

BRUNEI¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 31 May 2017)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Equality of spouses in marriage</p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is ap-</i></p>	<p>Brunei's Constitution does not contain any equality guarantees.²</p> <p>The Bruneian Islamic Family Law Act (BIFLA) is the main codified law that governs matters relating to marriage and family relations of the Muslim majority population in Brunei.³ In the absence of codified laws that sufficiently address a particular matter of personal status of Muslims, according to Section 144 of BIFLA, the rules of any Muslim sect which the court considers valid (<i>Hukum Syara'</i>) apply.⁴ Article 3 of the Constitution declares Islam in accordance with the rules of Shafi'i jurisprudence (<i>fiqh</i>) as the official religion of the State.⁵ The preference for Shafi'i jurisprudence is also reflected in</p>	<p>Case law suggests that when deciding on matters regarding marriage and family relations, judges tend to draw on a number of sources to justify their ruling. These include: (i) the relevant codified family laws; (ii) court precedence both from within Brunei and other similar legal jurisdictions in the Southeast Asia region such as Malaysia; (iii) religious sources, particularly As-Syarabini's <i>Mughni Al-Muhtaj</i>; and (iv) customary norms.⁹</p>	<p>Brunei has the following reservations to CEDAW:¹⁰</p> <ul style="list-style-type: none"> • A general reservation on "those provisions of CEDAW that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam."; 		<p>According to the 2016 UNDP Human Development Report, Brunei ranked 30 on the UNDP Human Development Index but was not ranked on the UNDP Gender Inequality Index.¹³</p>


¹ This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Brunei country table, we would also like to thank Cassandra Rasmussen from Harvard Law School, and Dr. Kerstin Steiner for their inputs in its preparation.

² Brunei's Constitution (1959), http://www.agc.gov.bn/AGC%20Images/LOB/cons_doc/dokumen-dokumen_perlembagaan_2008.pdf

³ Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁴ Section 144 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁵ Article 3 of Brunei's Constitution (1959), http://www.agc.gov.bn/AGC%20Images/LOB/cons_doc/dokumen-dokumen_perlembagaan_2008.pdf

<p><i>plicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>Section 43(1) of the Religious Council and Kadis Courts Act.⁶</p> <p>BIFLA provides for a marital framework based on ‘reciprocal’ or ‘complementary’ rights (as opposed to ‘equal’ rights) between the two spouses, whereby in return for maintenance and protection from her husband, a wife is expected to obey her husband. Thus:⁷</p> <ul style="list-style-type: none"> • Based on Section 61(1) of BIFLA, a husband is obligated to pay his wife maintenance; • Based on Section 61(2) of BIFLA, the wife is obligated to obey the lawful wishes and demands of her husband or risk losing her maintenance. A wife is deemed disobedient (<i>nusyuz</i>) if, without valid reason, she: (i) withholds her association with her husband; (ii) leaves her husband’s home against his wishes; or (iii) refuses to move with him to another home or 		<p>and</p> <ul style="list-style-type: none"> • Specific reservations on Articles 9(2) and 29(1). <p>The Government of Brunei in its 2013 report to the CEDAW Committee explained that:¹¹</p> <ul style="list-style-type: none"> • There is no clear definition of “discrimination of women.” For practical purposes, it may be interpreted to mean treating women differently to 		
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⁹ Tim Lindsey and Kerstin Steiner, “Islam, Law and the State in Southeast Asia: Malaysia and Brunei”, (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 464-493

¹⁰ United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en

¹³ UNDP, “Human Development Report 2016”, Table 5, pp. 214-217, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

⁶ Section 43(1) of the Religious Council and Kadis Courts Act (1955), <http://www.agc.gov.bn/AGC%20Images/LOB/pdf/Cap.77.pdf>; Kerstin Steiner, “Comparative Law in Syariah Courts: A Case Study of Singapore, Malaysia and Brunei”, in *Comparative Law before the Courts*, eds Mads Adenas and Duncan Fairgrieve, (Oxford: Oxford University Press, 2015), p. 601

⁷ Sections 61, 129-130 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

¹¹ Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), paras. 1.1, 15.1.1, 16.2.9, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>place;</p> <ul style="list-style-type: none"> • Section 129 of BIFLA penalises a husband who fails to give proper justice to his wife; and • Section 130 penalises a wife who willfully disobeys an order of her husband. <p>Marriage and family relations of Brunei's non-Muslim minority communities are governed by laws relating to civil marriages or their own laws and customs.⁸</p>		<p>men to the detriment of women. While recognising that there may be customary and traditional practices that distinct the role of women and men, the Bruneian government takes a positive approach towards to address discrimination including by providing equal access to education, economic resources and employment;</p>		
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⁸ For instance, the Marriage Act (1948), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap076.pdf; Chinese Marriage Act (1955), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap126.pdf; Married Woman Act (1999), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap190.pdf; Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 16.1, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

			<ul style="list-style-type: none">• Women are accorded the same legal status as men in civil matters. They have the same rights to enter into contracts, administer property and receive equal treatment in courts;• With regard to Muslim women, according to the Syariah Courts Act, Muslim women have equal rights to appear before the Court, to sue, be sued, give evidence and be treated equally with men in all legal proceedings of the Courts and		
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			<p>tribunals.¹² Islam gives equal rights to women to conclude contracts and administer property and to move freely within the limits prescribed by <i>Shari'ah</i>; and</p> <ul style="list-style-type: none"> To further promote awareness of the rights of Muslim women, compulsory pre-marital courses are conducted to make them aware of their rights including the obligation for the husband 		
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¹² There are codified limitations for the equal treatment of the genders when giving evidence. Section 106 of the Syariah Courts Evidence Order (2001) prescribes the number of witnesses required to prove an offence, and authorises the substitution a single male Muslim witness by two female Muslim witnesses, except in certain circumstances where no substitution is allowed, [http://www.agc.gov.bn/AGC%20Images/LOB/Order/MNOP/Syariah%20Courts%20Evidence%20Order,%202001%20\(S%2063\).pdf](http://www.agc.gov.bn/AGC%20Images/LOB/Order/MNOP/Syariah%20Courts%20Evidence%20Order,%202001%20(S%2063).pdf). See Tim Lindsey and Kerstin Steiner, "Islam, the Monarchy and Criminal Law in Brunei: The Syariah Penal Code Order, 2013", (Griffith Law Review, 2017), for the relevance to the new Syariah Penal Code Order.

			to provide maintenance (<i>nafkah</i>) for children and to retain their own family name. In addition, Ministry of Religious Affairs (MORA) conducts annual programmes to disseminate information on the rights of Muslim women.		
<p>Minimum and equal legal age for marriage</p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of mar-</i></p>	<p>The BIFLA does not expressly provide for a minimum legal age for marriage.¹⁴</p>		<p>The Government of Brunei in its 2015 report to the Committee on the Convention on the Rights of the Child informed that “there are no plans to increase the</p>		<p>According to the 2015 Brunei Statistical Yearbook, 4% of Muslims who were married in 2015 were below 19, with 6% and 2% of brides and grooms,</p>

¹⁴ Brunei State party report, U.N. Doc. CRC/C/BRN/2-3 (2015), para. 65, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx#sthash.cDNPOz37.dpuf>

<p><i>riage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p>Applicable CEDAW Provision Article 16(2) Paras. 36-39 GR21</p>			<p>minimum age of marriage.”¹⁵</p>		<p>respectively, being below 19.¹⁶</p> <p>According to the 2015 Brunei Key Indicators, the median age at first marriage for brides in 2015 was 26.3 (2013: 25.6) and grooms was 27.6 (2013: 27.3).¹⁷</p>
<p>Women’s consent to marriage</p> <p><i>Is a marriage valid without the woman’s consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women’s rights or otherwise? Is it mandatory to register a marriage?</i></p>	<p>Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, <i>ijbar</i> marriages are prohibited.</p> <p>Section 8(3) of the BIFLA provides that a marital guardian (<i>wali</i>) may only solemnise the marriage of a prospective bride after she has given her consent.¹⁸</p> <p>Section 12 provides that a marriage is void and cannot be officially</p>		<p>The Government of Brunei in its 2013 report to the CEDAW Committee reiterated that Muslim women have the same right as men to choose a spouse with free consent. It is an offence for any</p>	<p>Muslim marriages must be solemnised by a state appointed official who is authorised to conduct the solemnisation of Muslim marriages (<i>jurunikah</i>). The <i>jurunikah</i></p>	

¹⁵ Brunei State party report, U.N. Doc. CRC/C/BRN/2-3 (2015), para. 66, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx#sthash.cDNPOz37.dpuf>

¹⁶ Brunei Department of Statistics, “Brunei Darussalam Statistical Yearbook 2015”, Table 1.18, p. 26, http://www.depd.gov.bn/DEPD%20Documents%20Library/DOS/BDSYB/BDSYB_2015.pdf

¹⁷ Brunei Department of Statistics, “Brunei Darussalam Key Indicators 2015”, Vital Statistics, p. 10, http://www.depd.gov.bn/DEPD%20Documents%20Library/DOS/BDKI/BDKI2015_R2.pdf

¹⁸ Section 8(3) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

<p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>registered unless both parties to the marriage have consented to it.¹⁹</p> <p>Section 13(2)(b) provides that a divorced woman, once she has passed the waiting period after a divorce (<i>iddah</i>) must give “clear consent” to remarry.²⁰</p> <p>Section 35(a) makes it an offence for any person to use any force, threat, or deception to compel a person to marry against his or her will.²¹</p> <p>The mandatory registration of marriages is provided for in Section 24 of the BIFLA. Non-registration of a marriage does not necessarily invalidate the marriage. However, the failure to register a marriage is an offence.²²</p>		<p>person to use any force, threat or deception to compel a person to marry against his/her will.²³</p>	<p>will only solemnise a marriage after both the prospective bride and her <i>wali</i> have consented to the marriage.²⁴</p> <p>The <i>Ta’liq</i> Certificate is a document containing the vows expressed by a husband after solemnisation of the marriage. A breach of one or more of the vows may give rise to a wife’s entitlement to seek a divorce. The</p>	
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¹⁹ Section 12 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf
²⁰ Section 13(2)(b) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf
²¹ Section 35(a) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf
²² Sections 24, 32, 125, 139 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf
²³ Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 16.2.3, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>
²⁴ Section 8(4) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

				<p><i>ta'liq</i> may be a standard one or otherwise.²⁵</p> <p>Upon registration of a marriage, the Registrar of Muslim Marriages, Divorces, Annulments and <i>Ruju'</i> (Registrar) will issue copies of the following three documents in a form prescribed by law to both spouses: (i) Marriage Certificate; Marriage Card; and <i>Ta'liq</i> Certificate.²⁶</p>	
Women's capacity to enter into marriage	Regardless of her age, a prospective bride requires the consent of a marital guardian (<i>wali</i>) to enter into			Both spouses may mutually agree to	

²⁵ Sections 2, 21(1) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

²⁶ Sections 21, 22 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

<p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>	<p>marriage. The guardian must be a Muslim and a male relative of the prospective bride (<i>wali nasab</i>).²⁷</p> <p>A <i>jurunikah</i> who has been authorised to give away a woman in marriage may solemnise the marriage of a woman who does not have a <i>wali nasab</i>. In addition, if the prospective bride's <i>wali</i> opposes the marriage, she may seek the authorisation of a judge to get married. The judge may authorise the marriage after determining that the <i>wali</i> has refused consent without reasonable grounds.²⁸</p> <p>Section 35(b) of BIFLA makes it an offence for any person who uses any force, threat or deception to prevent a man who has attained the age of 18 or a woman who has attained the age of 16 from entering into a valid marriage.²⁹</p> <p>Section 135 makes it an offence for any person who: (i) solemnises or makes any regulation for the solemnisation of a marriage in contravention of BIFLA; or (ii) wilfully officiates any invalid marriage under BIFLA.³⁰</p>			<p>stipulate conditions of their marriage in the <i>ta'liq</i>. The <i>ta'liq</i> provisions must be registered by the Registrar in the Marriage Register.³¹</p>	
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²⁷ Sections 2, 12 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf
²⁸ Sections 8(7), 12(b) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf
²⁹ Section 35(b) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf
³⁰ Section 135 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

<p>Polygamous marriages</p> <p><i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>A Muslim man may marry up to four wives at one time.</p> <p>Section 13(1) of BIFLA prohibits a woman from entering into a polygamous marriage.³²</p> <p>Section 23(1) of the BIFLA prohibits a man from entering into a polygamous marriage except with the written permission of a judge. However, Section 23(1) also provides that a man may officially register the polygamous marriage which was entered into without a judge's permission subject to a penalty (fine, imprisonment or both) under Section 123.³³</p> <p>An application for permission must be accompanied by a declaration by the man stating: (i) the grounds on which the proposed marriage is claimed to be just and necessary; (ii) his present income, particulars of his commitments and ascertainable financial obligations and liabilities; (iii) the number of his dependants including persons who would be his dependants as a result of the proposed marriage; and (iv) whether the consent or views of the existing wife have</p>				
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³¹ Section 21 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf
³² Section 13(1) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf
³³ Sections 23(1), 123 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

	<p>been obtained or not regarding the proposed marriage. The judge may grant permission if he is satisfied that the application would be approved in accordance with <i>Hukum Syara</i>.³⁴</p> <p>Section 23(4) of BIFLA makes it mandatory for the polygamous marriage to be solemnised and registered in accordance with the procedure set out with regard to a marriage.³⁵</p> <p>Section 123 makes it an offence for a man to enter into a polygamous marriage without the written permission of a judge.³⁶</p>				
<p>Divorce rights</p> <p><i>Is there equal right to divorce between women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral</i></p>	<p>The BIFLA provides for four main mechanisms for divorce: (i) unilateral repudiation (<i>talaq</i>); (ii) conditional divorce (<i>tal'iq</i>); (iii) judicial divorce; and (iv) redemptive divorce (<i>cerai tebus talāq or khul'</i>). The marriage may also be annulled.³⁷</p> <p>A husband may unilaterally repudiate the marriage, which must generally be effectuated in court. A husband may pronounce <i>talaq</i></p>	<p>On the ratification of pronouncements of <i>talāq</i> outside the court.⁴⁴</p> <ul style="list-style-type: none"> In the case of <i>Yusrin bin Jurah v Hj Mariani binti Ketua Juurulaki Awang Hj Abdul Rahman @ Duraman</i>, the court stated that the five elements of a valid pronouncement of <i>talāq</i> are: (i) the presence of the person pronouncing the 	<p>The Government of Brunei in its 2013 report to the CEDAW Committee explained that a Muslim woman may dissolve her marriage on various grounds such as: (i) conflicts</p>	<p>The registration of divorce is mandatory, a standard procedure must be followed (e.g. a divorce cannot be registered without a final court order) and a divorce</p>	

³⁴ Sections 23(2), 23(3) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

³⁵ Sections 23(2), 23(3) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

³⁶ Section 23(4) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

³⁷ Sections 40-51 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

<p><i>divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p>Applicable CEDAW Provision Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>outside the court and without the permission of the court. However.³⁸</p> <ul style="list-style-type: none"> Section 55 of BIFLA provides that he is required to report the pronouncement of the <i>talāq</i> to the Court within seven days of the pronouncement; and Section 124 makes it an offence for a man to divorce his wife by pronouncement of <i>talāq</i> in any form outside the court and without the court's permission and prescribes a penalty (fine, imprisonment or both) for the offence. <p>A married woman may, if entitled to a divorce pursuant to the terms of her <i>ta'liq</i> certificate made upon a marriage, apply to the Court to pronounce that such divorce has taken place. The Court must, before pronouncing the divorce, examine the application and make an inquiry as to the validity of the divorce. If the court is satisfied that the divorce is valid in accordance with <i>Hukum Syara'</i>, it must pronounce and record such divorce.³⁹</p>	<p><i>talāq</i> (the husband); (ii) the phrase used; (iii) the intention i.e. whether the <i>talāq</i> was pronounced voluntarily; (iv) the authority to pronounce the <i>talāq</i>; (v) the subject of the <i>talāq</i> (the wife). It is noteworthy that in this case neither party produced witnesses to the purported <i>talāq</i>. The court found that all five elements of the <i>talāq</i> was met in this case and ratified the divorce;</p> <ul style="list-style-type: none"> In the case of <i>Serjan Roslan bin Hj Matzinin v Dayangku Rosidah binti Pengiran Omar</i>, the husband claimed that he could not remember pronouncing <i>talāq</i> outside the court. At the time of his purported pronouncement of <i>talāq</i>, he was so angry that he had lost awareness and was not in control of his actions. After reiterating the conditions that would render the pronouncement of <i>talāq</i> invalid (insanity, duress, etc.), the court held that: (i) being angry in itself does not 	<p>between the spouses (<i>syiqaq</i>); (ii) causing violence to a wife (<i>dharar syari'e</i>); (iii) non-compliance of matrimonial requirements (<i>fasakh</i>); and (iv) giving right of divorce to woman in marriage contract (<i>tal'iq</i>).⁴⁷</p>	<p>certificate will be issued to both parties.⁴⁸</p>	
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⁴⁴ Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 464-468

³⁸ Sections 41-42, 55, 124 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

³⁹ Section 45 of the Islamic Family Law Act (2001), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁴⁷ Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 16.2.4, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>A wife's valid grounds for seeking a judicial divorce by way of <i>fasakh</i> include her husband's: ((i) prolonged absence for more than one year; (ii) detention for a year or more; (iii) failure to provide maintenance for more than four months; (iv) imprisonment of more than three years (wife may seek divorce after one year); (v) failure to perform marital obligations for over a year; (vi) impotence of which the wife was not aware; and (vii) incurable or severe physical or mental illness provided certain conditions are met.⁴⁰</p> <p>In addition, a wife may seek judicial divorce by way of:⁴¹</p> <ul style="list-style-type: none"> • <i>Syiqaq</i> if she has been mistreated or assaulted by her husband, or if he has caused harm to her body, modesty, or property by words or actions. If the wife's claim is proven and reconciliation between the spouses is impossible, the court will grant a divorce. If her claim is not proven and she insists on her claim, the couple will be required to undergo a reconciliation process. If after at least 	<p>render the pronouncement of <i>talāq</i> invalid; (ii) only in very cases would anger be so severe that it invalidates the pronouncement of <i>talāq</i> because the person is analogous to an insane person; and (iii) the burden of proof is on the person making the claim that the pronouncement of <i>talāq</i> is invalid because it was said in a state of anger (in this case the husband). The court found that the husband had failed to meet the burden of proof and ratified the divorce;</p> <ul style="list-style-type: none"> • In the case of <i>Mohd bin Asgar v Maria Pacsa binti Abdullah</i>, the wife (a Philippine national) denied that a divorce had taken place. On the other hand, the husband (a Bruneian) claimed that he had divorced her over the telephone while she was back in the Philippines. The court found that all five elements of the valid pronouncement of <i>talāq</i> were met and ratified the 			
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⁴⁸ Sections 54-56 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁴⁰ Section 46 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁴¹ Sections 43-44 of the Islamic Family Law Act (2001), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

	<p>three rounds of reconciliation and two different panels of two arbitrators (<i>hakam</i>) each have failed, the court will grant a divorce; or</p> <ul style="list-style-type: none"> • <i>Dharar Syar'ie</i> if her husband: (i) habitually assaults her or makes her life unbearable through cruelty; (ii) associates with "women of evil repute," or leads an "infamous life"; (iii) attempts to force her to lead an immoral life; (iv) disposes of her property or denies her from exercising legal rights over it; (v) prohibits her religious practice; or (vi) does not treat her equally with other wives in the event her husband is in a polygamous marriage. <p>A wife may seek redemptive divorce (<i>ceras tebus talāq</i> or <i>khul'</i>), whereby she is granted a divorce in exchange for a mutually-agreed compensation to be paid to the husband. If both parties are unable to reach a mutual agreement on the amount of compensation to be paid by the wife, the court may assess the amount in accordance with <i>Hukum Syara'</i>, having regard to the status and financial means of the spouses, and to the dower (<i>mas</i></p>	<p>divorce.</p> <p>On <i>ta'liq</i>.⁴⁵</p> <ul style="list-style-type: none"> • In the case of <i>Hjh Siti Tiewa binti Awh Hj Iring v Hj Reduan bin Lalal</i>, the couple had married in Malaysia and subsequently registered their marriage in Brunei. The husband then left the wife to return to Malaysia and the wife filed for divorce. The husband failed to appear in court for the hearing of the divorce case. The husband had pronounced a <i>ta'liq</i> at the time of marriage that if he leaves his wife and do not provide for her or if he does not have intercourse with her for four months or if he commits a wrong on his wife's body or soul or honour or property and his wife lodges a complaint with a <i>Shari'ah</i> judge who finds that the complaint valid, he will be deemed to have pronounced <i>talāq</i> upon her. Although the wife had applied for divorce on the basis that the husband had failed to provide her with maintenance for more the 			
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⁴⁵ Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 486-492

	<p><i>kahwin</i> or <i>mahr</i>). Once the amount of compensation has been fixed and the husband still refuses to the divorce, the court will grant the divorce.⁴²</p> <p>The mandatory registration of a divorce is provided for in BIFLA. The failure to register a divorce is an offence.⁴³</p>	<p>four months, the court examined the different elements of <i>ta'liq</i> and determine that all had been satisfied. The court proceeded to grant a <i>ta'liq</i> divorce;</p> <ul style="list-style-type: none"> • In the case of <i>Noor Aini binti Hj. Adam v Hj. Mohd. Idris bin Hj. Mohd Yusof</i>, the wife applied for a <i>ta'liq</i> divorce on the ground of unpaid maintenance. The court held that there were three elements to the <i>ta'liq</i>: (i) the husband had left the wife for more than four months without hi or a representative providing maintenance; (ii) the wife had complained to the judge; and (iii) the wife had sworn that she was not disobedient (<i>nusyuz</i>). The court found that all elements of the <i>taliq</i> was met and granted a divorce; • In the case of <i>Siti R[...] binti Hj. M[...] v M[...] A[...] bin I[...]</i>, the husband had pronounced a <i>ta'liq</i> that if he hits is his wife with a blow that causes harm and is not 			
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⁴² Section 48 of the Islamic Family Law Act (2001), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁴³ Sections 54-55, 124-125, 139 of the Islamic Family Law Act (2001), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

		<p>appropriate and she reports the incident to the judge and asks for a divorce, then if the report is upheld, she will ultimately be divorce. The court held that the wife bore the burden of proving that her husband had in fact harmed her. The wife produced a photo taken at the police station the day the abuse occurred showing her right eye swollen and red and also a doctor's report at the Accident and Emergency Department of the hospital confirming her injuries. The court found that all elements of the <i>ta'liq</i> was met and granted the divorce.</p> <p>On judicial divorce:⁴⁶</p> <ul style="list-style-type: none"> • In the case of <i>Ahjasiah binti Hj. Anpal v Samsudin bin Osman</i>, the wife filed for divorce on the basis that her husband had failed to financially provide for her. The husband in turn claimed that his wife was disobedient (<i>nusyuz</i>). After examining the evidence provided by both parties, the court found that the husband had failed 			
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⁴⁶ Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 482-485

		<p>to provide his wife with maintenance and that he has also failed to prove any of his allegations that his wife was disobedient (<i>nusyuz</i>), which was a “serious matter”;</p> <ul style="list-style-type: none"> In the case of <i>Serbanun binti Mumin v Mat Jani bin Sulaiman</i>, another case where a wife filed for divorce on the basis that her husband had failed to financially provide for her, the court proceeded to hear the case despite the absence of the husband. The court considered the evidence provided by the wife and also required her to swear an oath that the evidence she provided was the trust as the husband was not present. The wife swore the oath and the court granted the divorce. 			
<p>Women’s financial rights after divorce</p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the</i></p>	<p>Generally, upon divorce, a woman may be entitled to: (i) financial maintenance during the waiting period after the divorce (<i>iddah</i>); (ii) a consolatory gift (<i>mut’ah</i>); and (iii) a share of the matrimonial assets (<i>harta sepencarian</i>).</p>	<p>In the case of <i>Azlan bin Idris v Nur’ Ainaa binti Abdullah ginda a. Carthinee Anna</i>,⁵⁹ the husband had asked the court to ratify his pronouncement of <i>talāq</i>. After undergoing mediation, the husband agreed to</p>	<p>The Government of Brunei in its 2013 report to the CEDAW Committee confirmed that</p>		

⁵⁹ Tim Lindsey and Kerstin Steiner, “Islam, Law and the State in Southeast Asia: Malaysia and Brunei”, (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 469-470

<p>woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (<i>iddah</i>)? Is she entitled to a consolatory gift or compensation upon divorce (<i>mut'ah</i>)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p>Under BIFLA, a woman may be entitled to financial maintenance during the waiting period after the divorce (<i>iddah</i>). The maintenance amount is dependent on the means and needs of the parties. The <i>iddah</i> period is generally three months.⁴⁹</p> <p>A woman loses her right to financial maintenance during the <i>iddah</i> period if she is found to be disobedient (<i>nusyuz</i>). She also loses her right to financial maintenance that may have been mutually agreed upon between her and her former husband when she remarries.⁵⁰</p> <p>Section 57 of BIFLA provides that upon divorce, in addition to maintenance a woman may apply to the court for a consolatory gift (<i>mut'ah</i>). The amount of <i>mut'ah</i> compensation is dependent on what the court considers fair and just in accordance with <i>Hukum Syara</i>.⁵¹</p> <p>Sections 59 of BIFLA mandates the</p>	<p>pay the wife financial maintenance during the three months <i>iddah</i> waiting period. The court ratified the agreement despite the fact that wife was not entitled by law to the maintenance. The court: (i) opined that while it was not compulsory (<i>wajib</i>) for the husband to provide financial maintenance, the court nevertheless thought it was necessary (<i>harus</i>). It also considered it a fair compromise as the wife had not claimed <i>mut'ah</i> compensation and the husband had agreed to pay the financial maintenance.</p> <p>In the case of <i>Pg Hj M[...] bin Pg. Hj. [...] v Dayang H [...] binti Hj A[...]</i>,⁶⁰ the couple could not agree on the amount of financial maintenance during the <i>iddah</i> period and the <i>mu'tah</i> compensation due to the wife. They also could not agree on the amount of child maintenance. The husband: (i) was prepared to pay a lower</p>	<p>upon divorce, a Muslim woman is entitled to: (i) dowry (<i>mahr</i>); (ii) a consolatory gift (<i>mut'ah</i>); (iii) maintenance during the three-month <i>iddah</i> period; (iv) a share in the matrimonial property on the basis of the joint matrimonial property (<i>harta sepencarian</i>).⁶¹</p>		
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⁴⁹ Sections 57, 67, 72 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf; Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 16.2.4, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁵⁰ Section 67 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁵¹ Section 57 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁶⁰ Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 470-473

⁶¹ Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 16.2.4, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>court, after granting a divorce, to order any assets acquired by the parties during the marriage (<i>harta sepencarian</i>) either through their joint efforts or by the sole efforts of one party to the marriage to be divided between them or any such assets to be sold and the proceeds of any such sale to be divided between the parties.⁵²</p> <p>Where the assets were acquired by the joint efforts of the parties, in accordance with Section 59(2), the court must have regard to: (i) the extent of the contributions made by each party by way of money, property or labour towards acquiring the assets; (ii) any debts owed by either party that were contracted for their joint benefit; and (iii) the needs of any minor children of the marriage. Subject to these considerations, the Court shall order equal division.⁵³</p> <p>Where the assets were acquired by the sole efforts of one party to the marriage, in accordance with Section 59(4), the court must have regard to: (i) the extent of the contributions made by the party who did not acquire the assets, to the welfare of the family by looking</p>	<p>amount of financial maintenance during the <i>iddah</i> period but the wife demanded more; (ii) had refused to pay <i>mut'ah</i> compensation to his wife stating that he had provided for her during their marriage and that should be sufficient; and (iii) was prepared to pay a lower amount of child maintenance but the former wife demanded more. The court held that: (i) the amount suggested by the husband was appropriate based on his financial means at current times (and not at the time of the marriage.); (ii) <i>mu'tah</i> was obligatory for God-fearing husbands to pay to their ex-wives and in determining the amount to be paid, the court is to use its discretion based on the husband's means, the character of the wife, the status or standing of the couple in the community and the duration of the marriage; (iii) a father has a duty to pay a custodian mother maintenance for the children. Referring to a similar Malaysian case that cited the principle that "no mother shall be made to suffer harm on account of</p>			
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⁵² Section 59 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁵³ Section 59(2) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

	<p>after the home or family; and (ii) the needs of any minor children of the marriage. Subject to these two considerations, the court may divide the assets or the proceeds of sale in such proportions that the Court thinks reasonable, but in any case the party by whose efforts the assets were acquired must receive a greater proportion of the assets.⁵⁴</p> <p>Section 59(5) of BIFLA defines assets acquired during a marriage to include assets owned before the marriage by one party that have been substantially improved during the marriage by the other party or by their joint efforts.⁵⁵</p> <p>Section 60 of BILFA provides that upon divorce, a woman or man may apply to the court for an order against her former husband or his former wife, as the case may be, relating to a division of assets jointly acquired by them during their marriage.⁵⁶</p> <p>Following a divorce, a father is responsible for the financial maintenance of his children. If the mother is the custodian, he is obligated to pay her maintenance to</p>	<p>her child, nor any father on account of his”, the court held that the amount a father is obligated to pay a custodian mother depended on the father’s means and proceeded to agree with the amount suggested by the father in this case. The court also held that some of the claims made by the mother in this case such as insurance for the children and “snack food” were not obligatory child maintenance to be paid by the father and advised the mother to pay the eldest child’s school fees “in an alternative form”.</p>			
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⁵⁴ Section 59(4) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁵⁵ Section 59(5) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁵⁶ Section 60 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

	<p>cover the expenses of his children. Both daughters and sons are entitled to maintenance until they are 18 but the court may extend the maintenance period as it thinks reasonable to enable them to pursue further or higher education or training.⁵⁷</p> <p>The court may order the attachment of the earnings of a former husband/father for the payment of court-ordered maintenance if it thinks reasonable to do so. The former husband/husband and his employer are legally obliged to follow the requirements of the attachment of earnings order.⁵⁸</p>				
<p>Custody of Children</p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon re-marriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p>	<p>A mother has priority right over the custody of her children until they are capable of differentiating a matter (<i>mumaiyiz</i>). Thereafter, the child is entitled to choose to live with the mother or father, unless the court orders otherwise.⁶²</p> <p>Despite a mother's priority right over the custody of her children, courts have to decide custody cases based on the welfare of the child. When making a determination, the court must have</p>	<p>In the case of <i>Pg Hj M[...] bin Pg. Hj. [...] v Dayang H [...] binti Hj A[...]</i>,⁶⁶ the court held that a mother has priority right over her children who has not attained the age of discernment (<i>mumaiyiz</i>) during her marriage and after a divorce unless she loses this right as a result of one of the conditions stated by law. The court also added that based on <i>fiqh</i>, children usually become <i>mumaiyyaz</i> at seven or eight.</p>	<p>The Government of Brunei in its 2013 report to the CEDAW Committee confirmed that: (i) a mothers has priority right over the custody of her children if she fulfils the conditions and qualifications</p>		

⁵⁷ Sections 75, 76(3), 82 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁵⁸ Sections 84-87 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁶² Sections 88(1), 91(2) of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁶⁶ Tim Lindsey and Kerstin Steiner, "Islam, Law and the State in Southeast Asia: Malaysia and Brunei", (New York, NY: I.B. Tauris, Vol. III, 2012), pp. 470-471

<p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>regard to: (i) the wishes of the parents of the child; and (ii) the wishes of the child where the child is of an age where she or he is able to express hers or his own opinion.⁶³</p> <p>A mother loses custody of her child if she: (i) marries a man who is not related to the child but the regains custody when she divorces; (ii) is of bad conduct in a gross and open manner; (iii) changes her place of residence (with the exception of the mother's birth place) with the intention of preventing the father from exercising the necessary supervision over the child; (iv) becomes an apostate; or (v) neglects or abuses the child.⁶⁴</p> <p>A court is mandated to grant the custodian the right to decide all questions relating to the welfare, guidance, upbringing and education of the child subject to whatever conditions that the court thinks fit to impose. These conditions may include: (i) conditions relating to the place of residence of the child and the manner of the child's education; (ii) provision for the child to be in the temporary care and control of a</p>	<p>As the eldest of the three children in this case was five, the court awarded the mother custody of the children as the father had not succeeded in establishing that the mother fell under any of the conditions stated by law that would lead to her losing her priority right to custody of the children. The father was given visitation rights for the youngest child and was allowed to take the eldest two home overnight from 5 p.m. to 8 p.m. the day following the visit.</p>	<p>imposed by law; and (ii) the child is entitled to choose to live with either parent once the child reaches the age when she or he is capable of differentiating a matter.⁶⁷</p>		
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⁶³ Section 93 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf;

⁶⁴ Section 90 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf;

⁶⁷ Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 16.2.5, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>person other than the custodian; (iii) provision for the child to visit the non-custodian parent or any other member of the family as the court thinks reasonable; (iv) provision for the non-custodian parent to have access to the child at such times and such frequency as the court thinks reasonable; or (v) prohibition of the custodian to take the child outside Brunei.⁶⁵</p>				
<p>Guardianship of Children</p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>A father has priority right over the guardianship of his children followed by the paternal grandfather, the executors of the father or grandfather, the executors of their executors and finally a <i>Shari'ah</i> judge or a person entrusted by a <i>Shari'ah</i> judge.⁶⁸</p> <p>A mother may only be appointed as guardian of her children by the court in the absence of any other guardian as specifically stipulated by law. In such case, the court may also appoint a joint guardian.⁶⁹</p>				

⁶⁵ Section 94 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf;

⁶⁸ Section 95 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf;

⁶⁹ Sections 97-99 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf.

<p>Family Planning</p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>Abortion is strictly prohibited by law, except when it is necessary to save the pregnant woman's life.⁷⁰</p>		<p>The Government of Brunei in its 2013 report to the CEDAW explained that the term "birth spacing" is preferable to "family planning" and "birth spacing" services are available in both public and private hospitals and clinics, with guidance on birth spacing being provided by medical practitioners on a one-to-one basis.⁷¹</p>		<p>According to World Bank data, the total fertility rate decreased from 6.5 children per woman in 1960 to 1.9 in 2015.⁷²</p>
<p>Personal rights of spouses</p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive vari-</i></p>	<p>Brunei's Constitution does not contain any guarantees on personal freedoms (travel, movement, etc.) as well as the right to work.⁷³</p> <p>The BIFLA potentially restricts the</p>				<p>According to World Bank data, female labour force participation increased from</p>

⁷⁰ Sections 158-164 of the Syariah Penal Code (2013), http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf

⁷¹ Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 12.12.3, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁷² World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

⁷³ Brunei's Constitution (1959), http://www.agc.gov.bn/AGC%20Images/LOB/cons_doc/dokumen-dokumen_perlembagaan_2008.pdf

<p><i>ous health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>personal rights of a Muslim wife as a result of the maintenance-for-obedience legal framework provided for under the law. Thus:⁷⁴</p> <ul style="list-style-type: none"> Section 61 of BIFLA has the effect of generally obligating a wife to obey her husband, including ensuring: (i) his conjugal rights are met;⁷⁵ (ii) she does not leaving the marital home against the husband's wishes;⁷⁶ or (iii) she moves with the husband to another home or place in accordance with his wishes. Otherwise she risk losing her maintenance; Section 130 subjects a wife who willfully disobeys an order of her husband to a fine of up to 500 Bruneian dollars for her first offence and up to 1000 Bruneian dollars for her second and subsequent offence. 			<p>45% in 1990 to 51% in 2016.⁷⁷ During the same period, the male labour force participation decreased from 83% to 75%.⁷⁸</p> <p>According to the 2016 UNDP Human Development Report:⁷⁹</p> <ul style="list-style-type: none"> 68% of women over 25 have at least some secondary education as compared to 70% of men of the same age group; and
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⁷⁴ Sections 61, 130 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf.

⁷⁵ Section 199 of the Syariah Penal Code Order (2013) makes it a criminal offence to prevent a married couple from cohabiting, http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf. See also Tim Lindsey and Kerstin Steiner, "Islam, the Monarchy and Criminal Law in Brunei: The Syariah Penal Code Order, 2013", (Griffith Law Review, 2017)

⁷⁶ Section 201 of the Syariah Penal Code Order (2013) makes it a criminal offence to entice a women to leave her marital home, http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf. See also Tim Lindsey and Kerstin Steiner, "Islam, the Monarchy and Criminal Law in Brunei: The Syariah Penal Code Order, 2013", (Griffith Law Review, 2017)

⁷⁷ World Bank, "Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

⁷⁸ World Bank, "Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

⁷⁹ UNDP, "Human Development Report 2016", Tables 5, 9, pp. 214-217, 230-233, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

					<ul style="list-style-type: none"> The ability of females and males aged 15-24 who are able to read and write a short simple sentence is almost universal.
<p>Inheritance rights</p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p> <p>Applicable CEDAW Provision</p>	<p>Generally, inheritance rights between women and men are unequal. Brunei does not have codified laws relating to inheritance rights of Muslims. Inheritance rights of Muslims are based on <i>Shari'ah</i>.⁸⁰ In many instances, for example in the cases involving widows and widowers as well as siblings, a woman is entitled to half the share of a man.⁸¹</p>		<p>The Government of Brunei in its 2013 report to the CEDAW Committee explained that Muslim women are entitled to their inheritance rights, although generally, their share of the estate are not equal to that of men. The general rule, however, is not</p>		

⁸⁰ Mohammad Arif Sabtu and Siti Mashitoh Mahamood, "Consensual Agreement Method in Muslim Estate Distribution: A Study in the Shariah High Court Brunei Darussalam", (Journal of Shariah Law Research, 2:1, 2017), p. 23, http://e-journal.um.edu.my/filebank/published_article/10770/2.%20Kaedah%20Muafakat%20dalam%20Pembahagian%20Harta%20Pusaka%20Islam.pdf

⁸¹ Nadjma Yassari, "Intestate Succession in Islamic Countries", in *Comparative Succession Law: Vol. II: Intestate Succession*, eds. Kenneth Reid, Marius de Waal, Reinhard Zimmermann, (Oxford: Oxford University Press, 2015), p. 424

<p>Paras. 34-35 GR21 Paras. 49-53 GR29</p>			<p>an absolute one because.⁸²</p> <ul style="list-style-type: none"> • There is nothing to preclude beneficiaries from mutually agreeing to equal shares of the estate; and • <i>Shari'ah</i> encourages the making a will or gift in favour of women. 		
<p>Violence against women in the family</p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domes-</i></p>	<p>Brunei has not adopted specific legislation to criminalise acts of domestic violence. However, the BIFLA contains provisions on "<i>dharar Syar'ie</i>" that are specifically applicable to domestic violence.</p> <p>Section 60A of BIFLA defines <i>dharar Syar'ie</i> as the commission of any of the following acts:⁸³</p> <ul style="list-style-type: none"> • wilfully or knowingly causing, or 		<p>The Government of Brunei in its 2013 report to the CEDAW Committee explained that:⁹⁰</p> <ul style="list-style-type: none"> • Provisions in BIFLA relating to <i>dharar Syarie</i>' 		<p>According to the Bruneian government, statistics show that the number of domestic violence cases decreased from 158 cases in 2005 to 119 cases in 2008.⁹¹</p>

⁸² Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), para. 16.2.7, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁸³ Section 60A of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁹⁰ Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), paras 3.7.1-3.7.5, 4,1, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁹¹ Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), Table 7.9, p. 72, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<p><i>tic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u> GRs 12 & 19 Para. 40 GR21</p>	<p>attempting to cause, a family member in fear of hurt;</p> <ul style="list-style-type: none"> • causing hurt to a family member by such act which is known or ought to have been known would result in hurt; • compelling the family member by force or threat to engage in any conduct or act from which she or he has a right to abstain; • wrongfully confining or restraining a family member against her or his will; • continual harassment with intent to cause distress, annoyance or humiliation, or knowing that it is likely to cause distress, annoyance or humiliation, to a family member; or • causing destruction, damage or loss of property of a family member, or causing financial loss to a family member. <p>Sections 60B and 60C of BIFLA mandate a court to issue a protection order or expedited protection order restraining a</p>		<p>were added to the law in order to explicitly define domestic violence and better protect domestic violence victims; and</p> <ul style="list-style-type: none"> • The Department of Community Development (DCD) run shelter homes for victims of domestic violence while other government agencies and NGOs provide other support services for the victims, including counselling services for both victims and 	<p>According to a media report, victims of domestic violence refrain from reporting the abuse to the relevant authorities for fear of bringing shame to the family and the community.⁹²</p>
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⁹² Azlan Othman, "Victims urged to report cases of domestic violence", *Borneo Bulletin*, 3 October 2014, <http://borneobulletin.com.bn/victims-urged-report-cases-domestic-violence/>

	<p>perpetrator of <i>dharar Syar'ie</i> from approaching the family member concerned after being satisfied that <i>dharar Syar'ie</i> has been committed or is likely to be committed by the person against the family member concerned and that it is necessary for the protection of the family member.⁸⁴</p> <p>Section 60D mandates the court to attach a power of arrest to a protection order or expedited protection order.⁸⁵</p> <p>Section 60E mandates a court to award compensation to a victim of <i>dharar Syarie'</i> who has suffered personal injuries, destruction or damage to property, loss of property or financial loss as a result of the <i>dharar Syarie'</i>.⁸⁶</p> <p>Section 128 makes it an offence for husbands and wives to ill-treat each other.⁸⁷</p> <p>Apart from the BIFLA, the Penal Code also contains some general prohibitions that are applicable to domestic violence. For instance, the Penal Code criminalises: (i)</p>		perpetrators.		
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⁸⁴ Sections 60B, 60C of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁸⁵ Section 60D of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁸⁶ Sections 60E of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

⁸⁷ Sections 128 of the Islamic Family Law Act (2000), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap217.pdf

	<p>acts that intentionally cause hurt or grievous hurt; (ii) acts that insult the modesty of a woman; and (iii) rape.⁸⁸</p> <p>The Penal Code does not specifically criminalise marital rape. Instead, the Penal Code exempts sexual intercourse by a man with his own wife from being a crime unless the wife is under 13.⁸⁹</p>				
<p>Nationality rights</p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p>A Bruneian man may pass his nationality to his non-Bruneian wife, provided she makes an application, takes the prescribed oath and is of good character.⁹³ The law does not specifically provide for a Bruneian wife to confer her nationality to her foreign husband. The foreign husband of a Bruneian woman may acquire Bruneian nationality through an application in a prescribed manner. He may be obtained Bruneian nationality if he: (i) has resided in Brunei for at least 15 years; (ii) of good character; and (iii) has good knowledge of the Malay language.⁹⁴</p> <p>A Bruneian father passes his citi-</p>		<p>The Government of Brunei in its 2013 report to the CEDAW Committee stated that:⁹⁷</p> <ul style="list-style-type: none"> • Women have equal citizenship rights as men; • Marriage of a Bruneian woman to a foreign spouse does not 		

⁸⁸ Sections 319-338,354-355, 375, 509 of the Penal Code (1952), https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf

⁸⁹ Section 375 of the Penal Code (1952), https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf

⁹³ Section 5(6) of the Brunei Nationality Act (1962), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf

⁹⁴ Sections 5(1)-5(5) of the Brunei Nationality Act (1962), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf

	<p>zanship to his children wherever they are born.⁹⁵ The law does not specifically provide for a Bruneian mother to confer her nationality to her children. A Bruneian mother may make an application in a prescribed manner for her minor child to be a Bruneian citizenship. Such application may be approved if it meets “such special circumstances” as the Bruneian Sultan thinks fit.⁹⁶</p>		<p>automatically affect the nationality of the woman because: (i) her Bruneian citizenship is not affected by her husband's nationality, thereby rendering her stateless; and (ii) the nationality of her foreign husband is not forced upon the wife;</p> <ul style="list-style-type: none"> • The Brunei Nationality Act allows for either a Bruneian father or Bruneian mother to obtain Bruneian nationality on behalf of their 		
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⁹⁷ Brunei State party report, U.N. Doc. CEDAW/C/BRN/1-2 (2013), paras. 9.1-9.3, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁹⁵ Section 4 of the Brunei Nationality Act (1962), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf

⁹⁶ Section 6 of the Brunei Nationality Act (1962), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf

			<p>children in accordance with Sections 4 and 6 respectively. Section 4 spells out categories of persons who may acquire nationality by operation of law whilst Section 6 provides for the acquisition of nationality of a minor by way of registration i.e. upon application by a parent or guardian who is a Bruneian. As such, pursuant to Section 6, children of Bruneian women married to foreign husbands may be accorded</p>		
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			<p>Brunei citizenship upon application;</p> <ul style="list-style-type: none"> • Brunei has a reservation to Article 9(2) of CEDAW because it has a policy of single nationality and does not recognise dual nationality. Thus, children of Bruneian women may either be registered as Bruneian or the nationality of the father. 		
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