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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

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

Comments by the State*

* The present document is being issued without formal editing.



Response by the Government of Malaysia on the Report of the Country Visit to Malaysia by the Special Rapporteur on the Sale and Sexual Exploitation of Children, including child prostitution, child pornography and other child sexual abuse material

The Government of Malaysia refers to the advanced, unedited version of the report of the Special Rapporteur on the sale and sexual exploitation of children on her visit to Malaysia from 24 September to 1 October 2018, which was officially conveyed to the Government of Malaysia on 21 November 2018. The Government of Malaysia would like to thank the Special Rapporteur for the opportunity to provide comments, with the view to ensuring accuracy through highlighting errors of fact or law, within the report.

1. Para 8: “The Penal Code does not differentiate between the different forms of exploitation or sale of children and that of adults.”

First, it must be corrected that the law governing this matter is the Anti-Trafficking Persons and Anti-Smuggling of Migrant Act 2007 [Act 670], not the Penal Code.

Although Act 670 does not differentiate whether the victim of exploitation is a child or an adult, Act 670 does differentiate on whether the offence of trafficking is against a child or adult. Sections 12 and 13 are applicable to the accused who commits an act of trafficking against an adult; while Section 14 is applicable to the accused who commits an act of trafficking against a child.

2. Para 13: “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 sale of children.”

This sentence is misleading. It should be clarified that the adoption procedures are comprehensively outlined. There are relevant procedures to ensure that there will be no room for any illegal activities relating to adoption of children.

3. Para 13: “The sale of children in Malaysia is prevalent also because there is a large number of unwanted or abandoned babies born out of wedlock and to migrant workers who are not allowed to have families in Malaysia.”

There is no evidence or data to substantiate the sale of children in Malaysia is prevalent. It has to be noted that only migrant workers in peninsular Malaysia cannot be accompanied by their family members, while in the states of Sabah and Sarawak, migrant workers can be accompanied by their family members.

4. Para 16: “The Special Rapporteur learnt 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 outcry by women’s organisations, the perpetrator was later re-charged and is currently serving a 12-year sentence.”

Sexual intercourse with underage children, regardless of whether it is rape or consensual sex, is considered as statutory rape and therefore, a crime. It has to be clarified that such a crime is punishable under the law, regardless of whether the perpetrator marries the victim or not.

5. **Para 27: “Reportedly, up to 17,000 teenage pregnancies occur in Malaysia annually; an equal number or more of teenage abortions happen, many under unsafe conditions.”**

There is no evidence or data to substantiate this allegation. This sentence should be deleted.

6. **Para 29: “Malaysia has demonstrated political will and openness to deliver on its human rights commitments as also expressed in the Manifesto of the new Government.”**

Malaysia proposes the sentence to be rephrased, “Malaysia under the newly elected government, has demonstrated political will and openness to deliver on its human rights commitments.”

7. **Para 29: “There are also specialised courts for children in Sarawak, Selangor and Johor.”**

Malaysia would like to highlight that special courts for children are in operation throughout Malaysia and not only in these states.

8. **Para 32: “It also criminalizes the sexual abuse (Section 17 and 21).”**

Malaysia would like to inform that the applicable provisions related to “criminalizes the sexual abuse” are referred to in Section 31 and 43 of Act 611. Basically, Section 17 of Act 611 is about the child in need of care and protection while section 21 of Act 611 is basically on the child in need of medical examination or treatment.

9. **Para 32: “Part II of the Sexual Offences Against Children Act 2017 (SOACA), criminalizes the preparation of, or the making, producing or direction of child pornography, the exchanging, publishing, selling and accessing child pornography. It criminalizes “grooming” of children as a prelude to sexual abuse and spells out penalties for making and possessing child abuse material involving children. It also envisages establishing a registry of convicted perpetrators.”**

It should be clarified that no such provisions exist under SOACA. Malaysia would like to inform that the Child Act 2001 provides for the establishment of a child registry which is known as the Register of Children. The registry includes information on details of every case or suspected case of a child in need of protection as well as persons convicted of any offence in which a child is a victim.

10. **Para 33: “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.”**

It should be clarified that the Islamic Family Law (Federal Territory) Act 1984 only applies to the Federal Territories, while other states have their respective Islamic Family Law Enactments.

- 11. Para 35: “Despite the withdrawal by Malaysia of its reservation to article 16 (2) of the CRC, child 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.”**

Malaysia would like to highlight that article 16 (2) refers to CEDAW instead of CRC.

- 12. Para 35: “The Islamic Family Law (IFLA) Act 1984 sets the minimum age of marriage of girls at 16 while it is 18 for boys.”**

In line with Malaysia’s comment in Paragraph 10 above, Malaysia proposes to add in paragraph 35 of the Special Rapporteur’s report “and the respective state enactments” after “The Islamic Family Law (IFLA) Act 1984 ...”

- 13. Para 36: “the Penal Code (Art 375 A)”**

Malaysia proposes to amend the word “Art” to “Section”.

- 14. Para 36: “It is also common to resort to child marriage as means to escape prosecution for statutory rape.”**

Malaysia would propose to delete this sentence. In line with Malaysia’s comment in paragraph 4 above, Malaysia would like to reiterate that a crime (statutory rape) is still punishable under the law regardless of the perpetrator marries the victim.

- 15. Para 37: “The Social Welfare Department and its Children’s Division provide care and rehabilitation to vulnerable communities, including children.”**

Malaysia proposes to amend “The Social Welfare Department” to “The Department of Social Welfare”.

- 16. Para 37: “The National Coordinating Council for the Protection of Children was established under the Child Act 2001 to ensure the coordination and advise on child protection issues.”**

Malaysia proposes to change the word “The National Coordinating Council for the protection of children” to “The National Council for Children”.

- 17. Para 37: “SUHAKAM also plays an active role in receiving complaints on alleged trafficking cases involving minors, however it does not have a mandate dealing with child rights and is looking into setting up one.”**

Malaysia would like to clarify that Act 597 clearly stipulates SUHAKAM’s mandate extends to all forms of human rights, which includes the rights of the child. Malaysia further proposes the SR to rephrase the statement.

- 18. Para 42: “Alliance of Hope Government”**

Malaysia would like to highlight that the newly elected government of Malaysia is known as the “Pakatan Harapan”.

- 19. Para 42: “In September 2018, the Deputy Minister stated that the Government is looking into enforcing a comprehensive standard operation procedure for Syariah judges to follow before approving child marriages.”**

Malaysia proposes to amend “The Deputy Minister” to “The Deputy Prime Minister”.
