

Prepared by



on behalf of



Child Marriage – Briefing Paper for UPR - Malaysia

Why Do Child Marriages Occur?

- Onset of puberty still seen in some communities as a sign of marriageability;
- Marriage seen a way to avoid *maksiat* or sexual immorality (tradition/religious belief);
- Relieve families of financial burden;
- Myth prevails that marriage ensures safety and protection for the girl child;
- There are also reports that underage Rohingya 'mail-order brides' are being smuggled into the country from Myanmar to be wed to refugees. (Stateless Rohingya have been fleeing ethnic violence in Myanmar to seek refuge in Malaysia. The majority of these refugees have been young men who now are looking for brides from their own communities. Malaysia is not party to the UN Convention on the status of refugees 1951. As such, refugees in Malaysia are not protected by any domestic legislation)¹.

Child marriages in Malaysia fall into two categories: marriage between an underage girl and an underage boy; and marriage between an underage girl and an older man.

The legal age of marriage for non-muslims is 18. Non-Muslim females are permitted to marry between the ages of 16 and 18 with the consent of the Chief Minister.² Under Syariah law, Muslim girls can marry at the age of 16 and boys at the age of 18; however persons below 16 can marry if the consent of the Syariah court is obtained.³

Section 375(g) of the Penal Code (Act 574) makes sexual intercourse with a girl with or without her consent when she is less than 16 years of age an offence of statutory rape. Marital rape is not criminalized in Malaysia.

Obtaining accurate data on the incidence of child marriage is difficult due to under-reporting, in particular due to unregistered/unofficial customary marriages. Available statistics on prevalence is piecemeal.

¹ Rohingya refugees import 'mail-order' brides, 17 March 2013, Retrieved from <http://www.aljazeera.com/indepth/features/2013/03/201331291132937760.html>

² Section 10 Law Reform (Marriage and Divorce) Act 1976, which provides that "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)".

³ Section 8 Islamic Family Law (Federal Territories) Act 1984, which provides that "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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The practice of child marriage in Malaysia disproportionately affects girls. Child marriage is a form of discrimination against girls.

The Malaysian government maintains its reservation to Article 16 (2) of CEDAW which 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.”

EXAMPLES OF CHILD MARRIAGES REPORTED IN THE MEDIA

2010: In March 2010, newspapers covered reports about the discovery of an 11 year old girl in a semi-conscious state in a mosque near Batu Caves, Selangor. She had married a 41 year old man on 20 February 2010 after the man reportedly “convinced her father that there was nothing wrong with the marriage.”⁴ This marriage was later annulled by the Kelantan Syariah court; albeit not because of the age of the child, but because Syariah law was not complied with.⁵ Another girl aged 10 was married to a man in his 40s in Kelantan⁶. In October 14-year-old Siti Maryam Mahmud married 23-year-old schoolteacher⁷.

Posted 2012: YouTube video of bride and groom identified only by their first names: Syafiq, a 16-year-old boy and his 14-year-old bride Yana⁸.

2012: 12 year-old Nur Fazira Saad and 19 year-old Fahmi Alias married last week in northern Kedah state after the girl's father agreed to the union stating and an Islamic court granted permission.⁹ The father was quoted as saying “It is better for them to get married rather than doing something that *istak elok* (improper),”¹⁰

2013: Rape charges were dropped when a 13 year-old girl reportedly ‘agreed’ to marry her 40 year-old alleged aggressor. (Mr Masmud, a father of four from his first wife, allegedly raped the girl inside a car parked by a road in Kota Kinabalu, the capital of the Borneo state of Sabah, on February 16). The accused defended his action, saying it was a case of *suka sama suka* (mutual consent). He is under investigation for bribery amid calls to proceed with prosecution of statutory rape charges as the case is one of “public interest”.

RECOMMENDATIONS

- Enact and enforce national legislation that raises the age of marriage to 18 for all, regardless of religion and with no exception.

⁴ *Girl, 11, Married to Husband, 41, found Semi-Conscious*, The Star, 13 March 2010.

⁵ *Malaysia court rules child marriage “illegal*, BBC News, 23 December 2010, Retrieved from: <http://www.bbc.co.uk/news/world-asia-pacific-12066910>

⁶ *Girls, not brides*, The Star, 11 October 2012. Retrieved from: <http://www.sistersinislam.org.my/news.php?item.1115.27>

⁷ Same as 5.

⁸ <http://www.youtube.com/watch?v=-h0yh-rDcjo>

⁹ *Activists slam marriage of 12-year-old in Malaysia, November 2012*. Retrieved from: <http://www.google.com/hostednews/afp/article/ALeqM5ieDPB92voKbub-OiIGxf91TGT6A?docId=CNG.ffd45c8f53e34a40930b4ce3b3c5caed.791>

¹⁰ *Here comes the 12-year-old bride*, 23 November 2012. Retrieved from: <http://thestar.com.my/news/story.asp?file=/2012/11/23/nation/12361340&sec=nation>