



MALAYSIA: A BRIEF ON EQUALITY AND NON-
DISCRIMINATION, CHILD MARRIAGE, AND EDUCATION
(CRC ARTICLES 2, 19, 24, 28, 34, AND GENERAL COMMENT
4)

Information for the Committee on the Rights of the Child

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INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,500 indicators that matter to equality, health, and well-being. We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 100th Pre-Sessional Working Group of the Committee on the Rights of the Child.

This brief will focus on the following areas:

- General Principles: **Equality and Non-Discrimination**
- Special Protection Measures: **Child Marriage**
- Special Protection Measures: **Education, Leisure and Cultural Activities**

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current available information on the constitutional and legal landscape of a country.

In this report we first provide a summary of our constitutional and legislative findings, as well as suggested questions for the Committee to ask Malaysia, and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional and legislative excerpts documenting our findings. We hope the Committee will recommend that Malaysia address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Malaysia for having provisions in place, we hope the Committee will recommend that Malaysia work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. General Principles: Equality and Non-Discrimination (Article 2)

Our review of full-text national constitutions found that Malaysia’s constitution explicitly guarantees equality before the law generally and prohibits discrimination on the basis of religion, race, descent, place of birth, and gender. However, this article of the constitution does not address equality in education and **does not prohibit discrimination based on language, political opinion, social origin, property, and disability**. Moreover, in a separate article where the constitution prohibits discrimination in education, protections based on gender are omitted.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- Recommend that Malaysia amend its constitution to explicitly prohibit discrimination on the basis of language, political opinion, social origin, property, and disability, consistent with CRC commitments. This could be added to Article 8 of the constitution, which already prohibits discrimination on the basis of other CRC-protected groups and statuses.
- Recommend that Malaysia amend its constitution to add gender to the list of groups protected from discrimination in education in Article 12 of the constitution.

2. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

Malaysia’s federal marriage legislation sets the minimum age of marriage as 21, which can be lowered to 18 for boys and 16 for girls with different combinations of parental consent and court authorization. Certain ethnic and religious groups are exempt from this law, and certain states and territories may have different provisions. When all exceptions are taken into account, our research shows that some Malaysians may be married at any age. While data on child marriage is sparse and dated, as of 2010 7% of girls aged 15 to 19 in Malaysia were already married.¹

¹ UNICEF data – Child Marriage. Retrieved November 7, 2024 from <https://data.unicef.org/topic/child-protection/child-marriage/>



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Malaysia: Can Malaysia outline concrete, near-term plans to harmonize its legislation or otherwise pass federal legislation so that the minimum age of marriage is at least 18 for both boys and girls, with no exceptions?
 - If Malaysia cannot outline such plans, recommend in its concluding observations that Malaysia harmonize its legislation or otherwise pass federal legislation so that the minimum age of marriage is at least 18 for both boys and girls without exception.
- In its list of issues, ask Malaysia: given the dearth of current data, can Malaysia provide updated figures on marriages where at least one of the parties is under the age of 18, disaggregated by age and gender?

3. Special Protection Measures: Education, Leisure and Cultural Activities (Article 28)

Malaysia's legal framework provides for compulsory primary education but does not guarantee free education at this level. However, our research concurs with Malaysia's claim in the State Party report that primary and secondary education are free in practice. We have found no evidence that Malaysia prohibits gender discrimination in education specifically.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Malaysia: can Malaysia confirm whether it has concrete, near-term plans to enshrine free primary and secondary education in law?
 - If Malaysia cannot outline such plans, recommend that Malaysia pass and implement legislation that makes primary education free as well as compulsory, and secondary education free.
- In its list of issues, ask Malaysia: can Malaysia confirm whether it has concrete, near-term plans to pass legislation that explicitly prohibits gender discrimination in education?
 - If Malaysia does not have concrete, near-term plans in place, recommend in its concluding observations that Malaysia pass and implement legislation that explicitly prohibits gender discrimination in education.



DETAIL OF CONSTITUTIONAL AND LEGISLATIVE FINDINGS

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

1. General Principles: Equality and Non-Discrimination (Article 2)

Article 2.1 of the Convention states that:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Constitutions state the values of a country, outlining the rights of people living within the country and profoundly influencing norms and practices. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws, as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal rights. For these reasons and others, as the foundational document setting out the rights of all human beings in a country, a constitution and the rights contained therein are essential to realizing equal rights.

We reviewed full text constitutions for all 193 UN member states available from official government sources to determine whether the constitution took any approach to equality across the grounds listed in article 2.1 of the CRC by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

MALAYSIA'S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION BASED ON LANGUAGE, POLITICAL OPINION, SOCIAL ORIGIN, PROPERTY AND DISABILITY

Our review of full-text constitutions found that Article 8 of Malaysia's Constitution grants equality before the law to all, and prohibits discrimination on the basis of religion, race, descent, place of birth, and gender. However, this article of the constitution does not address equality in education, and some Convention-protected groups are not covered by this constitutional provision – specifically, children facing discrimination based on language, political opinion, social origin, property or disability. Moreover, in a separate article where the constitution prohibits discrimination in education, protections based on gender are omitted.



Constitution of Malaysia, consolidated to 2020

8. Equality

All persons are equal before the law and entitled to the equal protection of the law.

Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

12. Rights in respect of education.

(1) Without prejudice to the generality of Article 8, there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth—

(a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or

(b) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation).

2. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

General Comment No. 4 (2003) states that:

The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

Child marriage has life-long health, educational, and economic consequences. For girls in particular, child brides are more likely to drop out of school, be victims of domestic abuse, and experience pregnancy and childbirth complications due to early childbearing, all of which affect core rights of the Convention, specifically the right to protection from violence (Article 19), the right to health (Article 24),



the right to education (Article 28), and the right to protection from sexual exploitation and abuse (Article 34).

We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, and under religious and customary law. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization’s NATLEX database, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBase, and official country websites.

MALAYSIA’S LEGISLATIVE PROVISIONS: WHEN ALL EXCEPTIONS ARE TAKEN INTO ACCOUNT, GIRLS AND BOYS CAN BE MARRIED AT ANY AGE

Malaysia’s federal marriage legislation sets the minimum age of marriage as 21; this age can be lowered to 18 with parental consent, and, in the case of girls, to 16 with court authorization. Further, the law does not apply to certain ethnic and religious groups, and certain states and territories may have different provisions. When all exceptions are taken into account, our research shows that girls and boys from certain groups and in some parts of the country may be married at any age. While data on child marriage is sparse and dated, as of 2010 7% of girls aged 15 to 19 in Malaysia were already married.²

LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976, AS AMENDED TO 2017

Application

3. (1) Except as is otherwise expressly provided this Act shall apply to all persons in Malaysia and to all persons domiciled in Malaysia but are resident outside Malaysia.

(...)

(3) This Act shall not apply to a Muslim or to any person who is married under Islamic law and no marriage of one of the parties which professes the religion of Islam shall be solemnized or registered under this Act; but nothing herein shall be construed to prevent a court before which a petition for divorce has been made under section 51 from granting a decree of divorce on the petition of one party to a marriage where the other party has converted to Islam, and such decree shall, notwithstanding any other written law to the contrary, be valid against the party to the marriage who has so converted to Islam.

² UNICEF data – Child Marriage. Retrieved November 7, 2024 from <https://data.unicef.org/topic/child-protection/child-marriage/>



(4) This Act shall not apply to any native of Sabah or Sarawak or any aborigine of Peninsular Malaysia whose marriage and divorce is governed by native customary law or aboriginal custom unless—

(a) he elects to marry under this Act;

(b) he contracted his marriage under the Christian Marriage Ordinance [Sabah Cap. 24]; or

(c) he contracted his marriage under the Church and Civil Marriage Ordinance [Sarawak Cap. 92].

Avoidance of marriages where either party is under minimum age for marriage

10. Any marriage purported to be solemnized in Malaysia shall be void if at the date of the marriage either party is under the age of eighteen years unless, for a female who has completed her sixteenth year, the solemnization of such marriage was authorized by a licence granted by the Chief Minister under subsection 21(2).

Requirement of consent

12. (1) A person who has not completed his or her twenty-first year shall, notwithstanding that he or she shall have attained the age of majority as prescribed by the Age of Majority Act 1971 [Act 21], nevertheless be required, before marrying, to obtain the consent in writing—

(a) of his or her father;

(b) if the person is illegitimate or his or her father is dead, of his or her mother;

(...)

ISLAMIC FAMILY LAW (FEDERAL TERRITORIES) ACT 1984

Short title, application and commencement

*1. (1) This Act may be cited as the Islamic Family Law (Federal Territories) Act 1984 and applies only to the Federal Territories of Kuala Lumpur and *Labuan.*

(2) This Act shall come into operation on a date to be appointed by the Yang di-Pertuan Agong by notification in the Gazette.

Minimum age for marriage



8. No marriage may be solemnized under this Act where either the man is under the age of eighteen or the woman is under the age of sixteen except where the Syariah Judge has granted his permission in writing in certain circumstances.

3. Special Protection Measures: Education, Leisure and Cultural Activities (Article 28)

Article 28.1 of the CRC recognizes a child’s right to education, and specifically orders States Parties to “make primary education compulsory and available free to all” as well as to “[e]ncourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education.” Article 2.1, referenced above, compels States Parties to ensure that these rights are enjoyed without discrimination on the basis of sex.

For all 193 UN member states, we systematically reviewed education acts and child protection laws available online through UNESCO’s Observatory on the Right to Education Library and International Labour Organization’s NATLEX database. Through the review we determined whether national legislation guaranteed free and compulsory primary and secondary education. We also determined whether sex discrimination in education is prohibited by law.

MALAYSIA’S LEGISLATIVE PROVISIONS: PRIMARY EDUCATION IS COMPULSORY, BUT NOT GUARANTEED TO BE FREE BY LAW

Malaysia makes primary education compulsory, but not free by law. Our research shows that Malaysia has implemented free primary and secondary education through a series of government circulars, and thus concurs with paragraph 158 of the state party report that Malaysia’s primary and secondary education are free in practice despite this lack of a legal guarantee.

Education Act 1996, amended to 2020

Interpretation

2. In this Act, unless the context otherwise requires—

“primary education” means a course of study at primary level which is designed for a duration of six years but which may be completed within five to seven years;

29A. (1) The Minister may, by order published in the Gazette, prescribe primary education to be compulsory education.



(2) Every parent who is a Malaysian citizen residing in Malaysia shall ensure that if his child has attained the age of six years on the first day of January of the current school year that child is enrolled as a pupil in a primary school in that year and remains a pupil in a primary school for the duration of the compulsory education.

(...)

However, we have found no evidence that Malaysia prohibits discrimination in education on the basis of gender.

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