

Philippines, Republic of the

Please note this is just a draft and all contents are still under revision.

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[Legal Text](#)

<p>Legal System/ History</p>	<p>Term •Moros• (Filipino Muslims) is label given by Spanish in 16th century to thirteen ethno-linguistic groups, mainly concentrated in south-western Philippines. Under Spanish rule, colonial authority not extended to Moro areas. Philippines under U.S. rule from 1899 to 1946. Christian Filipino settlement encouraged in Muslim areas. 1914 Organic Act for the Department of Mindanao and Sulu extended Philippine laws to the area, within certain limits, and redrew existing boundaries to establish provinces and municipalities. Philippine Commission Act 1915 allowed for assessors such as •<i>kalis</i>•, •<i>panditas</i>•, or Muslims well-versed in local laws and customs, to sit with Moroland Courts, and allowed for modification of U.S. law in cases where parties were Muslims. Principle of exemption has continued but over time was limited to area of family law.</p> <p>Emergence of separatist movement among students and intellectuals in late 1960s; gained popular support after eruption of communal violence in Cotabato in 1970. Developed into armed movement; after much debate, Organic Act passed in 1989 allowing for creation of an autonomous region in Muslim Mindanao, followed by plebiscite in which four provinces (Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi) opted for inclusion in Autonomous Region for Muslim Mindanao. Final Peace Accord signed between government and Moro National Liberation Front in September 1996.</p>
<p>School(s) of <i>Fiqh</i></p>	<p>Muslims are almost all Shafi'i; majority of population is Roman Catholic, with Protestant and Buddhist minorities.</p>
<p>Constitutional Status of Islam(ic Law)</p>	<p>Current constitution adopted October 15th 1986. Article II, sec. 6 states "the separation of Church and State shall be inviolable". • Article III, sec. 5 guarantees the free exercise of religion and states that there shall be no religious test for exercising civil and political rights; Article X provides for personal, family and property relations to be subject to legislative power of autonomous regions of Muslim Mindanao and the Cordilleras.</p>

<p>Court System</p>	<p><i>Shari•a</i> courts organised at two levels. <i>Shari•a</i> Circuit Courts in five <i>shari•a</i> judicial districts. Exclusive original jurisdiction over: cases relating to offences defined in Family Code and; civil actions between Muslims married under terms of Family Code. •</p> <p>5 <i>Shari•a</i> District Courts, each presided over by one judge. Exclusive original jurisdiction over: custody, guardianship, legitimacy, paternity and filiation cases arising under Family Code; disposition, distribution and settlement of estates or wills of Muslims and appointment of executors; petitions for declaration of death or absence or correction of entries in Muslim civil status registers; actions arising from customary contracts between Muslims. Appellate jurisdiction over <i>Shari•a</i> Circuit Court decisions. Decisions of <i>Shari•a</i> District Courts are final.</p> <p>Office of Jurisconsult in Islamic Law (<i>Mufti</i>) constituted under supervision of Supreme Court; shall, upon written request of any party on any question concerning Muslim Law, issue legal opinions based on recognised authorities, and shall compile and publish all legal opinions issued.</p>
<p>Relevant Legislation</p>	<p>Code of Muslim Personal Laws (Presidential Decree no. 1083 1977) concerning family law and institutions (<i>nikah</i>, divorce, paternity, filiation, <i>nafaqah</i>, registration, succession, and constitution and jurisdiction of <i>shari'ah</i> courts)</p> <p>Family Code (Executive Order no. 209 1987, as amended by Executive Order no. 227 1987)</p>
<p>Notable Features</p>	<p>Marriage Age: minimum marriage age 15 years for males and puberty for females (female is presumed to have attained puberty at 15 years); <i>Shari•a</i> District Court may authorise marriage of female between 12 and 15 years if she has attained puberty, upon petition of her <i>wali</i>; <i>khiyar al-bulugh</i>: marriage of minors to be defined as betrothal and may be annulled by either party within 4 years of attaining puberty if marriage was not voluntarily consummated and neither father nor paternal grandfather served as <i>wali</i>; penalty of imprisonment or fines or both for illegal solemnisation of marriage</p> <p>Marriage Guardianship: free consent of marrying parties and presence and consent of <i>wali</i> are requisites for marriage contract</p> <p>Marriage Registration: obligatory; penalty of fine for failure to register any change in civil status</p> <p>Polygamy: no Muslim man may take more than one wife "unless he can deal with them with equal companionship and just treatment as enjoined by</p>

Islamic law and only in exceptional cases"; determination of exceptional cases not specified

Obedience/Maintenance: husband's rights and obligations relate to fixing residence of family (subject to classical conditions) and maintaining family; wife may not work without husband's consent, but may take matter to arbitration council in case he withholds consent

Talaq: divorce may be effected by: *talaq, ila, zihar, li'an, khul'*, *tafwid* or *faskh*, as enumerated in Family Code; divorce by *talaq* must be effected by husband in single repudiation during wife's *tuhr*; *talaq* to which any number is attached counts only as single revocable until expiry of *'idda*

Judicial Divorce: wife may seek judicial divorce on following grounds: in cases of husband's oath of abstinence (*ila*), *zihar* (likening wife to his relations within the prohibited degrees), *li'an* (imprecation of adultery); wife may seek decree of *faskh* on following grounds: husband's failure to maintain for six months; husband's sentencing to one year's imprisonment; husband's impotence or abstention from conjugal relations for six months; husband's insanity or affliction with incurable disease injurious to family; husband's cruelty (defined in Code); and any other cause valid under Muslim law; until the passage of the Family Code, Muslims were the only Filipinos with the possibility of legally ending a marriage

Post-Divorce Maintenance/Financial Arrangements: wife entitled to maintenance during *'idda*; maintenance due for duration of nursing if divorced mother continues to nurse child for two years

Child Custody and Guardianship: divorced mother has right to custody over sons and daughters until 7 years after which age ward may choose to reside with either parent; custody of unmarried female ward who has reached puberty reverts to father while son in same circumstance resides with mother

Succession: governed by classical law, as defined in Family Code

Notable Cases

Law/Case Reporting System

Law reporting through *Official Gazette*.

International Conventions (with Relevant Reservations)

ICCPR & ICESCR • signatures 1966; ratification of ICESCR 1974 & ratification of ICCPR 1986, without reservations

CEDAW • signature 1980, ratification 1981, without reservations

CRC • signature and ratification 1990, without reservations

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages • signature 1963, ratification 1965

Legal History:

The term **•Moros•** (Filipino Muslims) is a label given by the Spanish in the 16th century to thirteen ethno-linguistic groups, mainly concentrated in south-western Philippines. Under Spanish rule, colonial authority was not extended to the Moro areas due to considerable resistance on the part of the local population. Spain lost the Philippines to the United States who ruled the area from 1899 to 1946. The U.S. military rulers initially obtained the acknowledgement of the Sultan of Sulu in the Bates Agreement, preserving the Sultan's jurisdiction over Moros.

The United States' policy eventually changed, limiting the powers of traditional authorities and encouraging Christian Filipino settlement in Muslim areas. The 1914 Organic Act for the Department of Mindanao and Sulu extended state laws to the area, within certain limits, and redrew existing boundaries to establish provinces and municipalities. The Philippine Commission Act 1915 allowed for assessors such as **•kalis•**, **•panditas•**, or Muslims well-versed in local laws and customs, to sit with Moroland Courts, and permitted the modification of U.S. law in cases where the parties were Muslims. The principle of exemption continued, but over time came to be limited to the area of family law.

After independence, a separatist movement emerged among students and intellectuals in the late 1960s, gaining popular support after the eruption of communal violence in Cotabato in 1970. The movement developed into an armed struggle for secession after President Ferdinand Marcos declared martial law in 1972. The conflict continued into the mid-1970s, with a cease-fire declared and Libyan-brokered peace talks held in 1976. The settlement offered to the separatists included a Muslim Autonomous Region in 13 provinces, but negotiations broke down. Marcos began implementing parts of the **•Tripoli Agreement•** unilaterally, including passing a Code of Muslim Personal Laws in 1977.

A new round of talks began under President Corazon Aquino in 1986. After much debate, an Organic Act was passed in 1989 allowing for the creation of an autonomous region in Muslim Mindanao, followed by a plebiscite in which four provinces (Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi) opted for inclusion in the Autonomous Region for Muslim Mindanao (ARMM). A final Peace Accord was signed between the government and the Moro National Liberation Front in September 1996.

Schools of *Fiqh*: •Muslims of the Philippines are almost all Shafi'i. The majority of the population is Roman Catholic, and there are Protestant and Buddhist minorities.

Constitutional Status of Islam(ic Law): The current Constitution was adopted on October 15th 1986. Article II, section 6 states that "the separation of Church and State shall be inviolable".• Article III, sec. 5 guarantees the free exercise of religion and states that there shall be no religious test for exercising civil and political rights. • Article X relates to local government and section 1 thereof states that "there shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided", to which sections 15 to 21 relate. Under section 20, personal, family and property relations to be subject to the legislative power of each autonomous region.

Court System: *Shari•a* courts are organised at two levels. The *Shari•a* Circuit Courts in five *shari•a* judicial districts have exclusive original jurisdiction over: cases relating to offences defined in the (Muslim) Family Code and civil actions between Muslims married under the terms of Family Code (relating to marriage, divorce, betrothal, dower, division of property upon divorce, maintenance and consolatory gifts, restitution of marital rights and disputes over communal property).

The five *Shari•a* District Courts, each presided over by one judge, have exclusive original jurisdiction over: custody, guardianship, legitimacy, paternity and filiation cases arising under the Family Code; the disposition, distribution and settlement of estates or wills of Muslims and the appointment of executors; petitions for declaration of death or absence or correction of entries in Muslim civil status registers; and actions arising from customary contracts between Muslims. The District Courts also have appellate jurisdiction over *Shari•a* Circuit Court decisions. Decisions of *Shari•a* District Courts are final.

An Office of Jurisconsult in Islamic Law is constituted under the supervision of the Supreme Court. The Jurisconsult's Office shall, upon the written request of any party on any question concerning Muslim Law, issue legal opinions based on recognised authorities, and shall compile and publish all legal opinions issued.

Notable Features: The minimum marriage age is 15 years for males and puberty for females (a female is presumed to have attained puberty at 15 years). The *Shari•a* District Court may authorise the marriage of a female between 12 and 15 years if she has attained puberty, upon petition of her *wali*. The marriage of minors is defined as betrothal and may be annulled by either party within four years of attaining puberty if the marriage was not voluntarily consummated and neither the father nor paternal grandfather served as *wali*. There is a penalty of imprisonment or fines or both for illegal solemnisation of marriage. Validity of marriage requires the free consent of marrying parties and the presence and consent of the *wali*.

Marriage registration is obligatory, backed up by penal sanctions of fines for failure to register any change in civil status. The Family Code states that no Muslim man may take more than one wife "unless he can deal with them with equal companionship and just treatment as enjoined by Islamic law and only in exceptional cases". The grounds for determination of exceptional cases is not specified.

The husband's rights and obligations in marriage relate to fixing the residence of the family (subject to classical conditions) and providing maintenance. The wife may not work without her husband's consent, but may take the matter to an arbitration council in case her husband withholds his consent.

Divorce may be effected by *talaq*, *ila*, *zihar*, *li•an*, *khul•*, *tafwid* or *faskh*, according to the Family Code. Divorce by *talaq* must be effected by the husband in a single repudiation during the wife's *tuhr*. Any *talaq* to which a number is attached counts only as a single revocable repudiation until the expiry of the *•idda*. A woman may seek a judicial divorce on the following grounds: in cases of the husband's oath of abstinence (*ila*), *zihar* (likening of his wife to his relations within the prohibited degrees), *li•an* (imprecation of adultery); or a decree of *faskh* on the following grounds: husband's failure to maintain her for six months; husband's conviction to one year's imprisonment; husband's impotence or abstention from conjugal relations for six months; husband's insanity or affliction with an incurable disease injurious to his family; husband's cruelty; and any other cause valid under Muslim law. • Until the passage of the Family Code, Muslims were the only Filipinos with a possibility for legally ending a marriage.

The divorced wife is only entitled to maintenance during *•idda*, in addition to maintenance for the duration of nursing if the divorced mother continues to nurse her child for two years. The divorced mother has the right to custody over sons and daughters until 7 years after which age the ward may choose to reside with either parent. The custody of an unmarried female ward who has reached puberty reverts to father, and the son in the same circumstances resides with the mother.

Succession is governed by classical law, as defined in the Family Code.

Notable Cases:

Law/Case Reporting System: Law reporting is through the *Official Gazette*.

International Conventions (with Relevant Reservations): Philippines signed the ICESCR and ICCPR in 1966, ratifying the former in 1974 and the latter in 1986 without reservations.

Philippines signed the CEDAW in 1980 and ratified it in 1981 without reservations.

Philippines signed and ratified the CRC in 1990 without reservations.

Philippines signed the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages • in 1963 and ratified it in 1965 without reservations.

•Background and Sources: Hooker, *Islamic Law in South-East Asia*, Singapore, 1984; Mahmood, •Philippines,• in *Statutes of Personal Law in Islamic Countries*, 2nd ed., New Delhi, 1995; McKenna, *Muslim Rulers and Rebels*, Berkeley, 1998; Mercado, *Southern Philippines Question: The Challenge of Peace and Development*, Cotabato City, Philippines, 1999; Philippine *Shari•ah* Institute, *Code of Muslim Personal Laws of the Philippines*, Manila, 1983; Philippines, *Fourth periodic report to CEDAW*, 25th July 1996; Redden, •Philippines• in *Modern Legal Systems Cyclopedia*, vol. 9, Buffalo, NY, 1990.