



*Permanent Representative of Malaysia
Geneva*

15 February 2022

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Special Rapporteur on the Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and other Child Sexual Abuse Material

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Special Rapporteur on Violence Against Women, Its Causes and Consequences

Ms. Melissa Upreti

Chair-Rapporteur

Working Group on Discrimination Against Women and Girls

Dear Sir/Madam,

I refer to your previous Joint Communication, reference AL MYS 3/2021 dated 10 March 2021 regarding the situation of refugees and asylum-seeking children in Malaysia.

2. I hereby transmit in the **ANNEX** the response of the Government of Malaysia to the afore-mentioned matter.

3. In thanking the Special Procedures for the understanding and cooperation, I express my sincere hope that the attached response from the Government of Malaysia will be fully taken into consideration.

Please accept, Sir/Madam, the assurances of my highest consideration.

Thank you.

Yours Sincerely,



AHMAD FAISAL MUHAMAD
Ambassador/Permanent Representative

THE GOVERNMENT OF MALAYSIA'S RESPONSE TO THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE SITUATION OF REFUGEE AND ASYLUM-SEEKING CHILDREN IN MALAYSIA

INTRODUCTION

1. The Government of Malaysia ("the Government") presents herewith its response to the concerns raised by the Special Procedures, Office of the High Commissioner for Human Rights ("OHCHR") on the situation of refugees and asylum-seeking children in Malaysia, in a joint communication (reference no.: AL MYS 3/2021) dated 10 March 2021 ("the Joint Communication").

OBSERVATIONS BY THE GOVERNMENT OF MALAYSIA

2. The Government took note of the information provided in the Joint Communication, among others, on the statistics of refugees and asylum-seekers registered with the United Nations High Commissioner for Refugees ("UNHCR") in Malaysia as of November 2020, including from various minorities and children. The Joint Communication also raised on underreported gender-based violence against women and girls among refugees due to social stigma, difficulties in accessing safe and confidential services, fear of deportation, and violation of immigration laws.

3. The Government will continue to explore means, including through collaboration with non-governmental organizations, to provide care services for women and girls survivors of violence and mitigate the effects of violence on victims. In doing so, the Government has carried out several initiatives such as providing information to the public on the support services available to the victims of domestic violence, publicising available helplines managed by the Government and NGO via social media, facilitating victims to report a case or seek shelters and enhancing coordination of data relating to domestic violence.

4. In ensuring protection to the victims of domestic violence, the Government provides safe places and shelters under the Domestic Violence Act 1994 [Act 521]. Act 521 provides for various protection orders to be issued by the court to protect the victims of domestic violence, namely Emergency Protection Order (“EPO”), interim protection order (“IPO”) and Protection Order (“PO”).

5. Emotional support assistance is provided to the trafficked victims through an online psychoeducation programme for rehabilitation and emotional management (“De’ Stress Clinic”). Under this programme, the Protection officer/NGOs/Case officer may conduct emotional well-being programmes for the trafficked victims in the Special Shelter Homes for Women as enacted in the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670].

6. During the COVID-19 pandemic, the De’ Stress Clinic programmes were conducted through tele-conference or tele-guidance in accordance with the guidelines issued by the Ministry of Health (“MOH”) and National Disaster Management Agency (“NADMA”). Investigation officers, translators (where needed), Victim Assistance Specialists and Deputy Public Prosecutors are encouraged to conduct an early investigation and online social report with minimum contact with the victim. In any situation that requires immediate action, the investigation officer would obtain permission from the relevant authorities based on the guidelines issued by MOH and NADMA.

7. As part of the continuous reform to address the issue of gender-based violence against women and girls, the Government is working towards establishing a One-Stop Social Support Centre (“OSC”) to provide a holistic and responsive social services support system to the targeted groups including women, children, families, elderly and people with disabilities in dealing with social issues such as domestic violence, post-divorce, abuse and unwed pregnancy.

8. With regard to findings made by agencies working with the survivors of gender-based violence and serious concern on the risk of the children being exposed to abuse and exploitation, the Government has introduced a five-year National Strategy Plan 2020 – 2025 (“the Plan”) to resolve issues on child marriage.

9. Guided by the core principles of the Convention on the Rights of the Child (“CRC”), the Plan outlines the programmes and actions to address the factors that cause child marriage. It also adopts a cross-sectoral approach in addressing various aspects namely law, parenting, family support, education, health and awareness. The Plan covers both Muslim and non-Muslim marriages as well as customary marriages involving the indigenous people and the natives of Sabah and Sarawak. The Plan also takes into consideration the children with refugee status. The implementation of the programmes and actions under the Plan is carried out by the various Ministries and agencies at the federal and State levels, NGOs and international bodies under the supervision of the National Strategy Plan in Addressing the Causes of Child Marriage Steering Committee.

10. With regard to challenges faced by asylum-seeking and refugee child victims and survivors of trafficking, sexual exploitation and abuse in accessing State social protection services, the Government reaffirms its commitment under the CRC to ensure 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 or physical, mental or emotional disabilities or any status, the principle of which is embodied in the Malaysian Child Act 2001 [Act 611].

11. Moreover, the Joint Communication flagged certain concerns pertaining to dissemination of information to women and children refugees and asylum-seekers. While the mainstream information dissemination is still largely available in the national language, the Government has taken progressive actions by collaborating with NGOs to improve the access and clarity of the information on support services available, including the helplines managed by the Government and NGOs through promotion in the social media. To ensure inclusivity in the approach, consultation with vulnerable children is also undertaken during policy review. The Government also collaborates with NGOs in engaging directly with the refugees and asylum-seeking community to spread awareness on the available assistance and legal protection.

12. The Joint Communication also highlighted that since August 2019, UNHCR has no access to asylum-seekers and refugees detained in Immigration Detention Centres

("IDCs") in Peninsular Malaysia. Concern was also raised on access to an asylum procedure in line with international protection standards for the asylum-seekers, as well as a mandatory and often prolonged and indefinite administrative detention of many asylum-seekers and refugees.

13. The Government is currently improving a mechanism to conduct preliminary security screening for detainees at IDCs. Based on this mechanism, the detainees who were cleared for security vetting will then be allowed to engage with UNHCR for refugee status determination process. Malaysia is not a Contracting State to the 1951 Convention Relating to the Status of Refugees ("Refugees Convention") or a State Party to the 1976 Protocol Relating to the Status of Refugees ("Refugees Protocol") and is not legally obliged to comply with the international protection imposed therein. However, protection and assistance based on humanitarian ground are frequently provided by the Government to refugees.

14. In relation to statistics of minors in IDCs, the Government is looking into commencing the Alternatives to Detention ("ATD") pilot project that will involve unaccompanied and separated children in IDC. Under this pilot project, these children will undergo vulnerability screening and later will be placed at temporary shelter under the provision for placement with fit and proper person under Act 611.

15. On the conditions in IDC as well as its use for children, pregnant women and other vulnerable inmates as raised in the Joint Communication, the Government affirms that the Standard Operating Procedure ("SOP") at IDCs ensures that female and male detainees are held separately from each other, and only immigration officers of the same gender are allowed to monitor and handle the respective detainees. Nonetheless, the Government also ensures that detainees with family ties such as husband, wife and children are placed at the same detention centre. They are allowed to meet once a week under the supervision of Immigration Officers.

16. The Government continuously improves access to quality health care in IDCs including support for physical and mental health. Paramedics were placed in IDCs to provide and attend to first aid response. Meanwhile, arrangement was also made to facilitate cases referral, including emergency cases such as women in labour and

other obstetric emergencies, from IDCs to a nearby hospital or health clinic to reduce the waiting time. In addition, the Government maintains its policy to allow children and babies to stay with their mothers in the detention centres, and continue to provide health and immunisation status examinations for children.

17. The Government attaches great importance in ensuring access to affordable medical services to all irrespective of migration status. Refugees and asylum-seekers can seek medical assistance and treatment from the Government healthcare facilities. The charges for such treatment is 50% subsidised by the Government.

18. Regarding the concerns about the poor detention condition, the Government continuously allocates fund to upgrade and refurbish the IDCs to ensure compliance with its domestic laws, rules and regulations. In addition, regular cleaning and disinfection works are carried out at IDCs to ensure their sanitary condition. Detainees are served with balanced diet as recommended by MOH with the aim to reduce the risk of diseases and promote their good health.

19. In terms of the healthcare services, detainees with health problems, acute and emergency cases, will be brought to the nearest public health clinics and/or hospitals for treatment in accordance to the SOP set by MOH. Children and pregnant women in the detention centres will be referred to the nearest public health clinics for immunization and pre-natal check-up and child care check-up on regular basis.

20. In terms of management of disease outbreak or public health event, the nearest district health office will deploy a specialised health team to investigate, control and manage the outbreak. Detainees with symptoms will be immediately referred to this team and are isolated from other detainees until a risk assessment is performed.

Responses by the Government on issues raised

(i) **Please provide information on measures taken towards the complete termination of immigration detention of children and their families as well as efforts made to provide effective protection, adequate care and reception,**

including access to education, for migrant, asylum-seeking and refugee children.

21. Children and their families in IDCs are provided with access to healthcare services such as medical pre-screening, referral to the nearest public health clinics for immunization, and referral to nearest public health clinics/hospitals for acute and emergency cases. The Government provides 50% subsidy rate on medical treatments for refugees and asylum-seekers, which reflects its commitment to ensure them access to healthcare services.

22. Whilst UNHCR cardholders are not allowed to enrol in public schools, they have access to education within their own community schools and schools administered by NGOs through *Alternative Learning Centre* (“ALC”). The curriculum of the ALCs are based on the country of origin or third country to ensure easier immersion when they are repatriated.

23. Additionally, the Government maintains regular communications or had entered into agreements with countries from which Malaysia has sourced migrant workers. These agreements are regularly revisited and improved on. Malaysia also adheres to the provisions of ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (“ADRMW”). In addition to that, the Government periodically engages with International Organization for Migration in implementing provisions on rights of migrants' children as stipulated in ADRMW.

24. The Government also collaborates with NGOs and civil society organizations through regular engagements, consultations and joint projects. The civil society organizations have been consulted in the formulation of laws, policies and programmes. The collaboration also includes direct engagement with the refugees and asylum-seeking communities to spread awareness on the assistance and legal protection for them.

(ii) Please provide information on policies and measures taken to prevent any act of sexual abuse and sexual violence to which asylum seekers and refugee women and girls detained in IDCs are particularly exposed.

25. The SOP implemented in IDCs ensures that the female and male detainees are detained separately from each other. Immigration officers are only allowed to monitor and handle detainees of the same gender.

(iii) Please provide information on the availability of child-sensitive victim identification, assessment and referral procedures in place and standard operating procedures for coordination among law enforcement, humanitarian actors and civil society organizations/other service providers, to ensure that child victims and their families are neither detained nor forcibly returned to their countries of origin.

26. In practice, all measures by the Government in ensuring child victims and their families are not detained or forcibly returned to their country of origin, are in accordance with its sovereign responsibility within its own territory as recognized by international law, which include protecting national security, public order, morals, rights and freedom of Malaysian citizens as well as non-citizens. These measures have been exercised carefully taking into consideration Malaysia's domestic laws and its international obligations.

27. Malaysia also allows for illegal immigrants in possession of the UNHCR Cards to remain temporarily in Malaysia on humanitarian grounds and on a case-by-case basis. Refugees who possess valid UNHCR card are neither detained nor sent back to their country of origin against their will except if they pose threat to Malaysia's national security. Furthermore, the Government does not implement any policy that would separate a child from their biological parents even during detention pending the process of their asylum application.

28. The Government has been collaborating closely with the UNHCR in addressing issues related to refugees in Malaysia. A Joint Task Force with UNHCR was established in 2016 to address various issues pertaining to UNHCR cardholders. Being the country that hosts the largest number of refugees in Southeast Asia, Malaysia participates and supports the Global Compact on Refugees. Malaysia is ready to work with all relevant partners to tackle the challenges relating to the global phenomenon of forced migration and refugees.

29. Akin to other jurisdictions globally, deportation of foreign nationals detained in IDC in Malaysia is part of routine and on-going efforts to address the major problem of overcrowding of IDC around the country, especially to reduce the risks of COVID-19 outbreaks in IDC. The deportation of illegal immigrants is consistent with Malaysia's right to protect its sovereignty, national security and upholding the rule of law.

(iv) Please provide information on the availability of child protection shelters and mechanisms, and the provision of appropriate protection and humanitarian assistance, comprehensive health care and counselling to child victims of sexual abuse and exploitation and other human rights violations, regardless of their migration status and, as far as possible, in their languages or in a language they understand. Please provide information on the accessibility of child-sensitive justice complaints, reporting and referral mechanisms allowing victims to report abuses without fear of deportation and violation of immigration laws.

30. The Government provides protection to children who are victims of human trafficking and migrant smuggling. The Ministry of Women, Family and Community Development ("MWFCD") is responsible to provide a place of refuge for trafficked persons, particularly women and children as stated in Section 42 of the Act 670 to ensure that their basic needs are taken care of.

31. MWFCD monitors the management and programmes implemented in the shelter homes which are gazetted as a place of refuge under Act 670. There are two shelters that provide protection to children under the age of 18 based on gender streaming. Negeri Sembilan shelter provides protection for girls, whilst Johor shelter is dedicated for boys. The home shelters seek to provide certain needs for the children such as protection, food, healthcare service, education, training and vocational skills programmes, counselling service and recreational activities.

32. Children's institutions established and appointed by Act 611 and Act 670 to provide care and protection to children also permit the admission of non-citizen children. Based on the statistics by the Social Welfare Department for the period 2018 to 2021, there are a total of 46 children who are non-citizen placed in places of refuge

under Act 670 (“ATIP Shelters”). While for children's institutions under Act 611, there are a total of 10 children who are non-citizens. Children rescued under Act 670 are placed in places of refuge segregated according to gender and age (separate place of refuge for child and provided with basic needs, support and assistance).

33. Recreational and educational activities are conducted in the shelters in collaboration with 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 and psychologists will be invited to assist victims periodically or whenever necessary.

34. In terms of the referral mechanism available for trafficked victims, enforcement officers may, on reasonable suspicion that any person who is found or rescued is a trafficked person, take that person into temporary custody and produce that person before a Magistrate within 24 hours. The Magistrate shall make an interim protection order (IPO) for the person to be placed at an ATIP Shelter for a period of 21 days. During those period, enforcement officers shall investigate into the circumstances of that person’s case in order to determine whether the person is a trafficked person under Act 670. A report will be prepared jointly by the enforcement officers and the Protection Officer upon completion of the investigation and enquiry. The report together with the person will be produced before a Magistrate’s Court, whereby the Magistrate may make a Protection Order (PO) for a period not exceeding three (3) months from the date of the order upon being satisfied that the person is a trafficked person and in need of care and protection.

35. The victims will be placed in ATIP Shelters for a duration specified in the PO. During this period, the victims are provided with counselling and self-development training.

(v) Please indicate through which policies, laws and mechanisms Malaysia ensures the protection of all children, including migrant, asylum-seeking and refugee children, from forced marriage, forced labour, trafficking and other forms of exploitation.

36. Malaysia has implemented numerous policies, laws and mechanisms to ensure the protection of children, including migrant, asylum-seeking and refugee children, from forced marriage, forced labour, trafficking and other forms of exploitation. The relevant laws are Act 611, Sexual Offences Against Children Act 2017 [Act 792] , Evidence of Child Witness Act 2007 [Act 676] , Act 521, Act 670, Islamic Family Law (Federal Territory) Act 1984 [Act 303] , Islamic Family Law Enactments in all states, Children and Young Persons (Employment) Act 1966 [Act 350], Law Reform (Marriage and Divorce) Act 1976 [Act 164] and Penal Code [Act 574].

37. Other complementary legislations that guarantee the protection all children, including migrant, asylum-seeking and refugee children, from forced marriage, forced labour, trafficking and other forms of exploitation are the Adoption Act 1952 [Act 257] , Adoption Ordinance Sabah 1960 (*Sabah No.23 of 1960*) and the Adoption Ordinance Sarawak 1958 [*Cap.91 (1958 Ed.)*], Registration of Adoption Act 1952 [Act 253], Guardianship of Infants Act 1961 [Act 351], Education Act 1996 [Act 550], Child Care Centres Act 1984 [Act 308] and Care Centres Act 1993 [Act 506]. The Government also develops the National Child Policy that focuses on the holistic development of children's survival, protection, development and participation as provided under CRC.

38. Moreover, the National Strategy Plan in Handling the Causes of Child Marriage was launched on 16 January 2020 and will be completed in 2025. The Plan shall focus on the identified factors leading to child marriage through various programmes and actions across all levels of society. The Plan covers Muslims and non-Muslims marriages and customary marriages involving the Orang Asli (indigenous people) and the natives of Sabah and Sarawak.

(vi) Please provide information on the measures taken to implement the *Child Act 2001* to ensure migrant, asylum-seeking and refugee children exercise their rights and access State protection systems and services in a non-discriminatory manner, in line with Malaysia's commitment to meet the Sustainable Development Goal 16 to end violence against all children.

39. Malaysian Act 611 was enacted based on the 4 core principles of the CRC which are, non-discrimination, best interest of the child, the right to life, survival and

development and respect for the views of the child. 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 or physical, mental or emotional disabilities or any other status.

40. As mentioned at paragraphs 30 to 38 above, the child protection shelters and mechanisms, and the provision of appropriate protection and humanitarian assistance, comprehensive health care and counselling to child victims are available to all children regardless of their status. In addition, amendments were made to Act 611 in 2016 to increase the penalties on offences relating to health and welfare of children which include abuse and neglect, namely sections 31, 32 and 33 of Act 611. Besides Act 611, there are other measures undertaken to provide access to children involved in cases of abuse and ill-treatment to exercise their rights effectively during legal proceedings. The measures include the amendment to the Legal Aid Act 1971 [Act 26] to provide Legal Companion for child victim of sexual offences, amendments to the Sexual Offences Against Children Act 2017 [Act 792] concerning the admissibility of certain type of evidence in cases involving children to facilitate prosecution, and the provision on detailed and specialized guideline in dealing with child witnesses under the Evidence of Child Witness Act 2007 [Act 676] which aimed at reducing the trauma experienced by child witnesses in court appearances.

(vii) Please provide information on measures taken to increase collaboration and mobilise support between all child protection stakeholders in Malaysia, including the Ministry of Women, Family and Community Development to safeguard the well-being of asylum seeking and refugee children at risk.

41. Malaysia is committed to protect and promote the rights of all children including asylum seeking and refugee children at risk. Being a State Party to the CRC, Malaysia has undertaken efforts in ensuring that the rights of the child are protected. Towards this end, the Government is guided by the policy directive which deals with the management of refugees and asylum seekers in Malaysia including to safeguard the well-being of asylum-seeking and refugee children at risk.

42. The Government wishes to reiterate the information provided in paragraph 33 above concerning collaboration measures between all child protection stakeholders in Malaysia to safeguard the well-being of child victims.

43. The Government is looking into the introduction of an ATD pilot project, which will involve unaccompanied and separated children in immigration detention. These children will undergo vulnerability screening and will be placed at temporary shelter under the provision for placement with fit and proper person under Act 611.

44. With regard to the care and protection for trafficked victims, currently, the Government runs 8 shelter homes (i.e. 1 for men, 5 for women, and 2 for children) and is planning to build another shelter in Kedah and Sarawak, respectively. In addition to these, two shelters are currently run by NGOs in Penang and Kuala Lumpur.

(viii) Please indicate which mechanisms are applied by all the domestic authorities, whether investigative, prosecuting and judicial authorities - including the police, immigration and border officials, and any other law enforcement agency or officials - when a situation triggering the application of non-punishment is first identified.

45. Any person who enters Malaysia without valid documents is in breach of the Malaysian Immigration Act 155 and the Passport Act 1966 [Act 150] are the main legislations that govern and regulate foreigners' entry into and stay in Malaysia. Therefore, foreigners who entered Malaysia in contravention with these laws are subjected to these legislations.

46. If upon examination and inquiry it is found that the person falls under the classification of a prohibited immigrant under Act 155, that person may be detained at an immigration depot or other designated place until an opportunity arises to return him to his place of embarkation or to the country of his birth or citizenship.

47. In cases involving trafficking in persons, a Special Court for Anti-Trafficking in Persons was launched in 2018. This Special Court aims to manage and dispose cases

on trafficking in person cases more effectively. This ensures the welfare of the victims are well taken care of until they are repatriated to their home countries.

(ix) Please provide information on measures taken to reinstate UNHCR's access to IDCs to assess the international protection risks of detainees.

48. The Government further notes the issue raised in the Joint Communication to "reinstate" UNHCR's access to IDCs to assess the international protection risks of detainees. The Government through the Department of Immigration has refused the UNHCR access to the detainees since August 2019, following a concern that there has been a number of instances whereby UNHCR cards and asylum-seeker letters were issued without sufficient verification. The Government was also not allowed access to any information concerning the refugees and asylum-seekers who have entered Malaysia and registered with the UNHCR. The repercussion for this is grave as it could pose threat to Malaysia's security and public order.

49. The Government also would like to clarify that the permission granted previously to UNHCR to access IDCs should not be construed as a form of right. The Government wishes to reiterate that Malaysia is not bound by the Refugees Convention and the Refugees Protocol and has the right to decide as a matter of its national policy on matters concerning national security, including access by the UNHCR to IDCs.

50. The Government views that as a sovereign State, the Government has the primary responsibility to ensure not only a fair and efficient procedure of asylum in place, but also a procedure that considers its national context. In this regard, the Government through MOHA, with the cooperation from the Immigration Department and Royal Malaysian Police, are improving a mechanism to conduct preliminary security screening for detainees at the IDCs. Based to this mechanism, the detainees who have cleared for security vetting will then be allowed to engage with UNHCR for refugee status determination process.

51. The Government assures that all measures taken are based on the consideration of its sovereign responsibility within its own territory as recognized by

international law. This include ensuring national security, public order, morals, rights and freedom of Malaysian citizens as well as non-citizens. These measures have been exercised carefully taking into consideration Malaysia's obligations both domestically and internationally.

52. Despite not being a Contracting Party or State Party to the Refugees Convention and Refugees Protocol, currently there has been a large number of refugees and asylum-seekers in Malaysia due to its policy formulated based on humanitarian ground. In this respect, the Government further assures that Malaysia will continue to make its best endeavour towards improving its management of refugees, without compromising its independence, sovereignty and territorial integrity.

53. The Government of Malaysia requests the foregoing responses and observations be submitted to the kind attention of the Human Rights Council.

The Government of Malaysia

15 February 2022