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Our Ref: SR(800) 826/8/10/2 (a)
Date: 09 February 2017

Mr. Dainius Pūras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Mdm. Maud de Boer-Buquicchio

Special Rapporteur on the sale of children, child prostitution and child pornography

Mdm. Urmila Bhoola

Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Mdm. Alda Facio

Chairperson of the Working Group on the issue of discrimination against women in law and in practice

Dear Sir / Mesdames,

I wish to refer to the Joint Communication ref: OL MYS 6/2016 dated 13 June 2016 from the Special Rapporteurs (SR) on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health; on the sale of children, child prostitution and child pornography; on contemporary forms of slavery, including its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice (hereinafter known as the "Mandate Holders") concerning the amendment to the 2001 Child Act.

2. In this response, the Government of Malaysia (hereinafter known as "the Government") will provide explanations to those which full facts and details are available and fully known to the Government. The Government's response to the relevant issues and allegations mentioned in the Joint Communication are elucidated in the subsequent paragraphs.

Law Reform (Marriage and Divorce) Act 1976 and the Islamic Family Law (Federal Territories) Act 1984 condone and legitimize child marriage, which is a form of forced marriage and a slavery-like practice

3. In Malaysia, the two main legislations involved in relation to divorce and marriage are the **Law Reform (Marriage and Divorce) Act 1976 [Act 164]** and **Islamic Family Law (Federal Territories) Act 1984 [Act 303]**. Act 164 governs matters concerning the solemnization and registration of marriage and divorce of non-Muslims, whereas Act 303 governs matters involving Muslims' family life.

4. As a State Party to the Convention of the Rights of the Child (CRC), Malaysia has undertaken efforts in ensuring that the rights of its children are protected including in relation to marriage.

5. It is prudent that the relevant provisions related to marriage specifically Act 164 and Act 303 concerning the minimum age for marriage. Section 10 of Act 164 stipulates that-

"Avoidance of marriages where either party is under minimum age for marriage

10. Any marriage purported to be solemnized in Malaysia shall be void if at the date of the marriage either party is under the age of eighteen years unless, for a female who has completed her sixteenth year, the solemnization of such marriage was authorized by a licence granted by the Chief Minister under subsection 21(2)."

6. Whilst Section 8 of Act 303 states that-

"Minimum age for marriage

8. No marriage may be solemnized under this Act where either the man is under the age of eighteen or the woman is under the age of sixteen except where the Syariah Judge has granted his permission in writing in certain circumstances."

7. A woman under sixteen years of age and a man under eighteen years of age is prohibited from contracting into a marriage unless a permission from a Syarie judge is obtained. In this respect, section 18 of Act 303 provides that instead of issuing the permission to marry under section 17 of Act 303, the Registrar shall refer the application of marriage to a Syarie judge if either of the parties to the intended marriage is below the age specified in section 8.

8. Section 8 of Act 303 permits a woman below the age of sixteen and a man below the age of eighteen to marry, provided that permission of the Syarie Judge is first

obtained before the marriage is solemnized. Therefore, a marriage by a person under the minimum age for marriage who fails to comply with the requirement under section 8 of Act 303, commits an offence under subsection 40(2) of Act 303, which provides as follows:

“Offences relating to solemnization of marriage

40. (1).....

(2) Any person who marries, or purports to marry, or goes through a form of marriage with, any person contrary to any of the provisions of Part II commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment”.

9. The Government of Malaysia, through Acts 164 and 303 does not condone or legitimise child marriage as well as disallows what could be construed as forced marriage. It certainly does not constitute a slavery like practice, a practice that is abhorred in Islam.

Absence of a specific offence of child pornography in the 2001 Child Act.

10. The Government wishes to inform that currently there are no specific laws on child pornography. However, there are provisions of law which govern the issues relating to the welfare of the child that prevents offences related to child pornography in Malaysia. The laws are as follow:

- 10.1. Child Act 2001 [Act 611];
- 10.2. Penal Code [Act 574];
- 10.3. Anti-Trafficking in Persons And Anti-Smuggling of Migrants Act 2007 [Act 607];
- 10.4. Communications and Multimedia Act 1998 [Act 588]; and
- 10.5. Film Censorship Act 2002 [Act 620].

11. There are domestic legislations which provide protection for children against exposure to pornography and other elements related thereto. In addition, the authorities are also able to take legal action against offenders under legislations that criminalise pornography, such as Act 574, Act 620 and Act 588. Amendments were made to Act 611 by increasing the sentence provided for under section 31. The sentence was increased from 10 years' imprisonment to 20 years and a fine of RM20,000 to RM50,000 with mandatory community service as punishment. The effort taken to increase the maximum fine under section 31 of Act 611 illustrates that the Government

of Malaysia views child pornography as a serious offence. It is also part of Malaysia's continuous commitment in her efforts to combat child pornography.

The SRs encouraged the Government of Malaysia to reform the Law Reform (Marriage and Divorce) Act 1976 and the Islamic Family Law (Federal Territories) Act 1984 so that the minimum age requirement conforms to national legislation, as set out in the 2001 Child Act, as well as to all the principles and provisions of international treaties ratified by Malaysia.

12. Article 1 of the CRC states that a child means every human being below the age of eighteen years *unless under the law applicable to the child, majority is attained earlier*. Act 611 defines children as every human being below the age of 18 years which is in conformity with the definition of children as provided in the CRC. Nonetheless, the CRC does allow the State to declare a lower age of majority. Therefore, the Government is of the view that the existing laws are still relevant in the context of Malaysia's society.

The SRs also encouraged the Government of Malaysia to revise the 2001 Child Act in order to explicitly criminalize the production, distribution, dissemination, import, export, offer, sale or possession of child pornography and to prohibit child and forced marriage.

13. There are existing legislations which deal with production, distribution, dissemination, import, export, offer, sale or possession of pornography. Malaysia believes that the law on sexual exploitation and child pornography should not be combined under Act 611 based on the following:

- 13.1. The provisions of legislation related to sexual exploitation and pornography children have been enshrined in various laws in Malaysia such as Act 574, the Anti-Trafficking in Persons Anti-Smuggling of Migrants Act 2007 [Act 670], Act 620 and Act 301;
- 13.2. Act 611 focuses on the prevention of sexual abuse and sexual exploitation of children also can mean child pornography. Section 17 (2)(C) of the Act states that a child is sexually abused if he has participated either as participants or observer, in any sexual activity for the purpose of:
 - 13.2.1. any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance; or
 - 13.2.2. sexual exploitation by any person for that person's or another person's sexual gratification;

- 13.3. Section 43 of Act 611 states that it is an offence for any person who sells, acquires, bring in, hold and advertise children for purposes of prostitution and sexual behaviour within or outside Malaysia. If found guilty, shall be liable to a fine not exceeding RM50,000 or imprisonment not exceeding 15 years or both. For those who act as intermediaries, by influencing or controlling children into or related to prostitution, can upon conviction shall be liable to a fine not exceeding RM50,000 and shall also be liable to imprisonment of not less than three (3) years but not more than 15 years and whipping of not more than six (6) strokes;
- 13.4. Section 31 of Act 611 also makes it an offence to those who, being a person having the care of a child, sexually abuses the child or causes or permits him or her to be so abused and could be liable to a fine not exceeding RM20,000 or to imprisonment for a term not exceeding ten years or both;
- 13.5. Act 611 also provides for care, protection and recovery to children who are exposed to physical and emotional abuse. Children who are being threatened or intimidated for unlawful or immoral purposes are also provided protection under this act. A child who is being induced to perform any sexual act, or is in any physical or social environment, which may lead to the performance of such act should be protected and be taken into rehabilitation. A child who is exploited sexually and requires protection and rehabilitation, will be placed at the shelter home for a term not exceeding three (3) years or until the child reaches the age of 18 years, whichever is sooner. However, the child can be released after only 12 months depending on the confirmation of the Court For Children or Board of Visitors;
- 13.6. Apart from Act 611, Act 574 particularly Section 292 generally provides that a person who receives profits from businesses relating to selling, buying, distributing etc. of pornographic materials had committed an offence. Section 292 had been amended to increase the penalty in instances where the materials sold, possessed, distributed etc. are pornographic material involving children. While Section 377E also provides that stimulating children under the age of 14 years with any pornographic action or material as an offence; and
- 13.7. Meanwhile, section 232 of Act 588 states that any person who abuses network facilities and services network for distributing pornographic images will be liable for punishment of fine not exceeding RM50,000 and jailed not

more than one (1) year. These would include pornographic materials involving children on the Internet and other sources.

14. Apart from the domestic legislations outlined above, Malaysia had also taken the crucial step of acceding to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (The Optional Protocol). Therefore, based on the explanation provided, the Government is of the view that the existing domestic legal framework is in place to address issues of and protect children from all forms of sexual exploitation, trafficking, prostitution and pornography.

Provide an update on the status of the Law Reform (Marriage and Divorce) Act 1976 and the Islamic Family Law (Federal Territories) Act 1984, and on the Amendment to the 2001 Child Act.

15. Currently, there are no proposals to amend to the Law Reform (Marriage and Divorce) Act 1976 and the Islamic Family (Federal Territories) Act 1984 to ban child marriage. However, at this time Malaysia is focusing on improving social elements and the welfare of children who intend to marry and who are already married to ensure their welfare is protected and guaranteed under the law.

16. Malaysia has recently amended Act 611. The amendment seeks to provide for the establishment of the National Council for Children (NCC) to better deal with issues and aspects relating to the care, protection, rehabilitation, development and participation of children, to introduce the concept of family based care to encourage children's development and well-being. It is also to make sure the participation and involvement of society in providing services relating to care, protection, rehabilitation and development of children. Further, to allow for the details of persons convicted with any offence in which a child is a victim be kept in the Register of Children, to abolish the punishment of whipping for children who are found guilty of an offence and to introduce provisions relating to community service to be performed by the children; to further clarify children's rights upon arrest to increase the penalty for offences under Act 611 and to provide for community service as an additional punishment for offences under Act 611 and to provide for consequential matters or incidental matters.

17. Act 611 has been amended through the Child (Amendment) Bill 2015 and it was passed after gaining approval in both the House of Commons on 6 April 2016 and the Senate on 4 May 2016. Among the aims of the amendment is to prevent and deal with cases of paedophilia such as increasing the punishment for the offence of abuse and neglect, including sexual manner under section 31 of Act 611. In addition, the amendments are expected to indirectly curb paedophilia through the "List of Children in Need of Protection" Section 119 of the Act 611. The list will be recognized as "Product

Children" that expands to include information on offenders for crimes where children are victims. This information includes individuals, convicted of sexual crimes.

Provide further information on any measures taken by Your Government to address and tackle child and/or forced marriages which discriminate women and girls and have negative impacts on their health, development, education, life options and their protection from violence, in light of its international human rights obligations.

18. Malaysia has undertaken various positive measures to ensure that human rights, including children's and women's rights are upheld and better protected. Among the steps taken in addressing marriage involving child / forced marriage which discriminate women and girls are:

- 18.1. the establishment of the Task Force for Underage Marriages under the Coordinating Council for the Protection of Children (Task Force). The Task Force comprising relevant government agencies, academics and activists examine the issue of children associated with underage marriages. Among the items proposed under this Task Force is the provision of medical reports and social reports to be considered by the Judge (Muslim), Chief Minister (non-Muslim), and the Ketua Adat (Traditional) before approving an application for underage marriage;
- 18.2. to provide / improve awareness of reproductive health and parenting among adolescents and young couples that will get married through courses such as the Pre-Marriage Course and SMARTSTART provided by the National Population and Family Development Board;
- 18.3. the creation of youth centers cafe @ TEEN by NPFDB nationwide. Cafe @ TEEN targets young people aged 13 to 24 years to provide information related to psychosocial issues, including providing counselling services to adolescents. Among the aspects to be emphasized is the relationship within the family and the relationship between the sexes as well as clinical advice and life skills programmes;
- 18.4. the establishment of Policy and Action Plan of the National Reproductive Health Education to be implemented by ministries and agencies responsible for providing education about health reproductive and advocacy in the community such as the Social and Reproductive Health Education (PEKERTI); and

18.5. continued consultations with the agency responsible for the law relating to marriage, such as the National Registration Department, the Department of Islamic Development Malaysia, the Shariah Judiciary Department Malaysia and the Court.

19. Apart from that, the Ministry of Women, Family and Community Development (MWFCD) has taken steps to monitor child marriages by ensuring that a social and medical report is mandatory for marriages involving minors. This is to ascertain that the minor has attained the necessary maturity and physical attributes.

20. Malaysia is taking more legislative measures to address the so-called child and forced marriages. These include amendments to laws prohibiting child and forced marriages through sanctions against the perpetrators of child and forced marriages and the implementation of compulsory registration of all marriages. Some progressive measures includes attempts by the courts to determine whether a boy or a girl can give valid consent, understand the concept of marriage and understand his and her responsibility before the courts grant permission to marry. Therefore, in Malaysia's perspective there is no such term as forced marriage. This is based on the understanding that forced marriages mean any marriage which occurs without the full and free consent of one or both of the parties and/or where one or both of the parties is/are unable to end or leave the marriage, including as a result of duress or intense social or family pressure.

Provide any further information on additional issues such as appropriate redress mechanisms available for victims of child and/or forced marriage, including rehabilitation, counselling and reintegration, girls' education, and awareness raising campaigns, with the involvement of men and women, boys and girls, and community and religious leaders, to prevent and eliminate child marriage.

21. Malaysia enacted the Act 611 to fulfil its obligation under CRC. Act 611 repealed the Juvenile Courts Act 1947 [Act 90], the Women and Girls Protection Act 1973 [Act 106] and the Child Protection Act 1991 [Act 468]. The preamble of Act 611 provides that every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin and physical, mental or emotional disabilities or any status. The provisions of Act 611 are based on the four core principles of the CRC that is, non-discrimination, best interest of the child, the right to life, survival and development and respect for the view of the child.

22. In Malaysia, child protection service is guided mainly by Act 611, which governs the care, protection and rehabilitation of children. Under Act 611, Malaysia has

established a coordinating council for the protection of children. Section 3 of the Child (Amendment) Act 2016 states that the functions of the Council amongst others are:-

- 22.1. to advise and make recommendations to the Government of Malaysia on all issues and aspects of child protection, care, rehabilitation, development and participation at national, regional and international level;
- 22.2. to develop programs and strategies aiming at educating the society and to raise awareness throughout society, including at the family level, regarding the rights and dignity of children; and
- 22.3. to develop programs aiming at educating the society in the prevention of child abuse and neglects as well as the prevention of child's involvement in immoral or criminal acts.

23. Child victims who need rehabilitation, counselling and reintegration, will be referred to the Department of Social Welfare (DSW) under the MWFCDC which provides the following services:

- 23.1. Counselling services and reintegration is undertaken to improve their potential, to accept responsibility and to accept themselves as they are in addition to the construction of self-concept.
- 23.2. Malaysia via the relevant ministry works closely with non-governmental organisations (NGOs) in applying the knowledge about the protection and safety of self and knowledge of reproductive health education for parents and children.
- 23.3. Action to save married children who face abuse is taken under the provisions of the Act 611 and the Domestic Violence Act 1994 [Act 521].

24. The Act 611 provides protection to any child who falls under the definition of "child" regardless of gender, marital status, race, religion, ethnicity, etc. in accordance with paragraph 4 of the Preamble referred to in Act 611 as follows:

"RECOGNIZING that every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, color, sex, language, religion, social origin, or physical, mental or emotional disabilities or any other status:"

25. Act 521 is an Act to provide for legal protection in situations of domestic violence and matters incidental thereto. Therefore, protection under Act 521 is given to the husband or wife of the interpretation provided in section 2 of Act 521:

"Spouse" includes a de facto spouse, that is to say, a person who has gone through a form of ceremony which is recognized as a marriage ceremony according to the religion or custom of the parties concerned, notwithstanding that such ceremony is not registered or not capable of being registered under any written law relating to the solemnization and registration of marriages;

26. There are two (2) types of protection that can be given to victims of domestic violence under Act 521, namely:

26.1. An interim protection order: given by the Court pending investigation with the treatment of domestic violence that includes:

26.1.1. prohibiting the person against whom the order is made from using domestic violence against the spouse or former spouse or a child or an incapacitated adult or any other member of the family; and

26.1.2. prohibiting the person against whom the order is made from inciting any other person to commit domestic violence against the spouse or former spouse or a child or incapacitated adult or any other member of the family of the person against the order was made.

26.2. The order of protection: given by the Court in an application involving a complaint of domestic violence that includes any one or more of the following orders:

26.2.1. prohibiting the person against whom the order is made from using domestic violence against the complainant;

26.2.2. prohibiting the person against whom the order is made from using domestic violence against the child;

26.2.3. prohibiting the person against whom the order is made from using domestic violence against the incapacitated adult; and

26.2.4. prohibiting the person against whom the order is made from inciting any other person to commit domestic violence against protected person.

27. The protection stated above, is given on the application of the complainant to the court. In a case where a child who is unable to file an application, the application may be filed by a guardian or relative or person responsible for the care of the child, or by an enforcement officer. Furthermore, protection to an under aged spouse who is subjected to domestic violence is provided for under Act 611 and 521.

28. The Government has been continuously working to raise awareness in collaboration with religious and civil marriage celebrants, migrant and legal resource centers, domestic violence services, child support agencies, families and community leaders, women, girls and boys from vulnerable group.

Provide any further information on measures taken to prohibit and criminalise child pornography, addressing the demand and ensuring the provision of comprehensive care, recovery and reintegration services to child victims.

29. The Government reiterates its earlier position that pornography in any form is illegal and this includes child pornography. While there is no specific legislation for online pornography, persons or service providers circulating such content or maintaining sites with such contents are considered to have committed an offence under Sections 211 and 263 of Act 588.

30. Malaysia acknowledges that this issue must be addressed comprehensively and prudently. This requires the cooperation of all parties, including the private sector and non-governmental organisations (NGOs). An Action Plan for the Protection of Children in the Cyber World has been set up that aims to protect children from the dangers of cyber threats. This plan includes programmes and coordinated action that must be implemented by all parties to protect children in cyberspace. The action plan also acts as a catalyst in raising awareness and commitment of every member of society, particularly parents, guardians, teachers and NGOs.

31. Action Plan for the Protection of Children in the Cyber World sets out four (4) main objectives:

- 31.1. increase the awareness and commitment of all stakeholders to protect children in cyberspace;
- 31.2. to protect children from any form of cyber threats;
- 31.3. ensure that children get involved in cyber threats of intervention and rehabilitation; and

31.4. strengthen support services in preventing cyber threats to children.

32. The MWFCO has formulated 20 strategies based on four key aspects of advocacy, prevention, intervention, and support services. Various implementing agencies have been identified including government agencies, NGOs and private sectors to implement any programs planned.

33. In addition, the Government has established two (2) committees to oversee paedophile cases in Malaysia as follows:

33.1. Technical Committee at the level of Social Welfare Department (SWD) Review of the technical aspects of the implementation and development of the Register of Children in line with amendments; and

33.2. Steering Committee at the level of MWFCO to discuss paedophilia as a whole including the paedophilia as a mental health problem that is difficult to identify, the important role of family and community responsibilities to safeguard and protect children.

34. The Committee involves the relevant agencies namely the Attorney General Chambers, the Royal Malaysia Police (PDRM), Office of the Chief Registrar of the Court, the Ministry of Health (MOH) and the Malaysian Communications and Multimedia Commission (MCMC).

35. The Government has set up the Task Force on Child Online Protection in 2013 to create network among agencies, authorities, NGOs and other stakeholders to look at all aspects of protecting children from crime and exploitation in cyberspace and address the issue. In 2015, the Action Plan was designed to deal with threats like cyber-bullying, cyber-grooming, pornography as well as violent content on the internet.

36. Malaysia affirms that treatment of perpetrators will be just and fair, while the victims of child pornography will be provided with adequate care and services consistent with international standards and practice. Realising the importance of this, Malaysia has incorporated Human Rights- Based Treatment of Victims as one of the guiding principles of the National Action Plan. Recreational and educational activities are conducted in collaboration with the International Organization for Migration (IOM), NGOs and community members. Victims with trauma or any health issues will be referred to hospitals for treatment. Social Welfare Officers are on duty 24 hours a day and counsellors as well as psychologists will be invited to assist victims periodically or when there is a need.

Conclusion

37. As a State Party to the CRC, Malaysia has undertaken efforts in ensuring that the rights of its children are protected. The Government recognises that children are the key to the country's survival, development and prosperity. Initiatives undertaken by the Government and civil society in realising and upholding the rights of children have resulted in progress in the field of education and primary healthcare for children. Malaysia views the protection of children, their health, educational development and participation in society as important building blocks in the growth of nations, especially among developing countries.

38. The Government will continue to fulfil its international obligations as stipulated in the CRC. Malaysia gives its assurance that the rights which are presently available to all citizens especially children shall continuously be observed in accordance with the Federal Constitution and other domestic laws of Malaysia.

39. The Government also reiterates its commitments on the protection, promotion and implementation of all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms.

Please accept, Sirs / Mesdames, the assurances of my highest consideration



AMRAN Mohamed Zin

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