



# MALAYSIA

**ECPAT**

## COUNTRY OVERVIEW

A report on the scale, scope and context of  
the sexual exploitation of children

OCTOBER, 2019



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Recent years have seen unprecedented progress towards embedding the child’s right to protection from sexual exploitation more deeply into the global agenda, no more so than the global mandate to eliminate the sexual exploitation of children (SEC) enshrined in the Sustainable Development Goals (SDGs) adopted by world leaders in 2015. ECPAT Country Overviews on SEC provide an effective tool for advocacy at all levels as well as for monitoring, including on government commitments made in the SDGs to end violence against children in all its different forms by 2030.

ECPAT Country Overviews are first and foremost, a desk review exercise that gather and present all the existing publicly available information into a comprehensive summary of all forms of SEC in a country. They do not contain any new primary data. They also provide an assessment of achievements and challenges in implementing counteractions - including the participation of children themselves - to eliminate SEC.

ECPAT Country Overviews also suggest concrete priority actions urgently needed to proactively advance the national fight against SEC and enable the monitoring of the implementation of international instruments on child rights related to sexual exploitation that have been ratified by the State. Furthermore, the ECPAT Country Overviews provide well-organised information and research, which can be used in preparing Alternative Reports and Additional Submissions to the Committee on the Rights of the Child and the Human Rights Council.

During the process, drafts are shared with ECPAT members, relevant local organisations, and experts working on the ground who review the content and supplement the information with other local sources and analysis. ECPAT International greatly relies on the contributions of all those involved in producing these reports and would like to express its profound appreciation for their invaluable inputs.



## AT A GLANCE

Malaysia is a federal constitutional monarchy located in Southeast Asia. Over the last several years, Malaysia has made concerted efforts to decrease the sexual exploitation of children (SEC), but much work remains to be done. Issues that contribute to continued exploitation include a dual legal system, which leads to gap in legislation; inadequate ministry procedures; cumbersome immigration processes; and a lack of data and research.

Malaysia is considered a destination and, to a much lesser extent, a source and transit country for victims of trafficking, including children for the purposes of forced marriage and sexual exploitation. Whilst it is difficult to quantify the number of child victims who have been trafficked for sexual purposes, it is clear that recent government policies such as the crackdown on undocumented migrants has led to children being placed at greater risk of exploitation and re-trafficking. Although a few media reports on exploitation of girls and women exist, no reliable and detailed research into exploitation in prostitution, for both adults and children - and to understand how children are affected - was identified during this overview.

Malaysia has a strong tourism industry, and therefore is at risk of the sexual exploitation of children in travel and tourism (SECTT). Cheap travel options, simplified visa procedures and increasing vulnerability of children living or working on the streets and child migration are contributing factors to the existence of SECTT.

In Malaysia, accessibility to Internet and communication technologies is widespread with approximately 80% of the population accessing the Internet in 2018, the highest proportions of active Internet users are among youth aged 15–24. This has led to increasing concerns about cyber safety and protection, which in turn has promoted a number of key policy decisions and responses focused on combating online child sexual

exploitation (OCSE). Notable actions include the launch of the Malaysian Internet Crime Against Children Investigations Unit. Unfortunately, the criminal justice response remains limited with no prosecutions identified in this research for online sexual exploitation taking place.

Under Malaysia's complex legal system which encompasses *Syariah*, civil, customary and state law, contradictions/discrepancies mean that child marriages can be argued to be legal and still take place in Malaysia. The debate surrounding the ending of the practice, is at times highly contentious. Whilst Prime Minister Mahathir Mohammad issued a directive in 2018 to all state authorities that the legal minimum marriage age was set at 18 for Muslims and non-Muslims, limited action has been taken.

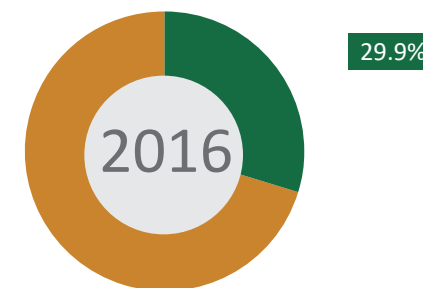
Malaysia has ratified all the major SEC-related international conventions and is party to a number of international and regional frameworks. In 2017, the Malay government took an important and promising step towards combatting SEC when the Sexual Offences against Children Act came into force. Although three national plans exist in Malaysia; two of which include the eradication of the sexual exploitation of children, and one that specifically targets trafficking in persons; there is little or no public information regarding the implementation of these plans, so it remains hard to assess the effectiveness of policies and legislation.

The efforts of civil society in preventing and raising awareness on sexual exploitation of children and related phenomena are praiseworthy. However, government recovery and reintegration programmes are lacking with most facilities administered by private entities, such as faith-based organizations. In terms of children's participation, while policy in Malaysia recognizes that children and youth participation is important, the country has yet to take actions to involve children specifically in policy-making.

## POPULATION

SOURCE: UNICEF State of the World's Children Report 2017

### Children under 18 years



## INTERNET ACCESS

SOURCE: ITU Statistics 2018: Malaysia

### Have Internet access

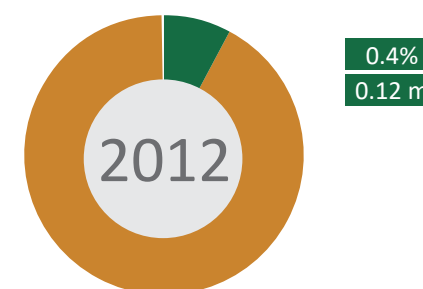


81.2%

## POVERTY RATE

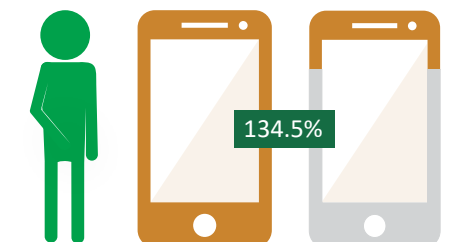
SOURCE: Poverty & Equity Data Portal: World Bank

### Living under the national poverty line



## MOBILE PHONE USERS

SOURCE: ITU Statistics 2018: Malaysia



134.5%

134.5 mobile phone subscriptions per 100 inhabitants

## CHILDREN'S RIGHTS UNDER THE LAW

	Girls	Boys
Age of consent for sex	16	16
Minimum age for marriage	18*	18*
Legal working age	15	15
Compulsory age of schooling	6-11	6-11

\* Exceptions in both Civil and Islamic law allow for marriages under 18

## Introduction

### COUNTRY OVERVIEW AND SPECIFIC VULNERABILITIES LEADING TO THE SEXUAL EXPLOITATION OF CHILDREN

Located in Southeast Asia, Malaysia shares borders with Thailand, Singapore, Brunei Darussalam and Indonesia. Malaysia is a federal constitutional monarchy with thirteen states and three federal territories.<sup>1</sup> The head of state and spiritual leader is the King, known as the Yang di-Pertuan Agong.<sup>2</sup> Islam is the most widely practiced religion in Malaysia, with 61% of the population professing to follow it; other religions include Buddhism (19.8%), Christianity (9.2%) and Hinduism (6.3%).<sup>3</sup> The child population of Malaysia corresponds to approximately 9,350 million.<sup>4</sup>

Whilst positioning itself as a moderate Muslim State, Malaysia, in many aspects of the social, political and religious sphere, takes a traditional and conservative approach. More progressive steps have been taken recently with the change in government in 2018; the new cabinet includes more women and minority representatives in powerful positions and human rights gained prominent attention in the manifesto of the new Government.<sup>5</sup> Previous government policies

have tended to favour the ethnic Malay and Muslim majority (also known as the Bumiputera) who make up 67.4% of the estimated 31.187 million population<sup>6</sup>. Other ethnic groups include Chinese (24.6%) and Indians (7.3%). Malaysia's conservative stance contributes to the continued practice of child marriage in the country. Whilst the law stipulates that girls may marry at 16 and boys at 18, Muslim law, which governs Malaysia's Muslim-majority population, permits the *Syariah*<sup>7</sup> court to grant permission to marry below those ages. Furthermore, conservative attitudes around social norms and values hamper sexual and reproductive health education and gender-based attitudes towards sexual abuse and exploitation.

Over the past three decades, the country has experienced a positive economic transformation, due to its success in diversifying from a predominantly agricultural based economy to a leading exporter of electrical-based goods. This growth has dramatically reduced poverty and income inequalities and less than 1 per cent of Malaysian households live in extreme poverty.<sup>8</sup> In 2017, the GDP per capita in Malaysia amounted to around US\$9,951.5, compared to US\$2,215.365 in 1990.<sup>9</sup> The country ranked 57 out of 188 countries, in the 2018 update of the Human Development Index, around the same as Kuwait and Barbados.<sup>10</sup>

Due to Malaysia's position geographically and its economic prosperity as the third richest country in the ASEAN region, it is home to a range of migrant workers and a large number of refugees or asylum-seekers.<sup>11</sup> Both documented and undocumented migrant workers, mainly from Indonesia, Pakistan and the Philippines, are present in Malaysia which leads to challenges in terms of assessing the scope and magnitude of the sale of children, child sexual abuse and exploitation.<sup>12</sup>

The phenomena of sale of children, child sexual abuse and exploitation in Malaysia must be contextualised against the backdrop of stateless, asylum-seeking and refugee populations, particularly among the Filipino and Indonesian communities from Sabah and Rohingyas from Myanmar in Peninsular Malaysia. According to the United Nations High Commissioner for Refugees (UNHCR) as of June 2019 of 175,760 refugees and asylum seekers registered, some 44,880 were below the age of 18.<sup>13</sup> Most refugees and asylum seekers in Malaysia are from Myanmar, 95,110 are from the Rohingya population.<sup>14</sup> According to the 2019 UNHCR's Global Focus Report, there is an estimated 10,931 stateless individuals in Malaysia.<sup>15</sup> These populations experience significant barriers to full participation in everyday life, particularly in regards to healthcare and education. Despite some government and civil society programmes being available for support; these unaccompanied children find themselves at risk, often denied access to basic services they are exposed to higher vulnerability and to different forms of violence, including sexual exploitation in all its different manifestations.<sup>16</sup>

AS OF JUNE 2019

**175,760**  
REGISTERED REFUGEES AND  
ASYLUM SEEKERS, OUT OF WHICH  
**44,880**  
WERE  
CHILDREN



Malaysia ranked 23 out of 60 countries, in the 2019 Out of the Shadows Index on the response to child sexual abuse and exploitation, with a score of 54.5<sup>17</sup> This overall score measures how a country's environment exacerbates risks of sexual exploitation and abuse for children; how it helps them seek justice; if the government is committed to and capable of addressing sexual violence against children; and assesses the role that civil society and industry are currently playing in addressing the issue. Within the region of Southeast Asia, Malaysia was ranked ahead of Cambodia and Indonesia but behind the Philippines.<sup>18</sup>

1 Federal Constitution. (1957, August 27) last amendments on 1 November 2010, Art. (1). (2) and (3).

2 Ibid., article 3 (5).

3 Pew Templeton (n.d) *Global Religious Futures Project: Malaysia*; Department of Statistics Malaysia. (2011, August). *Population Distribution and Basic Demographic Characteristic Report 2010*.

4 UNICEF. (2017, December). *The State of the World's Children 2017: Children in a digital world*. 175. New York: UNICEF.

5 Pakatan Harapan. (2018). *Buku Harapan: Rebuilding Our Nation, Fulfilling Our Hopes*.

6 UNICEF. (2017, December). *The State of the World's Children 2017: Children in a Digital World*. 175. UNICEF: New York.

7 *Syariah* is the Malay spelling of 'Sharia', the Islamic law.

8 The World Bank. (2019, March). *The World Bank in Malaysia*. The World Bank Group.

9 The World Bank. (n.d) *GDP per capita (current US\$)*. The World Bank Group.

10 United Nations Development Programme. (2018). *Human Development Indices and Indicators. 2018 Statistical Update*. New York: United Nations Development Programme.

11 The ASEAN Secretariat. *ASEAN Key Figures*. 28. Jakarta: The ASEAN Secretariat.

12 Nasa, Aina. (2017, July 27). *More than 1.7 million foreign workers in Malaysia; majority from Indonesia*. U.S Department of State. (2018, June). *Trafficking in Persons Report*. Washington D.C: US Department of State.

13 UNHCR (n.d.). *Figures at a glance*. UNHCR.

14 Ibid.

15 Stateless populations in Malaysia have mainly Tamil/Indian origins and ancestors working in plantations during the colonial times (18<sup>th</sup> and 19<sup>th</sup> century). Indonesian migrant workers and their descendants also may be included in the stateless populations, as they may have lost their Indonesian nationality for having spent more than five years abroad before 2006 without consular registration. It also includes children born from undocumented foreign migrants, refugees without documentation...; UNHCR. (2019). *Global Focus Operation Malaysia*. UNHCR.

16 Towle, R. (2017, May 20th). *Challenges and Way Forward in Handling Rohingya Refugees in Malaysia*. UNHCR; Institute of Human Rights and Peace Studies. (2016, June). *Child Rights Situation Analysis Within the ASEAN Region*. 23. Sweden: Save the Children. International Organisation for Migration and International Labour Organisation. (2013) *Children on the Move*. 66. (Geneva: IOM).

17 The Economist Intelligence Unit (2018). *Out of the Shadows: Shining light on the response to child sexual abuse and exploitation*. For a detailed overview of Malaysia please see: Out of the shadows: Malaysia Profile.

18 Ibid.



## The context of the sexual exploitation of children in Malaysia

### EXPLOITATION OF CHILDREN IN PROSTITUTION<sup>19</sup>

Article 2 (b) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) defines ‘child prostitution’ as “the use of a child in sexual activities for remuneration or any other form of consideration”.<sup>20</sup>

Official or reliable data on the exploitation of children in prostitution in Malaysia is limited. The most recent information comes from a report in 2011, by the Childs Rights International Network. The report cited child rights activists who estimated that up to 150 children were being coerced into the sex trade each year.<sup>21</sup> Despite these anecdotal reports, no further reliable research into the scope appears to have been done since then. Further research is urgently needed to understand the scale of this issue.

Whilst, the U.S. Department of State’s 2019 Trafficking in Persons Report noted instances of young women (mainly from Southeast Asia) who

are forced into prostitution after having been recruited ostensibly for legal work in Malaysian restaurants, hotels and beauty salons, it is unclear if these instances also include children. However, there have been reports of girls who entered into brokered marriages in Malaysia and were later forced into prostitution.<sup>22</sup>

There have been frequent raids on the Thai-Malaysia border, in 2019 for instance Thai police rescued 12 women from prostitution at a karaoke bar in Narathiwat’s Sungai Kolok district on the Malaysian border; two of these women were suspected of being underage.<sup>23</sup> However, on her visit to Malaysia in September 2018, the Special Rapporteur on the sale and sexual exploitation of children, was notified by the non-governmental organisations of a case where court authorities had failed to properly investigate a major case of sexual exploitation of children in prostitution in Dengkil, Selangor. Once the case made it to court, it was dismissed on the grounds that child victims’ statements were allegedly inconsistent, despite the amount of evidence gathered.<sup>24</sup>

The 2011 report (‘Malaysia: Haven for Child Prostitution’) also noted that the exploitation of children in prostitution in Malaysia is more lucrative than the exploitation of adults, as the

price paid can be more than double.<sup>25</sup> However, in 2013 local media reported that girls younger than 14 years old were being exploited in prostitution for MYR20 (around US\$5 as of July 2019).<sup>26</sup> The lack of data on this topic makes understanding the scale and scope of the issue, and the necessary solutions very difficult to determine. Further clarity is needed in understanding the nature of exploitation of children in prostitution in Malaysia.

### ONLINE CHILD SEXUAL EXPLOITATION (OCSE)

Online child sexual exploitation (OCSE) can include child sexual abuse/exploitation material (CSAM/CSEM),<sup>27</sup> live streaming of child sexual abuse, online grooming of children for sexual purposes, sexual extortion of children and various CSAM/CSEM-related conducts (production, distribution, downloading).<sup>28</sup> Article 2 (c) of the OPSC defines ‘child pornography’ as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”.<sup>29</sup>

In Malaysia, accessibility to Internet and communication technologies is widespread with approximately 80% of the population accessing the Internet in 2018.<sup>30</sup> Furthermore, according to the Global Cybersecurity Index 2018, Malaysia was ranked eighth in the world in terms of commitment to cybersecurity, and second in the Asia Pacific region, after Singapore.<sup>31</sup> The Index assesses States’ commitment based on the implementation of legal instruments, and the level

of technical and organisational measures taken to reinforce international cooperation and cyber security among competent authorities.<sup>32</sup>

### GLOBAL CYBERSECURITY INDEX 2018: MALAYSIA RANKED

**8<sup>TH</sup>** IN THE WORLD AND 2<sup>ND</sup> IN THE ASIA PACIFIC REGION IN TERMS OF COMMITMENT TO CYBERSECURITY



In February 2018, the Malaysian Internet Crime Against Children Investigations Unit (MICAC), operating under the supervision of the Police’s Sexual, Women and Child Investigations Department (D11) was officially launched.<sup>33</sup> The group who had previously been operating for four years, are tasked with using software to monitor, locate and pin-point child sexual abuse material viewers and disseminators, in order to obtain evidence for prosecution.<sup>34</sup>

Recent figures, show that 117 Malaysian children were sexually assaulted by perpetrators they met through the Internet, between January and May 2017.<sup>35</sup> According to D11 figures quoted in a UNICEF article, 80% of victims of rape who met their predators through the Internet were

19 ECPAT prefers the term ‘exploitation of children in prostitution’ instead of ‘child prostitution’ in line with the recently widely adopted Terminology Guidelines. Interagency Working Group on Sexual Exploitation of Children. (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. 30. Bangkok: ECPAT International.

20 UN General Assembly. (2000, May 25). *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. (hereinafter OPSC). (A/RES/54/263). entered into force on 18 January 2002, Article 2(b).

21 Child Rights International Network. (2011). *Malaysia: Haven for Child Prostitution*.

22 U.S Department of State. (2019, June) Trafficking in Persons Report. 310. Washington D.C: U.S Department of State.

23 The Thaiger and the Nation (2019, April 30). *12 women rescued from human trafficking ring at Malaysian border*.

24 UNHRC. (2019, January 17). *Visit to Malaysia - Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse*. A/HRC/40/51/Add.3. (UNHRC: New York)

25 Child Rights International Network. (2011). *Malaysia: Haven for Child Prostitution*.

26 Murali, R.S.N. (2013, August 4). *RM20 - that's the going price for a child prostitute*. The Star Newspaper.

27 ECPAT prefers the terms ‘child sexual exploitation material’ or ‘child sexual abuse material’, but in a legal context still uses ‘child pornography’ in line with the recently widely adopted Terminology Guidelines, 40.

28 ECPAT. (n.d.). *Issues we work on*. Bangkok: ECPAT International.

29 OPSC. Article 2(c).

30 International Telecommunication Union (ITU). (2018). *Country ICT: Statistics*. The World Bank Group.

31 ITU. (2018). *Global Cybersecurity Index (GCI) 2018*. 11-22.

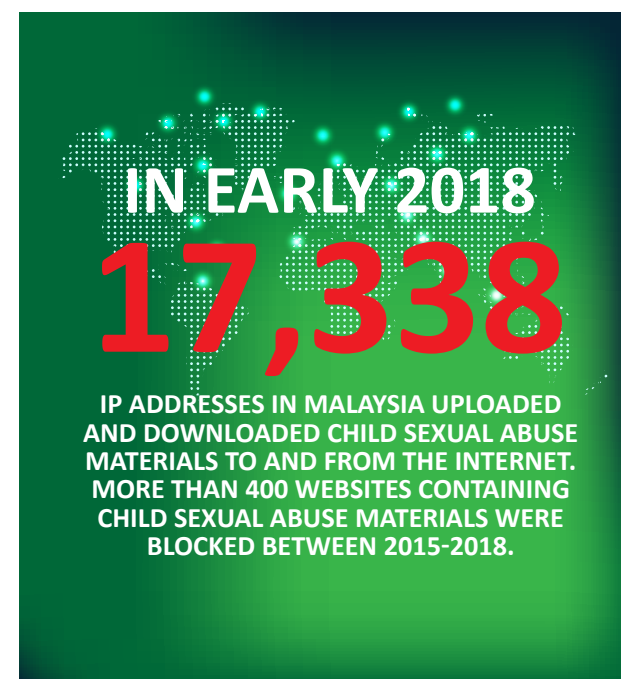
32 *Ibid*.

33 Chin. E.S.M. (2018, February 9). *After four years polices anti child sexual crimes unit officially launched*. MalayMail.

34 UN Human Rights Council (2019, January 17). *Visit to Malaysia - Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse*. 13. A/HRC/40/51/Add/3. (UNHRC: New York)

35 *Ibid*. 7.

children aged 10-18.<sup>36</sup> Despite figures revealed in 2018, which showed that 17,338 IP addresses downloaded and uploaded child sexual abuse material to and from the Internet<sup>37</sup> and that over 400 websites containing child sexual abuse materials were blocked between 2015-2018 following public complaints,<sup>38</sup> there has been no prosecutions or convictions.<sup>39</sup>



Concerns about cyber safety and protection have become the focus of media attention and debate in Malaysia, following the death of a 16-girl old girl in May 2019. The girl committed suicide after holding a poll on her Instagram on whether she should live or die.<sup>40</sup> Sparking controversy and a call for closer scrutiny of social media platforms, the government have discussed amending laws to

govern cyberbullying and Internet usage, which may also have positive impacts for monitoring online child sexual abuse crimes.<sup>41</sup> Malaysia, is also a signatory of Interpol's International Child Sexual Exploitation (ICSE) database, a tool which assists in victim identification through a global comparison of child sexual abuse images.<sup>42</sup>

## SALE AND TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), defines 'trafficking in persons' as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".<sup>43</sup>

In case of child victims, Article 3 (c) of the Protocol specifies that "the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if it does not involve any of the

means stipulated in Article 3 (a)".<sup>44</sup> In other words, the Protocol recognises that children can never be willing participants to their own exploitation.

For its part, the OPSC deals with the 'sale of children', defined as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration".<sup>45</sup>

Both concepts are often used in conjunction and without any clear distinction. However, despite a certain overlap, 'sale of children' is not identical to 'trafficking'. The 'sale of children' always involves some form of commercial transaction, which trafficking in children does not require, but does not necessarily include the purpose of exploiting a child (e.g. sale of children for illegal adoption). Therefore, 'sale of children' is not necessarily related to sexual abuse and sexual or other forms of exploitation. Lastly, the 'sale of children' can take place without physically moving the child out of his/her social environment, whereas trafficking inherently depends on the movement of the child.<sup>46</sup>

In 2017, Malaysia ranked Tier 2 in the US Department of State Trafficking in Persons Report<sup>47</sup> but in 2018 it was downgraded to Tier 2 Watch List, which includes countries that, despite government efforts, require closer scrutiny.<sup>48</sup> In 2019, Malaysia still remains as a Tier 2 Watch List country.<sup>49</sup> Reasons cited include, ongoing complicity of government officials, lack of prosecutions for the possible trafficking crimes that were uncovered on the border of Thailand in 2015 and the fact that the government

prosecuted fewer suspected traffickers than the previous year.<sup>50</sup>

Despite demonstrated efforts, the exploitation of children through trafficking for sexual purposes remains a challenge for Malaysia. The country is a destination and, to a much lesser extent, a source and transit country for victims of trafficking, including children.<sup>51</sup>

Malaysia is often mentioned as a transit country for trafficking for sexual purposes as it is at a crossroads between South and East Asia and Australia. Trafficking victims have been identified from the following countries: Thailand, Indonesia, Myanmar, India, Bangladesh, the Philippines, Vietnam and China.<sup>52</sup> A 2019 study from the UNODC, highlighted that the majority of detected trafficking cases in Malaysia, in recent years have been cases of sexual exploitation. Statistics show that from 2016-2018 these cases account for roughly 60- 73%, which translates to an average of 260 victims per year. The majority of these victims are women and girls, however during 2016-2018, 15 boy victims were also identified.<sup>53</sup> This latter statistic is of particular importance, as during the previous four year UNODC reporting period no male victims had been identified.<sup>54</sup>

On her visit to Malaysia in 2015, the UN Special Rapporteur on Trafficking, highlighted a lack of data collection on the prevalence rate, the trends and the manifestations of human trafficking in Malaysia, which makes the identification of victims difficult.<sup>55</sup> Additionally, she stressed that the rapid repatriation programmes for undocumented migrants implemented by the government's immigration agencies increases the risks for children to be arrested, detained and deported without being properly identified as victims of trafficking.<sup>56</sup> This issue has been exacerbated by

<sup>36</sup> UNICEF in Malaysia (2017). For every child: Digital Safety .

<sup>37</sup> UN Human Rights Council (2019, January 17). *Visit to Malaysia - Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse*. 7. A/HRC/40/51/Add/3. (UNHRC: New York)

<sup>38</sup> MSN news. (2019, April 24) *MCMC blocks 400 websites with child sexual abuse content*.

<sup>39</sup> UN Human Rights Council (2019, January 17). *Visit to Malaysia - Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse*. 7. A/HRC/40/51/Add/3. (UNHRC: New York)

<sup>40</sup> Nation. (2019, May 17). *Global Debate over Girls Death*.

<sup>41</sup> CAN. (2019, May 16). *Malaysia mulls law amendment to tackle cyberbullying in wake of teen suicide*

<sup>42</sup> INTERPOL. (n.d). *International Child Sexual Exploitation database*.

<sup>43</sup> UN General Assembly. (2000, November 15). *United Nations Convention against Transnational Organized Crime, Annex 2: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)*. Res. 55/25 of 15. Art. 3 (a).

<sup>44</sup> *Ibid.*, Article 3 (c).

<sup>45</sup> OPSC. Article 2 (b).

<sup>46</sup> ECPAT International. (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. 58. Bangkok: ECPAT International.

<sup>47</sup> U.S Department of State. (2017, July). *Trafficking in Persons Report*. 264. Washington D.C: U.S Department of State.

<sup>48</sup> *Ibid.* 289

<sup>49</sup> *Ibid.* 306

<sup>50</sup> *Ibid.* 306.

<sup>51</sup> *Ibid.* 307.

<sup>52</sup> UNODC. (2019). *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact*. 74.

<sup>53</sup> *Ibid.* 74-75.

<sup>54</sup> *Ibid.* 74.

<sup>55</sup> UNHCR. (2015, June 15). *Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro - Addendum - Mission to Malaysia*. 22. A/HRC/29/38/Add.1 (UNHRC: New York).

<sup>56</sup> *Ibid.*



the recent government crackdown (OPS Mega 3.0) on irregular migrants in 2018. In July 2018 the government ended their amnesty rehiring programme, which had previously seen 744,942 foreign workers and 83,919 employers registering under the programme.<sup>57</sup> This crackdown has left undocumented migrants vulnerable to exploitation and re-trafficking. In a recent case in Sabah, women and children were repatriated without proper repatriation procedures due to financial constraints and have thus been placed at risk of being exploited and re-trafficked.<sup>58</sup>

## SEXUAL EXPLOITATION OF CHILDREN IN TRAVEL AND TOURISM (SECTT)

The sexual exploitation of children in travel and tourism (SECTT) is defined as any “acts of sexual exploitation embedded in a context of travel, tourism, or both”.<sup>59</sup> The UNWTO Framework Convention on Tourism Ethics recognises that the exploitation of children conflicts with the fundamental aims of tourism and should be strongly combated with the cooperation of all the States concerned.<sup>60</sup>

Like many other countries in Southeast Asia, the tourist flow in Malaysia is growing. In 2018, Malaysia was ranked 15<sup>th</sup> in the list of countries with the most international tourist arrivals during the previous year.<sup>61</sup> Of the 25.83 million arrivals recorded in 2018,<sup>62</sup> the majority of tourists were coming from neighbouring Singapore (almost 12.5 million), Indonesia, China and Thailand.<sup>63</sup>

Although not a sex tourism hotspot like neighbouring Thailand and the Philippines, limited evidence suggests the sexual exploitation of children in travel and tourism is a concern for Malaysia.<sup>64</sup> Data could be found in the 2016 Global Study on Sexual exploitation of Children in Travel and Tourism identifying Malaysian SECTT offenders in Indonesia in 2009 (although no data on actual numbers was given).<sup>65</sup>

Unfortunately, the lack of recent data makes it difficult to have a more accurate picture of the phenomenon’s current scale in Malaysia. Some trends may be common to the whole of Southeast Asia, including the increasing vulnerabilities of street children, international and internal migrant children.<sup>66</sup> In addition, factors such as cheap flight tickets and simplified visa procedures<sup>67</sup> for tourism or business reasons<sup>68</sup> aid in facilitating travel

and border crossing. Media reports suggest that Malaysia is a destination for Singaporean men in search of foreign sex workers (many of whom have been trafficked), however reliable information on this issue is inconclusive.<sup>69</sup> Internal trafficking of Malaysian girls and women for sexual exploitation to tourist destinations within the country have also been reported to meet the demand for commercial sex.<sup>70</sup>

## CHILD, EARLY AND FORCED MARRIAGE (CEFM)

The Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (Luxembourg Guidelines) define ‘child marriage’ as “a marriage in which at least one of the parties is a child. It also refers to the act of marrying off children, usually young girls, with or without their consent”.<sup>71</sup> Some forms of child marriage are related to commercial sexual exploitation of children, in cases where child marriage is linked to forced child labour, slavery and bondage, servitude or payment of a dowry.<sup>72</sup>

number of communities, including Muslim, non-Muslim, refugee and indigenous populations.<sup>73</sup> A representative from the Ministry of Women, Family and Community Development reported that between 2010 and 2015, 9,061 child marriages were recorded in Malaysia.<sup>74</sup> Factors such as low household income, lack of parenting support interventions, and access to education have been cited as reasons for the prevalence of child marriage in Malaysia.<sup>75</sup> A recent UNICEF report, noted a change in the practice, evolving to one that acts as a pre-emptive or punitive measure against pre-marital sex.<sup>76</sup>

The continuation of the practice can in part, be attributed to secular law which permits child marriage. Despite, the National Fatwa Councils’ (an Islamic authority) declaration in 2014 in an official statement (*fatwa*) that, not only was child marriage not obligatory, but it is also an “unhealthy practice”<sup>77</sup>; 5,362 marriage applications were submitted to *Syariah* courts between 2013 and 2017 of children under 16 years old.<sup>78</sup> However, cases of child marriage have also been reported in the non-Muslim community with statistics showing that from 2005 to October 2015, 5,215 cases were submitted by non-Muslim female children.<sup>79</sup>

Children from foreign countries may also be victims of child marriage in Malaysia. It was reported by the media and human rights groups that some Bangladeshi and Burmese Rohingya men in Malaysia trafficked underage girls from their home countries to Malaysia for marriage.<sup>80</sup> In August

Child marriage in Malaysia is a controversial topic. Whilst data is not comprehensive, instances of child marriage have been found to occur in a



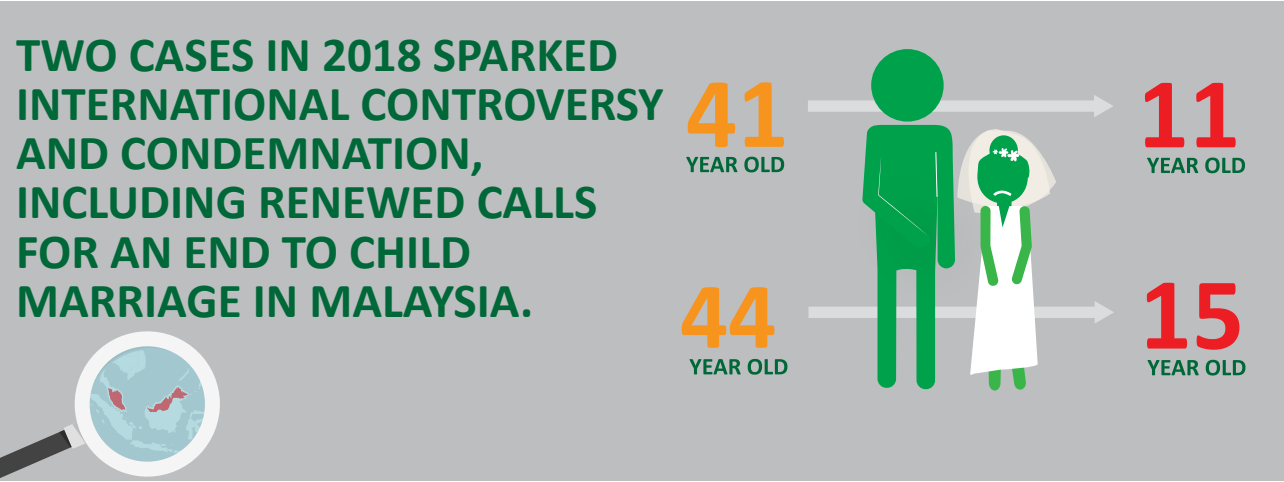
- 57 Yi, Lih, Beh. (2018, August 31). *Malaysia’s crackdown on illegal immigrants puts trafficking victims in danger*. Reuters.
- 58 End CSEC Malaysia Network. (2019, July). Personal communication.
- 59 ECPAT International, Defence for Children, Ministry of Foreign Affairs of the Netherlands. (2016, May). *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism (hereinafter Global study on SECTT)*. Bangkok: ECPAT International.
- 60 UN General Assembly. (11-16 September 2017). Consideration, approval or adoption of the UNWTO Framework Convention on Tourism Ethics. UN Doc. A/RES/707(XVII). Art. 5 (3).
- 61 United Nations World Tourism Organisation and Global Tourism Economy Research Centre. (2018). *Asia Tourism Trends – Executive summary*. 6. New York: United Nations World Tourism Organisation.
- 62 Tourism Malaysia. (2018). *Malaysia Tourism Statistics in Brief*.
- 63 My Tourism Data. (2019). *Arrivals by Country 2017-2018*. Tourism Malaysia.
- 64 ECPAT International jointly with Defence for Children - ECPAT Netherlands. (2016, May). *Global Study on Sexual Exploitation of Children in Travel and Tourism. Regional Report Southeast Asia*. 29. Bangkok: ECPAT International.
- 65 *Ibid.*, 28.
- 66 *Ibid.*, 42.
- 67 Immigration Department of Malaysia. (n.d.). *eVisa*. Ministry of Foreign Affairs.: Numerous countries nationals are exempted from requiring visa and receive a permit to stay for 90, 30 or 14 days depending on the country.
- 68 Immigration Department of Malaysia (n.d.), *APEC Business Travel Card (ABTC)* Ministry of Foreign Affairs.: For example the Asia-Pacific Economic Cooperation (APEC) Business Travel Card (ABTC);

- 69 Free Malaysia Today (2017, July 27) *Singaporean uncles flocking to jb for fun with hookers*.
- 70 UNHRC. (2019, January 17). *Visit to Malaysia - Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse*. 28. A/HRC/40/51/Add.3. (UNHRC: New York)
- 71 ECPAT International. *Terminology Guidelines*. 63.
- 72 ECPAT International and Plan International. (2015). *Thematic Report. Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage*. Bangkok: ECPAT International.
- 73 Mohd, Noor and Samuri, M. (2018). *A working paper: Child Marriage in Malaysia*. 6. UNICEF.Helwig. N. (2013, July). *Media coverage of child marriage in Malaysia – Reflections*. Girls not Brides.
- 74 Carvalho, M. (2016, May 19). *Fewer child marriage cases now, says ministry*. The Star.
- 75 Mohd, Noor and Samuri, M. (2018). *A working paper: Child Marriage in Malaysia*. 78.
- 76 *Ibid.* 28.
- 77 Department of Islamic Development, Malaysia. (2016) *Kompilasi Pandangan Hukum, Muzakarah Jawatankuasa Fatwa, Majlis Kebangsaan Bagi Hal Ehwal Agama Islam Malaysia* JAKIM.; 2016; Sisters in Islam (SIS) & Asian-Pacific Resource and Research Centre for Women (ARROW) (2018) *National Report: Malaysia Child Marriage: Its Relationship with Religion, Culture and Patriarchy*. 16. Kuala Lumpur: ARROW.
- 78 UN Human Rights Council (2019, January 17). *Visit to Malaysia - Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse*. 5. A/HRC/40/51/Add/3. (UNHRC: New York).
- 79 Mohd, Noor and Samuri, M. (2018). *A working paper: Child Marriage in Malaysia*. 19-20. UNICEF
- 80 *Ibid.*, Laatiff, R and Harris, E. (2017). *Sold into marriage: how Rohingya girls become child brides in Malaysia*. Reuters.; Fortify Rights and Rohingya Women Development Network. (2019, February 21). *Malaysia: End Child Marriage, Protect Rohingya Girls*. (Kuala Lumpur: Fortify Rights).

2018, UNHRC reported 201 identified cases of child marriage of Rohingya girls from the region to Malaysia - some as young as 10.<sup>81</sup>

Two cases in 2018 sparked international controversy and condemnation, including renewed calls for an end to child marriage in Malaysia.<sup>82</sup> The first case involved an 11-year old Thai girl who was married to a 41-year old Malay man in Thailand.<sup>83</sup> After close media attention the marriage was deemed illegal as it had not been approved by *Syariah* court and the man was fined \$450 (1,800 MYR) for polygamy and marrying without permission. However, he was not charged with underage marriage as he had technically not broken Malaysian law; marrying in Thailand allowed him to dodge both Thai and Malay marriage laws.<sup>84</sup> The second case, involved a 15 year old Malay girl who was married to a 44-year old man but in this case, the marriage was approved by the *Syariah* court and deemed legal.<sup>85</sup> Following these high profile cases activists, campaigners and some government officials came together to march for the elimination of child marriage in Malaysia. A petition with 159,700 signatures of support was handed to the new Deputy Women, Family and Community Development Minister Hannah Yeoh. Appointed in 2018, Yeah has become a staunch campaigner for child rights.<sup>86</sup>

However, some government representatives and religious figures are divided on the issue. To counteract this, in early 2016, Women, Family and Community Development Minister Datuk Seri Rohani Abdul Karim stressed the importance of raising the populations’ awareness about the physical and psychological dangers of early marriages on children.<sup>87</sup> More recently, in 2018, the Human Rights Commission of Malaysia (SUHAKAM) issued a press release, against the Government’s decision to introduce Standard Operating Procedures on the screening process of marriage as they felt this would only perpetuate and not eliminate the practice.<sup>88</sup> Unfortunately however, other public representatives, including MPs maintained that protecting people’s right to marry children reduces casual sex,<sup>89</sup> prevents sexual immorality and relieves families of financial burden.<sup>90</sup>



81 UN Human Rights Council (2019, January 17). *Visit to Malaysia - Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse*. 4. A/HRC/40/51/Add/3. (UNHRC: New York).

82 Latiff. R. (2018, October 1). *U.N. rights expert urges Malaysia to end Child Marriage*. Reuters.

83 Bangkok Post (2018, August ) *Child Bride back from Malaysia*.

84 Lamb. L. (2018, July 10). *Malaysian man who married 11 year old Thailand girl fined*. The Guardian.

85 Nufael. A and Azmi. H (2018) *Malaysian NGO’s criticise Deputy PM for comments on latest child marriage case*. Benar News.

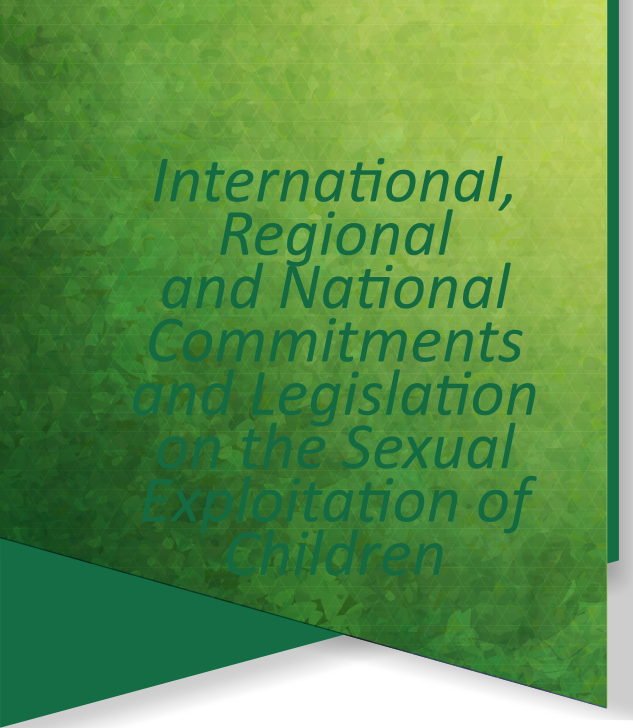
86 Choong, J. (2018. November 13). *Activists schoolkids march to parliament calling for end to child marriage*. Malay Mail.

87 Brown. V. (2016, February 25). *Rohani: Malaysia opposed to child marriage*. The Star.

88 Human Rights Commission of Malaysia (SUHAKAM). (2018. July 6). *Press Statement No.27 of 2018*.

89 Ram, Sadho (2018, September 28) *Perak Mufti says teens would become adulterous if minimum age for marriage was raised to 18*. SAYS. Kow Gah. C. (2016, April 6). *MP: Banning child marriages will see lustful girls engaging in casual sex*. Malaysiakini.

90 Malaysian Child Resource Institute. (2013). *Submission to the OHCHR for its report on “Preventing and eliminating child, early and forced marriage with a particular focus on challenges, achievements, best practices and implementation gaps*. 1. Kuala Lumpur: Malaysian Child Resource Institute.



Status of ratification of relevant international and regional instruments, reporting to human rights bodies and engagement with the special procedures of the Human Rights Council		
International Instruments		Date of ratification/accession
Convention on the Rights of the Child - 1989		7 February 1995 Reservations with respect to articles 2, 7, 14, 281(a) and 37
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - 2000		12 April 2012
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)		10 November 2000
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – 2000 (supplementing the UN Convention against Transnational Organized Crime)		26 February 2009
Regional Instruments		Date of ratification/accession
Declaration on the Commitments for Children in ASEAN - 2001		2 August 2001
Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children - 2010		28 October 2010
ASEAN Human Rights Declaration - 2012		18 November 2012
Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN - 2013		9 October 2013
ASEAN Convention against Trafficking in Persons, Especially Women and Children - 2015		21 November 2015
Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (CRC review)	20 December 2006	<ul style="list-style-type: none"> <li>State’s reports for 2nd – 4th reporting cycles pending as of April 2019.</li> </ul> <p>Key concluding observations and/or recommendations related to SEC adopted by the CRC in its 2007 report:</p>



Human Rights Bodies	Date of latest submitted report	Comments
		<ul style="list-style-type: none"> <li>Review the reservations made to the CRC with a view to withdraw them (paragraph 12);</li> <li>Strengthen and expand bilateral and multilateral agreements and co-operation programmes to prevent and combat trafficking in children. Trafficking cases reported shall also be investigated (paragraph 96);</li> <li>Undertake a national study on the sexual commercial exploitation of children (paragraph 100);</li> <li>Pay particular attention to “the increasing sex tourism in the region” (paragraph 101); Adopt specific legislation on the obligations of Internet service providers in relation to ‘child pornography’ on the Internet (paragraph 102).</li> </ul>

## INTERNATIONAL AND REGIONAL COMMITMENTS

International commitments	
Commitment	Start date
Sustainable Development Goals (SDGs)	2016
Regional commitments	
Commitment	Start date
The Bali Process - a forum for policy dialogue, information sharing and practical cooperation to help the region address people smuggling, trafficking in persons and related transnational crimes. <ul style="list-style-type: none"> <li>Ad Hoc Group (AHG)</li> </ul>	2002
ASEAN <ul style="list-style-type: none"> <li>Treaty on Mutual Legal Assistance in Criminal Matters</li> <li>Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)</li> </ul>	1967

Malaysia was among the 43 countries that submitted a Voluntary National Review on the implementation of the SDGs in 2017, which unfortunately contains scant information on SEC.<sup>91</sup>

The Royal Malaysia Police and immigration services work closely with INTERPOL to maintain an international partnership to tackle transnational crime: the INTERPOL National Central Bureau for Malaysia works under the command of the Inspector General of the Royal Malaysia Police in Kuala Lumpur.<sup>92</sup> INTERPOL works with Malaysia and in general with ASEAN countries on strengthening borders<sup>93</sup> and regional security.<sup>94</sup> From 2015-2018, Malaysia was part of an international programme funded by the European Union and led by INTERPOL: the EU-ASEAN Migration and Border Management Programme II.<sup>95</sup> The Programme lasted three-years and aimed to strengthen law enforcement capacities in addressing migrant smuggling and human trafficking. It provided support for trainings, operational activities, exchange of information and research.<sup>96</sup> There is no information available on the effectiveness of the programme.

Malaysia has also entered into bilateral agreements to reinforce regional and international co-operation. An agreement with the Philippines and Indonesia was concluded in 2016 to co-operate on transnational crimes, including human trafficking, and initiate law enforcement contacts among the three countries.<sup>97</sup> Partnerships between Malaysia and other states are an occasion for authorities to share their experiences and best practices to improve mechanisms for the protection of children against any form of sexual exploitation.

## NATIONAL LEGISLATION

### Exploitation of children in prostitution

Under Malaysian laws, exploitation in prostitution is illegal and criminalised by the Penal Code.<sup>98</sup> However, the Penal Code does not distinguish between exploitation of children in prostitution and exploitation of adults. Instead, it penalises anyone who “sells, lets for hire, or otherwise disposes of, or procures, buys or hires or otherwise obtains possession of, any person with such intention that the person is to be employed or used for the purpose of the prostitution or having sexual intercourse with any other person, either within or outside Malaysia, or knowing or having reason to believe that the person will be so employed or used”.<sup>99</sup> The Penal Code also states that anyone who deceives a victim “with the intention to use [him/her] for the purpose of prostitution [...], receives or harbours any person [...], wrongfully restrains any person [...], advertises a place for prostitution service [...], or acts as an intermediary [...] is liable for imprisonment for a term, which may extend to 15 years, whipping and a fine”.<sup>100</sup> In addition, Section 372B of the Penal Code sentences anyone who “solicits or importunes for the purpose of prostitution or any immoral purpose in any place” to imprisonment not exceeding one year or/and a fine. Additional relevant offences include kidnapping or abducting any woman with the intent to compel her to marry against her will or force or seduce her to illicit intercourse or to a life of prostitution, which are criminalised by Section 366 of the Penal Code.

91 Government of Malaysia. (2017, June). Sustainable Development Goals – Voluntary National Review 2017- High-level Political Forum.

92 INTERPOL website. (n.d.). *Malaysia*.

93 INTERPOL website. (2016, June 13). *INTERPOL border operation in Southeast Asia targets crime suspects*. INTERPOL.

94 True Blue Line (2015, April 17). *INTERPOL Asia meeting sets its sight on enhancing regional security*.

95 European Commission. (n.d). *EU- ASEAN Migration and Border Management Programme*. INTERPOL Website (2016, March 18). *Border security across Southeast Asia focus of new EU-ASEAN programme. led by INTERPOL*;

96 INTERPOL Website (2016, March 18). *Border security across Southeast Asia focus of new EU-ASEAN programme. led by INTERPOL*;

97 Philippines Department of Defence. (2016, June 20). *Trilateral meeting among the defence ministers of the Philippines, Malaysia and Indonesia*. (Manila: Philippines Department of Defence).

98 Government of Malaysia. (2015). Laws of Malaysia – Act 574 - Penal Code, Sections 372A., 372B., 373.

99 *Ibid.*, Section 372 (1)(a).

100 *Ibid.*, Section 372 (1)(b), (c), (d), (e) and (f).

The Child Act criminalises more specifically the exploitation of children for the purpose of prostitution. Section 43 punishes anyone who “sells, lets for hire, disposes of, buys, hires or otherwise obtains possession of a child [...], procures a child, deceives a child [...], brings into Malaysia a child, receives or harbours a child, puts a child in a place with the intent to have him/her be employed or used for the purpose of prostitution or having sexual intercourse with any other person or any other illegal purpose, either within or outside Malaysia”.<sup>101</sup> Additionally, the advertisement of places where a child may be offered for purposes of prostitution is criminalised.<sup>102</sup> The attempt of any act defined by Section 43 of the Child Act is punishable by a fine not exceeding MYR50,000 (around US\$12,150 as of July 2019) and/or imprisonment not exceeding 15 years.<sup>103</sup> The Act acknowledges that children who are suspected to be under threat or intimidation for purposes of prostitution may be in urgent need of protection,<sup>104</sup> which may be granted by a special authorisation prescribed by the Protector.<sup>105</sup> As of July 2019, there is no public information on the number of special authorisations proscribed by the prosecutor.

### Online child sexual exploitation (OCSE)

Malaysia has taken a progressive step in the protection of children from SEC by enacting a new bill, the Sexual Offences against Children Act 2017, that encompasses OCSE manifestations, namely CSAM/CSEM and online grooming.<sup>106</sup> Article 4 of

the Act defines ‘child pornography’ as provided by the OPSC.<sup>107</sup>

Hence, UNICEF Malaysia has praised the country for bringing national legislation closer to international standards enshrined in the CRC and its OPSC.<sup>108</sup> The legislation prohibits a wide range of acts related to CSAM/CSEM, such as using a child or causing a child to be used in the production of these materials,<sup>109</sup> and making, producing and directing the making or production of CSAM/CSEM.<sup>110</sup> Taking any action in preparation for the above offences is also criminalised.<sup>111</sup> Moreover, the legislation criminalises the act of distributing, promoting, importing, exporting, selling, possessing and accessing, among other conducts, any CSAM/CSEM.<sup>112</sup> Penalties prescribed by the law vary according to the gravity of the offence and can range from whipping to imprisonment up to 30 years.<sup>113</sup>

A unique feature of the Sexual Offences against Children Act is that there is a specific provision for offences committed by a corporate body.<sup>114</sup>

Concerning child grooming, the law criminalises the act of sexually communicating with a child or encouraging a child to sexually communicate by any means.<sup>115</sup> Although not specific to online grooming, the broad wording of the legislation makes it possible to address grooming in the online context. The term ‘sexually communicating’ is understood when “(a) the communication or any part of the communication relates to an activity that is sexual in nature; or (b) any

reasonable person would consider any part of the communication to be sexual.”<sup>116</sup> Additionally, the law imposes criminal liability for anyone that communicates with a child intending to commit or to facilitate offences related to CSAM/CSEM and sexual assault.<sup>117</sup> If the person meets with the child, the offender will be liable for the offence of meeting following child grooming.<sup>118</sup> The penalties prescribed by the law vary according to the gravity of the offence and can range from whipping to imprisonment up to 10 years.<sup>119</sup>

Similarly to the Council of Europe’s Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse -also known as the Lanzarote Convention-, the Sexual Offences against Children Act criminalises abuses committed by an individual “in the circle of trust”.<sup>120</sup> Hence, if the person who commits the aforementioned offences is in a relationship of trust with the child, in addition to the punishment to which the individual is liable, the offender will also respond to a specific criminal offence: person in relationship of trust.<sup>121</sup> According to the legislation, a person is considered to be in a relationship of trust with the child “if the child is under his care, supervision or authority”, such as parents, teachers or public servants in the course of their duties under any written law in respect of the child.<sup>122</sup> According to the Malaysian Chief Justice, 14 cases have been processed under the Sexual Offences Against Children Act 2017 and 48 cases are still being analysed.<sup>123</sup> As of July 2019, these are the most recent publically available statistics. On the 19<sup>th</sup> September 2019, a principle of a Thafiz school (a religious school) was charged with 100 offences under section 14 of the Sexual Offences Against Children Act after sexually abusing his students.<sup>124</sup> Furthermore, in response

to this case and the increase of sexual abuse in Thafiz schools, the Human Rights Commission of Malaysia have proposed the creation of a separate ministry for children.<sup>125</sup> This call has been further supported by the Deputy Minister for Women, Family and Community Development.<sup>126</sup>

For the time being, Malaysia has not established a legal obligation for Internet service providers to report, remove or block access to websites where sexual abuse materials representing children are available.<sup>127</sup> Nor does Malaysia have a legal framework that would ease the identification of suspects using ICT devices (e.g. through IP address detection, destination and source of a communication) to commit offences against children.<sup>128</sup> The Malaysian Government has partially ordered Internet café operators to take measures against obscene, indecent or pornographic materials online in some territories. The Federal Territory of Kuala Lumpur enacted the Cyber Centre and Cyber Café Rules in 2012 to supervise the granting of professional licenses (Section 3) and to require licensees to provide and keep records of computer usage for each computer available (Section 12 (1)), including personal information on the identity of the users.<sup>129</sup> The aforementioned, is not a federal law and therefore creates gaps among the laws applicable in the different territories. The same year, Malaysia amended Section 114A of the Evidence Act and established a presumption of fact in publication.<sup>130</sup> Section 114A presumes that owners, hosts, administrators, editors or sub-editors have published all the contents that appear under their name, using their photograph or pseudonym (paragraph 1). The same presumption applies to the subscriber of a network service provider

<sup>101</sup> Government of Malaysia. (2001). Laws of Malaysia – Act 611 - *Child Act 2001*. Art. 43. (a)-(g).

<sup>102</sup> *Ibid.*, Art. 43. (h).

<sup>103</sup> *Ibid.*, Art. 43. (aa).

<sup>104</sup> *Ibid.*, Art. 41.

<sup>105</sup> *Ibid.*, Art. 41. (1) and Art. 2. (1): “‘Protector’ means (a) the Director General; (b) the Deputy Director General; (c) a Divisional Director of Social Welfare, Department of Social Welfare; (d) the State Director of Social Welfare of each of the States; (e) any Social Welfare Officer appointed under section 8”.

<sup>106</sup> Government of Malaysia. (2017). Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017.

<sup>107</sup> *Ibid.*, Article 4.

<sup>108</sup> UNICEF. (2017). *UNICEF Malaysia applauds Sexual Offences Against Children Bill 2017*.

<sup>109</sup> Government of Malaysia. (2017). Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017, Art. 7.

<sup>110</sup> *Ibid.*, Art. 5.

<sup>111</sup> *Ibid.*, Art. 6.

<sup>112</sup> *Ibid.*, Art. 8-10.

<sup>113</sup> *Ibid.*, Art. 5-7.

<sup>114</sup> *Ibid.*, Art 23. The legislation states that when any of the offences therein listed and related to child pornography are committed by a body corporate, “any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, or was in any manner responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall also be guilty of that offence unless he proves that the offence was committed without his knowledge, consent or connivance, and that he had exercised all due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

<sup>115</sup> *Ibid.*, Art. 12.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*, Art.13.

<sup>118</sup> *Ibid.*, Art. 14.

<sup>119</sup> *Ibid.*, Articles. 12-14.

<sup>120</sup> Council of Europe. (2007). Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Article 18.

<sup>121</sup> Government of Malaysia. (2017). Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017, Art. 17.

<sup>122</sup> *Ibid.*, Article 17(2).

<sup>123</sup> The National Human Rights Society of Malaysia (HAKAM). (2017). *14 cases solved under Sexual Offences Against Children Act*.

<sup>124</sup> Nufae, A and Azmni, H.(2018, August 25) *Malaysian Islamic Schools will be Tightly Regulated, Deputy Minister says*. BenarNews.

<sup>125</sup> Malaysiakini. (2018, September 23). *Suhakam moots ministry for children after tahfiz school incidents*.

<sup>126</sup> Bernama. (2019, May 11). *Government to set up agency for children, says minister*.

<sup>127</sup> The World Bank and International Centre for Missing & Exploited Children. (2015). *Protecting Children from Cybercrime – Legislative Response in Asia to Fight Child Pornography, Online Grooming and Cyberbullying*. 48-49. Washington D.C: The World Bank Group.

<sup>128</sup> *Ibid.*, 49.

<sup>129</sup> *Ibid.*, 53-54.

<sup>130</sup> Government of Malaysia. (2012), Laws of Malaysia – Act 56 - Evidence Act 1950, Section 114A.



(paragraph 2). Subsequently, with the amendment of Section 114A, websites hosts, forum administrators and even social media platforms may be held accountable for the publication of materials depicting sexual abuse of children. Section 114A, seen as a potential tool to prevent and combat the circulation of CSAM/CSEM, was however the subject of protests online due to possible limitations it might cause on freedom of expression.<sup>131</sup>

## Sale and trafficking of children for sexual purposes

Malaysia has two laws<sup>132</sup> which cover anti-trafficking provisions: the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act<sup>133</sup> and the Child Act.<sup>134</sup> Whilst, the definition of trafficking in persons in both Acts meets the international definition of trafficking, requiring both the act, means and purpose; they fall short in their dealing with trafficking of children for sexual purposes, failing primarily in calling for provisions for providing adequate provisions and support. Key weaknesses of the Anti-Trafficking in Persons and the Anti-Smuggling Act include: its lack of distinction between adult and child victims of human trafficking and its failure to guarantee extensive follow-up measures for the long term protection of child victims of trafficking.

The Anti-Trafficking in Persons and the Anti-Smuggling Act, by virtue of section 14, imposes a penalty for the offence of trafficking in children of imprisonment for a term no less than three

years, but not exceeding 20 years (15 years for the offence of trafficking in adults),<sup>135</sup> and a fine.<sup>136</sup> The Child Act is limited in comparison, as it imposes lighter sanctions and acknowledges a possible defence to prosecution, if the “transfer took place in contemplation of or pursuant to a *bona fide* marriage or adoption; and at least one of the natural parents of the child or the guardian of the child was a consenting party to the marriage or to the adoption by the adopting party”.<sup>137</sup>

The Anti-Trafficking Act offers some protections to victims, ensuring their privacy by prohibiting media outlets from revealing their name, personal information and pictures during criminal proceedings and in the post-trial stage<sup>138</sup>; whilst also providing medical care or treatment to adult<sup>139</sup> and child victims.<sup>140</sup> However, no service is provided to victims regarding their long-term medical or psychological treatment, and their reinsertion and rehabilitation in their communities. The Child Act also fails to provide additional protective measures, as children in need of protection and rehabilitation may be put in shelters or in places where children convicted of offences may be detained as well.<sup>141</sup>

Importantly, upon suspicion that a person is a victim of trafficking, regardless of his/her age, an enforcement officer may take them into temporary custody to be presented to a Magistrate within 24 hours; the Magistrate may then instate an interim protection order to place the person in a refuge for 21 days to facilitate any investigation into the case.<sup>142</sup> Malaysians who are found by the Court to be victims of trafficking may be detained in a place

of refuge for up to three years.<sup>143</sup> Non-Malaysians may be held in a place of refuge for up to three months.<sup>144</sup> In some reported cases, children, both unaccompanied and accompanied, have been held in these detention centres.<sup>145</sup>

Efforts have been noted in government initiatives to improve the protection mechanisms for victims of trafficking. For example, the Royal Malaysia Police operates a specialised anti-trafficking unit, and the immigration and labour departments have anti-trafficking enforcement agents. The capacity of the Special Forces dedicated to anti-trafficking was doubled.<sup>146</sup> The Attorney General’s Chambers have 55 trafficking-specialist deputy public prosecutors throughout Malaysia.<sup>147</sup>

Despite legal amendments and other measures to combat trafficking of children for sexual exploitation, the authorities’ response is limited. The mass graves of Bangladeshi and Burmese Rohingya suspected to be victims of trafficking (no specific details were given on the number of child victims), found in mid-2015 at the Thai-Malay border, highlight the challenges Malaysian authorities still have to tackle. Their response has been reported as slow particularly in regards to the investigation, prosecution and protection of the vulnerable.<sup>148</sup> While the media reported that Thai officials were being investigated for their involvement in the border camp, no Malaysian officials or national have been convicted.<sup>149</sup>

Malaysia conducted 281 case investigations in 2018, into human trafficking which marked a decrease compared to 398 investigations in 2017. In addition the government convicted 50 individuals under the Anti-Trafficking in Persons and Smuggling of Migrants Act, an increase from 45 in 2017; the data provided by the US State Department does not detail the proportion of child

victims.<sup>150</sup>

## Sexual exploitation of children in travel and tourism (SECTT)

Malaysian law does not contain provisions that specifically address the sexual exploitation of children in travel and tourism. However, Section 292 (d) of the Penal Code punishes anyone who advertises or makes known by any means that any person is engaged or is ready to engage in any act dealing with obscene objects stipulated in this Section, and punishes the procurement of any such obscene objects from or through any person. This provision may be used to prosecute individuals who produce and disseminate materials advertising SECTT. Since ‘obscene objects’ is not defined by the law, the application of Section 292 (d) to recognise the responsibility of private actors involved in travel and tourism may be difficult to establish.

## Child, early and forced marriages (CEFM)

As Malaysia has a dual legal system, the minimum age of marriage differs according to the applicable law. According to the Law Reform (Marriage and Divorce) Act of 1976, the legal age to marry is 18 years old.<sup>151</sup> A girl between 16 and 18 years of age is still allowed to get married if she obtains a special marriage license from the Chief Minister and the consent of her parents or guardian to the union.<sup>152</sup> Under Islamic tradition, boys can marry at 18 and girls can marry at 16. Below these ages, a religious *Syariah* court can give permission.<sup>153</sup> The Islamic Family Laws (Federal Territories) Act of 1984 also pays special attention to the consent given by both the spouses and their guardians.<sup>154</sup> In its efforts to combat child marriage, the

<sup>131</sup> Centre for Independent Journalism. (n.d.), *Stop 114A, 14 August 2012 Internet Blackout page*.

<sup>132</sup> Additional relevant legislation includes, the Penal Code which criminalises kidnapping or abducting women into forced marriage (Section 366), kidnapping or abducting a person to subject them to slavery (Section 367), wrongfully concealing or keeping persons in confinement (Section 368) and buying or disposing of any person as a slave (Section 370). ‘Habitual dealing in slaves’, which includes importing, exporting, removing, buying, selling and trafficking in slaves is punishable by imprisonment for a longer term (20 years) and a fine.

<sup>133</sup> Government of Malaysia. (2007). Laws of Malaysia – Act 670 - Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Part I – Preliminary. 2 – Interpretation: “‘trafficking in persons’ or ‘traffics in persons’ means the recruiting, transporting, transferring, harbouring, providing or receiving of a person for the purpose of exploitation”.

<sup>134</sup> Government of Malaysia. (2001). Laws of Malaysia – Act 611 - *Child Act 2001*.

<sup>135</sup> Government of Malaysia. (2007). Laws of Malaysia – Act 670 - Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Part III. Section. 12.

<sup>136</sup> *Ibid.*, Part III. Section. 14.

<sup>137</sup> *Ibid.*, Part VIII. Section. 48 (4).

<sup>138</sup> *Ibid.*, Part VII. Section 58.

<sup>139</sup> *Ibid.*, Part VI, Section 45 and 46.

<sup>140</sup> *Ibid.*, Section 47.

<sup>141</sup> Government of Malaysia. (2001). Laws of Malaysia – Act 611 - *Child Act 2001*, Section 40.

<sup>142</sup> Government of Malaysia. (2007). Laws of Malaysia – Act 670 - Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 44.

<sup>143</sup> Government of Malaysia. (2015). Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2015, Amendment of section 51.

<sup>144</sup> *Ibid.*, Section 51 (3)(a).

<sup>145</sup> End CSEC Malaysia Network. (2019, July). Personal communication.

<sup>146</sup> U.S. Department of State. (2016, June). *Trafficking in Persons Report*. 255. Washington D.C: U.S Department of State.

<sup>147</sup> U.S. Department of State. (2019, June). *Trafficking in Persons Report*. 307. Washington D.C: U.S Department of State.

<sup>148</sup> The Guardian. (2015), *Mass graves of suspected trafficking victims found in Malaysia*.

<sup>149</sup> Fortify Rights and The Human Rights Commission of Malaysia (SUHAKAM). (2019, March) ‘*Sold Like Fish*’ *Crimes Against Humanity, Mass Graves, and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015*.

<sup>150</sup> U.S. Department of State. (2019, June). *Trafficking in Persons Report*. Washington D.C: U.S Department of State.

<sup>151</sup> Government of Malaysia. (2006). Laws of Malaysia – Act 164 – Law Reform (Marriage and Divorce) Act 1976, articles 10 and 87, “Child” is defined as an individual under the age of eighteen years”.

<sup>152</sup> *Ibid.*, articles 21 and article 69 (b).

<sup>153</sup> Government of Malaysia. (2006). Laws of Malaysia – Act 303 - Islamic Family Law (Federal Territories) Act 1984, Section 8.

<sup>154</sup> *Ibid.*, Section 13 and 37(a).

Government of Malaysia withdrew its reservation on article 16(2) of CEDAW in July 2010.<sup>155</sup> The practice of child betrothal and child marriage is still prevalent<sup>156,157</sup> and the laws allowing children less than 18 years old to get married in Malaysia have not been amended since their creation.<sup>158</sup>

In October 2018, Prime Minister Mahathir Mohammad issued a directive to all state authorities that the legal minimum marriage age is now set at 18 for Muslims and non-Muslims alike and has ruled that it is no longer to be allowed under any circumstances.<sup>159</sup> On the other hand, in November 2018, Deputy Prime Minister, Dr Wan Azizah reportedly stated that laws governing child marriages will be tightened. Amendments covering both civil and Islamic marriages would include among others: the requirements that social, health and police reports be submitted for application for underage marriages, which comes under the purview of the Home Ministry and to make it a requirement for relevant agencies to submit reports before such marriages are allowed.<sup>160</sup> The amendments were due to be heard in Parliament by the middle of 2019 and will affect the Law Reform (Marriage and Divorce) Act 1976 that governs marriages for non-Muslim and the Islamic Family Law (Federal Territories) Act 1984 for underage marriages under Islamic law where the reports must be submitted to a *Syariah* court judge. However, as of July 2019 no meeting has taken place. So far, the only states who have stated that they will raise the minimum age of marriage to 18 are Selangor and Perak. Selangor has passed amendments to the to the Islamic Family Law (State of Selangor) Enactment 2003 and the *Syariah* Court Civil Procedure (State of Selangor) Enactment 2003 in regards to underage marriage.<sup>161</sup> Officials from the State of Perak have tabled in discussions to amend the law in July 2019.<sup>162</sup>

Furthermore, marital rape is not criminalised in Malaysian Law. The Malaysian Penal Code states that “the sexual intercourse by a man with his own wife by a valid marriage under any written law for the time being in force, or is recognised in Malaysia as valid, is no rape”.<sup>163</sup> However, it does punish the husband who “causes hurt or fear of death or hurt to his wife” in order to have sexual intercourse with her.<sup>164</sup> Regarding these formulations, the CEDAW Committee expressed its concerns over the definition of the crime “based on use of force and death threats by the husband, rather than based on lack of consent of the wife”.<sup>165</sup>

Strong calls for amendment of the laws (both religious and secular) to ban child marriage have been made by activists in Malaysia, both to prohibit marriage between two children and to forbid the marriage of children when it is to escape prosecution and conviction for what could be qualified as statutory rape.<sup>166</sup>

### ***Extraterritorial jurisdiction and extradition law***

Malaysia has explicitly guaranteed extra-territorial application of its legal provisions related to some manifestations of OCSE, namely CSAM/ CSEM and online grooming. The recent Sexual Offences against Children Act 2017 states that if the criminalised offences are committed by a Malaysian citizen against a child in any place outside Malaysia, the offender may be prosecuted as if the offence had been committed anywhere within Malaysia.<sup>167</sup>

Additionally, under the Extra-Territorial Offences Act, in some cases, the Malaysian Law applies to extra territorial offences.<sup>168</sup> The Malaysian Law may be applied when an offence committed “in any

place without and beyond the limits of Malaysia” is alleged to have been committed by a citizen or a permanent resident of Malaysia.<sup>169</sup> Under Section 4 of the Malaysian Penal Code, Malaysia has extraterritorial jurisdiction for offences against the State, and offences relating to terrorism and organised crime.<sup>170</sup> Thus, even if the perpetrator is not a Malaysian citizen or resident but has perpetrated one of these crimes against a citizen of Malaysia, or property belonging to or operated by the Malaysian government, for the purpose of compelling the Malaysian government to do or refrain from a certain act, or, if following the crime, the perpetrator is present in Malaysia, Malaysia has extraterritorial jurisdiction. Therefore, if not committed by a “group of two or more persons, acting in concert with the aim of committing one or more serious offences, in order to obtain, directly or indirectly, a material benefit, power or influence”,<sup>171</sup> a SEC offence committed abroad by a non-Malay citizen or resident cannot be tried in Malaysia, even if the victim was Malay.

The Malaysian Extradition Act 1992 defines an extradition offence as an offence with a punishment of no less than one-year imprisonment/death under the laws of a state referred to in the Act, as well as under Malaysian law (section 6).<sup>172</sup> The attempt, conspiracy to commit or abetment of the commission of an offence may also be subject to an extradition request.<sup>173</sup> Consequently, domestic law may authorise extradition for OPSC offences. There are two bases for extradition. First, extradition may be granted to countries with which Malaysia has concluded an extradition treaty;<sup>174</sup> examples of these include Australia, Hong Kong and the

United States.<sup>175, 176, 177</sup> The second basis for extradition is the administrative decision, which requires the consent of the Minister of Home Affairs (article 2(2)). In both cases, the request for extradition shall be presented before each House of Parliament.<sup>178</sup>

The Government of Malaysia and the Governments of Brunei and Singapore have special agreements for extradition, which provides a simplified procedure for extradition.<sup>179</sup> Extraditions may be granted for offences punishable on conviction by imprisonment for a term exceeding six months, the arrest warrant may be issued without being examined by the Session Court and the Magistrate who received the extradition request directs the transfer of the person.<sup>180</sup>

The conditions for the return of accused or convicted persons to Malaysia are provided in Part VII of the Extradition Act.<sup>181</sup> In June 2015, it was reported that the request to have Nur Fitri Azmeer Nordin, the Malaysian student convicted in United Kingdom for possession of child sexual abuse material, returned to Malaysia, was approved by the Malaysian Government.<sup>182</sup> Extraditions in cases of SEC offenders may present other challenges, as was highlighted by the Malaysian organisation Women’s Centre for Change: while serving his sentence in the UK, Nur Fitri received both treatment and counselling. The advocacy officer for Women’s Centre for Change questioned Malaysia’s ability to provide the same kind of treatment to Nur Fitri, proposing that the lack of such a safeguard poses a risk of reoffending.<sup>183</sup>

155 United Nations Treaty Collection. (n.d.), “Convention on the Elimination of All Forms of Discrimination against Women”, see “Malaysia Declarations and Reservations”.

156 New Straits Times. (2018). *Suhakam: Stop consenting child marriage*.

157 UNICEF. (2018). *Child Marriage in Malaysia (Working Paper)*.

158 The Star Online. (2016). *Rohami: Malaysia opposed to child marriage*.

159 UCAN. (2018, October 23). *Malaysia: PM Mahathir Mohamad Bans Child Marriage*. Euroasia review.

160 The Star Online. (2018, November 15). *Malaysia to have tighter rules on child marriages*.

161 Government of Selangor. *Warta Kerajaan Negeri Selangor*. 37. (MYS).

162 Looi, S. (2019, May 8). *Perak next in line to ban child marriage*. MalayMail.

163 Government of Malaysia. (2015). Laws of Malaysia – Act 574 - Penal Code, Section 375, Exception.

164 *Ibid.*, Section 375A.

165 Committee on the Elimination of Discrimination against Women. (2006), “*Concluding comments of the Committee on the Elimination of Discrimination against Women: Malaysia*”, CEDAW/C/MYS/CO/2, paragraphs 21-22, 31 May 2006.

166 UNICEF et al. (2018, June 21) *Joint Statement on Child Marriage*. UNICEF Malaysia.

167 Government of Malaysia. (2017). Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017, Article 3.

168 Government of Malaysia. (2006). Laws of Malaysia – Act 163 - Extra-Territorial Offences Act 1976.

169 *Ibid.*, Section 2 (1) (b)(ii) and (iii).

170 Government of Malaysia. (2015). Laws of Malaysia – Act 574 - Penal Code, Section 4 (1)(b)(c).

171 *Ibid.*, Section 130U.

172 Government of Malaysia. (1992). Laws of Malaysia – Act 479 - Extradition Act 1992, Section 6 para. (1) and (2).

173 *Ibid.*, Section 6 (3).

174 *Ibid.*, Section 2 (1).

175 Government of Malaysia and Government of Australia. (2005). Treaty between the Government of Australia and the Government of Malaysia on Extradition.

176 Government of Malaysia and Government of Hong Kong. (2005). Agreement between the Government of the Hong Kong and the Government of Malaysia for the surrender of Fugitive Offenders.

177 Government of Malaysia and Government of the United States of America. (1995). Extradition treaty between the Government of the United States of America and the Government of Malaysia”.

178 Government of Malaysia. (1992). Laws of Malaysia – Act 479 - Extradition Act 1992, Section 2 (3).

179 *Ibid.*, Section 25.

180 *Ibid.*, Sections 26 to 28.

181 *Ibid.*, Sections 32 to 36.

182 Astro Awani. (2015). Pedophile issue: Nur Fitri obtains green light to be extradited home – MARA.

183 Malaysiakini. (2015). *Focus on rehabilitation, not extradition*.



## National Response to the Sexual Exploitation of Children

### PREVENTION MEASURES, AWARENESS-RAISING AND EDUCATION

Malaysian authorities together with civil society entities have implemented a number of awareness raising campaigns which deal with SEC. Often, these protection mechanisms are not specifically targeted at child sexual exploitation, but address broader issues of child abuse. Government awareness campaigns run by local police districts<sup>184</sup> and the D11 Division, target schools through events, pamphlets and mobile phone communication.<sup>185</sup> The Malaysian Government, has also introduced awareness raising of child abuse into the school curricula.<sup>186</sup> However, it is important to note that refugee children and unregistered children are excluded from the Malaysian Education Ministry's strategic plans (which only address Malaysian children)<sup>187</sup> although under the Zero Project Policy, launched in 2018 and ran under the Ministry of Education, the government has attempted to integrate refugee and undocumented children into the education system.<sup>188</sup>

In 2019, the Ministry of Women, Family and Community Development designed a series of illustrations and messages that have been published on social media.<sup>189</sup> NGOs also participate in the broadcasting of information about children's rights and child sexual abuse on radio stations and workshops.<sup>190</sup> Often, the materials are child-friendly, employing cartoons to convey the message. In regards, to the effectiveness of these campaigns it is difficult to ascertain as there has been comprehensive analysis of their reach.

In 2018 a new technical working group was established to focus on comprehensive sex education. The group has in part, been created in response to the number of babies that have been abandoned at birth in Malaysia.<sup>191</sup> The working group, which is chaired by the CEO of End CSEC Malaysia comprises of NGOs working on child related issues, government agencies, academia, professionals, experts, media and children, with support from UNICEF and UNFPA. The role of the group is to plan a strategy for the implementation of sexual education to all groups of children, it also aims to monitor and evaluate the process.<sup>192</sup>

Through incorporating reforms in sex education a more open dialogue can occur in relation to preventative measures in SEC.<sup>193</sup>

Notable, targeted SEC campaigns include the 2013 Child Online Protection campaign, which saw more than 1000 events across Malaysia, inform and educate children and adults about the safe use of the Internet and encourage responsible conduct when online,<sup>194</sup> the 2016 '#ReplyForAll-My Campaign', whose goal is to ensure that the Internet is safe for children, and the CyberSAFE initiative, established in 2013 and still ongoing, offer a good example of a multi-disciplinary partnership awareness programmes.<sup>195</sup> Furthermore, End CSEC Malaysia Network, in partnership with ECPAT International, is working towards raising awareness amongst the general public on SECTT.<sup>196</sup>

Combatting child sexual exploitation goes beyond awareness-raising; it is also about providing services to children that may already be victims of sexual abuse, violence and exploitation. Initiatives, like the Malaysian 'Child Line 15999' telephone hotline, which offers a free 24-hour service, are important tools in the fight against SEC.<sup>197</sup> As of July 2019 since 2015, the Childline Helpline has received 1215 calls.<sup>198</sup> Unfortunately, there is no record of how many of these calls related to the sexual exploitation of children. Community programmes, run by Children Activity Centres (*Pusat Aktiviti Kanak Kanak* or PAKKs) and the National Population and Family Development Board offer both support for the development and protection of children, and for parents. PAKK's presence in local communities facilitates detection of the specific needs of children and facilitates the effective elaboration of programmes and activities,

as they are financially autonomous.<sup>199</sup> Kafe@TEEN adolescent centres, which operate in different cities and are run by the National Population and Family Development Board (LPKKN), organise online forums and indoor activities, provide counselling services and develop youth skills.<sup>200</sup> Besides supporting children and youth, both PAKK and Kafe@TEEN Adolescent Centres prevent children and adolescents from being exposed to abusers and exploiters while wandering alone in the streets and prevent children from becoming involved in petty crimes and delinquency.<sup>201</sup> There has been no formal evaluation of the Kafe@Teen programmes but the LPKKN have expanded the teen centres and feedback provided by End CSEC Malaysia suggests they are having a positive impact.<sup>202</sup>

An additional protection mechanism is the child sex offender's registry.<sup>203</sup> Following cases of sexual exploitation of children reported in Malaysia, the Malaysian Bar pushed for the creation of a sex offender registry, for a specific definition of child sexual abuse material, and for a specific offence related to child sexual abuse material (instead of combining articles from different acts).<sup>204</sup> Launched in 2019, the registry seeks to improve the mechanisms of identification and arrest, particularly within SECTT.

The involvement of private sector actors is essential as they not only convey the message of prevention across broader channels, but also alleviate some of the financial burden public bodies may encounter when combating SEC. For example, the telecommunication company Digi participates in the CyberSAFE Initiative, which is a public prevention project.<sup>205</sup> Digi contributed to outreach programmes in schools and inform

184 Ministry of Women, Family and Community Development and UNICEF (2013) *Child Protection System in Malaysia – An Analysis of the System for Prevention and Response to Abuse, Violence and Exploitation against Children*. 57.

185 *Ibid.*

186 End CSEC Malaysia Network. (2019, July). Personal communication.

187 Ministry of Education Malaysia (2016, August). *Annual Report 2015, Malaysia Education Blueprint 2013-2025*; In its Annual Report, the Ministry of Education stress that access to education shall be granted to all "Malaysian children" (highlighted by us). Therefore, the data are excluding all the undocumented children, refugees/ asylum-seeker children. And Ministry of Women, Family and Community Development and UNICEF. (2013). *Child Protection System in Malaysia – An Analysis of the System for Prevention and Response to Abuse, Violence and Exploitation against Children*. 58.

188 Borneo Post Online. (2018, April 28). *Undocumented children allowed to study Bernma*. (2019, April 22). *Enhancing Orang Asli education priority for gov't: PM*. MalaysiaKini.

189 End CSEC Malaysia Network. (2019, July). Personal communication.

190 *Ibid.*; Protect and Save the Children Association of Selangor and Kuala Lumpur (2013). *Annual report 2013*. 16. Selangor: Protect and Save the Children.

191 Balasegaram, M. (2019, May 12). *Human Writes: We need sex education to stop baby dumping*. Star 2.

192 End CSEC Malaysia Network. (2019, May). Personal communication.

193 Mohd, Noor and Samuri, M. (2018). *A working paper: Child Marriage in Malaysia*. 3. UNICEF.

194 ITU (n.d.). *Child Online Protection Malaysia*.

195 ReplyForAll-MY. (n.d.). *About*. DIGI (n.d) *CyberSafeInitiative*.

196 Malaysia Council for Child Welfare. (2018, March 27). *Global Study on Sexual Exploitation of Children in Travel and Touriim, Malaysia Launch Concept Note*.

197 Childline 15999. (n.d.). *The Concept of Childline Malaysia*.

198 End CSEC Malaysia Network. (2019, July). Personal communication.

199 Ministry of Women, Family and Community Development and UNICEF. (2013). *Child Protection System in Malaysia – An Analysis of the System for Prevention and Response to Abuse, Violence and Exploitation against Children*. 61. Department of Social Welfare. (2019, March 3). *Child Protection Team (PKKK)*.

200 National Population and Family Development Board (Ministry of Women, Family and Community Development) (n.d.). *Kafe@TEEN Adolescent Centre*.

201 Ministry of Women, Family and Community Development and UNICEF (2013). *Child Protection System in Malaysia – An Analysis of the System for Prevention and Response to Abuse, Violence and Exploitation against Children*.60.

202 End CSEC Malaysia Network. (2019, May). Personal communication.

203 Asia Times Staff. (2019, March 28) *Malaysia launches child sex offenders registry*. Asia Times.

204 The Malaysian Bar (2015, May 17), *"Paedophiles tend to reoffend, lawyers say in pushing for registry*.

205 CyberSAFE Malaysia (n.d.), *Cyber Safe Malaysia*.

children about the dangers of the misuse of the Internet.<sup>206</sup> They recently launched a new campaign called Yellow Heart, which aims to promote responsible digital usage amongst children.<sup>207</sup> However, the private sector has not been as committed in the fight against trafficking of children for sexual purposes, as noted by the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, in her 2015 visit report.<sup>208</sup> As of 2019, only one Malaysian company has joined the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism; a global initiative which trains actors from the tourism industry to recognize and respond to sexual abuse and exploitation of children; but several international private companies operating in Malaysia are members.<sup>209</sup>

## COORDINATION AND COOPERATION

Malaysia has adopted three national plans of action to implement its policy for the protection of children and promotion of their development, however none of these plans have been evaluated making it difficult to ascertain their effectiveness.<sup>210</sup> First, the 2009 National Child Policy (ongoing) which provides special programmes for vulnerable children and special measures to protect child victims of sexual exploitation, and ensure their rehabilitation and reintegration into their communities, or safe deportation.<sup>211</sup> Unfortunately it lacks a governing body to ensure the implementation of the child protection policy and it has been left to the initiative of some NGOs to keep advocating for it.

Second is the National Action Plan on Trafficking in Persons (2016-2020).<sup>212</sup> The plan focuses on capacity building and coordination, enhancing legal mechanisms, improving collaborative efforts of law enforcement agencies and prevention, protection and rehabilitation. Following the amendments to the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, the plan seeks to improve government’s efforts towards a joint holistic co-operation in the fight against human trafficking.<sup>213</sup> Established by the 2001 Child Act,<sup>214</sup> the Co-ordinating Council for the Protection of Children, is responsible for implementing and monitoring this plan.<sup>215</sup>

Finally, the 2015 Plan of Action on Child Online Protection which deals primarily with prevention, intervention and support for victims and families of cyberbullying, cyber grooming, child sexual abuse materials and online child abuse. It also seeks to build awareness and advocacy campaigns.<sup>216</sup> The plan has developed pre-existing relationships and led to initiatives between private companies and the government. Online protection of children has for example been at the core of co-ordinated action between the Malaysian Communications and Multimedia Commission; the Ministry of Women, Family and Community Development; several NGOs; Digi mobile and Harvard’s Berkman Centre for Internet and Society.<sup>217</sup>

In addition, a National Human Rights Action Plan was launched in 2018 by the Prime Minister’s Department. The plan focuses on the rights of vulnerable groups, including children; other areas include the rights of indigenous peoples and natives of Sabah and Sarawak.<sup>218</sup>

Since 2004, the Ministry of Women, Family and Community Development has been the main organ that co-ordinates child protection and child development policies.<sup>219</sup> The Department of Social Welfare (JMK for *Jabatan Kebajikan Masyarakat*), a sub-unit of the Ministry, is in charge of providing a wide range of services for other social groups, including children. To address the administration, assistance and social welfare of children, the JMK created the Children Division in 2005. The services provided by the JMK are divided into four categories: child protection services, child rehabilitation services, child development services and a witness support service programme for children.

The Child Protection Teams (*Pasukan Pelindungan Kanak-Kanak*, PPKKs) have the closest contact with the population as they co-ordinate locally-based services in each district of Malaysia.<sup>220</sup> They develop and manage the implementation of social and healthcare strategies at the local level. The strategies elaborated by the PPKKs are relayed to and implemented in the communities by different Children’s Activity Centres (*Pusat Aktiviti Kanak-Kanak*, PAKKs). However, in the key findings listed by the Ministry of Women, Family and Community Development and UNICEF, both the Child Protection Teams and the Children’s Activity Centres, although different,<sup>221</sup> often lack the specialised skills necessary to handle resource management, project management and strategy planning; some reportedly lacked even the training

to cover issues surrounding child sexual abuse.<sup>222</sup>

The Royal Malaysia Police acts as an important law-enforcement agency in curbing child sexual exploitation. The Criminal Investigation Division of the Royal Malaysia Police has a specialised section that investigates sexual crimes and crimes involving children: the Sexual Crime and Children Division, also called D11.<sup>223</sup> The D11 Division is also in charge of developing and co-ordinating nationwide prevention campaigns, training programmes and ensuring that adequate facilities are available for children.<sup>224</sup>

Additional co-operation and co-ordination are found in the partnership between the Malaysian authorities and UNICEF. UNICEF Malaysia and the Malaysian government developed several projects whose aim is the protection of children in general. Their joint expertise is essential for data collection, the production of situational reports,<sup>225</sup> as well as the organisation of trainings,<sup>226</sup> advocacy<sup>227</sup> and the development of prevention campaigns (as detailed in the section on Prevention). UNICEF Malaysia also plays a key role through its co-operation with specific bodies. UNICEF was part of the multisectoral task force on sexual crimes and was instrumental in the enactment of the Sexual Offences against Children Act 2017 and the accompanying standard operating procedures.<sup>228</sup> However, due to a change in government this task force has become inactive, although the act is still being implemented under the Ministry of Women

206 Digi CyberSAFE (n.d.), *our Journey*; CyberSAFE in Schools website (n.d.), *CyberSAFE*.

207 Digi (n.d) *Yellow Heart*.

208 United Nations Human Rights Office of the High Commissioner. (2015, February 23-28) *UN Special Rapporteur on Trafficking in persons especially women and children, Maria Grazia Giammarinaro – Visit to Malaysia. A/HRC/29/38/Add.1*. New York: UNHRC

209 The Code (n.d.). *Members – Malaysia*.

210 End CSEC Malaysia Network. (2019, May). Personal communication

211 Department of Social Welfare - JMK for *Jabatan Kebajikan Masyarakat*. (n.d). *National Child Protection Policy*. Ministry of Women, Family, Community and Development.

212 Azura. A and Fazleena. A. (2016, August 15), *Malaysia aims to improve anti-human trafficking ranking to Tier 1 by 2020*: Zahid. The New Straits Times. Government of Malaysia. (2016) National Action Plan on Trafficking in Persons (2016-2020).

213 Information provided by END CSEC Network Malaysia.

214 *Child Act* (2001). (MYS).

215 *Ibid.*, Part II, article 3 -5.

216 Government of Malaysia (2015). National Plan of Action on Child Online Protection.

217 Initiatives include the Cyber Space program: and the Click Wisely Program.

218 Prime Minister’s Office of Malaysia. (2018) *National Human Rights Action Plan*. Government of Malaysia: Kuala Lumpur.

219 Malaysia Ministry of Women, Family and Community Development and UNICEF. (2013) *Child Protection System Malaysia- An Analysis of the System for Prevention and Response to Abuse, Violence and Exploitation against Children* 43.

220 *Child Act* (2001).Section 7 (1). (MYS).

221 The Children’s Activity Centres mainly provide activities and tuition whilst the Child Protection Teams are made up of social workers. Information provided by END CSEC Network Malaysia.

222 Ministry of Women, Family and Community Development and UNICEF. (2013) *Child Protection System in Malaysia – An Analysis of the System for Prevention and Response to Abuse, Violence and Exploitation against Children*. 66.

223 The official portal of Royal Malaysia Police (n.d.), *Jabatan Siasatan Jenayah*.

224 *Ibid.*, 11.

225 For example, UNICEF (2014, November). *Exploring the digital landscape in Malaysia - Access and use of digital technologies by children and adolescents*; The Ministry of Women, Family and Community Development and UNICEF (2013), *The Malaysian Juvenile Justice System*.

226 For example in November 2014, UNICEF and Malaysia Association of Social Workers organised training sessions for social workers and NGO to increase the knowledge of the participants on the protection of children, UNICEF (2014), *“UNICEF Annual Report 2014*. 22; UNICEF Malaysia. (2013. May 14). *PSA: A child’s right to protection*.

227 For example, the “CRC@25 - Children Rights, My Promise to Children” campaign, which encouraged parents, teachers and doctors to religious, community leaders and policy makers to develop plans to ensure the protection of children’s rights. Stakeholders included: Association of Registered Childcare Providers, Bar Council Malaysia, Child Rights Coalition, DiGi Telecommunications, Isobar, Malaysian Paediatric Association, National Early Childhood Intervention Council, the multinational company Sime Darby Berhad, the School at Jaya One, and the Scouts Association of Malaysia. UNICEF Malaysia. (n.d.). A promise to children. UNICEF; A school outreach program to raise awareness of children’s rights, including the negative impact of child marriage. UNICEF Malaysia. (2018, November 2) *The time is now: End child marriage*. UNICEF; A guide for parents on how to talk to children about safety online. UNICEF Malaysia and Cybersecurity Malaysia (2015, October). *How to talk to your children about the internet*

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and Family Community Division.<sup>229</sup> UNICEF also collaborates with the Malaysian Communications and Multimedia Commission (MCMC), in April 2019 they organized a seminar and workshop on OCSE, bringing together groups from various sectors.<sup>230</sup>

At the civil society level, a group of Malaysian NGOs formed a network of members called the Child Rights Coalition Malaysia, to work at first on an Alternative Report for the Convention of the Rights of the Child for Malaysia.<sup>231</sup> The Coalition monitors the situation of children's rights in Malaysia, but also co-ordinates advocacy activities, organises capacity building trainings and promotes child participation.<sup>232</sup>

## CHILD PROTECTION, ACCESS TO JUSTICE AND RIGHT TO REMEDIES FOR CHILD VICTIMS OF SEXUAL EXPLOITATION

### National Complaint Mechanisms

There is insufficient data worldwide related to the unique challenges and barriers that child victims of sexual exploitation face when accessing justice,<sup>233</sup> and Malaysia is no exception. Despite, limited information regarding child victims of SEC access to complaint mechanisms, evidence does suggest that children's access is ineffective and scarce. The low score (41.2) attributed to Malaysia in the Child Rights International Network's 2016 global ranking can illustrate this. Malaysia ranked 130 out of 197 countries analysed.<sup>234</sup> CRIN developed a scoring system that ranks states according to the extent

to which their legal systems effectively guarantee access to justice for children.<sup>235</sup>

Concerning the right to access justice in Malaysia's national jurisdiction, the Malaysian Rules of Court considers children to be unable to bring a claim, make a counterclaim, or intervene in any proceedings by themselves. All children must have a litigation representative, a role that must be endorsed by a solicitor.<sup>236</sup> Children also benefit from an extended limitation period to introduce their case before the Court. Before a civil court, limitation period starts to run only when the child reaches 18 years old.<sup>237</sup>

Regarding the criminal sphere, Malaysia does not have a national complaint mechanism designed to attend to the special needs of children. However, the Criminal Procedural Code states that police officers are entitled to receive information in relation to offences committed anywhere in Malaysia.<sup>238</sup> Furthermore, the legislation provides that Magistrates can also receive and examine complaints, as long as they submit the complaint to Public Prosecutors.<sup>239</sup> Moreover, the Human Rights Commission of Malaysia can also receive and examine complaints associated to human rights violations, providing that the subject matter is not pending before a court or has not been finally determined by any court.<sup>240</sup>

### Child-sensitive justice

The Sexual Offences against Children Act 2017 states that in any proceedings related to any offence listed therein or any offence under the relevant offences where the victim is a child, that the "child is presumed to be competent to give evidence unless the court thinks otherwise."<sup>241</sup> The *Syariah* Court Evidence (Federal Territories)

provides that "all Muslims are competent to give *syahadah* (religious creed) or *bayyinah* (clear proof) as witnesses provided that they are 'aqil (intelligent), *baligh* (reached puberty), 'adil (fair), have a good memory and are not prejudiced".<sup>242</sup> Contrary to the Civil Law, the *Syariah* Law requires that the child witness has reached puberty, even if the other criteria are fulfilled.

As for the legal services provided to minor victims, children and their representatives may be eligible for legal aid and assistance. The Malaysian Bar Council established Bar Council Legal Aid Centres which provide free legal advice, intervention and representation before the court to applicants who are not eligible for legal aid.<sup>243</sup> Another type of legal aid and assistance provided by the Legal Aid Department may be available to child victims and their representatives; these same services as ones available in the Bar Council Legal Aid Centres are provided to applicants, who may be classified into two categories based on their income.<sup>244</sup> The Legal Aid Department provides legal advice and assistance to proceedings only in specific cases, but these include the criminal proceedings under the Child Act.<sup>245</sup> Unfortunately, no evidence is publicly available on how many children are recipients of this legal aid.<sup>246</sup>

In addition to the very low rate of prosecutions and convictions in Malaysia, the UN Special Rapporteur on Trafficking in persons, especially women and children, expressed her concerns over the lengthy judicial process and the absence of quick processing for trials involving trafficking.<sup>247</sup>

As far as the non-criminalisation of child victims is concerned, the Child Act ensures the protection of children 'in need of care and protection' under Section 38. According to this article, a child

victim of sexual exploitation shall be provided protection and rehabilitation. The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act also guarantees the immunity of the victim from criminal prosecution.<sup>248</sup> Notwithstanding their immunity, children may still be detained and investigated when they are found in sites where they are exploited for prostitution.<sup>249</sup>

Law enforcement officers are the main actors ensuring that children can access justice. However, very often only brief presentations on the Malaysian Child Act and the international children protection instruments are administered to police officers. No courses or trainings are organised to develop officers' specific skills in interviewing children, or to raise officers' understanding of child psychology or child development.<sup>250</sup> Still, some police forces have reportedly been trying to adopt a more child-friendly approach in the investigation of crimes involving children.<sup>251</sup> The results of these efforts, or the effects of these approaches in all the police branches, at least in the units of the D11 Division (which specialise in sexual investigations involving children), have not been reported. Trainings were reported to have been elaborated for judicial authorities so that they would be aware of child protection and ensure the strong legal protection of children.<sup>252</sup> For example, in 2014, UNICEF supported the introduction of child justice modules in the professional training programmes for magistrates and Session Court judges.<sup>253</sup> In 2018, the Judiciary agreed to co-host a roundtable with UNICEF Malaysia on best practice related to the handling of child victims or witnesses of crimes.<sup>254</sup>

Child-sensitive procedures also include the support provided to children who stand as witnesses before the court. Specific procedures ensure

229 End CSEC Malaysia Network. (2019, July). Personal communication

230 MCMC. (2019, April 24). *Working together for better online child protection*

231 Child Rights Coalition Malaysia. (2013, December). *Status Report on Children's Rights in Malaysia*. 34-36.

232 Child Rights Coalition Malaysia. (2013, December). *Status Report on Children's Rights in Malaysia*. 1-40.

233 ECPAT International. (2016) *Expert Paper: Access to Justice for Child Victims of Sexual Exploitation in Travel and Tourism*. 1. Bangkok.: ECPAT International.

234 Child Rights International Network (2016), *Rights, Remedies & Representation: Global Report on Access to Justice for Children*. 43.

235 *Ibid.*

236 Government of Malaysia. (2012), Rules of Court 2012, Order 76, rule 2 (3).

237 Government of Malaysia. (1981). Limitation Act 1953 (revised 1981) - Act 254, Section 24.

238 Government of Malaysia. (2012). Laws of Malaysia – Act 593 - Criminal Procedure Code, Section 107(4).

239 *Ibid.*, Section 133.

240 Government of Malaysia. (1999). *Laws of Malaysia – Act 597 - Human Rights Commission of Malaysia Act 1999*, Article 12.

241 Government of Malaysia. (2017). *Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017*, Article 18.

242 Government of Malaysia. (1997). *Laws of Malaysia – Act 561 - Syariah Court Evidence (Federal Territories) Act 1997*, Section 83.

243 The Malaysian Bar (n.d.). *Legal Aid Centres*.

244 Legal Aid Department (n.d.), *Legal Aid - Eligibility of the applicant*.

245 Government of Malaysia. (2017), Laws of Malaysia – Act A1548 - Legal Aid (Amendment) Act,

246 End CSEC Malaysia Network. (2019, July). Personal communication.

247 United Nations Human Rights Office Of The High Commissioner. (2015). "Preliminary findings, UN Special Rapporteur on Trafficking in persons, especially women and children, Maria Grazia Giammarinaro – Visit to Malaysia".

248 Government of Malaysia. (2007). Laws of Malaysia – Act 670 - Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 25.

249 United Nations Human Rights Office Of the High Commissioner. (2015). "Preliminary findings, UN Special Rapporteur on Trafficking in persons, especially women and children, Maria Grazia Giammarinaro – Visit to Malaysia".

250 Ministry of Women, Family and Community Development and UNICEF. (2013). *The Malaysian Juvenile Justice System – A Study of Mechanisms for Handling Children in Conflict with the Law*. 35; End CSEC Malaysia Network. (2019, July ). Personal communication.

251 End CSEC Malaysia Network. (2019, July). Personal communication.

252 End CSEC Malaysia Network. (2019, July). Personal communication.

253 UNICEF. (2014). *Malaysia Annual Report 2014 Final*. 21-24.

254 UNICEF. (2017). *Malaysia 2017 Annual Report*. 24.

that children are not required to confront their abuser or the accused.<sup>255</sup> The Malaysian Child Act guarantees the non-disclosure of the child victim's information in a section dedicated to "Restrictions on media reporting and publication".<sup>256</sup> The name, address, educational institution or picture of a child shall not be revealed in the mass media reports, in any criminal case, at the pre-trial, trial or post-trial stage.<sup>257</sup>

The 2006 introduction of a section allowing live video or live television evidence for criminal trials and inquiries in the Criminal Procedure Code Act is a major improvement in child-sensitive procedures, even if children are not explicitly mentioned.<sup>258</sup> Unfortunately, the Court still has the power to refuse this evidence in cases where it considers these means to "[...] be inconsistent with the Court's duty to ensure that the proceedings are conducted fairly to the parties to the proceedings".<sup>259</sup> It has been stressed that guidelines should be provided for the Courts to determine the conditions required for the use of live video and television in cases where children stand as witnesses. The tradition of the adversarial system in Malaysia may have appeared to limit the use of these technologies during criminal trials,<sup>260</sup> but the adoption of the Evidence of Child Witness Act in 2007 affirmed Malaysia's commitment to adapt its legal procedures to children.<sup>261</sup> Under Section 4, the Act provides different ways to limit the contact between the child witness and the accused by holding a barrier between them or by live or recorded video.<sup>262</sup>

Whilst, the introduction of the Sexual Offences Against Children Act and the special court to cover sexual crime against children, has gone some way to alleviate previous child justice measures; Malaysia still has progress to make. Datuk Mah Weng Kwai, a commissioner with the

Human Rights Commission of Malaysia stated that structural changes in a classroom could only go so far, a more sensitised judiciary; skilled prosecutors and more ethical defence counsel would aid in providing better child sensitive justice.<sup>263</sup>

### Access to recovery and reintegration

Several mechanisms were created to protect and provide support services for children. For example, two units were created to ensure that child victims are identified, receive adequate treatment and, eventually, ensure that they are reintegrated and rehabilitated into their communities: the Suspected Child Abuse and Neglect (SCAN) Teams and the One-Stop Crisis Centre (OSCC). Both consist of multi-disciplinary groups of professionals from various medical fields, namely paediatricians, obstetricians and gynaecologists, psychiatrists, forensic pathologists, as well as medical social workers. The core of the SCAN Teams and OSCC is a medical team but they also work closely with officers from the Department of Social Welfare and police officers.<sup>264</sup> In practice, composition of the SCAN Teams is not strictly uniform across hospitals. The One-Stop Crisis Centre is a unit that provides an initial medical examination. The SCAN Teams and OSCC are different in that the former's objective is to collect testimonies from the child and his/her family.<sup>265</sup> The OSCC intervenes only when the situation of the child is not critical. When the victim is in a critical or semi-critical situation, the child is referred to the emergency department first, before being brought to an OSCC.<sup>266</sup> No statistics or data is available on the number of victims of child sexual exploitation who have received these services.

The Malaysian Child Act also establishes 'places of safety' to ensure the care and protection of children<sup>267</sup> and 'places of refuge' to ensure the

care and rehabilitation of children.<sup>268</sup> These places, institutions or centres are established or appointed by the Minister of Women, Family and Community Development. Following the adoption of the Child Act 2001, the Government created Children's Homes (*Rumah Kanak-Kanak*).<sup>269</sup> In 2019, there were 13 Children's Homes in Malaysia with a total capacity of 1,430 children.<sup>270</sup> Concerns may rise regarding the administration of the institutions, as juvenile offenders may also be housed in Children's Homes. While acknowledging the importance of the government-run shelters in the protection of children, the UN Special Rapporteur on Trafficking expressed some concerns about the absence of specialised trainings and capacity-building sessions organised for the staff of the shelters.<sup>271</sup> Whilst there are some NGOs that have provide training for staff, in 2019 these programmes are still limited.<sup>272</sup> Private organisations play a major role in ensuring the protection of children who are unable to stay in government-funded Children's Homes or *Tunas Harapan* Homes. These include faith-based organisations like the *Pertubuhan Kebajikan Anak-Anak Yatim (Peyatim)* managed by the Muslim Association of Malaysia, Shelter Homes, Global Shepherd and Tenaganita.<sup>273</sup>

### Access to compensation

The compensation of child victims of sexual exploitation is not a well-established process in Malaysia. Compensation for the victims through the seizure of the offenders' assets is not provided by the law, but other mechanisms exist in the laws. The general regime for compensation is provided under Section 432 of the Criminal Procedure Code.<sup>274</sup> Another example of compensation would be the Anti-Trafficking in Persons and Anti-Smuggling Act, which was amended in 2015 to enact the order for payment of compensation to the trafficked person (sections 66A and 66B). In practice, compensation is not always provided.<sup>275</sup>

255 Nazeri. N. M. (n.d.). *Development in Child Evidence in Malaysia*. 9.

256 Government of Malaysia. (2015). Laws of Malaysia – Act 574 - Penal Code, Section 15.

257 *Ibid.*, Section 15 (1) and (2).

258 Government of Malaysia. (2012). Laws of Malaysia – Act 593 - Criminal Procedure Code, 272(B).

259 *Ibid.*, Section 272B. para. 3.

260 Nazeri, N.M. (n.d.). *Development in Child Evidence in Malaysia*. 9.

261 Government of Malaysia. (2013). Laws of Malaysia - Act 676 - Evidence of Child Witness Act 2007.

262 *Ibid.*, Section 4, para. 1.

263 MalayMail. (2017, July 27). *From minors to sexual crime victims: Ensuring justice for vulnerable witnesses*.

264 Ministry of Health Malaysia. (2009, June 12), *Guidelines for the hospital management of child abuse and neglect*. MOH/P/PAK/130.07 (GU). Medical Development Division, Ministry of Health Malaysia.

265 *Ibid.*, 16-18.

266 *Ibid.*, "Procedures for handling SCAN cases", 30. Ahmed, Y *et al.* (2015) 'Suspected Child Abuse and Neglect Team (SCAN Team): Early Establishment, success stories, challenges and the way forward'. 60-72. *Journal of Administrative Science*. 12.1

267 Government of Malaysia. (2001). Laws of Malaysia – Act 611 - *Child Act 2001*, Section 54.

268 *Ibid.*, Section 55.

269 *Ibid.*, Part IX, Sections 51 and 55.

270 Department of Social Welfare (n.d.). *Services – Welfare Organisations – Children's Home*.

271 United Nations Human Rights Office Of The High Commissioner. (2015). "Preliminary findings, UN Special Rapporteur on Trafficking in persons, especially women and children, Maria Grazia Giammarinaro – Visit to Malaysia".

272 End CSEC Malaysia Network. (2019, July). Personal communication.

273 End CSEC Malaysia Network. (2019, July). Personal communication.

274 Government of Malaysia. (2015). Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2015, New Section 66A.

275 End CSEC Malaysia Network. (2019, July). Personal communication.



## Child, Victim and Survivor Participation

Most of the youth organizations in Malaysia are under the Malaysian Youth Council, also called the MBM (short for *Majlis Belia Malaysia*). Besides being a union of organisations, this council aims to promote the active role of youth in Malaysian society on issues including education, health or employment.<sup>276</sup>

In 2007, a National Youth Development Policy was developed with the objective of establishing a “holistic and harmonious Malaysian youth force... responsible, independent... and thus serving as a stimulus to the development and prosperity of the nation in consonance with the vision 2020”.<sup>277</sup> Under the Youth Societies and Youth Development Act, a National Youth Consultative Council under the supervision of the Minister of Youth and Sport was created.<sup>278</sup> While promoting the participation of the youth, neither the Seventh Malaysia Plan nor the National Youth Consultative Council actually include children or youth<sup>279</sup> in the process of policy elaboration. Nor does either target the promotion of children and youth’s rights, child sexual exploitation or protection from any forms of abuse.

Organisations whose actions focus more on the promotion of children’s rights and advocating the participation of children and youth can be found in Malaysia. Youths between the ages of 18 and 30 can participate in the Youth Parliament of Malaysia, a youth council and simulation of the parliamentary proceedings of the Parliament of

Malaysia, providing insight into the parliamentary workings. Whilst, Malaysia has a National Child Council under the Department of Social Welfare, civil society organisations have been unable to verify how far this Council is consulted or ascertain its impact. Although, 75 child advocates have reportedly received training to empower them for child participatory and advocacy activities.<sup>280</sup> At the beginning of 2017, an advertisement supporting the amendment of the existing laws in Malaysia punishing sexual crimes committed against children could be seen on the website of the Malaysian Youth Parliament.<sup>281</sup> Beside advocacy activities, Malaysian children and youth had the opportunity to participate in the early deliberations of the National Plan of Action, and other national programmes.<sup>282</sup>

At the regional level, children and youth have been invited to contribute to relevant policies and plans through different events. During the 10<sup>th</sup> Asia and Pacific Prevention of Child Abuse and Neglect Forum, held in Kuala Lumpur from 24-28 October 2015, the Malaysian Council for Child Welfare, ECPAT and the International Society for the Prevention of Child Abuse and Neglect (ISPCAN) co-organised and facilitated a Virtual Youth Forum.<sup>283</sup> The Youth Forum virtually brought together over 150 young people from Bangladesh, India, Indonesia, Malaysia, Myanmar, Laos, Pakistan, the Philippines and Thailand to discuss SEC-related topics such as the sexual exploitation of children in travel and tourism, trafficking of

children, child sexual abuse and child marriage.<sup>284</sup> In a number of its documents, ASEAN also invited Member States to involve youth in the elaboration of public initiatives addressing issues related to children.<sup>285</sup>

More recently in 2017, the nationwide yearlong campaign #SayaSayangSaya, provided 1,564 young people from 316 schools in Malaysia with a safe space to learn and openly discuss reproductive health issues, child sexual abuse and cyber safety with experts from the police’s Sexual, Women and Child Investigation Unit (D11), the Federation of Reproductive Health Associations, UNICEF Malaysia, Digi and the Star’s Rage Team. Evidence gathered during the campaign through youth opinion polls<sup>286</sup> resulted in a request from the Economic Planning Unit and the Ministry of Education for UNICEF Malaysia to convene stakeholders to share best practice.<sup>287</sup>

Non-governmental organisations such as UNICEF Malaysia and civil society organisations such as MKKM and Child Line Foundation have included children in workshops for the development of child advocates for child rights and protection – although it is unclear if these issues centre around SEC related issues.<sup>288</sup>

Despite all these initiatives, child participation in the political and social mechanisms developed to protect them specifically from child sexual exploitation is rare.<sup>289</sup> Participation of children and youth in the mechanisms monitoring the implementation of the Convention on the Rights of the Child are comparatively much stronger.<sup>290</sup>

<sup>276</sup> *Ibid.*, 69.

<sup>277</sup> Ministry of Youth and Health (n.d.), “National Youth Development Policy”, para. 3.

<sup>278</sup> *Youth Societies and Youth Development Act* (2007).Section 35. (MYS).

<sup>279</sup> See the composition of the Council in Malaysia, *Youth Societies and Youth Development Act* (2007).Section 37. (MYS).

<sup>280</sup> End CSEC Malaysia Network. (2019, July). Personal communication.

<sup>281</sup> Parlimen Belia Malaysia. (n.d.). *Mari Mengambil Bahagian Dalam Mempengaruhi Keputusan Kerajaan*.

<sup>282</sup> Bala, Amy and Sinnasamy, Maniam (2006, July 25), *Child Participation: The Malaysian Experience*.

<sup>283</sup> MHPSS (2015, October), “10<sup>th</sup> ISPCAN Asian Pacific Regional Conference on Child Abuse and Neglect (APCCAN), 24-28

<sup>284</sup> KOMPAK (2015, October 24). *The 10<sup>th</sup> Asia Pacific Regional Conference on child Abuse and Neglect (APCCSN 2015/ IPSCAN Virtual Youth Forum*.

<sup>285</sup> Forum-Asia. (2011). *A Guidebook on Spaces for Children’s Participation in ASEAN*. 13-15.: For example the Kuala Lumpur Agenda on ASEAN Youth Development, the Declaration on the Commitments for Children in ASEAN, the Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children.

<sup>286</sup> Children4Change. (2018, February 14) *9 in 10 teens want education to protect against sexual abuse*.

<sup>287</sup> UNICEF Malaysia. (2017). *Malaysia Annual Report*. 4. UNICEF: New York.

<sup>288</sup> End CSEC Malaysia Network. (2019, July). Personal communication.

<sup>289</sup> End CSEC Malaysia Network. (2019, July). Personal communication.

<sup>290</sup> UNICEF Malaysia (n.d.), *Child participation in monitoring the implementation of the Convention of the rights of the Child*.

## Recommendations for Action

### INTERNATIONAL AND REGIONAL LEGISLATION, COMMITMENTS AND COORDINATION TO ENDING SEC

- Accede to the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure;
- Strengthen existing international police and judicial cooperation through multilateral, regional and bilateral arrangements to improve prevention, investigation, prosecution and punishment of SEC crimes, and develop mechanisms to coordinate the implementation of such arrangements;
- Enhance Voluntary National Review process to include more detailed information related to SEC.

### NATIONAL RESPONSE TO SEC'S MANIFESTATIONS

- Improve implementation, monitoring and evaluation and multi-sectorial collaboration in the delivery of the National Action Plans; include more specific measures to ensure the protection, rehabilitation and reintegration of all child victims of trafficking;
- Amend both the Law Reform (Marriage and Divorce) Act and the Islamic Family Laws to set the minimum age of marriage at 18 years old for boys and girls;
- Criminalise marital rape, especially against children, in the Penal Code and amend Section 375 of the Penal Code on the definition of rape, in order to treat child victims equally;

- Recognise the exercise of extraterritorial legislation in all cases when the offender is a national citizen or a habitual resident, or when the victim is a national, in order to provide more guarantees against impunity from SEC offences;
- Amend the Anti-Trafficking Act to provide special protection to child survivors of trafficking;
- Provide for the shared responsibility of all stakeholders including, for instance, owners of cybercafés or people working in any capacity in the travel and tourism industries;
- Amend existing Acts to criminalise SEC offences committed in the context of travel and tourism.

### ACCESS TO JUSTICE AND RIGHT TO REMEDIES FOR CHILD VICTIMS OF SEXUAL EXPLOITATION

- Create additional legal provisions to ensure that child victims of SEC have access to legal remedies, regardless of their gender or their background;
- Ensure that adequate services and compensation are available to child victims of SEC offences in order to guarantee their physical and psychological recovery and reintegration into their communities;
- Provide adequate trainings on national instruments applicable to protection of child victims as well as on child-friendly approaches and procedures to all competent authorities, including police officers, social workers and legal and judicial officers;

- Conduct more awareness training on SEC for and among children, in schools and in places dedicated to children such as the Children's Activity Centres and Kafe@TEENs;
- Promote the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.

### CHILD, VICTIM AND SURVIVOR PARTICIPATION

- Develop more initiatives to include children and youth in specific policies combatting SEC crimes in Malaysia;
- Encourage children and youth to take part in programmes advocating the promotion of their rights, and participate in consultations on the implementation of laws criminalising SEC related offences.

### RESEARCH NEEDS AND AGENDA

- Adopt a data collection system on SEC that is consistent and optimised. Collect data in a disaggregated manner to provide a more accurate understanding of SEC in Malaysia and develop appropriate policies to prevent and combat related crimes;
- Increase research to understand better the scale and scope of sexual exploitation of boys and also on victims of child marriage.



## Acronyms

<b>ASEAN</b>	Association of Southeast Asian Nations
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CRC</b>	United Nations Convention on the Rights of the Child
<b>CSAM</b>	Child sexual abuse material
<b>CSEM</b>	Child sexual exploitation material
<b>GDP</b>	Gross Domestic Product
<b>HDI</b>	Human Development Index
<b>ICT</b>	Internet and Communications Technology
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>INTERPOL</b>	International Criminal Police Organization
<b>MWFCD</b>	Ministry of Women, Family and Community Development
<b>MYC</b>	Malaysian Youth Council
<b>NGO</b>	Non-governmental organization
<b>OPSC</b>	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
<b>SCAN</b>	Suspected Child Abuse and Neglect
<b>SEC</b>	Sexual exploitation of children
<b>SECTT</b>	Sexual exploitation of children in travel and tourism
<b>SUHAKAM</b>	The Human Rights Commission of Malaysia ( <i>Suruhanjaya Hak Asasi Manusia Malaysia</i> )
<b>UN</b>	United Nations
<b>OHCHR</b>	United Nations High Commissioner for Human Rights
<b>UNHCR</b>	United National High Commissioner for Refugees
<b>UNODC</b>	United Nations Office on Drugs and Crimes
<b>UNICEF</b>	United Nations Children’s Fund



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