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## الجمعية العامة



## مجلس حقوق الإنسان

## الدورة الأربعون

٢٥ شباط/فبراير - ٢٢ آذار/مارس ٢٠١٩

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

## زيارة إلى ماليزيا

تقرير المقررة الخاصة المعنية ببيع الأطفال واستغلالهم جنسياً، بما في ذلك بغاء الأطفال واستغلال الأطفال في المواد الإباحية وغيرها من المواد التي تنطوي على اعتداء جنسي على الأطفال \*\*

## موجز

تستكشف المقررة الخاصة، في هذا التقرير، القضايا المتصلة ببيع الأطفال واستغلالهم جنسياً في ماليزيا، وذلك في ضوء القواعد والمعايير الدولية لحقوق الإنسان. وبالاتناد إلى المعلومات التي أمكن جمعها قبل الزيارة وفي أثناءها وبعدها، تسلط المقررة الخاصة الضوء على المبادرات التشريعية والإطار المؤسسي وسياسات حماية الطفل التي جرى تنفيذها لمكافحة الظاهرة ومنعها، وعلى التدابير المتخذة لتوفير الرعاية للأطفال الضحايا وضمان تعافيهم وإعادة إدماجهم. وتقدم المقررة الخاصة توصيات لتعزيز الجهود الرامية إلى منع ظاهرة بيع الأطفال واستغلالهم جنسياً واستئصالها.

\* أتفق على نشر هذا التقرير بعد تاريخ النشر الاعتيادي لظروف خارجة عن إرادة الجهة المقدمة له.

\*\* يعمم موجز التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيُعَمَّم باللغة التي قُدِّم بها فقط.



الرجاء إعادة الاستعمال

GE.19-00807(A)



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## Annex

### **Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material on her visit to Malaysia**

#### **I. Introduction**

##### **A. Programme of the visit**

1. At the invitation of the Government of Malaysia, the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material visited the country from 24 September to 1 October 2018. The objectives of the visit were to assess the situation of the sale and sexual exploitation of children and to evaluate the national child protection system with a view to making recommendations to prevent and eradicate all forms of sale and sexual exploitation of children.

2. The Special Rapporteur visited Kuala Lumpur and Kota Kinabalu in the State of Sabah. The Special Rapporteur met with the Ministry of Women, Family and Community Development; the Ministry of Education; the Ministry of Health; the Ministry of Communications and Multimedia; the Ministry of Foreign Affairs; the Attorney General's Chamber; and various agencies, including the Department of Syariah Judiciary of Malaysia, the Department of Islamic Development and the Office of the Chief Registrar of the Federal Court. She also met with representatives of the Royal Police of Malaysia Sexual, Women and Child Investigations Division, the Malaysia Prison Department, the Immigration Department, the National Strategic Office for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, the National Registration Department of Malaysia and the Department of Labour of Peninsular Malaysia. In Sabah, the Special Rapporteur held meetings with the Ministry of Law and Native Affairs, the Ministry of Health and People's Well-being, the Sabah Native Affairs Office, the Immigration Department and the Sabah National Security Council. She also met with authorities from Sabah and Sarawak and held meetings with the Sabah Office of the Human Rights Commission of Malaysia (SUHAKAM) and the Malaysian Bar Council.

3. In addition, the Special Rapporteur met with representatives of non-governmental organizations (NGOs) and the private sector, both in Peninsular Malaysia and Sabah, where she also held meetings with authorities from Sarawak. She visited the Rumah Perlindungan ATIP shelter home for girls and the Bukit Jalil immigration depot, and met with young members of the Rohingya community at the Rohingya Women's Development Network. During on-site visits, she met with child victims of trafficking and sexual abuse.

4. The Special Rapporteur wishes to thank the Government of Malaysia for facilitating the meetings with State agencies. She also thanks the United Nations Country Team in Malaysia, civil society organizations and the Office of the United Nations High Commissioner for Human Rights for their assistance before, during and after her mission.

##### **B. Context**

5. Located in South-East Asia, Malaysia is an upper-middle-income country with a population, according to government estimates, of 32.4 million, of whom 23.8 per cent were under age 14 as of 2018, and comprising Bumiputera (67.4 per cent), Chinese (24.6 per cent), Indians (7.3 per cent) and other ethnic groups.<sup>1</sup> Malaysia is a federal constitutional monarchy with 13 states and 3 federal territories practising their own

<sup>1</sup> World Bank, *Malaysia Economic Monitor: Immigrant Labour* (2015).

jurisdictions and with plural legal systems, including civil courts, syariah courts and indigenous customary courts. The Federal Constitution is the supreme law of Malaysia. The customary law is not contained in statutes or customary jurisprudence. International treaties are enforceable domestically where they have been incorporated into Malaysian law by statute.

6. Malaysia is home to a large number of undocumented migrant workers,<sup>2</sup> refugees and asylum seekers, which presents additional challenges in terms of assessing the scope and magnitude of the sale of children, child sexual abuse and exploitation. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), as of August 2018, of 161,140 refugees and asylum seekers registered with UNHCR, some 42,620 were below the age of 18, 989 of whom were unaccompanied and separated children, including Rohingyas from Myanmar.

7. The Eleventh Malaysia Plan of 2015 envisions a high-income, inclusive and sustainable economy by 2020.<sup>3</sup> Parallel to pursuing economic growth, the promotion and protection of human rights gained prominent attention in the manifesto of the new Government following the elections in 2018.<sup>4</sup> While rapid economic growth has improved, the overall socioeconomic situation – the distribution of well-being – was uneven across subnational levels. Disparities prevail across a range of socioeconomic indicators, most notably in East Malaysia, which trails the rural regions on Peninsular Malaysia where indigenous communities have a higher incidence of poverty and multidimensional vulnerabilities compared with the national averages.<sup>5</sup>

## II. Scope of the sale and sexual exploitation of children

8. The scope and magnitude of the sale and trafficking of children across the borders with Thailand, Viet Nam, Indonesia and the Philippines and within Malaysia for purposes of sexual and labour exploitation is an issue of grave concern to protection stakeholders confronted with the plight of victims. The real extent of these crimes is unknown due to the unavailability of comprehensive data on the scope and prevalence of different forms of sexual abuse and exploitation of children and on the number of cases identified, investigated and prosecuted, disaggregated by country of origin, age and the gender of both victims and perpetrators. The fact that sufficient and reliable data are not publicly available is partially attributed to the operation of the Official Secrets Act 1972 (Act 88),<sup>6</sup> which gives wide discretionary power to authorities not to disclose classified information. A clear estimation is also complicated by the fact that although the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670) differentiates between child and adult victims, in practice child trafficking cases and statistics on convictions are not separated from other human trafficking cases. According to the Government, in 2017, there were 147 convictions involving trafficking in human beings;<sup>7</sup> however, there is no information on how many of these cases involved children.

9. The Special Rapporteur wishes to remind the Government that the distinction between “sale”, involving some form of commercial transaction, and “trafficking”, the purpose of which is exploitation of children, is important for the purpose of tackling the root causes of these scourges and informing the preventive strategy.

### A. Sale and trafficking of children for sexual and labour exploitation

10. The Special Rapporteur is concerned that in the context of reportedly high demand for commercial sex, Malaysia remains a destination and, to a lesser extent, a transit and

<sup>2</sup> A/HRC/29/38/Add.1, para. 5.

<sup>3</sup> Midterm review of the Eleventh Malaysia Plan 2016–2020.

<sup>4</sup> Pakatan Harapan, *Buku Harapan: Rebuilding Our Nation, Fulfilling Our Hopes*, 2018.

<sup>5</sup> Country Programme Action Plan 2016–2020.

<sup>6</sup> See [www.suhakam.org.my/press-statement-no-34-of-2018-official-secrets-act-1972-osa/](http://www.suhakam.org.my/press-statement-no-34-of-2018-official-secrets-act-1972-osa/).

<sup>7</sup> A/HRC/WG.6/31/MYS/1, para. 127.

source country for trafficking in persons,<sup>8</sup> forced marriage and sexual exploitation. Refugee and asylum-seeking, undocumented, street and migrant children are particularly exposed to sexual exploitation, forced begging and child labour. Trafficking of Malaysian girls and women for sexual exploitation to tourist destinations within the country have also been reported. Between 2014 and 2015, 66 child victims of trafficking (61 girls and 5 boys) were reported to have been temporarily placed in shelter homes.<sup>9</sup> No further information is available as to how many of them were victims of sale or sexual exploitation.

11. In 2015, the Special Rapporteur on trafficking in persons, especially women and children expressed concern about the trafficking of women, girls and boys into the sex industry, particularly young foreign women lured with false promises of legal work in Malaysia but subsequently coerced into the commercial sex trade.<sup>10</sup> The Special Rapporteur heard of allegations of an underground sex trade involving underage children from disadvantaged backgrounds reportedly kept in dilapidated low-cost apartments to avoid being detected by authorities.<sup>11</sup> A significant number of refugees, asylum seekers and stateless persons, particularly from the Filipino and Indonesian communities in Sabah and Rohingyas from Myanmar, are increasingly becoming victims of trafficking for forced labour and drug-running.<sup>12</sup> Without legal recognition, these children are more susceptible to becoming easy prey of unscrupulous traffickers and criminal networks. The Special Rapporteur learned from Rohingya child victims about their plight, being trafficked typically by embarking on maritime and overland journeys ranging between 10 days to a month to arrive in Malaysia. Initially smuggled across borders, some are subsequently trafficked to fishing boats and palm oil plantations for labour exploitation, including the sex trade, ending up in bonded labour to repay their debts.<sup>13</sup> Underage victims whose information and age are reportedly falsified by recruitment agencies to meet the demand for domestic workforce face additional distress in trying to escape their abusive employers.<sup>14</sup> Many are sold to marriage brokers as child brides, often by parents who reportedly resort to marrying off their daughters to foreigners to “protect” them. In 2014, some of the 26 Rohingya child brides detained at the Thai border by the Malaysian immigration authorities reportedly revealed that they had been trafficked for marriage.<sup>15</sup> As of end August 2018, UNHCR had identified 203 cases of child marriage of Rohingya girls as young as 10. The Special Rapporteur had the opportunity to meet with two of these children, already mothers, who described their plight during their journey from Myanmar, trafficked and sexually abused by traffickers. At the same time, the girls acquiesced to their present life conditions, which they judged were preferable to the oppression suffered in their home country.

12. The Special Rapporteur heard of allegations of child labour involving migrant and undocumented children in palm oil plantations and in almost every economic field. She learned of cases of underage victims trafficked into Malaysia to work as domestic workers, often without any payment, some of whom were reportedly sexually abused. In 2015, a local NGO reportedly handled 25 sexual abuse and 22 physical abuse cases. In 2017, SUHAKAM issued a press statement referring to news reports of the rescue of 18 people, including 7 children, at an oil palm plantation in Hulu Perak.<sup>16</sup> The International Labour Organization Committee of Experts on the Application of Conventions and Recommendations urged the Government to strengthen its measures to prevent trafficking

<sup>8</sup> CEDAW/C/MYS/CO/3-5, para. 25; A/HRC/29/38/Add.1, para. 7; and observation by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the International Labour Organization (ILO), adopted 2016, published 106th ILO session (2017), Forced Labour Convention, 1930 (No. 29).

<sup>9</sup> Observation (CEACR).

<sup>10</sup> A/HRC/29/38/Add.1, para. 15.

<sup>11</sup> ECPAT, *Malaysia: Country Overview* (2018).

<sup>12</sup> A/HRC/29/38/Add.1, para. 21.

<sup>13</sup> United Nations Children’s Fund (UNICEF) Malaysia, “Child marriage in Malaysia”, working paper, 2018; and A/HRC/29/38/Add.1, para. 19.

<sup>14</sup> See A/HRC/29/38/Add.1; and SUHAKAM, *Annual Report 2017*, p. 209.

<sup>15</sup> Rozanna Laatiff and Ebrahim Harris, “Sold into marriage: how Rohingya girls become child brides in Malaysia”, *Khmer Times*, 16 February 2017.

<sup>16</sup> SUHAKAM, *Annual Report 2017*, p. 175.

of children under 18 and to take measures to protect children of migrant workers from the worst forms of child labour.<sup>17</sup>

## B. Sale of children

13. In 2007, the Committee on the Rights of the Child expressed concern about the sale of babies from neighbouring countries to couples in Malaysia, and noted the lack of comprehensive data on child trafficking.<sup>18</sup> In 2016, UNICEF issued a statement<sup>19</sup> expressing concern about allegations of children being sold in Malaysia, as reported by Al-Jazeera in its 10 East report.<sup>20</sup> Three people were reportedly arrested following Al-Jazeera's investigation.<sup>21</sup> No prosecutions or convictions are known to have taken place in this regard. According to UNICEF, the multiple roadblocks, such as cumbersome and lengthy adoption procedures and alleged instances of corruption, faced by potential adoptive parents' further drive demand for the sale of children. The anecdotal evidence gathered from child protection stakeholders demonstrates that the sale of children in Malaysia is prevalent partially also because a large number of unwanted or abandoned babies are born out of wedlock and to migrant workers, who are not allowed to have families in Malaysia.<sup>22</sup>

14. According to the Department of Social Welfare, a total of 1,927 applications for adoption were made in Malaysia in the course of 2015, of which 1,354 were through the National Registration Department and 573 through the courts. There are significant gaps in Malaysian laws relating to adoption and sale of children, and the current legal framework does not provide adequate protection against illegal adoption practices. The Special Rapporteur remains concerned at the absence of comprehensive legislation on domestic and intercountry adoption law; the different procedures for adoption between states; the prevalence of informal or private adoptions, including through falsification of birth certificates; and the lack of data on the number of informal adoptions, which are neither registered nor monitored. In 2015 and 2017, following several interventions to identify instances of falsification of birth certificates, 31 children aged between 3 months and 8 years old were placed in shelters after being removed from their adoptive parents. At the time of reporting, these children were still awaiting their documentation. According to the Government, no investigation or prosecution is known to have been launched in relation to these cases.

### 1. Child marriage

15. Although child marriage is prevalent in numerous communities in the country,<sup>23</sup> data available on child marriage are fragmented, unreliable and confusing. According to the Deputy Prime Minister and the Minister for Women, Family and Community Development, a total of 5,362 marriage applications were submitted to syariah courts between 2013 and 2017 by children under 16 years old, with the highest numbers registered in Sabah, Sarawak in Eastern Malaysia and Kelantan in Peninsular Malaysia. In 2017, a total of 147 non-Muslim underage marriage applications were registered by the National Registration Department. According to the Sabah Native Affairs Office, 2,130 out of 2,191 registered applications by the underage group of 14- to 15-year-olds were granted during the period 2003–2017. In most cases, the decisions were reportedly based on the discretionary power of the judge, relying, among other things, on parents' judgment (often driven by socioeconomic factors), patriarchal norms, custom, or the misconception that marrying off a child prevents premarital sex and relieves families of the financial burden and shame in case of pregnancy. No provision is made to ensure the free and informed consent of children, and there are circumstances where the child is not called in by the court for an interview.

<sup>17</sup> Observation (CEACR).

<sup>18</sup> CRC/C/MYS/CO/1, para. 95.

<sup>19</sup> See [www.unicef.org/malaysia/media\\_statement-101-East-sale-of-children.html](http://www.unicef.org/malaysia/media_statement-101-East-sale-of-children.html).

<sup>20</sup> See <https://interactive.aljazeera.com/aje/2016/malaysia-babies-for-sale-101-east/>.

<sup>21</sup> See [www.aljazeera.com/news/2016/12/baby-selling-investigation-leads-arrests-malaysia-161201083024132.html](http://www.aljazeera.com/news/2016/12/baby-selling-investigation-leads-arrests-malaysia-161201083024132.html).

<sup>22</sup> See SUHAKAM, *Report on the Status of Women's Rights in Malaysia* (2010), p. 76.

<sup>23</sup> SUHAKAM, press statement No. 27 of 2018.

16. There are no proper mechanisms to identify and assist child marriage victims of domestic violence, and cases are rarely reported. Complaints of rape or child sexual grooming are rarely reported due to the prevailing taboos, shame, or threats by the perpetrators. Although sexual intercourse with underage children, regardless of whether it is rape or consensual sex, is considered statutory rape punishable by law, regardless of whether the perpetrator marries the victim, the Special Rapporteur learned about cases in which perpetrators of rape have sought to evade prosecution by marrying their underage victims. In at least one case, as a result of an outcry by women's organizations, the perpetrator was later re-charged and is currently serving a 12-year sentence. No measures were taken by authorities to nullify the marriage.

17. Several legal and policy bottlenecks hinder current efforts to curb child marriage in the country, including the complex Malaysian legal system, which encompasses syariah, civil and customary law, providing different definitions of "the child" in the context of child marriage, and the lack of federal government jurisdiction over the state Islamic laws governing Muslim child marriages. Along with poverty and lack of access to education for undocumented children or children in remote areas, other drivers of child marriage are deeply embedded patriarchal norms and gender discrimination; insufficient sexual and reproductive health education, resulting in out of wedlock pregnancies; and the stigma surrounding the topic of sex which perpetuates the practice of child marriage as a legitimate way to prevent premarital sex. Gender discrimination shapes societal expectations that further encourage the practice of child marriage. Religious and customary practices disapproving failure to conform to societal expectations; social norms viewing child marriage as a way of shielding girls from sexual assault; and lack of viable alternatives to legitimize a child born out of wedlock and thereby protect dignity and honour are additional triggers deeply embedded in the community.

## **2. International commercial surrogacy arrangements**

18. The Special Rapporteur was not able to obtain statistics from the Ministry of Health on the scale of surrogacy practices, despite the existence of fertility clinics and centres practising surrogacy arrangements. There is no Malaysian statutory law in place which would create safeguards to prevent the sale of children in the context of commercial surrogacy. In 2006, the Malaysian Medical Association produced guidelines for assisted reproduction and on the subject of surrogacy and in 2009, the Health Ministry initiated the Assisted Reproductive Technology Technique Services Act to address, among others, issues related to surrogacy. The Special Rapporteur was concerned about the lack of proper legislation and a regulatory body to oversee surrogacy arrangements, which may further facilitate the exploitation of marginalized women and sale of children.

## **C. Sexual abuse and exploitation of children**

19. Although the information obtained on the scope and different forms of sexual abuse and exploitation of children is fragmented and anecdotal, the evidence gathered from child protection stakeholders demonstrates that the phenomenon is real and vast in Malaysia. According to the Department of Social Welfare, in 2016, in total 4,962 cases of child abuse were reported, of which 978 were cases of sexual abuse, 565 were cases of physical abuse and 1,314 were related to neglect. During the same period, 2,124 reports of rape were filed with police; 14 cases involved children 0–12 years old, 962 involved 13- to 15-year-olds, 512 involved 16- to 18-year-olds and 505 cases involved persons over 18. These data are, however, incomplete due to underreporting and lack of cohesive data sharing between agencies. The rare instances when complaints are lodged with the police are not duly acted upon. A member of the Malaysian police was quoted as saying that 2,978 cases of child sexual abuse had been reported to police between January 2012 and July 2016. Charges were filed in 2,189 cases, resulting in just 140 convictions.<sup>24</sup> The Chief Justice was quoted as saying that by the end of 2017, 14 cases had been processed under the 2017 Sexual

<sup>24</sup> See [www.suhakam.org.my/press-statement-no-27-of-2016-sexual-offences-against-children/](http://www.suhakam.org.my/press-statement-no-27-of-2016-sexual-offences-against-children/).

Offences against Children Act and 48 cases were still being investigated.<sup>25</sup> There is no disaggregation of these data. The Special Rapporteur was told about a child prostitution ring in Dengkil, Selangor, and the failure of authorities to act on it despite the amount of evidence gathered. The case was reportedly dismissed on the grounds that child victims' statements were allegedly inconsistent.

20. According to the Ministry of Women, Family and Community Development, 581 child abuse cases involving child caregivers were reported between 2015 and 2017, and written directives were taken against unregistered nurseries while several were closed or suspended. The Special Rapporteur learned about the tragic death of an 11-year-old boy who was reportedly sexually assaulted by the dormitory warden of a school registered with the State Religious Authority. In September 2018, SUHAKAM expressed concern about the recurring cases of abuse of children in *tahfiz* (religious) schools, including the alleged sexual abuse of nine boys by their school principal.<sup>26</sup> Cases in such educational settings are frequent, but are rarely reported.<sup>27</sup> The Special Rapporteur was concerned about the lack of a comprehensive evaluation of the alternative-care system and the vetting of the personnel, and called on the Government to step up its efforts to ensure that proper oversight and accessible complaints mechanisms, vetting procedures and regularly updated child offender registers are in place.

## D. Online child sexual abuse and sexual exploitation

21. With 24.5 million Internet users and a household broadband penetration rate of 115.9 per cent nationwide, Malaysia has one of the highest proportions of active Internet users among youth aged 15–24. Child online sexual abuse is prevalent in Malaysia. The Royal Malaysia Police Sexual, Women and Child Investigation Division has revealed that in early 2018, about 17,338 Internet Provider (IP) addresses in Malaysia uploaded and downloaded child abuse material to and from the Internet. Between January and May 2017, 117 Malaysian children were sexually assaulted by perpetrators they met through the Internet. Reportedly, 80 per cent of victims of rape who met their predators through the Internet were children aged 10–18.<sup>28</sup> The Malaysian Communications and Multimedia Commission assists the Royal Malaysia Police primarily by blocking access to websites containing child abuse materials and providing assistance with suspect identification and digital forensic analysis. According to the Commission, based on public complaints, a total of 401 websites containing child abuse materials were blocked between 2015 and 2018. No prosecutions or convictions are known to have occurred in relation to these cases.

22. Although Malaysia has a commendable system in place to detect child abuse content based on photoDNA and reports to the Royal Malaysia Police, it lacks the capacity and personnel to monitor the encrypted paedophile networks. It also does not have access to retained IP addresses for securing evidence. Getting proper IP retention regulation is an important step in collecting evidence for investigation and subsequent prosecution of perpetrators. Efficiency could be further enhanced by engaging with the private sector, overseas operating companies and foreign enforcement agencies.

## E. Root causes and risk factors

### 1. Vulnerable groups

23. The phenomena of sale of children, child sexual abuse and exploitation are vast and real in Malaysia against the backdrop of stateless, asylum-seeking and refugee populations, particularly among the Filipino and Indonesian communities in Sabah and Rohingyas from Myanmar in Peninsular Malaysia. There are limited reliable data on the number of children born in Malaysia to irregular and migrant workers. The biggest population of stateless

<sup>25</sup> See <http://hakam.org.my/wp/2017/08/05>.

<sup>26</sup> SUHAKAM, *Annual Report 2017*, p. 196.

<sup>27</sup> See [www.suhakam.org.my/2018/09/](http://www.suhakam.org.my/2018/09/).

<sup>28</sup> See [www.unicef.org/sowc2017/index\\_101887.html](http://www.unicef.org/sowc2017/index_101887.html).

children born to immigrants in irregular situations and living on the streets is reportedly in the State of Sabah, which also ranks the highest for teenage pregnancy and abandoned babies. In 2016, the Minister of Home Affairs was quoted as saying that 290,000 children under 18 were stateless, of whom 60,000 were without birth certificates as at April 2018,<sup>29</sup> and some 2,500 stateless children are reportedly waiting for their proper documentation to attend school. This is the predicament of thousands of people who are born in Malaysia but have no citizenship. In the absence of identity documents, children from these groups have limited access to public education, health care and other welfare services.<sup>30</sup> Under the Alternative Education Policy, non-citizen children are allowed to enrol in alternative learning centres operated by private organizations which, however, are not registered with the Ministry of Education and cannot use the official syllabus. Without recognition of any legal status in Malaysia, these children are susceptible to risks of trafficking, child forced labour or street begging, sexual and labour exploitation, arbitrary arrest and detention. As of end August 2018, UNHCR had identified 101 children engaged in begging and debt bondage. This number may be underreported due to poor awareness. The country's approach to migration effectively relies on the criminalization of migrants in irregular situations and rapid deportation.<sup>31</sup> Frequent raids by the immigration police result in migrants being detained for a short period of time and released – or not – at the discretion of the arresting officer. There is no clarity as to the powers of the detaining authority, thus creating a conducive environment for corruption and arbitrariness. Often, child victims of trafficking are easily overlooked as victims and are subject to “repatriation” as illegal immigrants.

24. The Special Rapporteur was also concerned at reports of an increasingly hostile climate and State-supported or -tolerated physical and sexual violence, confinement, isolation, and corrective or rehabilitative practices directed against lesbian, gay, bisexual, transsexual and intersex children.<sup>32</sup>

## 2. Birth registration

25. Even though birth registration is mandatory in Malaysia, numerous implementation gaps remain, including lack of access to registration services, lack of adequate information about required documentation and absence of consular services in Sabah and Sarawak to assist with the growing population of undocumented children from the Philippines. Factors contributing to the lack of birth registration include inconsistent and cumbersome administrative and bureaucratic procedures for birth registration, lack of mobile birth registration units to proactively reach out to remote, poor and illiterate communities, and difficulties in obtaining birth certificates for asylum-seeking and refugee children and children of undocumented migrant workers who do not seek birth registration due to fear of arrest. Children are also at risk of statelessness due to difficulties and lengthy procedures to acquire citizenship for children born outside marriage to Malaysian fathers and foreign mothers. The issue of documentation is further complicated by the fact that it is under federal jurisdiction and state authorities can only make recommendations for possible solutions.

26. While the Government has increased efforts to enable access to birth registration for all, including through the use of mobile teams and registration campaigns, challenges remain in ensuring that the births of all children born in Malaysia are registered.

## 3. Sexual and reproductive health education

27. The Special Rapporteur was told at the Ministry of Women, Family and Community Development that “baby dumping” and teenage pregnancy are on the rise. According to the police, more than 100 babies are reportedly abandoned every year in Malaysia, of whom 60

<sup>29</sup> Mangai Balasegaram, “Human writes: time to include the stateless children in Malaysia”, Star2.com, 22 July 2018.

<sup>30</sup> SUHAKAM, *Annual Report 2017*, p. 142.

<sup>31</sup> A/HRC/29/38/Add.1, para. 22.

<sup>32</sup> Human Rights Watch, *I’m Scared to Be a Woman: Human Rights Abuses Against Transgender People in Malaysia* (2014), p. 51.



per cent die and their bodies abandoned. Many cases of baby dumping are not reported.<sup>33</sup> Although sexual and reproductive health education is an integral part of the secondary school curriculum, most married adolescents are school dropouts who did not attend secondary school. Moreover, topics such as sex, sexuality, contraceptive use and abortion are not addressed in school curricula and teachers are reportedly reluctant to discuss sex-related matters with students. Although the Ministry of Health has recently expanded its outreach services for out-of-school youth, it is not clear what the impact of this intervention is on disadvantaged and remote communities.

#### **4. Poverty and lack of education**

28. The anecdotal evidence gathered from child protection stakeholders demonstrates that child prostitution is real and vast among communities where poverty is rampant. Girls in rural areas with limited access to education and economic opportunities are often disproportionately affected by child marriage.<sup>34</sup> Although one of the priorities of the Tenth Malaysia Plan was to address relative poverty and the 2.4 million vulnerable households categorized as the bottom 40 per cent,<sup>35</sup> significant disparities in the distribution of well-being continue to prevail, especially in remote areas in Sabah and Sarawak which suffer most due to negligence, lack of infrastructure, human and budgetary resources, an insufficient number of teachers and police officers and a lack of protection.

### **III. Measures to prevent and combat the sale and sexual exploitation of children**

29. Malaysia, under the newly elected Government, has demonstrated political will and openness to deliver on its human rights commitments. It has adopted numerous legislative and policy measures to protect children from sale, trafficking and other forms of exploitation, including the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670) and its successive amendments; the 2016 amendments to the Child Act 2001; and the Sexual Offences against Children Act 2017 (Act 792). In 2017, the Special Court for Sexual Crimes against Children was established, the first of its kind in South-East Asia, along with a special court to hear human trafficking cases.<sup>36</sup> There are also specialized courts for children in Sarawak, Selangor and Johor. Other examples of commendable efforts include the establishment of child protection teams and child activity centres at both state and district levels targeting children vulnerable to all forms of abuse and exploitation; the October 2018 amendments to the Children and Young Persons (Employment) Act, aimed at protecting children from economic exploitation, including child labour; the national plan of action on anti-trafficking in persons 2016–2020 and child online protection (2015); and the National Human Rights Action Plan of 2018. While legislative measures are commendable, their enforcement and accountability are crucial at both federal and state levels.

#### **A. Legislative, institutional and policy framework**

##### **1. Legislative framework**

30. Malaysia has ratified three of the nine core international human rights treaties: the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. It has yet to accede to six core international conventions on human rights. It maintains reservations to articles 2 (protection against discrimination), 7 (immediate birth registration), 14 (freedom of thought, conscience and religion), 28 (1) (a) (free and

<sup>33</sup> See [orphancare.org](http://orphancare.org).

<sup>34</sup> UNICEF Malaysia, "Child marriage in Malaysia"; and A/HRC/29/38/Add.1.

<sup>35</sup> United Nations Fund for Population Activities, Final country programme document for Malaysia.

<sup>36</sup> See [www.suhakam.org.my/press-statements-no-1-of-2018-establishment-of-special-court-on-human-trafficking/](http://www.suhakam.org.my/press-statements-no-1-of-2018-establishment-of-special-court-on-human-trafficking/).

compulsory primary education) and 37 (torture, deprivation of liberty) of the Convention on the Rights of the Child. The Special Rapporteur was told that accession to the remaining treaties is pending the overall reform of the domestic legislation with a view to bringing it into conformity with these treaties.

31. The existence of a parallel legal system of civil law and syariah enactments and the lack of legal clarity in family and religious matters and in relation to different definitions of the child lead to legal loopholes in the protection of children, including on the basis of their religion. Despite the Federal Court decision of 29 January 2018 on unilateral conversion in the *Indira Gandhi* case, in which it held, inter alia, that the civil courts are the sole guardians of constitutional rights with the “power to review the lawfulness of executive action”, the divide between civil and syariah jurisdictions, and whether religious fatwas should be followed by federal government departments, remain to be clarified. The Special Rapporteur is not aware of any comprehensive national review or measures taken to reconcile and eliminate disparities and inconsistencies between the two legal systems. The ratification of remaining treaties in parallel with the harmonization of the unique dual justice system in Malaysia would help address the remaining loopholes and disparities between syariah, civil and customary law that continue to hamper the full protection of children from sale, trafficking and other forms of exploitation.

32. The Child Act 2001 (Act 611) addresses violence against children, such as physical, sexual, mental and emotional violence, as well as abandonment and neglect. It also criminalizes sexual abuse (sects. 31 and 43) and exploitation of children for the purpose of prostitution (sect. 43 (a)–(g)). Although the Penal Code criminalizes prostitution,<sup>37</sup> it does not differentiate between exploitation of children in prostitution and that of adults. Part II of the Sexual Offences against Children Act 2017 criminalizes the preparation, making, producing, directing, exchanging, publishing, selling and accessing of child pornography. It criminalizes “grooming” of children as a prelude to sexual abuse and spells out penalties for making and possessing child abuse material. The Child Act 2001 provides for the establishment of a child registry which includes information, inter alia, on perpetrators convicted of any offence in which a child is a victim.

33. Adoption is regulated by a variety of laws, including the Registration of Adoptions Act 1952 (Act 253), covering both Muslims and non-Muslims, and the Adoption Act 1952 (Act 257), which applies only to Peninsular Malaysia and does not apply to Muslim children. Both Sabah and Sarawak have adoption ordinances, with the same content. All family matters relating to Muslim children are governed by the Islamic Family Law (Federal Territory) Act 1984, which regulates custody, guardianship and fostering of children (*kafalah*) but does not permit adoption. While other states have their respective Islamic family law enactments, the Adoption Act 1952 does not include any restrictions on private or independent adoptions and makes no provision for a designated agency to arrange all adoption placements. Although the Child Act 2001 prohibits sale of children, section 48 (4) effectively allows for sale of children in the context of child marriage “in contemplation of or pursuant to a bona fide marriage or adoption”. Neither the 2001 nor the 2016 amendments restrict the defence of payment of “reasonable and legitimate” fees or expenses, thus giving wide latitude for the sale of children in the context of adoptions. The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 penalizes sale and transfer of children, but only for the purposes of “exploitation”, not adoption. The Penal Code (Act 574) does not include any offences in relation to sale of children or illegal adoption practices, although forging birth certificates or other documentation could potentially be prosecuted under various offences.

34. Although the 2016 amendment to the Child Act 2001 removed corporal punishment for child convicts, caning remains a form of disciplinary punishment in schools and institutions, whereas the whipping of women is prohibited under the Criminal Procedure Code.

35. Despite the withdrawal by Malaysia of its reservation to article 16 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, child

<sup>37</sup> Penal Code, 1936, sects. 372 A and B and 373.

marriages continue to be permitted under both the Law Reform Act 1976, the Islamic Family Law (Federal Territories) Act 1984 and the other states' Islamic family law statutes. The 2016 amendment to the Child Act 2001 does not outlaw child marriage. The issue of child marriage is further exacerbated by the existence of parallel legal systems of civil, customary and syariah law. Civil law sets the minimum age of marriage at 18 for non-Muslims, but girls aged 16 and older can marry with the permission of their state's chief minister.<sup>38</sup> The Islamic Family Law Act 1984 and the respective state enactments set the minimum age of marriage of girls at 16, while it is 18 for boys. In addition, the syariah judges may grant permission to even earlier marriages in "certain circumstances". What is considered to be "certain circumstances" is unclear and has not been defined. There is no formal procedure or guidelines for judges to follow in considering marriage applications, and it is up to the discretion of the syariah judge to approve the application. The Islamic Family Law Act is silent on the issue of consent of the child, and there is no provision in the Child Act 2001 regulating meaningful participation of children in decisions affecting them. In practice, consent is not necessarily requested in each case. Native courts operating on the basis of customary law permit marriage at the age of 12, as soon as the child is considered to have reached puberty, resulting in children getting married without any assessment or court approval.

36. Despite the 2015 amendments to the Penal Code (sect. 375 A), an act of violence by an intimate partner is not included within the scope of the Domestic Violence Act and marital rape is still not criminalized. Instead, section 375 A of the Penal Code criminalizes a "husband causing hurt in order to have sexual intercourse". Furthermore, the definition of rape in section 375 is narrow as it does not define non-consensual oral, anal or digital penetration as rape, and assumes that rape can only be inflicted on women. The Special Rapporteur was made aware of a barbaric crime committed by a 60-year-old rapist who impregnated an underage girl with his semen-smeared fingers and was acquitted by the Court of Appeal on a technicality.<sup>39</sup> An inclusive definition is needed to protect rape survivors of all genders from all forms of violations of their bodily autonomy and to prevent it from occurring.

## 2. Institutional framework

37. The Ministry of Women, Family and Community Development is the main coordinating body on child protection and child development policies. The Department of Social Welfare and its Children's Division provide care and rehabilitation to vulnerable communities, including children. The National Council for Children was established under the Child Act 2001 to ensure coordination and provide advice on child protection issues. Child protection teams under the management of the Department of Social Welfare coordinate locally and have the authority to receive reports and manage individual cases. The Department of Islamic Development Malaysia is responsible for formulating policies and implementing programmes for the advancement of Islamic affairs in the country. The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, established in 2008, is responsible for collecting data and monitoring migration patterns with a view to formulating and implementing anti-trafficking policies and programmes with a focus on prevention and protection of victims.<sup>40</sup> The Human Rights Commission of Malaysia (SUHAKAM) Act 1999 (Act 597) also plays an active role in receiving complaints on alleged trafficking cases involving minors; however, it does not have a specific mandate to deal with child rights and is looking into setting up one.

38. Despite these efforts, child protection and anti-trafficking officers reportedly lack the capacity to deal with the identification, protection and management of child sexual abuse cases. Other organizational gaps pertain to the lack of coordination between various child protection divisions and strategies, including partnership with child NGOs; overlapping duties; lack of inter-agency cooperation in handling cases; lack of long-term strategies; gaps in implementation of protection mechanisms; and an inadequate number of

<sup>38</sup> Law Reform (Marriage and Divorce) Act 1976, as amended 2006, art. 10.

<sup>39</sup> Yu Ji, "Protest against acquittal of 60-year-old man who impregnated teen", Star/Asia News Network, 8 June 2015.

<sup>40</sup> Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, sect. 7.

trained child protectors. The Special Rapporteur heard about the need to reform the child protection system to ensure that the National Council for Children, which spearheads child protection policies and laws, enjoys full cooperation by agencies, in particular the police, in managing and implementing child protection protocols and that these protections are accessible to all children. The Department of Social Welfare is reportedly unable to cope with the growing demand to protect and provide care and recovery for victims, especially in remote areas of the country, due to the lack of infrastructure, expertise and finance.

### 3. Policy framework

39. The 2009 National Child Policy provides special programmes for vulnerable children and special measures to protect child victims of sexual exploitation and to ensure their rehabilitation and reintegration or safe deportation. Other focus areas revolve around awareness-raising and creating a safe environment for all children. Launched in 2018 and overseen by the Prime Minister's Department, one of the main focus areas of the National Human Rights Action Plan is the rights of vulnerable groups, including children; other areas include the rights of the indigenous peoples of Peninsular Malaysia and natives of Sabah and Sarawak, among others. The Eleventh Malaysia Plan 2016–2020 envisions Malaysia as a fully developed country by the year 2020, reducing income disparity in Sabah and Sarawak and achieving universal access to quality health care by targeting underserved areas. The plan, however, does not mention inclusive education, including for undocumented and stateless children whose inability to access education impairs their future and leads to social dislocation and expulsion.<sup>41</sup>

40. The National Action Plan on Trafficking in Persons (2016–2020) focuses on strengthening legal mechanisms, joint action by law enforcement agencies, prevention, protection and rehabilitation, capacity-building and partnership. The implementation of the plan has been criticized for lack of proactive screening of trafficked victims, delayed or poor interventions and responses, and lack of legal recourse for survivors and referral pathways.

41. The 2015 Plan of Action on Child Online Protection deals with cyberbullying, cybergrooming and pornography, as well as violent content on the Internet, and focuses on advocacy and awareness-raising, prevention of online child abuse, interventions in identified cases and support for victims and their families. The Ministry of Education and Cybersecurity Malaysia, with support from DiGi Telecommunications and Childline Malaysia, is running the CyberSAFE in Schools programme to promote a safe and family-friendly Internet experience. As a highly connected country, the flagship awareness-raising campaign Click Wisely, education tools and Internet safety modules on topics such as cyberbullying, smart parenting and online grooming are examples of efforts undertaken by the Government to better address the emerging forms of online sexual abuse and child sexual exploitation.

42. The current Government included in its election manifesto a pledge to introduce a law that sets 18 as the minimum age of marriage.<sup>42</sup> In 2014, the National Fatwa Council stated that child marriages are not a “healthy practice” and are not obligatory or encouraged in Islam, and that it should not be encouraged or allowed without weighing the benefits and the consequences for the children involved. In September 2018, the Deputy Prime Minister stated that the Government is looking into enforcing a comprehensive standard operating procedure for syariah judges to follow before approving child marriages.<sup>43</sup> The Deputy Prime Minister stressed the importance of employing a holistic approach to ensure education, welfare nets, poverty eradication and support systems.

43. The Special Rapporteur learned that while some states (Selangor) were considering raising the minimum age of marriage, others were reportedly contemplating lowering the age of marriage to 14, or even 12. The Special Rapporteur was reassured by authorities that efforts are under way to discuss the matter with the Department of Islamic Development

<sup>41</sup> United Nations Country Team submission to the third universal periodic review of Malaysia, 2018.

<sup>42</sup> Pakatan Harapan, “Buku Harapan”, p. 141.

<sup>43</sup> See [www.freemalaysiatoday.com/category/nation/2018/07/18/new-sop-soon-for-shariah-judges-before-allowing-underage-marriage/](http://www.freemalaysiatoday.com/category/nation/2018/07/18/new-sop-soon-for-shariah-judges-before-allowing-underage-marriage/).

Malaysia to raise the marriage age for Muslims and non-Muslims. While stringent guidelines are reportedly being drafted to spell out “other circumstances”, their mere existence would still legitimize child marriage, which in itself jeopardizes these efforts as it is detrimental to the very objective of increasing marriageable age.

44. The Special Rapporteur was also told that the Ministry of Women, Family and Community Development has initiated safety advocacy programmes – the “I am in control” module, SmartStart and Cafe@Teen – to ensure a social protection net for children vulnerable to child marriage. While these initiatives are well intended, they are rarely targeted at children in remote communities and children of non-Malaysian nationality, who are in dire need of help and protection as they are often at risk of becoming victims. There is a need for clearly defined strategies and target groups and realistic timelines for implementation and monitoring of these initiatives and action plans.

## **B. Investigation, prosecution and sanction**

45. The Criminal Investigation Division of the Royal Malaysia Police and its Sexual, Women and Child Investigations Division (D11) is the main law-enforcement agency dealing with child sexual exploitation, including detecting and arresting offenders, as well as developing and coordinating nationwide prevention campaigns. Since 2008, there are D11 police officers in all states and districts. D11 also works closely with other agencies and NGOs to provide counselling, referral of victims, and video recording of child victims and witness statements. In February 2018, the Government launched the Malaysia Internet Crime against Children Investigation Unit, tasked to proactively identify and investigate cases of sexual grooming of children. It also investigates the production, dissemination and possession of images of child sexual exploitation facilitated by use of information and communications technology, coordinates and responds to matters relating to child sexual exploitation referred from external law enforcement agencies, builds capacity and maintains networks with law enforcement agencies.

46. The Special Rapporteur observed that while crimes of child sexual abuse and violence are numerous, very few cases of sale and sexual and labour exploitation of children are investigated and prosecuted. Of 38 cases of trafficking prosecuted in 2014, 26 of which were cases of forced labour exploitation and 12 of sexual exploitation, only 3 convictions were obtained, while 2 ended in acquittals, 1 case was dismissed and the rest were still awaiting trial.<sup>44</sup>

47. The discoveries in 2015 of migrant camps and mass graves along the border with Thailand fuelled reports that corrupt officials facilitated migrant smuggling. In 2016, investigations into these camps and graves resulted in four convictions for migrant smuggling in Malaysia; no Malaysian nationals were among those convicted.<sup>45</sup> The Government reported that the investigations are ongoing.

48. In 2017, SUHAKAM acknowledged the efforts made by the anti-trafficking task force, including its recent handling of seven complaints referred to it by SUHAKAM, two of which concerned trafficking syndicates involving underage girls, and the subsequent arrest and charging of three suspects and the rescuing of 19 Shan girls. SUHAKAM regretted, however, that it had not received statistics on cases investigated and charged.<sup>46</sup>

49. Although the Government has undertaken considerable efforts to strengthen the law, conduct trainings and hold public awareness-raising campaigns, victims continue to face multiple barriers in obtaining redress and prosecutions remain rare. Access to justice is further hampered by ineffective investigations, putting the burden of proof on the victim; the reluctance of victims to report violations due to the absence, inaccessibility or unreliability of reliable complaints mechanisms; limited or no legal assistance; fear of reprisals and deportation; and lack of expertise in handling cases of sexual abuse and exploitation and alleged corruption and complicity among law enforcement officials. Lack

<sup>44</sup> A/HRC/29/38/Add.1, para. 68.

<sup>45</sup> Human Rights Watch, *World Report 2018, Malaysia: Events of 2017*.

<sup>46</sup> SUHAKAM, *Annual Report 2017*, pp. 75–76 and 209.

of disaggregated data on different forms of sexual abuse and exploitation of children further hinders the ongoing efforts to curb the root causes and the design and implementation of appropriate proactive policies and measures.

### C. Care, recovery and reintegration

50. The Child Act 2001 provides for care, protection, recovery and rehabilitation for children, including by placing them in the Government-run shelters for a term not exceeding three years, or until the child reaches the age of 18. However, under the Immigration Act, children can spend up to six months in an immigration detention “depot” waiting for verification of their status. Child victims in need of rehabilitation, counselling and reintegration are referred to the Department of Social Welfare for court-ordered 21-day interim protection or a 90-day protection order for further investigation or deportation. Protection Officers from the Suspected Child Abuse and Neglect (SCAN) teams and the One-Stop Crisis Centre (available only in two states) are appointed to prepare reports for the court and ensure the care, protection and supervision of the victims. In addition to these centres, there are also 13 children’s homes that also house juvenile offenders as well as homes run by private and religious organizations. The Deputy Minister of Home Affairs was quoted as saying that a total of 1,124 trafficking victims, mainly females from neighbouring countries who were serving as sex slaves, were rescued in 2016 and placed in these shelters. There is no information as to how many of them were children.

51. While acknowledging the efforts to protect child victims of abuse and exploitation, the Special Rapporteur regrets that these efforts are primarily targeted at children of Malaysian nationality. Law enforcement has employed reactive measures by launching frequent raids to identify victims of trafficking or prostitution, which often leads to placing them in temporary custody as an interim protection measure while their identity is determined with a view to their immediate removal from Malaysia if they are foreigners.<sup>47</sup> This is problematic given the large number of undocumented children in Malaysia, some of whom were born in Malaysia to parents of migrant workers in irregular situations but who lack identity documents and are exposed, and fall victim, to various criminal syndicates for drug running, street begging or child prostitution. Their deportation is not a solution or a guarantee that they will not find ways to return or be trafficked into the country again. Neither the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 nor the Child Act of 2001 provides for follow-up measures or additional protective measures to ensure their reintegration and rehabilitation upon repatriation.

52. Despite close collaboration with NGOs, lack of proactive screening procedures in place, overreliance on NGOs to counsel and rehabilitate, lack of legal recourse for survivors and delayed or poor interventions and responses often leave victims deprived of proper care. In addition, there are no family detention units in immigration detention centres and at times, families are separated and detained in different immigration depots in the country. Children often become separated from their families as a result of raids and are stranded in immigration depots waiting to be collected by their parents who, in turn, fear charges and deportation due to their illegal status. All immigration detention centres tend to house children. Due to the lack of temporary shelters (there are only two shelters for minors in the Peninsula), child victims are often stranded with their parents for several months in immigration depots and detention centres. SUHAKAM has denounced dire conditions, lack of bedding, inter-inmate abuse, instances of sexual abuse and overcrowding in these depots, declaring them not suitable for minors.<sup>48</sup> On the basis of her visit to Bukit Jalil immigration depot, the Special Rapporteur can only subscribe to these conclusions. NGOs mostly provide recreational activities and counselling but often experience difficulty accessing victims in detention centres as they have to follow a procedure to obtain permission. According to the Immigration Department of Malaysia, as of September 2018, there were 167 unaccompanied and separated minors in Malaysia, most of whom were in Belantik and

<sup>47</sup> Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, sects. 51 and 54; and Immigration Act, sects. 8 and 32.

<sup>48</sup> SUHAKAM, *Annual Report 2017*, pp. 87–89 and 233–234.

Bukit Jalil (58 and 37, respectively). The Government took steps to reduce shelter overcrowding by providing 80 per cent of the funding for three new NGO-run shelters in Kuala Lumpur, Sabah and Penang; however, the shelters remained underutilized due to bureaucratic obstacles.

53. Considering that detention of children in particular in the conditions described above can have a lasting detrimental effect on their physical and mental health, it is imperative that non-custodial alternatives be made available. SUHAKAM has been lobbying for piloting an alternative to detention for children and placing them in NGO shelters; however, the process is slow and discussions are still ongoing.

54. The Special Rapporteur was also told about the lack of adequately trained social workers in the areas of child protection to deal with complex abuse and neglect cases. Despite the ongoing training efforts in collaboration with UNICEF and the Malaysian Association of Social Workers, victim protection efforts remain inadequate.<sup>49</sup> NGOs are also involved in training community leaders in documenting abuses and filing police reports. Comprehensive capacity-building activities are needed to strengthen child protection officers' capacity to prevent and manage high-risk cases of abuse and neglect.

## **D. Prevention and child-sensitive justice**

55. The Department of Social Welfare, the lead agency, lacks the resources, expertise and personnel to deal with the overall prevention problem. It also only deals with Malaysian children, leaving the foreign or undocumented children to be attended to by diplomatic presences and immigration authorities. There are no rescue, care and integration measures for undocumented children other than apprehension and repatriation. The prevention of child sexual abuse is included in school curricula and various awareness-raising campaigns have been launched nationwide. Although there are 24-hour helpline services, such as Talian Kasih for victims of domestic violence, it is not clear how accessible these hotlines are to children in the most precarious situations, including street and undocumented children and children in rural and isolated areas. In addition, these helplines are mostly available in the Malay language, and there is no data on or evaluation of whether they contribute to early detection and prevention. There is no publicly available information as to the number of complaints received resulting in investigation and prosecution.

56. Despite the rapidly growing tourism industry, efforts to prevent sexual exploitation of children in the context of travel and tourism are not well coordinated. No Malaysian company or hotel is known to have signed the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism. In 2017, the Government launched a human trafficking awareness-raising campaign in partnership with Malaysia Airlines and AirAsia and has announced that it was expanding partnerships with international airlines and tightening security control to identify trafficking syndicates at the airport. The Government has also recently announced its intention to create a registry for convicted child sex offenders.

57. As for the right to access justice, children who have been victims of sexual abuse or exploitation can file a complaint through a representative and are presumed to be competent to give evidence unless the court thinks otherwise. The Child Act 2001 provides for the protection of child victims, including child-sensitive procedures before and during the trial such as the use of videoconference facilities (which, however, are not available throughout the country), the use of screens and non-disclosure of the victim's identity. An ethical approach towards questioning of the child victim is also reported to be an issue, including the absence of pretrial meetings with the judge, defence counsel and prosecutors. The victim-support officers that are supposed to be provided by the Department of Social Welfare to accompany the child to court are also reportedly often not available. There are also concerns about lengthy judicial proceedings.<sup>50</sup>

<sup>49</sup> Ibid., p. 209.

<sup>50</sup> A/HRC/29/38/Add.1, para. 68.

## IV. Conclusions and recommendations

### A. Conclusions

58. While recognizing the progress made in combating the sale and sexual exploitation of children, considerable shortfalls remain in the field of implementation. Challenges faced in implementing laws to combat the sale and sexual exploitation of children are manifold: difficulties in reconciling different legal systems; lack of a robust, non-discriminatory child protection system focusing on the recovery and care of victims and ensuring the accountability of perpetrators; lack of clear and non-discriminatory victim identification and referral procedures; lack of comprehensive and reliable disaggregated data; and insufficient outreach, cooperation and coordination, including with the States of Sabah and Sarawak and with the country's vibrant civil society. Other significant deterrents are insufficient jurisprudence to inform and guide the investigative bodies; a judiciary trained on recently enacted laws on sexual offences against children; and lack of accessible and child-friendly complaints mechanisms resulting in a low rate of prosecution, thereby perpetuating impunity.

59. The principle of the best interests of the child, without discrimination, should permeate all policies in Malaysia, including in the context of child marriages and immigration policies. More emphasis should be put on prevention, including access to education for non-Malaysian nationals. It is also important that the Government continue to expand bilateral and multilateral agreements and partnerships with countries of origin to prevent trafficking in and sale of children; establish an effective screening process to identify child victims of trafficking and ensure that they are provided with adequate recovery and reintegration services; and that cases are investigated and perpetrators convicted. Further awareness-raising activities targeting vulnerable communities, the tourism industry and employment agencies are needed to effectively tackle the root causes and to reach out to victims. Additional training and capacity-building are needed for better screening as well as referral mechanisms to ensure that the protection needs of vulnerable groups are identified and addressed.

### B. Recommendations

60. On the basis of the above findings, and in the spirit of cooperation and dialogue, the Special Rapporteur offers the following recommendations to the Government of Malaysia.

61. Concerning the legislative, institutional and policy framework, the Government should:

(a) Expedite efforts to ratify the remaining international treaties, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness; the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption; the International Labour Organization conventions and the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, among others;

(b) Undertake comprehensive reform of the syariah, customary and civil legal systems to eliminate disparities and inconsistencies between the three legal systems and ensure that the best interests of the child is the primary consideration, including by aligning the definition of the child with the definition provided by the Convention on the Rights of the Child and ensuring that the minimum age of marriage is 18 years for all in all legal frameworks, without exception; amend discriminatory laws and policies against lesbian, gay, bisexual, transsexual and intersex children;



(c) Introduce universal legislation on adoption for Peninsular Malaysia, Sabah and Sarawak and amend the Child Act 2001 to repeal or restrict the defence of “reasonable payment” in the context of adoption, and repeal the defence of unlawful transfer of possession, custody or control of a child in instances of bona fide marriage (sect. 48 (4)); cease illegal adoption practices and falsification of birth certificates; put in place a regulatory body to oversee adoptions, including adoption placements;

(d) Amend the Child Act 2001 to ensure that the views of the child are heard and taken into consideration in all judicial, administrative and other decisions affecting them;

(e) Consider introducing in the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 special protection for child survivors of trafficking to prevent their detention and ensure their rehabilitation and reintegration;

(f) Prohibit surrogacy arrangements that amount to sale of children and adopt comprehensive regulations to govern the practice based, inter alia, on the best interests of the child.

62. Concerning investigation, prosecution and sanction, the Government should:

(a) Strengthen efforts to detect, investigate, prosecute and sanction the crimes of sale and sexual exploitation of children, including by ensuring systematic training of police officers nationwide, and increase the capacity of the police to monitor the encrypted paedophile networks and regulate their access to retained IP addresses for obtaining evidence;

(b) Ensure easy access to child-sensitive justice complaints, reporting and referral mechanisms allowing victims to report abuses without fear of deportation and violation of immigration laws;

(c) Ensure that children who are required to participate in criminal justice proceedings are given appropriate support and counselling to assist them at all stages of proceedings.

63. Concerning prevention and awareness-raising, the Government should:

(a) Ensure that the free 24-hour hotlines and web-/text-based services are available for all languages widely spoken in Malaysia, including by victims and potential victims;

(b) Carry out a national study on different forms of sale and sexual and labour exploitation of children, identifying trends, risk factors and root causes and how they affect vulnerable children;

(c) Urgently conduct a comprehensive mapping of the situation of street and undocumented, refugee and stateless children and develop a comprehensive national intervention, in collaboration with NGOs;

(d) Establish centralized data collection and analysis of disaggregated data on the scope and trends of the sale and sexual exploitation of children with a special focus of children in need of special protection, including the forms of exploitation and data on investigations, prosecutions and convictions; improve the data collection system on the number of reported cases, prosecutions and judgments and on the redress provided to victims, disaggregated by the nature of the offence, the category of perpetrator and the above-mentioned characteristics of victims;

(e) Ensure the transparency of data collection, accessibility and publicity, if necessary by reviewing the Official Secrets Act or its application;

(f) Strengthen existing victim screening and referral mechanisms by ensuring effective and timely coordination among law enforcement, social workers and service providers, and ensure that child victims are neither detained nor deported and that they are provided with adequate recovery and rehabilitation services;

(g) Establish alternatives to detention for undocumented children, including refugee and asylum-seeking children in Sabah and Sarawak;

(h) Ensure accessible and free birth registration for all children at all stages of applying for any documentation, including for non-Malaysian children, children of single mothers and children born in remote areas of the country;

(i) Ensure access to education and health-care services for all children, including non-Malaysian and undocumented children, without discrimination;

(j) Involve and empower children and youth through the use of new technologies and social media to share ideas and knowledge about and to report exploitative behaviours and ways to stop them;

(k) Publish the findings of the task force on a comprehensive action plan in an effort to address the root causes and main drivers of child marriage practices in Malaysia, including among the refugee and asylum-seeking population, migrant workers and indigenous communities;

(l) Raise awareness about the detrimental effects of child marriage on the child among religious communities and syariah and native courts, through community dialogue engaging children, families and leaders; take immediate measures to create employment opportunities, welfare nets, family support and affordable and accessible educational opportunities (including education on sexual and reproductive health) and vocational training for low-income communities in urban and, especially, in remote areas; strengthen One-Stop Crisis Centres sheltering school-age pregnant girls, including empowerment, follow-up and outreach after they leave the shelters;

(m) Provide training for law enforcement and the judiciary on the 2017 Sexual Offences against Children Act and ensure that cases of sale and sexual exploitation of children are separated from trafficking cases and investigated expeditiously, and that perpetrators are convicted; ensure that judicial proceedings are conducted in a child-sensitive manner as far as victim and witness protection are concerned and prevent revictimization;

(n) Strengthen capacity-building and specialist training of relevant professionals, ranging from social services and education professionals to law enforcement, and increase the number of trained social workers and professionals to effectively identify and address the crimes of sale and sexual exploitation of children;

(o) Address the demand factor, namely the perpetrators and intermediaries who commit sexual crimes against children, as a part of preventive efforts;

(p) Train teachers on sexual and reproductive health education in school and ensure that age-appropriate, comprehensive sexual and reproductive health education is taught in primary school and is accessible to out-of-school children, including in remote areas of the country.

64. Concerning care, recovery and reintegration, the Government should:

(a) Increase the number of child protection shelters beyond the capital, to provide comprehensive assistance to child victims of sexual abuse and exploitation;

(b) Ensure that child victims have access to remedies, including assistance to seek prompt and appropriate reparation for the harm suffered, through State compensation where appropriate;

(c) In collaboration with NGOs and UNICEF, systematically reach out to street children to protect them from arbitrary arrests and further victimization; provide recovery and reintegration services, registration and identity documents and access to basic health and education services, including vocational and life skills; and assist reunification with their families;

(d) Ensure the registration of alternative learning centres for undocumented children under the Education Act 1996.

65. Concerning cooperation and partnership, the Government should:

(a) Evaluate the availability, accessibility and quality of existing programmes and national plans of action with a view to informing and increasing the impact of new plans and programmes;

(b) Ensure that the Department of Social Welfare, in charge of providing a wide range of services to vulnerable groups, has enough resources and a dedicated capacity to deal with children in need of protection and enjoys full inter-agency cooperation and accountability in managing and implementing child protection policies;

(c) Establish closer working relationship with NGOs that work to detect, receive and refer cases of sexual abuse and exploitation of children;

(d) Enhance corporate social responsibility involving Internet service providers, telecommunications, financial services companies, the travel and tourism industries and the media in order to strengthen child safety online and to prevent child sexual exploitation in travel and tourism;

(e) Intensify efforts to regularly monitor the activities of employment agencies, private individuals and the entertainment industry to detect cases of sexual exploitation of children; raise awareness among chain hotels and the entertainment industry and encourage them to report suspected cases of sale and sexual exploitation of children;

(f) Increase collaboration with neighbouring countries, including within regional frameworks such as the Association of Southeast Asian Nations (ASEAN) Plan of Action Against Trafficking in Persons, Especially Women and Children and the ASEAN Convention Against Trafficking in Persons Especially Women and Children;

(g) Support alliances such as the Virtual Global Taskforce and the WePROTECT Global Alliance for effective cooperation in the investigation and prosecution of criminal networks and perpetrators in the context of Internet-facilitated criminal offences against children;

(h) Adopt necessary measures, including through international technical assistance, to ensure progress in order to achieve Sustainable Development Goals targets 5.3, 8.7 and 16.2;

(i) Expedite the submission of the State party's report to the Committee on the Rights of the Child and its two Optional Protocols, due since 2012;

(j) Issue a standing invitation to the special procedures system.

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