



Advocacy Brief:  
**Towards Ending Child Marriage  
in Malaysia**

# ACKNOWLEDGEMENTS

This Advocacy Brief is the culmination of many multi-stakeholder discussions, workshops and forums, as well as based on evidence generated from a 2018 UNICEF Working Paper, "Child Marriage in Malaysia," amongst other resources. Firstly, we wish to thank the federal government of Malaysia and the government of Sabah for their contribution and continued dedication towards addressing child marriage in our joint efforts together. The first draft of this Brief was written by Dr Prema Devaraj based on a wide range of sources including the 2018 UNICEF Working Paper that was co-authored by Prof Dato' Noor Aziah Mohd Awal and Mohd Al Adib Samuri, with both documents copyedited by Salt Media Group. We are grateful for their work. We also acknowledge the expertise and contributions of our United Nations, NGO and CSO partners in UNICEF's workshops and forums, which led to a Strategy and Roadmap to End Child Marriage. This Strategy and Roadmap was shared with government partners and formed the basis of the government's National Strategy Plan in Handling the Causes of Child Marriage and also of this Brief. This Brief benefited from a few rounds of internal review, and we thank all colleagues who took the time to provide their invaluable feedback, particularly:

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Cover photo:  
Puteri Nur Larissa from Girl Guides Malaysia holds a poster drawn by her sister. In 2019, the Girl Guides Association of Malaysia and UNICEF joined forces to harness the power of 130,000 Girl Guides to gather opinions on social media on children's rights in Malaysia.  
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# FOREWORD

Child marriage is a global problem, and a protection threat that denies children a chance to learn, play, grow and develop to their full potential. Child marriage also exposes children to particular risks and threats to their well-being, including exploitation and abuse, as well as health risks posed by early pregnancy and childbirth.

Child marriage affects thousands of girls and boys in Malaysia. Its impact transcends religion, ethnicity, community, and geography, whether in urban or rural areas. Child marriage is also a recognized problem amongst migrant and refugee communities, where poverty and vulnerability increase the risk for children on the move, with fewer options and opportunities.

UNICEF has developed this Advocacy Brief, in consultation with government and other partners, in an effort to raise awareness about the risks and threats posed by the practice of child marriage in Malaysia. It is designed to help communities, policy-makers, educators, and children themselves, to have a better understanding of this very complex and multi-sectoral issue, and to reflect on what they can do to support ongoing efforts to end child marriage.

UNICEF has appreciated the opportunity to work closely with the Government of Malaysia in the development of the National Strategy Plan in Handling the Causes of Child Marriage, and to support its implementation. It is anticipated that this Advocacy Brief will be an effective tool and resource to support further efforts in the implementation of the National Strategy Plan, and to give greater visibility and recognition of the situation of child marriage in Malaysia.

UNICEF has also worked closely with the Government of Sabah in their important efforts to develop a state action plan towards ending child marriage, recognising that their own unique situation would require a plan tailored to their needs and circumstances.

It is encouraging to see this issue, one of global as well as regional importance, given greater attention here in Malaysia, with a multi-stakeholder and inclusive partnership in the process.

In this spirit, UNICEF anticipates further cooperation and coordination of efforts as advocacy and awareness raising are increased through the dissemination of the Advocacy Brief, as part of a broader effort to address the wide



range of issues that continue to cause child marriage in Malaysia, noting that only through our shared partnership and commitment will progress be realized.

Our call to action for joint work on child marriage includes partnering with civil society, federal and state governments, community and religious groups as well as girls and boys.

A handwritten signature in black ink, appearing to read "Dr Rashed Mustafa".

**Dr Rashed Mustafa**  
UNICEF Representative to Malaysia  
and Special Representative to Brunei Darussalam



A Bajau Laut girl, Semporna, Sabah, Malaysia.

© UNICEF Malaysia/2014/G.Pirozzi

## EXECUTIVE SUMMARY

Child marriage is a global phenomenon affecting the lives of millions of children each year. Malaysia is no exception. It was reported that between 2007 and 2017, approximately 15,000 cases were recorded in Malaysia, with child marriage occurring in all communities across the country.<sup>1</sup>

A variety of interlinking factors drive child marriage in Malaysia: lack of a standardized minimum age of marriage, and laws that allow and facilitate child marriage; lack of access to sexual and reproductive health (SRH) information and services; low household income and poverty; lack of access to education and poor school attendance; social and cultural norms that allow and perpetuate traditional practices of child marriage; lack of parental awareness and understanding of SRH (leading to parents' inability to communicate with children effectively on these issues to better guide and protect them); and finally, the lack of legal status and rights of undocumented, stateless, refugee and asylum-seeking communities. Gender inequality cuts across all of these issues.

Different advocacy approaches are needed to engage different target groups, which include policy-makers, community and religious leaders, media, educators, academicians, parents, adolescents and society at large.

Systematic data collection and reporting are essential to ensure accurate assessment of the situation and effective targeting of the children and families most in need of support and protection.

This Advocacy Brief outlines recommendations for the way forward in nine key areas. It draws from and builds on previous work undertaken by UNICEF Malaysia together with the government of Malaysia and civil society organizations working on the issue of child marriage and adolescent pregnancy in Malaysia.

The launch in January 2020 of the National Strategy Plan in Handling the Causes of Child Marriage was a positive indication of the Malaysian government's commitment in addressing the issue. In 2019, the state of Sabah also developed a state action plan to end child marriage. It is hoped that this Advocacy Brief will provide useful support for the implementation of the National Strategy Plan and state action plans.

## This Advocacy Brief outlines recommendations for the way forward in nine key areas.

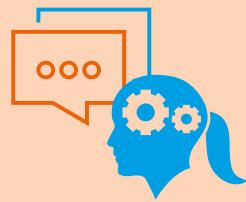
Legal reform pertaining to minimum age of marriage, other related laws that allow child marriage, and mandatory registration of marriage.



Centrality of data, including addressing the lack of standardized data collection and the lack of disaggregated data.



Addressing social and cultural norms, and capacity development.



Sexual and reproductive health (SRH) education, information and services.



Specific girl empowerment programmes and engaging men and boys.



Addressing poverty.



Access to education.



Responses towards undocumented, stateless, refugee and asylum-seeking communities.



Strategic research.



**“Child marriage is a global problem, and a protection threat that denies children a chance to learn, play, grow and develop to their full potential. Child marriage also exposes children to particular risks and threats to their well-being, including exploitation and abuse, as well as health risks posed by early pregnancy and childbirth.”**

**–Dr Rashed Mustafa,  
UNICEF Representative to Malaysia and  
Special Representative to Brunei Darussalam**



Maria Maisarah, 11, wants to be a world traveler and learn about cultures from other parts of the world.  
© UNICEF Malaysia/2015/Zahri

# 1 INTRODUCTION

International standards define child marriage as any marriage where at least one of the parties is under 18 years of age, with the term referring to both formal marriages and informal unions in which children under the age of 18 live with a partner as if married.<sup>2</sup>

While child marriage involves both girls and boys, its impact on girls is much greater. An estimated 12 million girls under 18 are married each year globally.<sup>3</sup> This is approximately 32,876 girls a day, or 23 girls every minute. Estimates from UNICEF suggest that about 18 per cent of children married before age 18 are boys, while about 82 per cent are girls.<sup>4</sup>

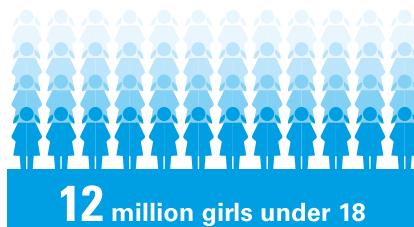
## DEFINITION

Child marriage refers to any formal marriage or informal union (where partners live as if married) between a child under the age of 18 and an adult or another child.<sup>a</sup>

## Global Estimates (2019)



**1 in 5** young women aged 20 to 24 years old married before their 18<sup>th</sup> birthday,  
compared to **1 in 30** young men.



are married  
each year  
**(23 girls**  
every minute)<sup>b</sup>



In Malaysia,  
at least  
**1,500**  
children marry  
every year  
(as of 2018).<sup>c</sup>

a UNICEF.

b UNICEF; Girls Not Brides.

c Based on 2007-2017 statistics from the Ministry of Women, Family and Community Development, Malaysia (MWFCD).

The United Nations Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child maintain that child marriage is “considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent.”<sup>5</sup> This is the case when one of the parties involved is not “physically and psychologically ready” for marriage and adult life “or to make conscious and informed decisions and [is] thus not ready to consent to marriage.”<sup>6</sup> Child marriage is regarded as a violation of the rights of a child that impacts on every aspect of the child’s life, at present and in the future. Consequences include loss of educational opportunities, leading to higher risk of sustained poverty; disempowerment and loss of self-esteem and bargaining power, especially if partners are much older; higher risk of domestic violence; higher probability of separation and divorce; and increased risk of sexual exploitation.

Equally serious are the health consequences. These include complications during and after pregnancy and childbirth due to the mother’s physical immaturity; higher rate of infant mortality; higher risk of contracting sexually transmitted diseases; and higher risk of disruption to emotional and psychological development.<sup>7</sup>

Worldwide, factors contributing to child marriage include gender inequality; cultural and religious practices heavily influenced by patriarchal beliefs and interpretations; poverty; lack of education; lack of awareness of sexual and reproductive health (SRH); and lack of legal sanctions for child marriage, as well as conflicting or ambiguous laws regarding child marriage.<sup>8</sup>

In Malaysia and around the world, the call to eradicate child marriage has been gaining momentum. Malaysia’s international commitments towards this end include the ratification of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1995 and the subsequent removal of the reservation to Article 16(2) pertaining to child marriage in 2010.<sup>9</sup>

Equally important was the ratification of the United Nations Convention on the Rights of the Child (CRC) in 1995, in which the Malaysian government committed under Article 24(3) “to take all effective and appropriate measures with a view to abolish traditional practices prejudicial to the health of the children.”<sup>10</sup> Malaysia’s commitment to Sustainable Development Goal 5 (Achieve Gender Equality and Empower All Women

## Ending child marriage will help Malaysia meet at least eight SDGs.



and Girls) also refers to eliminating all harmful practices, including child, early and forced marriage.<sup>11</sup>

It is also noteworthy that ending child marriage will help Malaysia meet at least eight of the Sustainable Development Goals, namely, those related to poverty (Goal 1), food security (Goal 2), health (Goal 3), education (Goal 4), gender equality (Goal 5), economic growth (Goal 8), reduced inequalities (Goal 10) and peace, justice and strong institutions (Goal 16).

At the domestic level, in 2013, a National Taskforce was set up to formulate a comprehensive action plan to address child marriage.<sup>12</sup> The National Fatwa Council<sup>13</sup> has also declared child marriage an unhealthy practice deeply detrimental to a child's health and psychology.<sup>14</sup> More recently, in 2019, the government under Pakatan Harapan (PH) took steps to follow through on commitments outlined in its 2018 election manifesto.<sup>15</sup> The then Prime Minister's call to state governments to set the legal minimum age of marriage at 18 for both Muslims and non-Muslims<sup>16</sup> was echoed by other ministers in government.<sup>17</sup> The move to amend the laws commenced but while some states agreed, others were not convinced.<sup>18</sup> Meanwhile, steps were taken to tighten procedures in the applications and process for underage marriages in the existing legal jurisdictions.<sup>19</sup>

In January 2020, the then Deputy Prime Minister and Minister of Women, Family and Community Development (MWFCDF) launched the "National Strategy Plan in Handling the Causes of Child Marriage (2020-2025)," with the aim of ending the practice in all jurisdictions through short-, medium- and long-term programmes or actions involving federal and state government agencies, NGOs, international organizations and communities.<sup>20</sup> Pursuant to the Plan, a Steering Committee was established to monitor the implementation of the Plan. Moreover, in July 2019, the state of Sabah, in its commitment to end child marriage, had begun development of a state action plan that is aligned with the MWFCDF's National Strategy Plan, and will also form taskforces to oversee and monitor implementation of the state plan.<sup>21</sup>

### Global Impact

- Married girls are more vulnerable to domestic violence.<sup>a</sup>
- Many married children suffer disrupted emotional and psychological development.



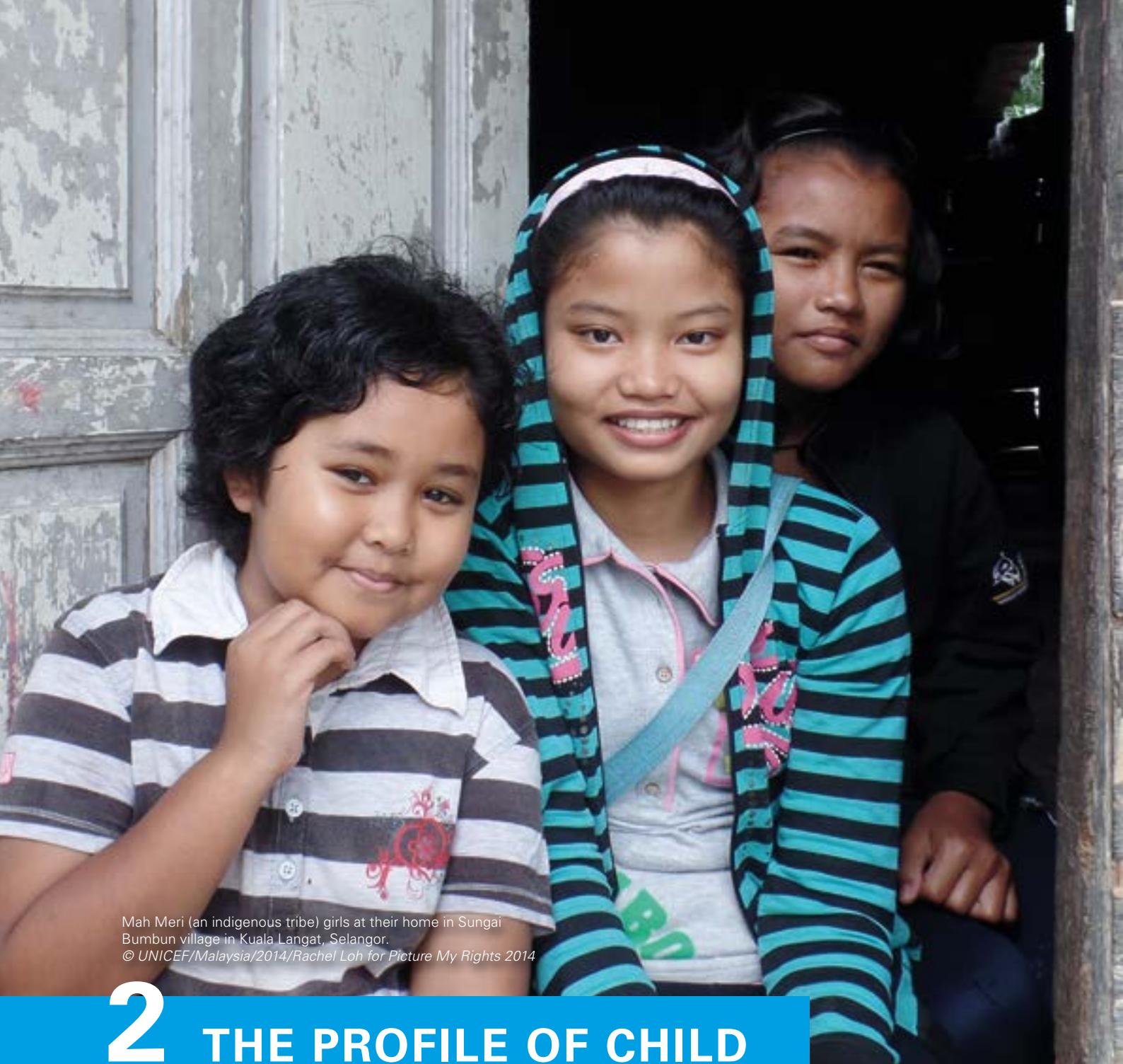
- Married children are less likely to remain in school, leading to a higher risk of sustained poverty.



- Complications during pregnancy and childbirth are the leading cause of death for girls between ages 15 and 19.<sup>b</sup>
- The infant mortality rate is higher for teenage mothers.



a Kidman, Rachel, 'Child marriage and intimate partner violence: a comparative study of 34 countries', *International Journal of Epidemiology*, 12 October 2016, pp. 1-14.  
b WHO. Global Health Estimates (GHE), 2016.



Mah Meri (an indigenous tribe) girls at their home in Sungai Bumbun village in Kuala Langat, Selangor.  
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## 2 THE PROFILE OF CHILD MARRIAGES IN MALAYSIA

Comprehensive data are needed to fully understand the extent of child marriage in Malaysia and ensure effective targeting of vulnerable children in need of support and protection.

Challenges pertaining to data include the lack of systematic data collection and sharing of data; difficulties in collating different types of data gathered (e.g. different minimum ages of marriage across different legal jurisdictions); and the non-registration of child marriages in certain communities. The available data remain, at best, estimations of the situation. Based on existing data, six observations can be made.

**1 Child marriage occurs in Malaysia, in both urban and rural settings.** According to the Department of Statistics Malaysia (DOSM), of the 2,750,861 Malaysians aged between 15 and 19 in 2010, 5.5 per cent (152,835) were married.<sup>22</sup> The then-Deputy Minister of the MWFCD announced in mid-2018 that between 2007 and 2017, 14,999 child marriages were recorded in total, of which 10,000 were Muslim child marriages (about 67 per cent).<sup>23</sup> Subsequent data for 2018 show that there were 1,856 children married that year, with 1,542 being Muslim children.<sup>24</sup> Other sources of data (comprising breakdown of data from different jurisdictions) include the following:

- The Department of Syariah Judiciary Malaysia ('Jabatan Kehakiman Syariah Malaysia' or JKSM) recorded 11,424 applications for child marriage (involving Muslims) between 2008 and June 2018.<sup>25</sup>
- The National Registration Department (NRD) recorded 5,409 non-Muslim child marriages between 2008 and September 2018.<sup>26</sup>
- The Sarawak Council for Native Customs and Traditions recorded marriages involving 5,000 children between 2008 and September 2018.<sup>27</sup>

Further, child marriages take place across all states in the country.<sup>28</sup>

- It is reported that from 2013 to June 2018, the highest number of applications (as opposed to registrations) for child marriage amongst Muslims were from Sarawak, Kelantan and Sabah.<sup>29</sup> While no corresponding data are available for registered Muslim child marriages during that period, DOSM data for 2018 as announced by the MWFCD show that the highest numbers of registered Muslim child marriages for that year were from Sabah (334), Pahang (177), Johor (167) and Selangor (163).<sup>30</sup>
- Non-Muslim child marriages appear to be concentrated mainly in Sarawak, Johor and Selangor (from various data sources from 2005 to 2017).<sup>31</sup> DOSM figures for 2018, however, show that the highest figures of non-Muslim child marriages that year were in fact from Pahang (102), followed by Sarawak (55), Perak (35), Johor (35) and Selangor (20).<sup>32</sup>

In very broad terms, the data above suggest that as of 2018, there are at least 1,500 children who marry every year in Malaysia. It can reasonably be assumed that this is an underestimation of the actual number of child marriages, given that: there are no available data on Muslim girls above the age of 16 but below the age of 18 who are getting married (due to the minimum age for girls as stated under Islamic laws; see (3) below); there are no reported data on Sabah Native Court marriages; child marriages according to customary laws may not be recorded as there is no mandatory registration of

customary marriages;<sup>33</sup> the figures do not include non-formalized relationships involving children; nor do they include unregistered non-Malaysian marriages such as those amongst the undocumented, stateless, refugee and asylum-seeking communities.

## **2 Child marriage occurs throughout all ethnic and religious communities in Malaysia.**

- Between 2013 and 2017 there were 5,362 Muslim child marriage applications to JKSM.<sup>34</sup> (As noted above, data on Muslim girls above 16 but below 18 who marry are currently not captured. Furthermore, JKSM data only captures underage marriage applications, whereas the various states' religious council/department ('Majlis/Jabatan Agama Negeri') data capture registration of Muslim marriages.)
- During the same 2013-2017 period, 2,367 cases of non-Muslim child marriages were recorded by the National Registration Department.<sup>35</sup> An ethnic analysis of 968 non-Muslim child marriages involving a child and an adult in 2017 as well as of 314 non-Muslim marriages in 2018 showed that child marriages took place among the Chinese, Indian and Orang Asli communities in Peninsular Malaysia, as well as among indigenous persons in Sabah and Sarawak.<sup>36</sup>
- Child marriages constituted 0.36 per cent of recorded Orang Asli marriages in 2017.<sup>37</sup>
- The DOSM population statistics for 2010 show that early marriages took place among approximately 11.0 per cent of non-citizens between the ages of 15 and 19.<sup>38</sup>
- Child marriages also take place in refugee communities in Malaysia.<sup>39</sup>

## **3 Child marriage is allowed under Islamic family law, civil law and customary laws.** Malaysia has a plural legal system composed of civil, Islamic (Syariah) and customary laws (some of which are governed by Native Courts in East Malaysia).

Thus, marriage for Muslims is governed by each state's Islamic family law enactment or ordinance. Marriage for non-Muslims is generally governed by civil law under the Law Reform (Marriage and Divorce) Act 1976 (LRA). However, non-Muslim indigenous people (the Orang Asli of Peninsular Malaysia and native communities of Sabah and Sarawak) may choose to marry according to their customary laws, which may or may not be codified.<sup>40</sup>

There is no legal sanction for child marriage. Furthermore, while there is a minimum age of marriage stated in Islamic and civil laws, exceptions to these provisions enable the marriage of children to take place.

- Under some states' Islamic family law enactments, the minimum age for marriage is 18 for boys and 16 for girls. As of January 2020, pursuant to the above-mentioned momentum for change, the state of Selangor had amended its Islamic laws to set minimum age of marriage for both sexes at 18, with more states intending to follow suit. In any event, in all states' Islamic laws, it is possible to marry below the minimum ages if approval is granted by the Syariah Court and the application is in adherence to a set of recently revised guidelines.<sup>41</sup>
- Under civil law, the minimum age of marriage for boys and girls is 18. However, a girl who has reached the age of 16 may get married upon obtaining a licence granted in the exercise of discretionary power by the Chief Minister.<sup>42</sup> In addition, anyone below 21 is required to obtain their father's (or in the absence, the mother's) written consent.<sup>43</sup>
- In customary laws (i.e. those that are codified), there is no stated minimum age of marriage, although there have been recent discussions in Sabah and Sarawak on amending native laws to set a minimum age of marriage at 18.<sup>44</sup>

#### **4 Child marriages fall into two categories: marriages between children, and marriages between a child and an adult.<sup>45</sup>**

- Based on an analysis of 2,143 cases analysed from applications to the Syariah Court for Muslim child marriages in seven states between 2012 and 2016, 54.6 per cent were marriages between children, 36.0 per cent were marriages between children and young adults (up to 25 years of age) and 9.4 per cent were marriages between children and older adults (above 25).<sup>46</sup>
- Data from the Department of Orang Asli Development (Jabatan Kemajuan Orang Asli or JAKOA) pertaining to Orang Asli child marriages in 2017 show that 9.1 per cent (26) of the recorded marriages involved a marriage between a child and another child, while the remaining 90.9 per cent (260) were children married to adult partners.<sup>47</sup>
- Data from the Ministry of Home Affairs for non-Muslim child marriages in 2017 suggest that 13.2 per cent (147) of non-Muslim marriages involved marriages between children while the rest, i.e. 86.8 per cent (968), were married to adult partners.<sup>48</sup>

#### **5 Both boys and girls are affected by child marriage in Malaysia.** Globally, girls remain disproportionately affected where child marriage is concerned, with one in five young women aged 20 to 24 married before their 18<sup>th</sup> birthday, compared to one in 30 young men.<sup>49</sup> In Malaysia, there is uncertainty about the gender trends

of child marriages over the years but some existing data suggest a difference in pattern among Muslim and Non-Muslim communities, where Muslim boys seem to be marrying at a higher rate than non-Muslim boys. Notably, however, data from DOSM in 2018 revealed that 90 per cent of children who were married in 2018 were girls.<sup>50</sup>

- JKSM statistics show that among 6,240 Muslim children who made applications to marry between 2011 and 2015, 51.6 per cent were girls and 48.4 per cent were boys.<sup>51</sup> (Recent DOSM data for 2018, however, are more consistent with the global pattern of child marriage involving mainly girls: out of a total of 1,542 Muslim children who were married in Malaysia that year, 1,372 were girls and 170 were boys.<sup>52</sup>)
- Among non-Muslims, a 2019 media report noted that between 2015 and 2018, of the 2,761 non-Muslim child marriages documented, 88.7 per cent involved girls and 11.3 per cent involved boys.<sup>53</sup> Additionally, data on Sarawak native customary marriages between 2008 and 2018 show that less than 10 per cent of child marriages involved boys (450 boys were married, versus 4,650 girls).<sup>54</sup>

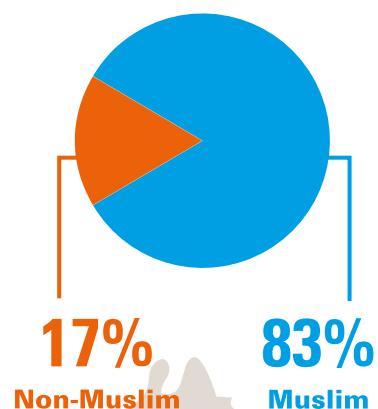
The relatively high percentage of Muslim child marriage applications involving boys (as recorded in the JKSM data) is thought to be largely due to the fact that Islamic family law allows boys below 18 to be married, whereas civil law does not. This supposition does not, however, explain the data from Sarawak (where, similarly, there is no minimum age of marriage under native customary laws that are codified).

#### **6 As of 2018, child marriages may be decreasing across communities in Malaysia, mirroring global trends.** Globally, the rate of child marriage is slowly declining but it is noted that progress isn't happening fast enough.<sup>55</sup> In Malaysia, there were 2,107 children married in 2017.<sup>56</sup> This saw a reduction to 1,856 in 2018 but more data is required to assess the trend over a longer period.<sup>57</sup>

However, since the onset of COVID-19, estimates indicate that the pandemic will disrupt progress on ending child marriage globally, because of its impact on education and the economy, among other things.<sup>58</sup>

## The Profile of Child Marriage in Malaysia in 2018<sup>a</sup>

**Child marriage occurs:**



Both boys and girls are affected by child marriage in Malaysia, but the impact on girls is greater. **90%** of children who were married in 2018 were girls.

**1,856**

children were married in 2018.<sup>b</sup>

State with the highest number of non-Muslim children married in 2018:  
**Pahang (102 children)**

State with the highest number of Muslim children married in 2018:  
**Sabah (334 children)**

### Children Who Were Married in 2018

	Muslim		Non-Muslim		<b>Total</b>
	Girls	Boys	Girls	Boys	
<b>Bumiputera</b>	1,314	166	174	20	<b>1,674 (90.19%)</b>
<b>Chinese</b>	5	2	92	1	<b>100 (5.39%)</b>
<b>Indian</b>	3	0	17	0	<b>20 (1.08%)</b>
<b>Others</b>	50	2	10	0	<b>62 (3.34%)</b>
<b>Total</b>	<b>1,372 (73.92%)</b>	<b>170 (9.16%)</b>	<b>293 (15.79%)</b>	<b>21 (1.13%)</b>	<b>1,856 (100%)</b>

Percentages are based on a total of 1,856 children.

a Department of Statistics Malaysia (DOSM) as cited by MWFCD.

b This is most likely an underestimation of the actual number of children as not all child marriages are registered or recorded.



Sarah, 12, and her older brothers  
enjoying a day out at the forest  
reserve in Bukit Melawati.  
© UNICEF Malaysia/2016/Zahri

## 3 FACTORS THAT CAUSE OR ENABLE CHILD MARRIAGE IN MALAYSIA

The seven main factors that cause or enable child marriage in Malaysia are complex and interlinked.



**1**  
Legislation  
that allows  
and/or  
facilitates child  
marriage.



**2**  
Lack of access  
to sexual and  
reproductive  
health (SRH)  
information  
and services.



**3**  
Low  
household  
income and  
poverty.



**4**  
Lack of  
access to  
education  
and poor school  
attendance.



**5**  
Social norms  
that condone  
the practice of  
child marriage.



**6**  
Lack of effective  
and informed  
parental  
guidance and  
support to  
protect children  
and ensure their  
access to SRH  
information  
and services.



**7**  
Lack of legal  
status and  
rights of  
undocumented,  
stateless,  
refugee and  
asylum-seeking  
populations.



## 1 Legislation that allows and/or facilitates child marriage

As noted above, there is no standardized minimum age of marriage across Islamic and civil laws, and there is no minimum age under customary laws. Nor is there legal sanction for child marriages, and exceptions to the existing minimum ages of marriage enable the practice of child marriage to continue.

In addition, there are other laws that allow or lead to child marriage such as provisions in the Child Act 2001 which provide for a defence to the crime of “unlawful transfer of possession, custody or control of child” if it is a *bona fide* marriage or adoption and one parent/guardian consented to the same.<sup>59</sup> The Age of Majority Act 1971 provides exceptions that “[n]othing in this Act shall affect the capacity of any person to act in the following matters, namely, marriage, divorce, dower and adoption”, allowing one to get married without attaining the age of majority (18).<sup>60</sup> Moreover, while the Penal Code provides that any sexual relations with a girl under 16 is considered statutory rape, it contains an exception if the victim is the man’s wife.<sup>61</sup> Unfortunately, in Malaysia, child marriage has been utilized as a way out for perpetrators hoping to avoid prosecution by marrying their victims.<sup>62</sup>

Further, there are other provisions in Islamic laws which inadvertently facilitate the decision of the child bride or her parent to choose marriage rather than other alternatives (see “Social norms that condone the practice of child marriage” below).



## 2 Lack of access to sexual and reproductive health (SRH) information and services

Many child marriages in Malaysia are likely to take place due to pregnancies.<sup>63</sup> The lack of access to sexual and reproductive health (SRH) information and services contribute to denying sexually active or young pregnant girls alternatives to child marriage.

Information – for example pertaining to safe sex, contraceptives, adoption, access to safe termination of pregnancies (permissible under the law in certain circumstances<sup>64</sup>), shelters for unwed mothers, baby hatchets, and access to support and counselling – is not widely known, as evidenced in a 2017 survey amongst adolescents.<sup>65</sup>

## Child Marriage and the Law

There is no standardized minimum age of marriage in Malaysia. Furthermore, current laws and exceptions allow for child marriage (i.e. a marriage involving a child below 18) to take place.

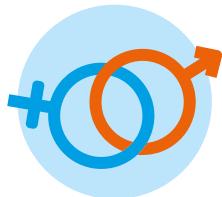


	For Muslims	For non-Muslims	For non-Muslim indigenous people
Laws	<b>Islamic family laws</b> (Various state enactments)	<b>Civil law</b> (Law Reform (Marriage and Divorce) Act 1976)	<b>Customary laws</b> (Various laws, which may or may not be codified)
Minimum age	(in some states*) 18 for boys 16 for girls	18 for boys and girls	no stated minimum age of marriage
Exceptions	All states’ laws allow marriage under minimum age upon Syariah Court’s approval and in adherence with guidelines. All females also require guardian’s (wali) consent.	Girls between 16-17 can marry upon approval by state Chief Minister. Both boys and girls below 21 require parent’s consent.	

\*as of January 2020, the minimum age in Selangor is 18 for both boys and girls.

## Lack of access to sexual and reproductive health (SRH) information and services contribute to child marriage.

### SRH information and services include:



Safe-sex options



Adoption



Shelters for unwed mothers



Counselling



Baby hatches

SRH education or comprehensive sexual education (CSE) continues to be a controversial issue in Malaysia. Sex education through the Social and Reproductive Health Education curriculum ('Pendidikan Kesihatan Reproduktif dan Sosial' or PEERS) has been introduced into the primary and secondary school systems by the Ministry of Education, but its implementation is limited for various reasons including a lack of sufficiently trained teachers and a lack of support from parents and the wider community.

Furthermore, PEERS places strong emphasis on abstinence as the best policy. There is minimal discussion on pregnancy prevention or termination of pregnancy, even where permissible under the law; this is due to moral and religious values which often deem these options unacceptable and immoral.<sup>66</sup>



### 3 Low household income and poverty

Low household income has been found to be a driver of child marriage across communities in Malaysia.<sup>67</sup>

One direct consequence of poverty is children dropping out of school.<sup>68</sup> Currently, only primary education is compulsory.<sup>69</sup> Although there are no school fees, other expenses such as transportation costs, school uniforms and books can force children from low-income households to stop schooling.

A family's economic situation also directly influences the decision to marry off a girl child after she leaves school. In some instances, the family benefits financially from a daughter's marriage when the son-in-law provides financial assistance to the family. A poor family may not

have the resources to look for alternatives to marriage for children who have left school.<sup>70</sup>



### 4 Lack of access to education and poor school attendance

In addition to low household income, there are a variety of other reasons contributing to lack of access to education and poor school attendance. These

include lack of parental awareness on the importance of education in both urban and rural areas, compounded by various barriers and bottlenecks that restrict access to education. Lack of academic interest, bullying and social pressure may cause disadvantaged children to drop out of school. Further, pregnant girls have a higher chance of dropping out of school, either because they are prevented by their teachers from attending, or they are worried about disciplinary action from the school, or they are embarrassed and stigmatized by society.<sup>71</sup>

Access to schools is a problem in rural areas, faced largely by indigenous communities.<sup>72</sup> Stateless, undocumented, refugee, and migrant children are also not eligible to attend government schools, with some exceptions provided for under the 2019 Zero Reject Policy.

Not being in school predisposes a girl child to an early marriage.<sup>73</sup> Apart from not having a focus for the future, teenagers who drop out are less likely to possess adequate knowledge about reproductive health and hence more likely to engage in risky behaviour, including sexual activity. Teenagers who do not involve themselves in school activities face a significantly higher chance of becoming pregnant.<sup>74</sup>



Students in Malaysia receiving exam results.

© UNICEF/Malaysia/2017/Ain Natasha



## 5 Social norms that condone the practice of child marriage

Social, cultural and religious norms<sup>75</sup> across communities in Malaysia generally dictate that premarital sex and pregnancy outside a marriage are unacceptable. A girl is considered 'damaged goods' if she has a child out of wedlock or has engaged in premarital sexual activity.

In these circumstances, child marriage is seen as a 'solution'.<sup>76</sup> It is seen as acceptable (i.e. doing the right thing), and as a means to remove the shame and restore somewhat the family reputation. In 2018, approximately 63 per cent of the 10,505 pregnant adolescents (10-19 years) presenting at government hospitals or clinics were married, indicating a correlation between pregnancy and early marriages.<sup>77</sup>

For Muslims, sanctions for premarital sex include provisions in Syariah criminal offences legislation (applicable also to children) that punish excessive and suspicious close proximity with a member of the opposite sex (known as *khalwat*) as well as premarital and extra-marital sexual activity (known as *zina*).<sup>78</sup> Muslim parents may marry off children (boys as well as girls), either where they have committed *zina* or as a means to prevent *zina* from occurring.<sup>79</sup>

In cases involving adolescent pregnancies, the push for child marriage is reinforced by the wish to avoid the stigma that follows the ascription of 'illegitimacy' to babies born out of wedlock.<sup>80</sup>

Furthermore, a Muslim child born out of wedlock loses rights to inheritance from the father's estate. Thus, apart from wishing to avoid the 'shame and social censure' associated with an unwed mother, a girl's parents may marry off their daughter for economic reasons, taking into account the welfare of the unborn baby.

An analysis of case files from the Syariah courts of seven states from 2012 to 2016 revealed that of 2,143 applications for child marriage, only 10 were rejected, suggesting that child marriage is easily accepted within the Islamic judicial system.<sup>81</sup>

It is also noted that child marriages in certain rural, indigenous or even refugee communities are sometimes driven by cultural and religious norms. When girls come of age or attain puberty and are seen to be capable of managing domestic responsibilities, they are deemed ready to start a family. Marriage is accepted as the next step towards giving a girl her status as wife and mother, especially when there are no opportunities for schooling or employment. It is also seen as a measure to safeguard her future security and prosperity.<sup>82</sup>



## **6 Lack of effective and informed parental guidance and support to protect children and ensure their access to SRH information and services**

Parental attention and guidance play an important role in determining whether or not a child gets married.<sup>83</sup> Parents' lack of time for proper supervision and monitoring of their children has been found to be a risk factor in child marriages.<sup>84</sup> The lack of attention, support and guidance from parents, including effective communication concerning SRH issues, can lead to teenagers engaging in unsafe behaviours, including unprotected premarital sex possibly resulting in pregnancy.<sup>85</sup>

As mentioned above, in circumstances involving adolescent pregnancy, marriage is often seen as a 'solution' to the 'problem' by parents unaware of other options or who are guided by religious or socio-cultural norms.



## **7 Lack of legal status and rights of undocumented, stateless, refugee and asylum-seeking populations**

The lack of legally recognized status and rights are important factors driving child marriage in the undocumented, stateless, refugee and asylum-seeking communities of Malaysia.

Throughout Malaysia and particularly in Sabah and Sarawak, undocumented and stateless children<sup>86</sup> have

limited access to basic rights and services such as education and healthcare. Poverty levels are high and SRH information and services are very limited.<sup>87</sup> Lack of official documents and lack of recognition of basic rights can put these children at greater risk of experiencing violence, abuse and trafficking.<sup>88</sup> Child marriage is seen as a way to protect the girl child from vulnerabilities associated with being undocumented and/or stateless such as sexual threats or assault or trafficking.<sup>89</sup>

Child marriage is also practised in the refugee and asylum-seeking communities in Malaysia, particularly among the Rohingya<sup>90</sup> community, the largest refugee community in the country.<sup>91</sup> Child marriages involve arranged marriages of girl children from within the community, and also child brides being brought, i.e. trafficked or smuggled, into the country from elsewhere.<sup>92</sup>

Besides the lack of adult Rohingya women in the refugee community, the factors driving child marriage in this community are similar to those in Malaysian communities, such as the lack of legal sanction, poverty, and religious norms. Additionally, the refugee community's lack of rights to education, employment and a future, as well as the lack of SRH information and services, leads to girls being vulnerable to sexual harassment, sexual violence, sexual abuse and an insecurity with regard to detention. Like the undocumented and stateless, many refugee families see child marriage as a means to offer their daughters protection and a safe space.<sup>93</sup>





Atiqah (name changed to protect identity), 16, combs her hair as she gets ready to go out with her friends. Her sister was married in 2016 when she was only 15 years old.  
© UNICEF Malaysia/2018/Noorani

## 4 RECOMMENDATIONS FOR THE WAY FORWARD

Child marriage is a complex issue, and efforts to end child marriage require horizontal coordination (across sectors including education, health, justice, social welfare, law enforcement, immigration, communications and media) and vertical coordination (between actors at the local, regional and national levels and with traditional and religious authorities).<sup>94</sup> Remedies put forward must be relevant to and match the needs of the different communities in which child marriages take place.

Stakeholders to be identified and engaged include: government ministries and agencies, legislators, policymakers, religious leaders, community leaders, civil society organisations, UN agencies, educators, researchers, parents, the media, private sector, the general public and children.

## The recommendations below are grouped into nine key areas.

### 1

### Legal reform pertaining to minimum age of marriage, other related laws that allow child marriage, and mandatory registration of marriage

Legal reform is an essential component in the move to end child marriage. Recommendations include:

- Set the minimum age of marriage at 18 without exceptions for all boys and girls in Malaysia, in all legal jurisdictions including customary laws.<sup>95</sup> In the transition stage, marriages involving those below 18 may be considered under very strict conditions, with legitimate grounds that are clearly defined in law, and upon the full, free and informed consent of the child or both children, as far as possible, and with the best interests of the child being the paramount consideration.
- Secure the full and inclusive participation of relevant stakeholders in the drafting of legislation so that primary concerns relating to child marriage are accurately identified and addressed. This in turn will help ensure its successful implementation thereafter. However, care should be taken to ensure prevailing attitudes and social norms that support child marriage do not weaken efforts to enact and enforce these laws.<sup>96</sup>
- Amend all provisions in other laws that allow or facilitate child marriage, as described above, (i.e. Child Act 2001, Penal Code, Age of Majority Act 1971).
- Conduct research on, and consider, criminalization of child marriage. In the transition stage, a moratorium may be declared on the prosecution of child marriage cases until all communities have had sufficient

time to understand the need for the ban on child marriages.

- Introduce a mandatory legal requirement of registration of marriages with the National Registration Department throughout all the different legal jurisdictions. This should be accompanied by awareness-raising, education and the establishment/strengthening of adequate infrastructure to make registration accessible to all persons.<sup>97</sup>
- Remove the ascription of illegitimacy to children born to unmarried parents in Islamic and civil laws to eliminate the push factor in quickly marrying off pregnant girls. Pregnant adolescents should be supported, and social norms at the heart of their stigmatization must be addressed.
- Conduct research on the impact of Islamic criminal laws regarding *khalwat* and *zina* on the best interests of the child and child marriage, and explore possible amendments.
- The enactment of laws alone is insufficient to combat child marriage effectively, and should be supplemented with a comprehensive set of measures to facilitate their implementation and enforcement, along with follow-up, monitoring and evaluation of the results achieved.<sup>98</sup> One suggestion is to establish a national-level legal reform monitoring programme to evaluate the progress of legal reform.



**Target groups:** The judiciary, legislators for civil law, Syariah law and native customary laws, parliamentarians, state religious councils, the legal fraternity, religious leaders, community leaders, Ministry of Home Affairs, Attorney General's Chambers, National Registration Department, Ministry of Women, Family and Community Development and the general public.

**2**

## **Centrality of data, including addressing the lack of standardized data collection and the lack of disaggregated data**

Data not only form the basis of advocacy efforts, they also determine the extent to which stakeholders are able to successfully plan, fund and implement prevention and intervention programmes. Recommendations include:

- Regularly collect, analyse and publicly disseminate data across the country on child marriages covering all children below the age of 18 and ensure that such activities are adequately resourced. Such data should be collated by one central agency.
- Build the profile of child marriages in the country through data disaggregation according to sex, age,

disability, ethnicity, religion and state, of the child and spouse. Other key data, such as socioeconomic status, education level, and reasons for entering into the marriage should also be collected from both parties.

- Through capacity-building measures, raise awareness of data design, collection and analysis among agencies involved in the registration of child marriages so that data collection is reliable and comprehensive.
- Set up a repository for data on child marriages so that information can be shared and further built upon.



**Target groups:** All agencies at state and at federal levels that are involved in registering and documenting marriages, Department of Statistics Malaysia.



Khadijah Jun, 13, at class in a school set up by a local NGO that provides learning opportunities for underprivileged children in Semporna, Sabah, Malaysia.  
© UNICEF Malaysia/2014/Pirozzi

# 3

## Addressing social and cultural norms, and capacity development

Social and cultural norms driving child marriage are most effectively addressed by challenging existing norms that condone child marriage and introducing new norms. In addition, it is important to equip and train relevant professionals and decision-makers accordingly.

- Establish national- and state-level working groups/ task forces to study and understand social and cultural norms that drive child marriage within different communities across Malaysia. This could include commissioning relevant research.
- Implement national- and state-level communication and advocacy programmes to raise awareness, influence perceptions and practices, and build capacity of stakeholders to be informed about child rights and the harmful impact of child marriage. The targeted audience includes parents, teachers, religious leaders, Syariah and Native Court judges, community leaders, social service and health workers.
- Train front-line professionals (i.e. social workers, teachers) to prevent, identify and respond to incidents of child marriage, teenage pregnancy and other associated cases including mitigating negative effects and helping children gain access to appropriate services. Provide refugee, migrant and undocumented children with equal access to these services, regardless of their legal status.<sup>99</sup>
- Institute specific training for judges and Chief Ministers and their staff on new and existing laws on child marriage and on human rights principles such as protecting the best interests of the child and the participation of children in administrative and judicial proceedings. Ensure they are aware of, and apply, human rights principles in handling and determining applications of child marriage.

A strategic advocacy and communication plan jointly executed with different stakeholders is crucial and can include the following:

- Produce and disseminate, in multiple languages, information on the harmfulness of child marriage and benefit of keeping girls and boys in school. Highlight examples from around the world of successful efforts to end child marriage by changing social and cultural practices.
- Convene workshops, public forums, town hall dialogue sessions, information campaigns, community and school programmes and road shows in all states, in urban and rural locations. Sustain this effort over a period of time. They can cover a range of topics to raise awareness, change public perception and address social norms on child marriage, recent and proposed law reform, SRH information and teenage pregnancy (especially amongst children, parents and educators). Take all measures to ensure that stigma and discrimination are not perpetuated against the victims and/or practising local and immigrant communities.
- Enlist the help of high-profile influencers (e.g. political leaders, religious leaders and well-known and well-liked personalities) to change public perception.
- Conduct mass media and social media campaigns to raise public awareness on negative consequences of child marriage and on SRH information. Educate the media on the importance of not romanticizing or sensationalizing child marriage.



**Target groups:** The government, judiciary (including junior judges and Native Court judges), legislators, community leaders, religious leaders, educators, parents, the general public, the media and children.

## 4

## Sexual and reproductive health (SRH) education, information and services

To gain wider support for access to SRH education, information and services, it is important to communicate to the public that sex education is not about encouraging sexual activity at an early age but about equipping young people with sufficient knowledge to understand their bodies, respect themselves and others and, importantly, identify and protect themselves. In giving young people a space to discuss issues pertaining to their sexuality, there is also the opportunity to instil the concepts of rights and responsibilities. Recommendations include:

- Through a working group of stakeholders, including children themselves, review the existing PEERS curriculum to ensure it matches present needs of adolescents. Ensure age-appropriate information and implement the curriculum uniformly across all primary and secondary schools in the country. Continue regular monitoring and evaluation of the curriculum and other educational initiatives and methods.
- Train teachers to deliver this curriculum in an appropriate and non-judgmental manner, especially on issues regarding contraceptives and safe sex, and options when an unplanned pregnancy occurs. Importantly, teach children how and where to seek help when they need it.
- Make available adolescent-friendly, non-judgmental SRH services in health clinics and in schools via

community nurses (e.g. weekly or monthly visits to schools in each district). Use different approaches, bearing in mind that the ‘abstinence only’ approach or punitive measures do not confront the reality of adolescent sexuality.

- Organize parenting seminars for parents/guardians to gain skills in discussing SRH information with children, and equip them with knowledge on the importance of keeping children in schools and the negative impacts of child marriage, amongst other issues.
- Produce and distribute SRH information to parents and community leaders, including faith-based leaders, who can in turn guide adolescents. This can be done through workshops at the community level and parent-teacher associations in schools.
- Ensure that parents with a sexually active or pregnant child are given information (on alternatives such as contraceptives, shelters for pregnant girls, adoption and completing schooling) and support (counselling, parenting workshops, financial aid). All parents must understand the importance of guiding and supporting adolescents, rather than punishing them for transgressions.
- Engage young people across the country in SRH discussions and awareness-raising and produce relevant adolescent-friendly social media and communication materials.



**Target groups:** Children, parents, teachers, educators, community leaders, community health professionals, social workers, religious leaders and the general public.



# 5

## Specific girl empowerment programmes and engaging men and boys

Girls need to be equipped with knowledge and awareness of their sexual and reproductive health, rights and responsibilities. At the same time, restrictive gender norms that contribute to child marriage can only be successfully challenged if the effort is also undertaken by men and boys. Recommendations include:

- Conduct programmes in schools and communities on human rights (specifically addressing those of women and children), gender equality, self-awareness, elimination of gender stereotypes and promotion of non-discrimination.
- Include specific programmes for girls to better enable them to understand the importance of developing their own agency and decision-making skills, good communications and negotiation skills pertaining to handling relationships. Options must also be included

for girls to learn skills that will help them to better earn and manage money.

- Conduct school and community programmes targeting men and boys to not only help them recognize the rights of women and girls and to empower them but also to address the issues of masculinity that are harmful to themselves and their relationships, including how to manage peer pressure to have sexual relations. These messages and awareness-raising efforts could be part of media and social media campaigns as well.
- Follow up such programmes with progressive policies that promote more gender-equitable behaviour at home, in the workplace and in the community (e.g. improved attitudes towards sharing of care work, reduced gender-based violence and sharing of decision-making).



**Target groups:** Adolescent girls (aged 10-19) in schools and communities, boys in schools and men in the community, policymakers, Ministry of Education, community leaders, corporates.



# 6

## Addressing poverty

Poverty is a significant driver of child marriage, and poverty alleviation measures are crucial if children are to have a chance at fulfilling their potential.

Recommendations include:

- Put in place an effective Social Protection Floor that provides an appropriate level of income security for all Malaysians. Provision of adequate child/family benefits for all poor and lower-income families, school meals, disability benefits and the extension of unemployment insurance/benefits to low-income workers in the informal sector are all critical to ensuring that children from low-income families do not exit the education system prematurely. In the immediate term, serious consideration should be given to restructuring existing social assistance schemes to ensure the delivery of adequate and ongoing financial assistance to low-income households while also addressing the exclusion of
- many of the poorest families from existing social protection mechanisms. This includes increasing public awareness and understanding of social assistance application procedures and increasing administrative capacity to process applications in a timely manner.
- Strengthen active labour market programmes (skill training, entrepreneurship support, job search, etc) for low-income workers, with a particular focus on low-income women. Relatedly, access to high quality, affordable childcare should be increased for low-income families through the establishment of a childcare voucher scheme coupled with stronger regulation of, and potentially subsidies for, private sector childcare providers.
- Keep the adequacy of the minimum wage under review, strengthen monitoring of compliance by employers and increase public awareness of workers' rights and redress mechanisms.



**Target groups:** Government agencies monitoring poverty and aid transfers, school authorities, community leaders and social workers.



Children at Harvest Centre, a school for underprivileged students.

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# 7

## Access to education

Education is crucial in a child's life. Besides ensuring children have access to education, keeping them interested in education and giving them a purpose may help ensure they have alternatives to child marriage. Recommendations include:

- Make secondary schooling (up to Form 5) compulsory for all children.
- Increase parental awareness of the importance of education and provide support to children at risk of dropping out of school as well as those who have dropped out.
- Identify barriers to access and adopt appropriate measures to support continued participation in education. Although school fees are subsidized by the government, there are other costs involved, and the government should consider extending these subsidies to cover uniforms, books, transport, food, etc.
- Provide financial aid for schooling for children from low-income families.
- Make schools in rural locations accessible to children. Subsidize transport to schools and provide financial aid for schooling for children from low-income families.
- Address the difficulties of returning to school that are faced by married children or children who have had a pregnancy. Many opt not to return to school because of stigma, new mothering responsibilities, bullying, etc. The option of completing an education through vocational schools should also be made available.
- Enable all non-Malaysian children from undocumented, stateless, refugee and asylum-seeking or other vulnerable communities to have access to schooling.
- Put in place more programmes at vocational schools and other learning centres for children who are not academically inclined. Access to technical and vocational education and training (TVET) should be available at national schools and beyond.



**Target groups:** Policymakers, Ministry of Education, academic institutions, educators, United Nations High Commissioner for Refugees (UNHCR), and United Nations Population Fund (UNFPA).

**8****Responses towards undocumented, stateless, refugee and asylum-seeking communities**

Many of the approaches outlined above also hold true for undocumented, stateless, refugee and asylum-seeking communities in Malaysia. Tackling the issue of a lack of rights in these communities will help end child marriage. Recommendations include:

- In line with efforts to meet SDG target 16.9 (*By 2030, provide legal identity for all, including birth registration*), facilitate processes to obtain citizenship documentation for those who are entitled under the law, as well as birth registration documents for persons born on the territory. This includes strengthening access to birth registration for all children born in Malaysia, particularly for non-Malaysian children, children of single mothers and children born in remote areas.
- Provide a legal and administrative framework that allows and/or strengthens these communities' access to child protection, education, health facilities and employment. Such access would not only enable the

communities to better combat poverty, it would also protect and give their children alternatives to early marriage.

- Extend and ensure provision of SRH education, information and services to these communities. This can be done through alternative and community learning centres targeting children and local non-governmental organizations and international agencies working with these communities.
- Work with both men and women as well as community leaders and religious leaders in these communities to share information on the harmful effects of child marriage and the illegality of buying and obtaining a bride from traffickers and smugglers.
- Work in partnership with community leaders and relevant civil society groups to identify and protect potential and actual trafficking victims, including child brides, and take action against human traffickers and smugglers.



**Target groups:** Policymakers, legislators, Ministry of Home Affairs, Malaysian National Security Council, National Registration Department, Ministry of Women, Family and Community Development, Department of Social Welfare, United Nations agencies, community leaders, religious leaders and civil society organizations, alternative and community learning centres.



Sitting in a canoe, children fish near a slum settlement on water in the state of Sabah. Many children of illegal immigrants are undocumented and as such are not allowed to enter government schools and denied access to basic healthcare.

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**9****Strategic research**

More research is needed to enable evidence-based advocacy to take place. The research undertaken must be part of and feed into a strategic approach towards ending child marriage. The research methodology should involve the communities and key agents of change in the design and implementation as well as in monitoring and evaluation. In addition, the research should:

- Be coordinated by the National Strategy Plan in Handling the Causes of Child Marriage Steering Committee, which should also propose research to fill existing gaps in knowledge and consolidate action points from the research.
- Include accurate statistics on the occurrence of child marriage across the country, including occurrences among non-citizens as well as undocumented, stateless and refugee populations. Research should also include the impact of child marriage on boys.
- Cover intersection considerations such as gender, age, disability, ethnicity, religion, urban/rural, geographical location, of the child and also of the spouse.

- Identify drivers specific to certain communities as well as states, and their specific social norms pertaining to child marriage.
- Include longitudinal studies to determine the long-term impact of a marriage on the child. This should also entail investigation into child marriages involving non-Malaysians as well as the sustainability of child marriages, i.e. occurrences of divorce and subsequent marriages if any.
- Include monitoring and evaluating strategies to end child marriage in the various communities. Best practices should be documented and shared with stakeholders.
- Include the impact of COVID-19 on child marriage, noting that the pandemic is having a devastating effect on families, communities and economies, including limiting access to basic services such as health, education and child protection in Malaysia and all over the world.



**Target groups:** Government agencies, universities, think tanks, key agents of change and stakeholder communities.

**Ending child marriage in Malaysia is a shared responsibility involving many stakeholders. Change has to take place on a myriad of levels in society. The best interests of children must be the motivating factor to garner support and push for reform on all fronts.**

# ENDNOTES

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- 6 UN CEDAW Committee and CRC Committee (n 5) para 21. The two Committees recognize that "it is a matter of respecting the child's evolving capacities and autonomy in making decisions that affect her or his life, a marriage of a mature, capable child below 18 years of age may be allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to culture and tradition."
- 7 UNICEF Malaysia, "Child Marriage in Malaysia" (working paper, UNICEF Malaysia, 2018), 15-17.
- 8 "Child Marriage," UNICEF, <https://www.unicef.org/protection/child-marriage>
- 9 CEDAW Article 16(2) states: "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."
- 10 UNICEF, "Joint statement on child marriage," (press release), June 21, 2018, <https://www.unicef.org/malaysia/press-releases/joint-statement-child-marriage>
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- 12 Oral answer by Dr Wan Azizah Wan Ismail, Minister of Women, Family and Community Development, 14<sup>th</sup> Parliamentary Sitting, First term, First Meeting, Hansard records, August 16, 2018, 13.
- 13 While the term "National Fatwa Council" is widely used, some have noted that the relevant body is in fact the Muzakarah of the Fatwa Committee of the National Council for Islamic Affairs.
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- 15 The Pakatan Harapan Manifesto included a Special Commitment for Women. Commitment 4 was "Ensuring the legal system protects women's rights and dignity," under which point No. 2 was "Introduce a law that sets 18 as the minimum age of marriage." *Buku Harapan* (Pakatan Harapan, 2018), 141. Available at [http://kempen.s3.amazonaws.com/manifesto/Manifesto\\_text/Manifesto\\_PH\\_EN.pdf](http://kempen.s3.amazonaws.com/manifesto/Manifesto_text/Manifesto_PH_EN.pdf)
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- 28 DOSM, as cited by MWFC (n 24).
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- 31 Written Answer by Dr Wan Azizah Wan Ismail, Minister of Women, Family and Community Development, to Question 77, 14th Parliamentary Sitting, First Term, First Meeting. 18 July 2018; UNICEF Malaysia (n 7).
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- 34 JKSM, as cited by MWFCD (n 12) 11.
- 35 NRD, as cited by MWFCD (n12) 11.
- 36 Various sources as cited by MWFCD (n 31). (In 2017, child marriages involving a child and an adult numbered 877 cases among Muslims and 968 cases among non-Muslims (with the non-Muslim cases comprising 384 Chinese, 122 Indian, 31 Sabah ethnic groups, 268 Sarawak ethnic groups, 145 Orang Asli in Peninsular Malaysia and 18 others). There is no comparable data given for Muslim marriages where both partners are children). The 2018 data are from DOSM as cited by the Minister of Women, Family and Community Development (n 24). According to the 2018 data, 1,674 were Bumiputera, 100 Chinese, 20 Indians, and 62 of other ethnicities.
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- 41 As of January 2020, only Selangor has amended its state enactment, while the Federal Territories have begun the amendment process. Penang, Sabah, Johor, Melaka and Perak have agreed to amend their laws. All these envisioned amendments include exceptions for those under 18 to marry, pursuant to approval by the Syariah Court and adherence to guidelines. See "Selangor raises minimum age for marriage from 16 to 18," *Sun Daily*, September 6, 2018, <https://www.thesundaily.my/archive/selangor-raises-minimum-age-marriage-16-18-YUARCH576572>; Radzi Razak (n 20).
- 42 See Law Reform (Marriage and Divorce) Act 1976, Part III, Avoidance of marriages where either party is under minimum age for marriage, Section 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 license granted by the Chief Minister under subsection 21(2)."
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- 45 See the Islamic Family Law (Federal Territories) Act 1984, Part II, Marriage, Section 8, Minimum age for marriage: "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."
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- 47 JAKOA. Of the 286 registered child marriages in 2017, 26 involved a child and an underaged spouse.
- 48 NRD, as cited by MWFCD (n 31). There are no comparable data given for Muslim marriages where both partners are children.
- 49 UNICEF (n 8); UNICEF, "115 million boys and men around the world married as children," (press release), June 7, 2019, <https://www.unicef.org/press-releases/115-million-boys-and-men-around-world-married-children-unicef>
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- 59 Child Act 2001, Section 48(4). Others have also pointed to Section 4(1) of the Age of Majority Act 1971 which provides exceptions that "[n]othing in this Act shall affect the capacity of any person to act in the following matters, namely, marriage, divorce, dower and adoption", allowing one to get married without attaining the age of majority (18). See also New Sin Yew, "Amend Age of Majority Act 1971 to end child marriage," *Malaysiakini*, July 12, 2018, <https://www.malaysiakini.com/news/433902>
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- 64 The 2012 Ministry of Health Guidelines on Termination of Pregnancy (TOP) for Hospitals in the Ministry of Health clearly state that termination of pregnancies is legal under specific conditions and is a service provided by government hospitals. <http://www.moh.gov.my/moh/images/gallery/Garispanduan/Guideline%20On%20TOP%20for%20Hospitals%20in%20MOH.pdf>
- 65 A nationwide school-based survey among adolescents in Malaysia in 2017 showed a low level of knowledge of sexual and reproductive health (e.g. of those surveyed who had ever had sex, only 12 per cent said they used a condom). See Institute for Public Health (n 61) 6 and 7.
- 66 *Implementation of Social and Reproductive Health Curriculum (Perlaksanaan Pendidikan Kesihatan Reproductive dan Sosial) (PEERS) through Health Education Curriculum* (Putrajaya: Curriculum Development Centre, Ministry of Education, 2011); UNICEF Malaysia (n 7) 33-34.
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- 72 Ibid, 64.
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- 76 Noraida Endut and Intan Hashimah Mohd Hashim (n 22) 40-44; UNICEF Malaysia (n 7) 66; and Ayako Kohno, Maznah Dahlui, Nik Daliana Nik Farid, Siti Hawa Ali and Takeo Nakayama, "In-depth examination of issues surrounding the reasons for child marriages in Kelantan Malaysia: A Qualitative Study," 2019, <https://bmjopen.bmjjournals.org/content/9/9/e027377>
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- 79 Sisters in Islam and ARROW (n 60) 20.
- 80 Meerah Deiwi Raja Gopal, "Does Illegitimacy Status of Children Matter? A Review on Malaysian Perspectives," *International Journal of Applied Psychology* 2015, 5(4): 109-114. [http://reprints.intimal.edu.my/633/1/Does%20Illegitimacy%20Status%20of%20Children%20Matter\\_.pdf](http://reprints.intimal.edu.my/633/1/Does%20Illegitimacy%20Status%20of%20Children%20Matter_.pdf). Islamic family law stipulates that a Muslim child is considered born out of wedlock if he or she is born less than six months from the date of the parents' marriage. See also "'bin Abdullah' case: Federal Court says illegitimate Muslim child cannot bear father's name," *Star*, February 13, 2020, <https://www.thestar.com.my/news/nation/2020/02/13/bin-abdullah-case-federal-court-says-muslim-child-cannot-bear-father039s-name>
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- 86 The United Nations High Commissioner for Refugees (UNHCR): "Statelessness can be caused by a number of factors such as: discrimination in nationality laws (e.g. racial, religious or gender), conflict between and gaps in nationality laws and State succession. Being undocumented is not the same as being stateless. However, lack of birth registration can put people at risk of statelessness as a birth certificate provides proof of where a person was born and parentage – key information needed to establish a nationality. Risks of statelessness can also arise in situations of displacement." Available at <https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2page-ENG.pdf>. There are pockets of children who remain unregistered at birth, comprising indigenous children living in remote areas, children living in rural and urban poor communities, children not registered as parents' marriage is not registered and children affected by migration (refugee, asylum-seeking, stateless, and undocumented children).
- 87 Documentation of Best Practices & Lessons Learned from the Pilot Outreach Programmes: UNFPA MYS4U302. Federation of Reproductive Health Associations, Malaysia (FRHAM) and UNFPA 2016.

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- 90 UNICEF Malaysia (n 7) 67.
- 91 According to the United Nations High Commissioner for Refugees (UNHCR), as of end April 2020 there were 177,800 refugees and asylum-seekers registered in Malaysia. Some 153,060 were from Myanmar, comprising some 101,280 Rohingyas, 22,470 Chins and 29,310 others from Myanmar. There were some 24,740 refugees and asylum-seekers from other countries, including some 6,650 Pakistanis, 3,640 Yemenis, 3,270 Somalis, 3,270 Syrians, 2,650 Afghans, 1,760 Sri Lankans, 1,230 Iraqis, 770 Palestinians, and others from other countries. Some 68 per cent of refugees and asylum-seekers were men, while 32 per cent were women. There were some 46,450 children below the age of 18. See <https://www.unhcr.org/en-my/figures-at-a-glance-in-malaysia.html>
- 92 Fortify Rights (n 39).
- 93 Penang Stop Human Trafficking Campaign (PSHTC) (n 39).
- 94 UNFPA, UNICEF and UN Women, *Technical Note on Gender-Transformative Approaches in the Global Programme to End Child Marriage Phase II: A summary for Practitioners*, <https://www.unicef.org/media/58196/file>; "The Social-Ecological Model: A Framework for Prevention," Centre for Disease Control and Prevention, 2018, <https://www.cdc.gov/violenceprevention/publichealthissue/social-ecologicalmodel.html#:~:text=CDC%20uses%20a%20four%2Dlevel,%2C%20community%2C%20and%20societal%20factors>.
- 95 UN CEDAW Committee and CRC Committee (n 5). Para 55(f) states that marriages involving those below 18 may be considered in "exceptional circumstances, where the absolute minimum age must not be below 16 years, the grounds for obtaining permission must be legitimate and strictly defined by law and the marriage must be permitted only by a court of law upon the full, free and informed consent of the child or both children, who must appear in person before the court." However, this is much more stringent than what has been proposed by law reform efforts and measures so far in Malaysia, and it is submitted that such a recommendation is not feasible in the context of Malaysia.
- 96 Ibid.
- 97 Ibid, para 55(g).
- 98 Ibid, para 41.
- 99 Ibid.

**“Children and youth should be given the right to a childhood, a time before the busy-ness begins. They should not be thinking about household matters. It is not fair for a youth to carry the heavy responsibility of being a wife and mother.”**

–Nur Mashitah Matusin, 17, a Girl Guide from SMK Agama Kota Kinabalu.

Translated from Bahasa Malaysia:

*“Kanak-kanak dan remaja sepatutnya diberikan hak untuk melalui zaman ‘childhood’, zaman sebelum segala kesibukan bermula, bukan sibuk memikirkan rumah tangga. Tidak wajar seorang remaja menggalas tanggungjawab seorang isteri dan seorang ibu dewasa yang sangat besar.”*

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