



**MALAYSIA**  
**A BRIEF ON THE IMPLEMENTATION OF CEDAW**  
**COMMITMENTS FROM ARTICLES 2, 5, 11, 16**

*Information for the Committee on the Elimination of Discrimination Against Women  
86<sup>th</sup> Pre-Session Working Group, February/March 2023*

**Submitted By**

The WORLD Policy Analysis Center  
University of California, Los Angeles



**TABLE OF CONTENTS**

**INTRODUCTION** .....2

**Summary of Findings and Recommendations**.....3

    1. Non-Discrimination in Work and Employment (Article 11) .....3

    2. Paid Maternity and Paternity Leave (Articles 11, 5) .....3

    3. Child Marriage (Articles 16, 2).....4

**Detail of Legislative Findings** .....5

    1. Non-Discrimination in Work and Employment (Article 11) .....5

    2. Paid Maternity and Paternity Leave (Articles 11, 5) .....6

    3. Child Marriage (Articles 16, 2).....8



## INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,000 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 86<sup>th</sup> Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following areas:

1. Non-discrimination in Work and Employment (Article 11)
2. Paid Maternity and Paternity Leave (Articles 11, 5)
3. Child Marriage (Articles 16, 2)

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 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. Non-Discrimination in Work and Employment (Article 11)

While we recognize there may be other policies governing discrimination at work, our systematic review of national legislation did not identify any national legislative provisions that specifically protect women from discrimination at work in Malaysia, with the exception of a recently introduced provision – the addition of article 41a to the country’s Employment Act – that prohibits the termination of pregnant women.

#### RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

**We hope the Committee will:**

In its list of issues, ask Malaysia: Can Malaysia demonstrate if the country has any legislation in force that protects women against workplace discrimination?

- If Malaysia does not have legislation in place, recommend that Malaysia:
  - Amend its legislation in the near term to explicitly protect women from direct and indirect discrimination at work in:
    - employment opportunities or hiring
    - equal pay for work of equal value
    - training
    - promotions or demotions
    - job security or terminations
  - Ensure that this legislation:
    - Includes effective enforcement mechanisms, such as protection from retaliation
    - Comprehensively recognizes the discrimination women also face based on marital status, pregnancy, or family status.

### 2. Paid Maternity and Paternity Leave (Articles 11, 5)

According to our data, as of January 1, 2023, Malaysia provides 14 weeks of paid maternity leave to new mothers and seven days of paid leave to new fathers, up from 60 days and 0 days respectively in the previous version of the Employment Act. We commend Malaysia for both introducing paternity leave and extending maternity leave to the 14-week international standard. However, multiple groups of workers, including domestic workers and self-employed women, are excluded from these provisions.



**RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS**

**We hope the Committee will:**

- In its list of issues, ask Malaysia: can Malaysia clarify if its current maternity leave provisions exclude some predominantly female categories of workers, such as part-time or domestic workers?
  - If these groups are currently excluded, recommend Malaysia amend its maternity leave provisions to be inclusive of all female workers, including domestic workers, self-employer workers, and women working in the informal economy.

### 3. Child Marriage (Articles 16, 2)

Malaysian civil law sets the minimum age of marriage at 21 for both girls and boys; anyone between the ages of 18 and 21 requires parental consent to marry. Furthermore, girls between the age of 16 and 18 can marry with permission of the Chief Minister. However, these provisions do not apply to certain groups of Malaysians whose marriages can be governed by customary law, some of whom can be married at any age.

**RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS**

**We hope the Committee will:**

- In its list of issues, ask Malaysia: does Malaysia have any concrete, near-term plans to pass federal legislation that prohibits marriage before the age of 18, with no exceptions, including exceptions for religious or customary law?
  - If Malaysia does not have concrete, near-term plans, recommend in its concluding observations that Malaysia pass legislation that establishes 18 years as the minimum age for marriage without any exceptions whatsoever.
- In its list of issues, ask Malaysia: given the dearth of reliable statistics by international organizations to evaluate the prevalence of child marriage, can Malaysia provide statistics on underage marriages in the country, disaggregated by sex and age?
  - If updated statistics are not available, recommend in its concluding observations that Malaysia begin collecting and reporting statistics on age of marriage, disaggregated by sex.



## DETAIL OF 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. Non-Discrimination in Work and Employment (Article 11)

---

Article 11 of the Convention outlines specific measures States Parties shall undertake in order to eliminate discrimination in the field of employment.

We systematically reviewed national labor codes, gender equality, and other relevant legislation available through the International Labour Organization’s NATLEX database for all 193 UN member states to determine whether national legislation prohibited gender discrimination in employment. We examined legal protections across five areas covered by CEDAW:

- employment opportunities or hiring
- equal pay for work of equal value
- vocational training
- promotions or demotions
- job security or terminations

We assessed whether women were explicitly protected from discrimination at work in each of these areas and whether the definition of discrimination included both direct and indirect discrimination.

We also examined whether there were explicit protections from discrimination in terminations on the grounds of pregnancy and marital status, in line with Article 11.2.a) of the Convention, which prohibits “dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status”. We further examined whether explicit protections from terminations on the basis of family status were in place, because of the intersection of family status with both marital status and pregnancy.

Finally, although the Convention focuses only on protecting from dismissal on these grounds, we nevertheless further examined whether discrimination on the grounds of pregnancy, marital status, or family status was prohibited in other stages of employment because of the centrality of these protections from preventing sex discrimination at work, which the convention protects against more broadly.

*MALAYSIA’S LEGISLATIVE PROVISIONS: No protections against workplace discrimination on the basis of sex*

While we recognize there may be other policies governing discrimination at work, our systematic review of national legislation did not identify any national legislative provisions that protect women generally from discrimination at work in Malaysia.



<b>Table 1: Does Malaysia have legislative provisions in place explicitly guaranteeing non-discrimination for women in the following key areas of employment?</b>	
Employment opportunities and hiring	No provisions found
Equal pay for work of equal value	No provisions found
Training	No provisions found
Promotions and/or demotions	No provisions found
Terminations	No provisions found
Discrimination on the basis of marital status, family status, and pregnancy	Protections against discrimination in terminations only in the case of pregnancy
Indirect discrimination	No provisions found
Retaliatory action	No provisions found

The Employment (Amendment) Act of 2022 introduced a prohibition of terminations on the basis of pregnancy; this narrow protection is the only gender-relevant provision we found in our research.

***Employment Act, as amended to 2022 (in force on January 1, 2023)***

Restriction on termination of pregnant female employee

41a. (1) Where a female employee is pregnant or is suffering from an illness arising out of her pregnancy, it shall be an offence for her employer to terminate her services or give her notice of termination of service, except on the grounds of—

- (a) wilful breach of a condition of the contract of service under subsection 13(2);
- (b) misconduct under subsection 14(1); or
- (c) closure of the employer’s business.

(2) Where the service of a female employee under subsection (1) is terminated, the burden of proving that such termination is not on the ground of her pregnancy or on the ground of illness arising out of her pregnancy, shall rest on the employer.

**2. Paid Maternity and Paternity Leave (Articles 11, 5)**

Article 11.2 of the Convention states that:

*In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*



*(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*

Further, Article 5(b) of the Convention emphasizes the importance of including men in the upbringing of children:

*To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.*

Research evidence indicates that paid paternity leave can increase gender equality in caregiving responsibilities and gender equality in employment; it is therefore important to ensure fathers have access to adequate paid paternity leave.

We systematically reviewed national labor codes and social security laws to assess the availability of paid maternity and paternity leave. We relied primarily on legislation downloaded through the International Labour Organization's NATLEX database. Additionally, for confirmation or clarification on legal provisions, we consulted trusted secondary sources including the Social Security Programs throughout the World (SSPTW) database, and the International Review of Leave Policies.

*MALAYSIA'S LEGISLATIVE PROVISIONS: Recently passed reforms increase available leave for mothers and fathers*

Based on our systematic review of national legislation and country reports, as of January 1, 2023, Malaysia provides 14 weeks of paid maternity leave to new mothers, and 7 days of paid paternity leave to new fathers. Before January 1, 2023, mothers were entitled to 60 days' maternity leave and there was no paternity leave entitlement.

**Employment Act, as amended to 2022 (in force on January 1, 2023)**

*Part IX. PREGNANCY AND MATERNITY*

*37. (1) (...)*

*(d) For the purposes of this Part-*

*(ii) —eligible period|| means a period of maternity leave of not less than ninety-eight consecutive days.*

*(2) (a) A female employee shall be entitled to receive maternity allowance for the eligible period from her employer if—*

*(i) she has been employed by the employer for a period of, or periods amounting in the aggregate to, not less than ninety days during the nine months immediately before her confinement; and*

*(ii) she has been employed by the employer at any time in the four months immediately before her confinement;*

*Paternity leave*

*60fa. (1) Subject to subsection (3), a married male employee shall be entitled to a paid paternity leave at his ordinary rate of pay for a period of seven consecutive days in respect of each confinement.*





*(2) The paternity leave under subsection (1) shall be restricted to five confinements irrespective of the number of spouses.*

*(3) A married male employee shall be entitled to paternity leave from his employer if—*

*(a) he has been employed by the same employer at least twelve months immediately before the commencement of such paternity leave; and*

*(b) he has notified his employer of the pregnancy of his spouse at least thirty days from the expected confinement or as early as possible after the birth.*

**However, multiple categories of workers are excluded from these provisions.** Maternity leave is funded by employers for employees only, so self-employed women, including those working in the informal economy, are not eligible to receive it. In addition, domestic workers – a predominantly female occupation – are explicitly excluded from Part IX of the Employment Act, including provisions on maternity leave.

**Employment Act, as amended to 2022 (in force on January 1, 2023)**

FIRST SCHEDULE

Employee

Any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person’s wages do not exceed one thousand five hundred ringgit a month.

Provision of the Act not applicable

None

(...)

2. Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer in pursuance of which—

(5) he is engaged as a domestic servant.

Provision of the Act not applicable

Sections 12, 14, 16, 22, 61 and 64, and Parts IX, XII and XIII

### 3. Child Marriage (Articles 16, 2)

---

Child marriage disproportionately affects girls, often leading to social, economic, educational, and health inequalities, which States Parties have committed to eliminating. Article 16.2 of the Convention calls on States Parties to legislate a minimum age of marriage and prohibit the marriage of children. Additionally, disparities in the legal minimum age of marriage between girls and boys contravenes Article 2(a) of the Convention, which commits States Parties to “embody the principle of the equality of men and women” in their “national constitutions or other appropriate legislation”.

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, regional sources, and official country websites.

*MALAYSIA'S LEGISLATIVE PROVISIONS: Early marriage prohibited, but exceptions allowed for multiple groups*

Based on our systematic review, Malaysia's general marriage law prohibits marriage under the age of 21, unless authorized by the Chief Minister; boys and girls between the ages of 18 and 21 require parental consent to be married. **However, there are multiple cultural and religious groups that are not bound by the provisions of this law.**

#### **LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976, amended to 2015**

##### PART I PRELIMINARY

###### 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.

(2) For the purposes of this Act, a person who is a citizen of Malaysia shall be deemed, until the contrary is proved, to be domiciled in 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.<sup>12</sup> Laws of Malaysia ACT 164

(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].

##### PART III MARRIAGE

###### Restrictions on marriage

###### 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;
  - © if the person is an adopted child, of his or her adopted father, or if the adopted father is dead, of his or her adopted mother; or
  - (d) if both his or her parents (natural or adopted) are dead, of the person standing in loco parentis to him or her before he or she attains that age,
- but in any other case no consent shall be required.
- (...)

Regarding the exceptions mentioned above, in the Islamic Family Law that applies to the Federal Territories, for example, boys and girls of any age can get married as long as the Sharia judge grants written permission.

ISLAMIC FAMILY LAW (FEDERAL TERRITORIES) ACT 1984, amended to 1984

PART I

PRELIMINARY

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.

PART II

MARRIAGE

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.

Consent required

13. A marriage shall not be recognized and shall not be registered under this Act unless both parties to the marriage have consented thereto, and either—
  - (a) the wali of the woman has consented thereto in accordance with Hukum Syarak; or
  - (b) the Syariah Judge having jurisdiction in the place where the woman resides or any person generally or specially authorized in that behalf by the Syariah Judge has, after due inquiry in the presence of all parties concerned, granted his consent thereto as wali Raja in accordance with Hukum Syarak; such consent may be given wherever there is no wali by nasab in accordance with Hukum Syarak available to act or if the wali cannot be found or where the wali refuses his consent without sufficient reason.