 374.
713. Immigration Act 1959/63, No. 155. (1963) (Malay).
714. Restricted Residence Act 1933, No. 377, § 2 (1933) (Malay). If the Minister, on the basis of written information and an inquiry, is satisfied that reasonable grounds exist for it, the Minister can issue an order directing a person to reside within a specified area for a fixed term. Under § 2A, the person may also be subjected to police supervision for up to five years.
715. U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2002: MALAYSIA (2003), <http://www.state.gov/g/drl/rls/hrrpt/2002/18252.htm> (Mar. 31, 2003).
716. HUMAN RIGHTS WATCH, HUMAN RIGHTS NEWS, MALAYSIA: MASS EXPULSION PUTS MIGRANTS AT RISK (2004), <http://hrw.org/english/docs/2004/11/19/malays9704.htm> (Nov. 23, 2004).
717. Immigration (Amendment) Act 2002, No. 1154 (2002) (Malay).
718. *Id.* at 6(3).
719. HUMAN RIGHTS NEWS, MALAYSIA: MASS EXPULSION PUTS MIGRANTS AT RISK, *supra* note 716.
720. ASIAN–AFRICAN LEGAL CONSULTATIVE ORGANIZATION (AALCO), SUMMARY RECORDS OF THE FIFTH GENERAL MEETING, HELD ON THURSDAY, 18 JULY 2002, AT 3:00 P.M., http://www.aalco.org/summary_records_of_the_fifth_general%20meeting.htm.
721. *Id.*
722. ROZIAH OMAR, THE MALAY WOMAN IN THE BODY: BETWEEN BIOLOGY AND CULTURE 23 (1994).
723. *Id.*
724. For a critique of the Child Act 2001, see “A Memorandum on Child Bill 2000.” Women's Crisis Centre, A Memorandum on Child Bill 2000 (2000), http://www.wccpenang.org/ir_child_bill_memo.htm (Oct. 6, 2000). A few of the recommendations have been incorporated, but not all.
725. Child Act 2001, No. 611, § 43(1)(a)–(j), (2) (2001) (Malay).
726. *Id.* § 43(1)(aa) (for offences under subsections (a) to (h) and (k)).
727. *Id.* § 43(1)(bb) (for offences under subsections (i) and (j)).
728. *Id.* § 43(2)(b) (for offences under subsections (1)(i) and (j)).
729. *Id.* § 48(1)–(3).
730. *Id.* § 48(1)–(2).
731. *Id.* § 48(4)(a)–(b).
732. Laws of Malaysia: Child Act 2001 (Act 611), § 2(1); Communication with Syrin Junisya & Rashidah Abdullah, *supra* note 434, at 7.
733. Child Act 2001, No. 611, § 38(a)–(c) (2001) (Malay).
734. *Id.* § 38(c). Other circumstances exist if the child is “being induced to perform any sexual act, or is in any physical or social environment which may lead to the performance of such act” and if the child “lives in or frequents any brothel or place of assignment.” *Id.* § 38(a)–(b).
735. *Id.* § 39 (1).
736. *Id.* § 39(4). “If the Court For Children is not satisfied that a child brought before it is in need of protection and rehabilitation, the Court For Children shall order the child to be returned to the care and custody of his parent or guardian.” *Id.* § 39(5).
737. *Id.* § 21(2).
738. *Id.* § 21(1)–(2).

