Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
Malaysia

Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
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by

Jaclyn Ling-Chien Neo
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**Formal Name** : The Federation of Malaysia  
**Capital City** : Kuala Lumpur  

| Population                        | Male: 14.4 million  
|                                  | Female: 13.9 million  
|                                  | Both sexes: 28.03 million* |

| Life expectancy at birth         | Male: 71.05 years  
|                                  | Female: 76.73      
|                                  | Both sexes: 73.79  |

| Age structure                    | Median age: 26.2 years  
|                                  | 0-14 years: 27.6%    
|                                  | 15-64 years: 67.3%   
|                                  | 65 and over: 5.1%    
| Gender breakdown:                | Male 0-14 years: 14.2% (of total population)  
|                                  | Female 0-14 years: 13.4%  
|                                  | Male 15-64 years: 34.8%  
|                                  | Female 15-64 years: 32.6%  
|                                  | Male 65 and over: 2.4%    
|                                  | Female 65 and over: 2.6%   |

| Sex ratio                        | Total: 1.01 male(s)/female  
|                                  | At birth: 1.069 male(s)/female  
|                                  | Under 15: 1.02 male(s)/female  
|                                  | 15-64 years: 1.01 male(s)/female  
|                                  | 65 and over: 0.79 male(s)/female   |

| Ethnic groups                    | Bumiputra: 67.4%  
| (Malaysian resident citizens only)| (Malays: 54.6%; other Bumiputra: 12.8%)  
|                                  | Chinese: 24.6%     
|                                  | Indians: 7.3%      
|                                  | Natives of Sabah and Sarawak: 4.3%  
|                                  | Others: 0.7%       |

| Religious groups                 | Islam: 61.3%       
|                                  | Buddhism: 19.8%    
|                                  | Christianity: 9.2% 
|                                  | Hinduism: 6.3%     
|                                  | Taoism/Confucianism/other traditional Chinese religions: 1.3%  
|                                  | Other/unknown religions: 1.4%  
|                                  | No religion: 1.0%  |

| Functional literacy rate         | Male: 94.58%¹      
|                                  | Female: 90.29%²     
|                                  | Both sexes: 92.1%   |

| National poverty line            | RM720 per month    |

| Percentage of population living below the national poverty line | 3.8% |

| Gross Domestic Product per capita | US$8,3730 |

---


| Number of foreign workers in country | Total: 2.045 million³  
|-------------------------------------|--------------------------------|
|                                     | Male: -  
|                                     | Female: -  
| Percentage of female-headed households | 15.56%  
|                                     | (887,000 out of 5.7 million heads of households)  
| Labour force participation rate     | Total: 62.7%  
|                                     | Male: 78.7%  
|                                     | Female: 46.1%  
| Unemployment rate                   | Total: 3.4%  
|                                     | Male: 3.3%  
|                                     | Female: 3.6%  
| Proportion of unpaid family workers | Total: 4.5%⁴  
|                                     | Male: 1.7%  
|                                     | Female: 2.8%  
| Fertility rate                      | 2.4  
| Maternal mortality rate             | 31 deaths/100,000 live births  
| Infant mortality rate               | 6.3 deaths /1,000 live births  
| Legal definition of 'child'         | The Child Act 2001 defines a ‘child’ as ‘a person under the age of eighteen years’ but ‘in relation to criminal proceedings, a child is a person under ten years of age.  
| Age of majority                     | 18 years of age⁵  
| Marriageable age                    | Non-Muslim male: 18  
|                                     | Non-Muslim female: Licence is required for females aged 16 and 17, not required for 18 and above  
|                                     | Parental consent for non- Muslim males and females is required until 21 years of age⁶  
|                                     | 18 years of age for Muslim males and 16 years of age for Muslim females  
| Age of consent                      | 16 years of age  
| Age of criminal responsibility      | 10 years of age⁷  
|                                     | although section 83 provides for an exception for a child above ten years of age and under twelve who has ‘not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.’  
| Minimum age of employment           | 14 years of age  
| Minimum age for military recruitment and participation | 18 years of age  

*Unless otherwise indicated, population data are as at 2010, and refer to the total resident population, i.e. citizens and non-citizens.

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⁵ Age of Majority Act (1971)


⁷ Penal Code (1997 Revised), 82.
A. OVERVIEW

1. Baseline Literature

This study uses as its baseline Malaysia’s combined initial and second periodic reports to the CEDAW Committee ('CEDAW Report'), Initial Report to the Committee on the Rights of the Child in 2006 ('CRC Report'), as well as Malaysia’s Universal Periodic Review Report to the Human Rights Council in 2008 ('Malaysia’s UPR'). The Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) are the central international instruments governing Malaysia’s legal-political framework on the protection of women and children against violence, exploitation and migration. Neither CEDAW nor the CRC are part of Malaysia’s domestic law. Malaysia adheres to the dualist tradition; treaties are not self-executing but must be incorporated by an ad-hoc legislative act to be directly applicable in domestic law. At present, the Malaysian parliament has yet to enact the necessary incorporating statute. Nonetheless, the reports give insights into Malaysia’s approaches to the protection of women and children, not just in the positive sense of showcasing areas of improvement but also in the negative sense of highlighting areas where attention is still lacking.

Malaysia submitted its CEDAW Report on 12 April 2004 and the CEDAW Committee considered it in May 2006. Besides the CEDAW Report, the following related documents also formed part of this literature review:


b. Malaysia’s responses to the CEDAW Committee’s list of issues and questions for consideration, 2006 ('Malaysia’s CEDAW Responses'); and

c. Concluding Comments by the CEDAW Committee, 2006 ('CEDAW Concluding Comments'); and

d. National Council for Women’s Organisations’ Memorandum on the Concluding Comments from the CEDAW Committee.

Malaysia submitted its CRC Report in 2006 and the CRC Committee considered it in June 2007. Besides the CRC Report, the following related documents also formed part of this literature review:

a. Written Replies by the government of Malaysia concerning list of issues received by the committee, 2006 ('CRC Written Replies'); and

b. CRC Committee’s concluding observations, 2007 ('CRC Concluding Observations').


12 Judges in common law dualist countries such as Malaysia have however incorporated human rights provisions into their constitutional and statutory interpretation. There was recently a landmark High Court decision where CEDAW’s article 11 provisions against pregnancy discrimination was used to inform the interpretation of Malaysia’s constitutional prohibition against gender discrimination, Norofaila binti Ahmad Sakin v Chayed bin Basirun, et. al. [2012] 1 MLJ 832. See further Jaclyn Ling-Chien Neo, Calibrating Interpretive Incorporation: Constitutional Interpretation and Pregnancy Discrimination under CEDAW, Human Rights Quarterly (2013, forthcoming).


14 Malaysia’s Responses to the list of issues and questions for consideration of the combined initial and second periodic report, Committee on the Elimination of Discrimination Against Women, (Mar 27, 2006), CEDAW/C/MYS/Q/2/Add.1 (hereafter ‘Responses to CEDAW Questions’)

15 See also the Concluding Comments of the Committee on the Elimination of Discrimination against Women: Malaysia, Committee on the Elimination of Discrimination Against Women (31 May 2006), CEDAW/C/MYS/Q/1/Add.1 (hereafter ‘CEDAW Concluding Comments’).


17 Written Replies by the Government of Malaysia Concerning the List of IssuesReceived by the Committee on the Rights of the Child Relating to the Consideration of the Initial Report of Malaysia, Committee on the Rights of the Child (Dec 4, 2006), CRC/C/MYS/Q/1/Add.1 (CRC/C/MYS/Q/1).


Jaclyn Ling-Chien Neo
Malaysia's UPR was a necessary update to Malaysia's CEDAW and CRC Reports insofar as it discussed human rights issues involving problems of violence, exploitation and migration against women. The Human Rights Council considered Malaysia's 2008 UPR in its fourth session. Besides the UPR, following documents arising from the UPR were reviewed:

- Stakeholders’ Submissions to the universal periodic review, 2008 (‘UPR Stakeholder’s Submissions’);
- Addendum to the Report of the Working Group, 2009;
- Report by the Coalition of Malaysia NGOs in the UPR Process (‘COMANGO Report’);
- Joint submission by members of the Migration Working Group (MWG) and the Northern Network for Migrants and Refugees (Jaringan Utara Migrasi dan Pelarian, JUMP) (‘MWG-JUMP submission’); and

As Malaysia’s CEDAW and CRC reports were prepared more than five years ago (i.e. submitted in 2004 and 2006 respectively) and the UPR, though more recent, addresses women's and children's issues from a broader human rights perspective, more updated and specialised literature needed to be reviewed to further illuminate the documented prevalence of the problem of violence, exploitation and migration affecting women and children, as well as to evaluate the de jure state responses and the range of implementation, monitoring and prevention mechanisms in Malaysia.

At the national level, various domestic reports and documents prepared by Malaysian government agencies and the Human Rights Commission of Malaysia (SUHAKAM) formed part of this literature review. These were:

2. Police Crime Statistics;
4. SUHAKAM Annual Report 2010

Furthermore, newspaper reports provided the most updated information on the prevalence of the problem, state responses as well as implementation, monitoring and prevention mechanisms.

Lastly, reports by external bodies and NGOs provided external views and important empirical and anecdotal accounts regarding the treatment of women and children in Malaysia. The relevant documents reviewed are:

2. US State Department 2010 Human Rights Report (HR Report);
3. Human Rights Watch Report, ‘Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia’ (2004); and
4. Human Rights Watch Report, “They Deceived


us at Every Step: Abuse of Cambodian Domestic Workers Migrating to Malaysia" (2011);27


The literature review showed that issues of violence against, exploitation of as well as abuse/discrimination arising from migration of women and children manifest in a multitude of situations. These situations raise different but overlapping considerations. As such, while the report seeks to provide a comprehensive view of these issues, it also concentrates on certain issues that disproportionately affect women and children so as to provide a better understanding of the predicament of the most vulnerable groups of women and children in Malaysia. These sub-issues are:

1. Violence against women and children: Domestic violence (against wives and children) and sexual violence (note that issues of violence against domestic migrant workers are addressed under the rubric of abuse and discrimination of migrant);
2. Exploitation of women and children: Trafficking of women and children, and child prostitution;

2. Background on Malaysia

Malaysia’s racial and religious demographic, and its pluralistic legal system are two critical factors affecting Malaysia’s approach to women and children. These formed the basis of Malaysia’s declarations and reservations to CEDAW and CRC. With regard to CEDAW, Malaysia declared that its accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia.29 As for the CRC, the Malaysian government declared that its implementation of certain provisions would be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia. Despite withdrawing reservations to Articles 1, 13 and 15 of CRC, Malaysia still has five reservations in place. This suggests that the Malaysian Government takes the view that children can be discriminated against, have no right to a name or nationality, have no freedom of thought, conscience and religion, and staggering, should not be free from torture and deprivation of liberty, presumably due to the existing views of cultural and religious groups concerning the status of children.

Malaysia practices state legal pluralism;31 there is a general system of law and courts and a limited system of Islamic or Sharia courts. These Sharia courts are part of the realization of the claims of the religious majority to self-determination and group autonomy in Malaysia. About sixty per cent of Malaysians are Muslims, the rest being of Buddhist, Hindu, and Christian affiliations. While there is some general correlation between race and religion for two of the three major racial groups, that is, most Chinese are Buddhists/Taoists and most Indians are Hindus, there is an almost complete overlap between Malays and Islam in Malaysia.

Criminal law falls within the scope of the federal government, whereas Islamic/Sharia laws fall within the scope of the state government. The Sharia Courts (Criminal Jurisdiction) Act 1965 provides that Sharia courts only have jurisdiction over offences against the precepts of the religion of Islam. Such offences are applicable only to persons professing Islam and the maximum punishment for these offences are three-year imprisonment, a fine not exceeding RM 5,000 and/or 6 strokes of the cane.32 Despite this, jurisdictional conflicts between federal and state governments on the one hand, and secular and Islamic courts on the other, have meant that some laws guaranteeing individual liberties are de facto deferred to Islamic requirements, at least for Muslims. The resulting uncertainty on the law may undermine state protection for women and children (see below discussion on statutory rape, child marriages and domestic violence). There are also discrepancies between the general/ secular and Sharia laws, with the latter granting fewer protections.

to women. For instance, general laws exempt women from judicial corporal punishment. However, Sharia laws do not similarly exempt women from whipping as a form of punishment. There have been occasions in recent years where women have been sentenced to whipping upon conviction for Sharia offences, which women’s groups heavily criticised. As an example, in 2010, three women were caned after being convicted of engaging in illicit sex under section 23(2) of the Federal Territory Sharia Criminal Offences Act 1997 (Illicit Sex). It should be noted that whipping as a form of punishment in the Sharia system is less severe than judicially ordered caning in the general system. Nonetheless, the discrepancies also have symbolic effect. At the very least, the Sharia legal system needs to more seriously take into account the viewpoints of Muslim women. As Malaysia’s Women Action Plan recommended, there was a need to involve women and obtain their opinions in the formulation of religious directions (fatwa) on issues concerning women.

Finally, it should be highlighted that discrimination and abuse is a systemic problem that is closely tied to the degree of political freedoms. Political freedoms are necessary to bring about true reform, which requires more than just legal but also political and social changes. Furthermore, when democratic space is constricted and dominated by a singular mainstream discourse, this can be used to perpetuate gender and patriarchal stereotypes with negative consequences for women and children. A corollary effect is that women and children who become politically active are denigrated and their efforts delegitimized because of their perceived (lower) status in society.

B. VIOLENCE

1. Description of the Problem

a. Prevalence of Violence

There has been growing recognition of the prevalence and seriousness of domestic violence (including child abuse) and sexual violence against women and children in Malaysia in recent years.

(i) Domestic Violence

Statistics show that the number of reported cases of domestic violence (keganasan rumahtangga) rose sharply in 2007 and 2008, but since then appear to be on the decline. The numbers do not differentiate between men and women victims. This is consistent with the Malaysia’s Domestic Violence Act being gender neutral. Nonetheless, media reports quote the police department acknowledging that about 98% of reported victims have been women.

<table>
<thead>
<tr>
<th>Year</th>
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Source: Royal Malaysia Police and Ministry of Women, Family and Community Development

Based on the statistics, the reported incidences of domestic violence are the highest in urbanized states. The highest number of reported cases occurs in the state of Selangor, which is the most urbanized and developed state in Malaysia. Furthermore, the number of cases reported for Kuala Lumpur may not seem very high in absolute terms, but considering the size of the territory, the numbers are worrying. However, despite an overall decline in the number of reported cases, there has been an increase in the number of reported cases in less developed states such as Kelantan (from 33 cases in 2000, to 242 cases in 2010) and Sabah (from 102 cases in 2000, to 301 cases in 2010).

The higher number of reported cases in urbanized areas may be due to better policing in the area and/or due to more awareness among urbanized women of their right not to be abused, thereby leading to more reports. These factors may also account for the increase in reported cases in less developed states in more recent times as policing and awareness campaigns begin to change cultural and social norms in these areas. The exact causes for the changes (rise and decline) in the number of reported cases are an area of possible research.


35 Andrew Sagayam, A Rape Every 2.5 Hours, (Malay Mail Online May 19, 2011), online at:http://www.mmail.com.my/content/72570-rape-every-25-hours (accessed Nov 9, 2011).
DOMESTIC VIOLENCE CASES IN MALAYSIA/YEAR 2000-2010 (By States)
KES KEGANASAN RUMAH TANGGA DI MALAYSIA

<table>
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<td>342</td>
<td>301</td>
</tr>
<tr>
<td>SERAWAK</td>
<td>316</td>
<td>203</td>
<td>222</td>
<td>201</td>
<td>208</td>
<td>254</td>
<td>224</td>
<td>416</td>
<td>298</td>
<td>340</td>
<td>260</td>
</tr>
</tbody>
</table>

Source: Women’s Centre for Change (Penang)36

(ii) Child Abuse

Child abuse is an area that has received increasing attention from the Malaysian government as well as non-governmental organizations in recent years. Generally speaking, statistics show an increase of reported cases over the years.

According to police statistics, the number of reported cases of physical abuse of children (penderaan kanak-kanak) was at an all-time high in 2010. Compared to 189 reported cases of child abuse in 2005, a total of 257 cases of physical child abuse were reported in 2010. Official statistics for 2011 have not been released to the public.

<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Child Abuse</td>
<td>189</td>
<td>141</td>
<td>196</td>
<td>22037</td>
<td>203</td>
<td>25738</td>
</tr>
</tbody>
</table>

Source: Royal Malaysia Police and Ministry of Women, Family and Community Development

The Department of Social Welfare’s reported number of child abuse cases is higher as it relies on a more comprehensive list of sources. Other than the police, the Department’s statistics include reported cases with the call centre 15999, private medical practitioners, government hospitals, members of the public, media, district social welfare officers, schools, nurseries/kindergartens, family members and other institutions.39


37 Data for the year 2008 was not widely available. It was presented in a newspaper report which claimed to rely on statistics released by the police department. Andrew Sagayam, Record High Child Abuse, (Malay Mail Online May 20, 2011), online at http://www.mmail.com.my/content/72695-record-high-child-abuse (accessed Nov 9, 2011). It should be noted that the online content has since been removed.

38 Data provided by the Women’s Aid Organisation (on file with author).

Statistics from the Department of Social Welfare, Malaysia show that 2,780 cases of child abuse were reported in 2008. This means that an average of 7 children were reported to be victims of child abuse each day in 2008. According to the Department data, more than 13,000 children were abused in Malaysia between 1999 and 2008 (a ten year period).\(^4\)

Neglect is the most common form of child abuse in Malaysia, followed by physical abuse and sexual abuse. Sexual abuse disproportionately affects female child victims. As an indication, a breakdown of cases according to type of abuse and the gender of the victims for 2007 and 2008 are as follows:

<table>
<thead>
<tr>
<th>Type of Abuse</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Abandoned babies</td>
<td>30</td>
<td>33</td>
</tr>
<tr>
<td>Neglect</td>
<td>392</td>
<td>369</td>
</tr>
<tr>
<td>Physical Abuse</td>
<td>298</td>
<td>288</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>50</td>
<td>704</td>
</tr>
<tr>
<td>Emotional / Psychological Abuse</td>
<td>7</td>
<td>38</td>
</tr>
<tr>
<td>Incest</td>
<td>2</td>
<td>19</td>
</tr>
<tr>
<td>Others</td>
<td>27</td>
<td>22</td>
</tr>
<tr>
<td>Total</td>
<td>806</td>
<td>1,473</td>
</tr>
</tbody>
</table>

Source: Department of Social Welfare\(^4\)

Malaysia's representations to the CRC stated that there were 1,390 reported cases of child abuse in 2003 and 1,800 cases in 2005.\(^4\) However, later statistics showed an increase of almost 1,000 cases, e.g. 2,696 or 2,780 cases in 2008. It is not clear if this increase is a real increase, that is, whether it is due to better reporting or because there are more incidences of child abuse. It is also possible that the increase is due to a change in statistical methods, e.g. a broader definition of what constitutes child abuse.

Data presented to the CRC Committee showed that most child abuse victims fall within the 7-15 years age bracket and are of the Malay ethnicity (although the latter could be a function of the population distribution). Furthermore, a large number of female child victims experienced sexual abuse; for example, 524 female victims out of 1170 female victims experienced sexual abuse in 2005.

Statistics obtained from the Department of Social Welfare show that 1 in 2 child victims reported in 2008 were abused by a parent; out of 2,780 child abuse cases reported in 2008, 772 offenders were mothers of the victims, while 494 cases were attributed to fathers of the victims.\(^4\)

UNICEF has expressed concern that child abuse is on the rise in Malaysia with an increase of some 700 reported cases between 2006 and 2008 alone.\(^4\) UNICEF Further noted concern that these figures represent only reported cases to the Department of Social Welfare, police or hospitals/clinics when children are treated.\(^4\) There is justified concern that the child abuse is more widespread than these figures show. According to UNICEF, global experience shows that only a small proportion of child abuse is reported and investigated, and few perpetrators are held to account.\(^4\) Anecdotal evidence indicates that, often, only the most acute cases of child abuse are reported.\(^4\) Furthermore, very young children, for example, lack the capacity to report physical or sexual abuse, while older children also often fear reprisals by perpetrators or interventions by authorities, both of which may worsen their overall situation.\(^4\)

---

40 There is a gap in the public data.
44 Written Replies by the Government of Malaysia Concerning the List of Issues (CRC/C/MYS/Q/1) Received by the Committee on the Rights of the Child Relating to the Consideration of the Initial Report of Malaysia, Committee on the Rights of Child, 44th session, (4 December 2006), CRC/C/MYS/Q/1/Add.1.
46 UNICEF Fact Sheet 2010 (cited in note 45).
47 UNICEF Fact Sheet 2010 (cited in note 45).
48 UNICEF Fact Sheet 2010 (cited in note 45).
49 UNICEF Fact Sheet 2010 (cited in note 45).
50 UNICEF Fact Sheet 2010 (cited in note 45).
(iii) Sexual Violence against Women and Children

A total of 3,595 cases of rape were reported in 2010. This means that an average of 10 women was raped every day in Malaysia in 2010. Latest 2012 statistics from the Malaysian Police Force show that there were 408 rape cases in the months of January and February 2012 alone. The department noted that this is a decrease of 43 cases from the same period the year before (January and February 2011). Nonetheless, this would still mean that an average of 6 to 7 rape cases occurred over the two-month period each day.

The Malaysian Police Force's Sexual Crimes and Child Abuse division has started compiling comprehensive data on violence against women and children, which is highly commendable. However, the data is not publicly and widely available but have only been selectively released to the public. There has been a general increase in sexual crimes against women and children, although there is indication that the numbers are decreasing slightly. For instance, compared to the 1,217 cases of reported rape in 2000 (based on Malaysia's representations to the CEDAW Committee), there were 3,816 reported cases in 2009.

<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>1,931</td>
<td>2,454</td>
<td>3,176</td>
<td>3,494</td>
<td>3,816</td>
<td>3,595</td>
<td>3,301</td>
</tr>
<tr>
<td>Outrage of Modesty (Molestation)</td>
<td>1,746</td>
<td>1,349</td>
<td>2,243</td>
<td>2,131</td>
<td>2,110</td>
<td>2,054</td>
<td>1,941</td>
</tr>
<tr>
<td>Sexual Harassment in the Workplace</td>
<td>102</td>
<td>101</td>
<td>195</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

Source: Royal Malaysia Police, and Ministry of Women, Family and Community Development

52 Perbandingan Jenayah Indeks Bagi Tempoh Jan-Feb 2011 dan Jan-Feb 2012 (cited in note 51).
53 The police department released the booklet to The Malay Mail (a local newspaper), which published a series of articles highlighting some of the relevant data. In addition, the non-governmental Women's Aid Organisation (WAO) managed to obtain a copy of the booklet after much negotiation and only on condition that it is used for research purposes only. The Malay Mail articles are no longer available online. See: Sagayam, Record High Child Abuse, (cited in note 37); Sagayam, A Rape Every 2.5 Hours, (cited in note 35). (Printed copies on file with author.)
54 Responses to CEDAW Questions at 15 (cited in note 14).
57 Statistics from Malaysian Police Force's annual report 2009. The report also stated that 95.65% of the cases were solved in 2009, i.e. that 3,650 cases were solved in 2009. This may suggest commitment and efficiency on the part of the police force, as well as the possibility that a large number of perpetrators are known to the rape victims, thereby facilitating identification and arrest. Report Tahunan 2009 at 100 (cited in note Error! Bookmark not defined.). See also Women's Aid Organisation, Statistics on Violence against Women in Malaysia (2000 - 2010), online at: http://www.wao.org.my/Police+Statistics+2007_64_5_1.htm (accessed Jul 25, 2012). Note however there is a slight discrepancy in the 2009 data for on rape. The WAO compilation shows lower number of rape cases in 2007, 2008 and 2009, i.e. 3,098, 3,409, and 3,626 respectively. It is not clear why there is such a discrepancy. WAO uses data provided by the Ministry of Women, Family and Community Development and the Malaysian Police Force.
58 Data provided by Women's Aid Organisation (stated source: Royal Malaysia Police & Ministry of Women, Family & Community Development) (on file with author).
RAPE CASES IN MALAYSIA/ KES ROGOL DI MALAYSIA
YEAR/TAHUN 2000-2010 (By States/Mengikut Negeri)

<table>
<thead>
<tr>
<th>STATES/NEGERI</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>PERLIS</td>
<td>12</td>
<td>10</td>
<td>13</td>
<td>11</td>
<td>21</td>
<td>26</td>
<td>28</td>
<td>27</td>
<td>41</td>
<td>43</td>
<td>40</td>
</tr>
<tr>
<td>KEDAH</td>
<td>110</td>
<td>123</td>
<td>132</td>
<td>119</td>
<td>127</td>
<td>163</td>
<td>221</td>
<td>313</td>
<td>314</td>
<td>344</td>
<td>339</td>
</tr>
<tr>
<td>P/PINANG</td>
<td>61</td>
<td>75</td>
<td>73</td>
<td>70</td>
<td>89</td>
<td>71</td>
<td>115</td>
<td>161</td>
<td>177</td>
<td>179</td>
<td>150</td>
</tr>
<tr>
<td>PERAK</td>
<td>91</td>
<td>79</td>
<td>100</td>
<td>118</td>
<td>121</td>
<td>148</td>
<td>183</td>
<td>226</td>
<td>234</td>
<td>257</td>
<td>294</td>
</tr>
<tr>
<td>SELANGOR</td>
<td>216</td>
<td>269</td>
<td>253</td>
<td>280</td>
<td>289</td>
<td>368</td>
<td>421</td>
<td>562</td>
<td>630</td>
<td>623</td>
<td>639</td>
</tr>
<tr>
<td>K/LUMPUR</td>
<td>67</td>
<td>97</td>
<td>120</td>
<td>77</td>
<td>116</td>
<td>111</td>
<td>142</td>
<td>221</td>
<td>186</td>
<td>155</td>
<td>152</td>
</tr>
<tr>
<td>N/SEMBILAN</td>
<td>59</td>
<td>82</td>
<td>62</td>
<td>69</td>
<td>89</td>
<td>97</td>
<td>103</td>
<td>153</td>
<td>194</td>
<td>210</td>
<td>182</td>
</tr>
<tr>
<td>MELAKA</td>
<td>43</td>
<td>43</td>
<td>57</td>
<td>67</td>
<td>100</td>
<td>77</td>
<td>125</td>
<td>139</td>
<td>130</td>
<td>110</td>
<td>106</td>
</tr>
<tr>
<td>JOHOR</td>
<td>194</td>
<td>234</td>
<td>235</td>
<td>312</td>
<td>323</td>
<td>324</td>
<td>343</td>
<td>473</td>
<td>535</td>
<td>589</td>
<td>585</td>
</tr>
<tr>
<td>PAHANG</td>
<td>74</td>
<td>79</td>
<td>79</td>
<td>70</td>
<td>102</td>
<td>84</td>
<td>143</td>
<td>194</td>
<td>206</td>
<td>221</td>
<td>223</td>
</tr>
<tr>
<td>TERENGGANU</td>
<td>48</td>
<td>48</td>
<td>45</td>
<td>38</td>
<td>58</td>
<td>99</td>
<td>127</td>
<td>130</td>
<td>141</td>
<td>122</td>
<td>137</td>
</tr>
<tr>
<td>KELANTAN</td>
<td>52</td>
<td>74</td>
<td>70</td>
<td>66</td>
<td>82</td>
<td>90</td>
<td>152</td>
<td>167</td>
<td>246</td>
<td>308</td>
<td>307</td>
</tr>
<tr>
<td>SABAH</td>
<td>109</td>
<td>94</td>
<td>115</td>
<td>111</td>
<td>149</td>
<td>156</td>
<td>199</td>
<td>236</td>
<td>261</td>
<td>239</td>
<td></td>
</tr>
<tr>
<td>SERAWAK</td>
<td>81</td>
<td>79</td>
<td>77</td>
<td>71</td>
<td>94</td>
<td>117</td>
<td>129</td>
<td>136</td>
<td>139</td>
<td>204</td>
<td>202</td>
</tr>
<tr>
<td>TOTAL/JUMLAH</td>
<td>1,217</td>
<td>1,386</td>
<td>1,431</td>
<td>1,479</td>
<td>1,760</td>
<td>1,931</td>
<td>2,431</td>
<td>3,098</td>
<td>3,409</td>
<td>3,626</td>
<td>3,595</td>
</tr>
</tbody>
</table>

Source: Royal Malaysia Police, and Ministry of Women, Family and Community

There are media reports providing the demographic breakdown of the rape victims which show that a significant proportion of rape victims were below 18 years old. It should nonetheless be noted that these data includes statutory rape cases. In order to fully apprehend the nature of the problem of sexual violence, and calibrate legal and policy responses, there is a need to disaggregate statutory rape from the rape data. Furthermore, where male minors are convicted of statutory rape, there is a lack of adequate protection and counselling to address the problem, particularly to ensure that these male minors are treated differently from common criminals.

(iv) Incest

There has been a rise in reported cases of incest in Malaysia, with fathers being the most common perpetrator of incest.

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61 According to the media reports, which claimed to rely on official statistics, a significant number of victims below 18 years of age were very young, i.e. below 13 years. For example, in 2010, the reports stated about 73.9% of rape victims were below 18 years of age, and of these 73.9%, 10% of victims were under 13 years old. This means that of 3,595 reported cases in 2010, 2,658 involved victims below 18 years of age. These numbers could not be independently verified as official statistics have not been forthcoming. This is an area for further research. See Sagayam, A Rape Every 2.5 Hours, (cited in note 35).

Jaclyn Ling-Chien Neo
### RELATIONSHIP WITH VICTIM AND SUSPECT/PERHUBUNGAN MANGSA
#### DENGAN SASPEK YEAR/TAHUN 2000-2007

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Grandfather/Datuk</td>
<td>4</td>
<td>5</td>
<td>13</td>
<td>5</td>
<td>7</td>
<td>1</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Step Grandfather/Datuk tiri</td>
<td>3</td>
<td>0</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Granduncle/Datuk saudara</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Father/Bapa</td>
<td>67</td>
<td>77</td>
<td>77</td>
<td>72</td>
<td>99</td>
<td>88</td>
<td>100</td>
<td>96</td>
</tr>
<tr>
<td>Step Father/Bapatiri</td>
<td>41</td>
<td>52</td>
<td>40</td>
<td>42</td>
<td>58</td>
<td>46</td>
<td>70</td>
<td>57</td>
</tr>
<tr>
<td>Uncle/Bapa saudara</td>
<td>34</td>
<td>42</td>
<td>65</td>
<td>42</td>
<td>61</td>
<td>54</td>
<td>60</td>
<td>74</td>
</tr>
<tr>
<td>Father-in-law/Bapa mertua</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Adopted father/Bapa angkat</td>
<td>3</td>
<td>7</td>
<td>9</td>
<td>5</td>
<td>7</td>
<td>16</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>In-law/Menantu</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Brother/Abang</td>
<td>13</td>
<td>15</td>
<td>29</td>
<td>22</td>
<td>24</td>
<td>18</td>
<td>25</td>
<td>36</td>
</tr>
<tr>
<td>Step Brother/Abang tiri</td>
<td>1</td>
<td>4</td>
<td>10</td>
<td>6</td>
<td>9</td>
<td>7</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Brother-in-law/Abang/Adik ipar</td>
<td>26</td>
<td>23</td>
<td>22</td>
<td>20</td>
<td>21</td>
<td>30</td>
<td>19</td>
<td>44</td>
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<tr>
<td>Foster brother/Abang angkat</td>
<td>3</td>
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<td>0</td>
<td>0</td>
<td>4</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Brother/Adik</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Step Brother/Adik tiri</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Child/Anak</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Step child/Anak tiri</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Adopted child/Anak angkat</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Nephew/Anak saudara</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Relative/Saudara</td>
<td>7</td>
<td>7</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>8</td>
<td>5</td>
<td>11</td>
</tr>
<tr>
<td>Cousin/Sepupu</td>
<td>8</td>
<td>11</td>
<td>27</td>
<td>26</td>
<td>33</td>
<td>25</td>
<td>33</td>
<td>39</td>
</tr>
<tr>
<td><strong>TOTAL/JUMLAH</strong></td>
<td><strong>213</strong></td>
<td><strong>246</strong></td>
<td><strong>306</strong></td>
<td><strong>254</strong></td>
<td><strong>335</strong></td>
<td><strong>304</strong></td>
<td><strong>346</strong></td>
<td><strong>390</strong></td>
</tr>
</tbody>
</table>

Source: Royal Malaysia Police, and Ministry of Women, Family and Community

The reported number of incest cases was consistently the highest in the states of Selangor, Johor and Sabah from years 2000 to 2009.

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The state of Kelantan has also been publicly flagged by the police for a notable increase in the number of reported incest cases, especially in rural areas.64

(v) Child Marriages

According to data provided in the CEDAW NGO Shadow Report, there was a significant number of marriages involving young girls. The Population and Housing Census 2000 show that there were 6,146 married girls and 4,478 married boys among adolescents aged 10-14. The census also shows that among the 2.49 million children within the age group of 10-14 in Malaysia, 235 were widowed and 77 were divorced or permanently separated.65 The Population and Housing Census 2010 claim that there are no married children under the age of 15. It records 145 married persons between the age of 15-19, of which 74 are males and 71 are females.

Media reports however suggest that child marriage is a continuing practice in Malaysia; recent media reports highlight Muslim men marrying under-aged girls as young as eleven years old.66 Reports state that Kelantan has the highest number of underage marriages among all the states in Malaysia. Based on data published by the Malaysian Sharia Courts Department, there were a total of 1,065 requests by parents for court approval of underage marriages in 2010. Of this, cases in Kelantan comprised more than a fifth (20%) at 231 cases. Other problematic states include Sarawak (165 cases), Sabah (146 cases) and Terengganu (107 cases). Penang ranked the lowest with 14 cases in 2010.67


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### CASES OF INCEST IN MALAYSIA/YEAR 2000-2009 (BY States)

**KES SUMBANG MAHRAM DI MALAYSIA**

<table>
<thead>
<tr>
<th>STATES/NEGERI</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
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Source: Royal Malaysia Police, and Ministry of Women, Family and Community.

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Jaclyn Ling-Chien Neo
(vi) Female Genital Mutilation

Malay-Muslims in some regions of Malaysia practice female circumcision.69 There have not been any reports on the more drastic form of female genital mutilation occurring in Malaysia. Although female circumcision was largely practiced in villages as part of the Malay cultural practices, there are reports of an increase in the practice of female circumcision even among adult women.69 Those interviewed believed that circumcision controls a woman's sexual desires.70 It has been argued that rising Islamic or, more specifically, Arabic influences in Malaysia could be a reason Malaysian Muslims are starting to practice female circumcision. In 2009, the Fatwa Committee National Council of Islamic Religious Affairs Malaysia issued a ruling stating that 'female circumcision is part of Islamic teachings and it should be observed by Muslims.' It should however be noted that the ruling went on to say that this practice is only obligatory and not strictly compulsory; 'circumcision can be exempted if the practice brings harm to the person.' This is because, the ruling explains, 'Islam also pays attention to the safety of its people.'71

(vii) Violence against Sex Workers

There are no figures to show the extent of this problem although sex workers have been known to work throughout pregnancies be forced to perform demeaning sex acts, and be beaten when unwilling to comply with clients’ demands.72 They also lack access to legal and medical recourse.73 They tend to suffer abuse from their pimps, their clients as well as from law enforcement officers. Sex workers are subject to harassment from law enforcement officers such as being handcuffed during raids, subject to demeaning treatment and have their right to privacy violated when their pictures are published.74 In addition, they are subjected to urine tests for drugs and HIV.75 This has resulted in sex workers going further underground and out of reach of social workers who can offer them information on health, STDs, etc.76

(viii) Violence and Sexual Harassment against Indigenous Women and Children

Besides the above, more attention needs to be given to determine the prevalence of violent acts and practices against foreign and/or indigenous women and children. The CRC Committee noted in its concluding observations that vulnerable groups of children such as children of indigenous populations living in remote places, children of migrant workers and child victims of trafficking are under-served and under-represented in Malaysia's governmental efforts.77 The more particularized forms of violence against domestic migrant workers and trafficked women and children are discussed generally in the other two sections below.

In Sarawak, Penan women and girls have been sexually violated and harassed by employees or associates of timber companies. A 2009 official report compiled by the Ministry of Women, Community and Family Development confirms the allegations of rape and sexual exploitation of Penan women and girls by employees and associates of timber companies.78 The report further


70 Zaman, FGM: It happens in Malaysia too (cited in note 69).


72 NGO CEDAW Shadow Report (cited in note 13) (on article 6).

73 NGO CEDAW Shadow Report (cited in note 13) (on article 6).

74 See e.g. images from Report Tahunan 2009 at 100 (cited in note 56).

75 NGO CEDAW Shadow Report (cited in note 13) (on article 6).

76 NGO CEDAW Shadow Report (cited in note 13) (on article 6).


concluded that one major cause of the sexual violence is due to the reliance of the victim on transportation vehicles belonging to timber companies. Despite this, there have yet to be concrete actions on the part of the Malaysian government to charge the perpetrators and to ensure Penan women and girls are protected from further sexual violence and exploitation. In fact, even when Malaysia addressed this issue in its 2008 UPR, there was little acknowledgement about the seriousness of the issue. Malaysia merely said that:

‘Based on the expected findings put forward by the police as well as SUHAKAM regarding the alleged abuse of Penan women, the Committee will formulate intervention programmes and provide counselling services to help the Penan women. This includes an awareness raising campaign to the Penan society, particularly women, so that they would be able to recognise and address issues of sexual harassment and abuse.’

There was no commitment to prosecuting the perpetrators and to take strong measures to ensure that such acts do not recur.

The Penan Support Group, together with the Asian Forum for Human Rights and Development and the Asian Indigenous Women’s Network, conducted an independent fact-finding mission. The Penan Support Group (PSG) consists of NGOs: Suara Rakyat Malaysia, Women’s Aid Organisation, Centre for Orang Asli Concerns (COAC) and AWAM. The mission documented evidence and statements of survivors who had been sexually abused by timber company employees/associate in a report entitled ‘A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia’. PSG has submitted the report to SUHAKAM with a request to conduct a national inquiry into the alleged sexual abuse. A preliminary meeting was organised in July 2010 for the Commission to ascertain details of the allegations. However, so far, SUHAKAM has only released a press statement urging the government to conduct a thorough investigation into the claims. The government had previously rejected setting up a Royal Commission of Inquiry to investigate the complaints on the basis that the matter was not urgent. So far, the PSG has given evidence to the police department about the rape claims but follow-up action has been slow.

(ix) Violence against Women Refugee and Asylum-Seekers

There are reports that women refugees and asylum-seekers are targets of violence, including sexual or gender-based violence. They have little protection against such violence, with minimal access to lawyers, medical treatment, safe houses and other necessary support.

(x) Sexual Harassment

Sexual harassment appears to be a prevalent problem in Malaysia. There is little statistical data on how extensive the problem is. Many people, particularly men, still see sexual harassment as being harmless fun. For instance, the Director-General (DG) of Labour Department, commented in 2009 that having a Sexual Harassment Act ‘could lead to a dull and rigid environment in the workplace’ thus trivializing harassment at the workplace. Incidences of harassment are only taken seriously where a crime has occurred. Sexist and offensive remarks have been reported even at the highest levels of government, including during parliamentary debate. Then deputy

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prime minister (now Prime Minister of Malaysia) Najib Tun Razak defended some the comments saying that the MP’s offensive remarks should be taken with a sense of humour. 88

It should be noted that there is now increasing recognition that ‘the multiplicity of forms of violence against women as well as the fact that this violence occurs at the intersection of different types of discrimination.’ 89 All forms of discrimination, however small, contribute to a hostile environment to women, which can escalate into physical violence.

Furthermore, sexual harassment becomes most problematic when children are involved since most children are presumptively less well equipped to fend off such harassment. There have been reported cases and police action taken. 90 in order to address sexual harassment on all levels, there needs to be an overhaul of societal attitudes towards women and girls.

(xi) Effeminate Boys and Homosexuals

In April 2011, it was reported that the Education Department of Terengganu (a conservative north-eastern state) ordered 66 Muslim boys between the ages of 13 to 17 to be sent to a special camp for counselling on masculine behaviour. They underwent four days of religious and physical education. The boys were selected because they displayed ‘feminine mannerisms.’ 91 The state’s education director said that the students were invited to join the camp but were not compelled to do so. The International Gay and Lesbian Human Rights Commission (IGLHRC) criticized the education department's action, as it would single out certain children for discriminatory treatment, which in turn could lead to bullying in schools, mental health problems, family rejection, and even violence. 92

The organization also pointed out that children who feel unsafe in school typically have low graduation rates. 93

In 2011, the Malaysian police banned the fourth Seksualiti Merdeka festival, an annual sexuality rights event held in Kuala Lumpur on the basis that the event constituted a threat to public order. 94 Part of the argument was that Seksualiti Merdeka promotes free sex and is contrary to the religious tenets of all religions. However, the Malaysian Consultative Council on Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) have come out in support of Seksualiti Merdeka, declaring that it is against all forms of harassment, intimidation, threats and violent attacks on any Malaysian including those from the lesbian, gay, bisexual or transgender (LGBT) community. 95 It should be noted that Seksualiti Merdeka is not a gay parade; among the events planned were talks, forums, workshops, art exhibitions and stage performances. 96

(xii) Judicial caning

Children can still be subject to judicial corporal punishment in Malaysia. The Child Act provides some safeguards but does not do away with them. The Child Court is empowered under section 91 to punish a male child by caning.

93 IGLHRC Letter to Malaysian Minister (cited in note 92).
Section 91(1) If a Court For Children is satisfied that an offence has been proved the Court shall, in addition to any other powers exercisable by virtue of this Act, have power to … (g) order the child, if a male, to be whipped with not more than ten strokes of a light cane:
(i) within the Court premises; and
(ii) in the presence, if he desires to be present, of the parent or guardian of the child; …

Section 92 further prescribes certain conditions for executing the punishment of whipping:
The following provisions shall be followed when executing the order of whipping:

(a) before executing the whipping, the child shall be examined by a medical officer to certify that the child is in a fit state of health to undergo the whipping;
(b) the person shall use a light cane with average force without lifting his hand over his head so that the child's skin is not cut;
(c) after inflicting a stroke, he shall lift the cane upward and not pull it;
(d) whipping may be inflicted on any part of the body except the face, head, stomach, chest or private parts;
(e) the child shall wear clothes; and
(f) if during the execution of the whipping the medical officer certifies that the child is not in a fit state of health to undergo the remainder of the whipping, the whipping shall be finally stopped.

Women and girls are exempted from judicial corporal punishment, except in the Sharia courts (see discussion above under section A.2.).

Corporal punishment is allowed in schools, but is regulated by the Education Regulations (Student Discipline) 2006. The Regulations state that:

a) Female students are not allowed to be caned;
b) Only the headmaster can carry out the caning;
c) A teacher can only cane when the headmaster delegates this power to him in writing, and he must be a permanent teacher of the school;
d) The student can only be caned on the buttocks or the palm. It cannot be done on bare buttocks and the student cannot be asked to lower his pants;
e) The caning is to be meted out in a confined area;
f) The student's parents will be informed and invited to witness the caning;
g) Caning must only be for a repeated mistake or very serious offence.

The Education Regulations (Student Discipline) 2006 also banned public caning. Malaysian governments do not encourage caning for primary school students, but caning is allowed at the secondary level by the principal or a person to whom he delegates the power to.97

Furthermore, the Penal Code provides parents/guardians a legal defence for corporal punishment done in good faith for the benefit of a person under 12 years of age. The provision states:

Section 89 Nothing, which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person:

Provided that this exception shall not extend to:
a) the intentional causing of death, or to the attempting to cause death;
b) the doing of anything which the person doing it knows to be likely to cause death for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;
c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;
d) the abetment of any offence, to the committing of which offence it would not extend.

Illustration
A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, in as much as his object was the cure of the child.

Furthermore, section 350 which defines criminal force contains an illustration that the caning of a scholar by a head teacher does not amount to criminal force.

350. Whoever intentionally uses force to any person, without that person's consent, in order to cause the

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committing of any offence, or intending by the use of such force illegally to cause, or knowing it to be likely that by the use of such force he will illegally cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

….. (i) A, a head teacher, in the reasonable exercise of his discretion as head teacher, canes B, one of his scholars. A does not use criminal force to B because, although A intends to cause fear and annoyance, he does not use force illegally.

b. Root Causes of Violence and Aggravating Practices

(i) Gender Stereotypes and Cultural Assumptions

Sexism is prevalent in Malaysian society. Even though there is de jure equality between husband and wife under the law, gender stereotypes remain prevalent. Many male politicians in governmental ministries and parliament have displayed sexist attitudes and made disrespectful comments about their colleagues. For instance, a woman MP was once told not to be too emotional in a debate on the Immigration Act 1963 and the Income Tax Act 1967. In another instance, a male MP claimed in Parliament that most women drivers were slow and paid little attention while on the road.

Such gender stereotypes and entrenched patriarchal attitudes are primary causes for violence against women (and the girl child) in Malaysia. Women tend to be seen as the ‘weaker’ and ‘less valuable’ sex. Assumptions about parental-children hierarchy within the family unit also contribute to violence by parents against children. Consequently, a primary aim of enacting the 1994 Domestic Violence Act was to eliminate certain cultural assumptions that ‘give men authority to abuse their spouses.’ Malaysia’s CEDAW Report noted:

‘In many cultures in Malaysia, the man is normally the head of the household while the wife is subservient and has to attend to his needs and comfort as well as take care of the children and elderly relatives in an extended family.’

It is possible that certain practices and ideas commonly associated with some cultural and/or religious group contribute disproportionately to acts of violence against women and children. It is also likely that socio-economic status/class are relevant contributors to violence against women and children.

(ii) Sexual Objectification

Existing culture also support the objectification of women as sexual objects, rather than persons of equal worth and dignity. In the past, Members of Parliament had made sexist remarks on female menstrual cycle of female Members of Parliament. Such sexism contributes to resistance to reform for gender equality.

Women may also contribute to the prevalence of sexual objectification. A group of Muslim women called the Obedient Wives Club have attracted much controversy for their position that wives should behave like ‘first-class whores’ to keep their husbands faithful and happy.

(iii) Social Misconceptions

Certain misconceptions about rape and rape victims make it harder for women to confront the problem squarely. It also makes it harder for survivors to report rape incidences because of fear of social stigma. Such misconceptions blame the survivor for rape rather than see it as a violent crime against the woman. Therefore, some Malaysians (mostly men) have been observed to say that ‘[o]nly young, pretty women are sexually assaulted’ and/or that ‘[g]irls who wear sexy clothes or flirt with men provoke rape.’ Such misconceptions effectively excurse the rapist’s behaviour by focusing on the victim’s


100 CEDAW Report at103 (cited in note 8).

101 CEDAW Report at 81 and 380 (cited in note 8).


104 Women’s Centre for Change (Penang), Myth and Reality of Rape, online at: http://www.wccpenang.org/rape/myth-vs-reality1/(accessed Jul 27, 2012).
personal traits as the root of the problem, rather than to see it as a criminal act of opportunity.

Social misconceptions also make it difficult for healthcare and service providers to adequately address the problems of domestic violence. For instance, a 2008 study on the knowledge, attitudes and practices of primary health care providers regarding the identification and management of domestic violence in a hospital-based primary health care setting showed that there is a lack of understanding and positive practices among the staff towards domestic violence. About 28% of clinicians and 51.1% of nursing staff interviewed tended to see victims of domestic violence as blameworthy. Less than a third of the participants reported knowing of any written protocol for domestic violence management. Only 20% of the clinicians and 6.8% of the nursing staff had ever attended any educational program related to domestic violence.105

With regard to violence against sex workers, the CEDAW Report stated that ‘negative social attitudes towards sex workers make it difficult for the Government to act against the perpetrators’.106

With regard to homosexuality discrimination among children, Malaysia is in many ways still a deeply conservative society. Sodomy is criminalized under section 377A of the Penal Code. Homosexuals and transsexuals are at most tolerated but not accepted. Malaysia has also declared that homosexuality and same sex marriage are incompatible with Islam and other religions practised in the country.107

(iv) Lower Socio-economic Status

In its National Policy on Women, formulated in 1989, Malaysia ‘recognizes poverty, lack of education and sometimes culture and tradition’ as ‘major hindrances to women’s progress’.108 Furthermore, there appears to be increasing incidences of rape by young persons, which the police department regards as part of a broader problem of rising delinquency among Malaysian youths.109

Lower socio-economic status has been identified as a direct contributing factor to sexual violence against Penan women by timber company employees/associates. Remoteness is another. In its conclusion, the report identified poverty, remoteness of residence as resulting in reliance on timber companies not only for transportation to obtain health and education but also for basic goods such as water and electricity supply.110 Other contributory factors include distrust in authorities and the outsiders’ prejudice against Penan as lazy, prone to lying and alcoholism. This makes it harder for the Penan community to obtain help from local authorities and outsiders.111

(v) Remoteness and Limited Reach of Law Enforcement

According to media reports, police officers in less developed states with large rural areas have publicly raised their concerns that there is a higher incidence of sexual violence against women and children there because ‘the culprits [think] that nobody would find out about their behaviour since they lived in remote areas’.112

(vi) Substance Abuse

UNICEF Malaysia has also identified substance abuse as a possible contributing factor for child abuse. This is because alcohol and drug use may lessen impulse control that leads adults to behave abusively. Furthermore, increased stress resulting from preoccupation with drugs on the part of the parent may also add to the likelihood of abuse.113 Similarly, it is possible that substance abuse is a contributing factor to domestic violence. For example, the Women’s Aid Organisation identified alcohol abuse as a triggering factor for domestic violence in 36% of the cases it received in 2011, and drug abuse as a triggering factor for domestic violence in 22.7% of the cases it received in the same year.114


106 CEDAW Report, 107 (cited in note 8).


108 CEDAW Report, 77 (cited in note 8).


112 Rise in rape, incest cases in Kelantan has cops worried, (cited in note 64).


114 Women’s Aid Organisation, Annual Statistics 2011, online at: http://
(vii) Financial Problems

There is also some indication that financial problems constitute a triggering factor for domestic violence. According to the Women's Aid Organisation's statistics, financial problem is a triggering factor in 38.7% of cases it received in 2011. Similarly, UNICEF Malaysia has raised the possibility that there is a link between economic downturns and increasing number of child abuse cases in Malaysia; it noted that more research is required to establish such a link.

UNICEF Malaysia disseminates information through brochures on the impact of child abuse and domestic violence on children. These brochures are available on the UNICEF website. For instance, in its brochure, violence on children. These brochures are available on the UNICEF website.117 For instance, in its brochure, UNICEF Malaysia disseminates information through brochures on the impact of child abuse and domestic violence on children. These brochures are available on the UNICEF website.117 For instance, in its brochure, UNICEF noted that the impact of child abuse is far greater than its immediate, visible effects. Child abuse is associated with short- and long-term consequences that may include brain damage, developmental delays, learning disorders, problems forming relationships, aggressive behaviour, and depression. Furthermore, it noted that survivors of child abuse and neglect may be at greater risk for problems later in life—such as low academic achievement, drug use, teen pregnancy, and criminal behaviour—that affect not just the child and family, but society as a whole. An academic study on the impact of physical abuse on the personality development of children was recently released. The study was based on 106 children from five selected protection homes, and concluded that physical abuse negative impacts the victims' personality development, specifically on their emotional adjustment. This may further influence their future wellbeing.

2. De Jure State Responses
   a. Bases of State Responsibility

CEDAW and CRC are the primary international human rights instruments underpinning Malaysia's international obligations to respect, protect and promote non-violence against women and children. As noted earlier, Malaysia has made several reservations on the basis of asserted incompatibility between CEDAW and the CRC, on the one hand, and Sharia laws, on the other. While some reservations have been progressively withdrawn, reservations to certain provisions of CEDAW and CRC remain. Of these, the reservation to article 16(2) of CEDAW, which seeks to nullify child marriages (and provision for a minimum age for marriage), is the most problematic for the issues under consideration in this literature review. As for Malaysia's remaining reservations to the CRC, it is the reservation to article 37, which deals with torture and the deprivation of liberty, which most concerns this review. The CEDAW Committee, the CRC Committee, and the UPR Committee have variously and repeatedly urged Malaysia to reconsider its reservations and to rethink its Sharia interpretations consistently with these human rights standards. Malaysia has repeatedly stated that it is in the process of considering withdrawal of its reservations to CRC and CEDAW.

On 7 September 2011, the Malaysian Cabinet approved the Ministry's recommendation to accede to the CRC's two Optional Protocols: the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography ("OP on Child Sale, Prostitution and Pornography"), and

118 UNICEF Fact Sheet 2010 (cited in note 45).
120 The remaining reservations are to article 9(2) (equal rights to the nationality of a couple’s children); article 16(1)(a) (equal rights to enter into marriage); article 16(1)(c) (equal rights and responsibilities during marriage and at its dissolution); article 16(1)(f) (equal rights and responsibilities regarding guardianship, wardship, trusteeship and adoption of children); article 16(1)(g) (equal personal rights in a marriage, including the right to choose a family name, a profession and an occupation). Malaysia withdrew its reservations to articles 2(f), 9(1), 16(1)(b), (d), (e) and (h) of CEDAW in 1998.
121 The other remaining reservations are to Article 2 (non-discrimination); Article 7 (name and nationality); Article 14 (freedom of thought, conscience and religion); and Article 28(1)(a) (free and compulsory education at primary level). Malaysia withdrew its reservations to articles 1, 13 and 15 of the CRC on 6 July 2010. See United Nations, Statement by the Honourable Gobalakrishnan Nagaparan Member of Parliament and Representative of Malaysia on Agenda Item 65: Promotion and Protection of the Rights of Children, online at www.un.int/malaysia/66/66unga22_65children.pdf (accessed Jul 25, 2012).
122 See UPR, 24 (cited in note 10).
the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (‘OP on Children in Armed Conflict’). The signing of OP on Children in Armed Conflict establishes 18 as the minimum age for compulsory recruitment and requires States to do everything they can to prevent individuals under the age of 18 from taking a direct part in hostilities. The signing of the OP on Child Sale, Prostitution and Pornography establishes the state’s obligations to protect the child against and eliminate these practices through criminalization.

b. National Policies against Violence

Malaysia’s Federal Constitution contains a fairly broad list of fundamental liberties guaranteed to individuals against the state. The constitution prohibits state discrimination based on gender (article 8(2)) but this is limited to discrimination in law, in professional/trade regulations and in public appointments/employment. Article 8(2) of the Federal Constitution now reads:

‘Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground of religion, race, descent, place of birth and gender in any law or in the appointment to any office or employment under a public authority or in administration of any law relating to the acquisition, holding or disposition of any property or the establishing or carrying on any trade business, profession, vocation or employment.’ (Emphasis added.)

Furthermore, the Penal Code, the Domestic Violence Act and the Child Act constitute the legislative framework protecting women and children from violence. The Penal Code criminalizes a wide range of violent acts against women/children. Some crimes are gender-neutral such as voluntarily causing hurt or grievous hurt or wrongful restraint or confinement. Others are gender and child-specific. Part XVI of the Penal Code criminalizes the act of causing miscarriage, injuries to the unborn child, exposure of infants, and concealment of births. Gender-specific laws include rape and abduction of a woman with the intent of compelling her to marry against her will or forcing/seducing her for illicit intercourse or prostitution.

(i) Rape (Sexual Intercourse without Consent)

Under the current laws in Malaysia, the crime of rape only applies where the victim is a woman. The legal definition of rape is ‘sexual intercourse with a woman … against her will [or] without her consent’ (Section 375 of the Penal Code). ‘This extends to situations where consent was obtained as a result of deception or fear of hurt or death or where the woman is unable to understand the nature and consequences of her giving consent at the time she does it.’ The legal penalty for rape was enhanced in 1989 – a person convicted of rape will receive a jail sentence of between five to 20 years, and may also be liable to whipping.

(ii) Rape by Object Penetration

A new section, 377CA, was included in the Penal Code in 2006 to criminalize rape by sexual penetration of an object:

Any person who has sexual connection with another person by the introduction of any object into the vagina or anus of the other person without the other person’s consent shall be punished with imprisonment for a term which may extend to twenty years and shall also be liable to whipping.

(iii) Statutory Rape

Sexual intercourse with a woman under sixteen years of age, with or without her consent, constitutes statutory rape (section 375(g)). The lack of consent or when the girl is under twelve years of age (regardless of consent) are considered aggravating factors. Under those circumstances, the punishment is enhanced to a maximum of thirty years.


124 CEDAW Report, 450 (cited in note 8).

125 CEDAW Report, 451 (cited in note 8).

126 CRC Report, 144 (cited in note 9).

127 CEDAW Report, 451 (cited in note 8).


129 CEDAW Report, 452 (cited in note 8).

130 The provision includes an exception: ‘This section does not extend to where the introduction of any object into the vagina or anus of any person is carried out for medical or law enforcement purposes.’

131 This was previously stated in §375 of the Penal Code as an Explanation but has been inserted as a proper provision by the Penal Code (Amendment) Act 2006. See CEDAW Report, 452. (cited in note8).

the practice of child marriages, which are more common among Malay-Muslims. It is arguable that consummation of such child marriages may constitute statutory rape. However, no charges have yet been brought against men who marry under-aged girls. (See further discussion below on child marriages.)

(iv) Incest

Incest was criminalized in 2002. Under section 376A of the Penal Code, a person commits incest if he or she has ‘sexual intercourse with another person whose relationship to him or her is such that he or she is not permitted, under the law, religion, custom or usage applicable to him or her, to marry that other person’. A girl under 16 years of age or a boy under 13 years of age cannot be charged under this section for incest. They are deemed incapable of giving consent. The punishment for incest is imprisonment for a term between six to twenty years and possible whipping.

There are conflicting secular and Sharia laws, and inconsistency in application. For instance, in 2000, the Kelantan Sharia Court prosecuted a 17 year-old girl for incest on the unproven assumption that the daughter was a willing partner in the crime. This would not have occurred under the Penal Code; the father would likely have been prosecuted for statutory rape or rape. It should be noted nonetheless that the current provision for incest means that a 17 year-old girl could be prosecuted for incest only if it was shown that she consented to sexual intercourse.

(v) Unnatural Sex or Gross Indecency

Section 377A criminalizes sodomy and oral sex, even when such sexual acts are consensual. The section reads:

‘Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.’

Section 377A is supplemented by section 377C, which criminalizes carnal intercourse without consent.

‘Whoever voluntarily commits carnal intercourse against the order of nature on another person without the consent, or against the will, of the other person, or by putting the other person in fear of death or hurt to the person or any other person, shall be punished with imprisonment for a term of not less than five years and not more than twenty years, and shall also be liable to whipping.’

Furthermore, section 377E targets persons who incites a child to an act of gross indecency:

‘Any person who incites a child under the age of fourteen years to any act of gross indecency with him or another person shall be punished with imprisonment for a term which may extend to five years, shall also be liable to whipping.’

(vi) No Marital Rape

As the CEDAW Report points out, marital rape is still not a crime in Malaysia. Prior to 2007, a man can be charged for rape under section 375 only if he has sexual intercourse with his wife under the following circumstances:

(i) where the wife is living separately from her husband under a decree of judicial separation or a decree nisi not made absolute;
(ii) where the wife has obtained an injunction restraining her husband from having sexual intercourse with her; or
(iii) in the case of a Muslim woman living separately from her husband during the period of ‘iddah’ which is approximately a period of three months.

However, the Penal Code was amended in 2007 to criminalize a husband’s use of force against a wife for sexual intercourse. This new section 375A of the Penal Code was included in 2007 to make it an offence for a husband to cause hurt to his wife in order to have sexual intercourse with her:

‘Husband causing hurt in order to have sexual intercourse 375A. Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to

133 CEDAW Report, 358 (cited in note 8).
134 See §376B of the Penal Code and the corresponding Explanation.
his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years.\footnote{CEDAW Concluding Comments, 21 (cited in note 15).}

This amendment has been censured for its narrow scope. The CEDAW Committee criticized the new provision as 'narrowly tailored to criminalize sexual assault based on use of force and death threats by the husband, rather than marital rape based on lack of consent of the wife.'\footnote{Ibid.} The Committee has urged Malaysia 'to enact legislation criminalizing marital rape, defining such rape on the basis of lack of consent of the wife.'\footnote{Malaysian Man Convicted of Marital Rape under New Law, (Jakarta Globe Aug 6, 2009), online at: http://www.thejakartaglobe.com/home/malaysian-man-convicted-of-marital-rape-under-new-law/322448 (accessed Jul 25, 2012); Malaysian Jailed for marital rape, (Sydney Morning Herald Aug 6, 2009), online at http://news.smh.com.au/breaking-news-world/malaysian-jailed-for-marital-rape-20090806-eb1q.html (accessed Jul 25, 2012).}

At present, marital rape remains a highly contested issue culturally and socially in Malaysia. In 2009, a man was convicted under the amended penal laws for forcing his wife to have sex with him. This is the first successful prosecution under the 2007 amendment to the Penal Code.\footnote{Islamic Family Law (Federal Territories) Act (1984), online at: http://www.agc.gov.my/Akta/Vol.%207/Act%20303.pdf (accessed Jul 25, 2012).} The current laws however only address situations where a husband causes fear of death or hurt to his wife but not to circumstances where the level of coercion does not meet that threshold. It should be noted however that section 129 of the Islamic Family Law Act (which applies to the federal territories and is put forward as a model family law for the other states) makes it an offence for a wife to be disobedient to her husband. The section states:

‘Any woman who wilfully disobeys any order lawfully given by her husband according to Hukum Syarak commits an offence and shall be punished with a fine not exceeding one hundred ringgit or, in the case of a second or subsequent offence, with a fine not exceeding five hundred ringgit.’\footnote{141 Islamic Family Law (Federal Territories) Act (1984), online at: http://www.agc.gov.my/Akta/Vol.%207/Act%20303.pdf (accessed Jul 25, 2012).}

There is a danger that such a provision continues to affirm the notion that the Muslim wife is subservient and subordinate to the husband.

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\(\text{(vii) Domestic Violence Act}\)

The 1994 Domestic Violence Act was enacted in response to campaigning by women's groups for a law to protect abused and battered women.\footnote{CEDAW Report, 455 (cited in note 8).} It defines domestic violence broadly as covering all conduct that wilfully places the victim in fear of physical injury, causes physical injury, compels the victim by force or threat to engage in any conduct or act, sexual or otherwise from which the victim has a right to abstain, and harassment or psychological harm so as to cause ill health.\footnote{See also Domestic Violence Act (1994), 2.} The DVA provides women and children with the recourse of obtaining a protective order against their abusers. Malaysia is the first country with a Sharia legal system to pass an act on domestic violence.\footnote{Violence against Women: harmful traditional and cultural practices in the Asian and Pacific region, Expert Group Meeting on Regional Strategies for Implementing the Recommendations from the Secretary-General's In-depth Study on All Forms of Violence against Women, with particular emphasis on harmful traditional and cultural practices and the role of national women's machineries, (26-27 April 2007), United Nations Conference Centre, Bangkok, Thailand,17.} However, the DVA's emphasis on the sanctity of individual libertymay conflict with the Sharia's emphasis on the primacy of the family and community, which tend to contribute to the idea of wives being subservient to their husbands (see e.g. section 129 of the Islamic Family Law Act).

\(\text{(viii) Child Act}\)

The 2001 Child Act is the primary comprehensive legislation protecting children against violence and all forms of exploitation and discrimination. The Child Act 2001 was 'promulgated based on the principles enumerated in the Convention on the Rights of the Child (CRC) which Malaysia acceded to in 1995.'\footnote{UPR, 16 (cited in note 10).} This suggests that acceding to human rights conventions does affect how states think about their laws and policies, at least in the official position. Section 31 of the Act, for instance, makes it an offence for any person having care of a child to abuse, neglect, abandon or expose the child to physical or emotional injury or to sexually abuse the child. In addition, section 31(4) states that ‘[a] parent or guardian or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause him physical or emotional injury if, being able to so provide from his own resources, he fails to provide adequate food, clothing, medical or dental treatment, lodging or care for the child.’ The CRC Committee noted

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that the Child Act is ‘guided by the principles of the Convention and aims at providing every child with care, protection and psychosocial assistance.’

While many positive policy measures have been taken, there is a need to ensure that the measures are effective and that there is effective use of resources.146

**c. Assessment of State Policies**

The constitutional prohibition under article 8 does not extend to gender discrimination by private companies or individuals.147 The constitution also does not directly address gender-based violence whether committed by the state or non-state actors.

(i) Domestic Violence

The Domestic Violent Act defines domestic violence broadly. The definition of domestic violence was widened to include psychological harm in 2011 following criticism of the omission. Now, ‘domestic violence’ includes causing physical injury, wilfully placing the victim in fear of physical injury, compelling the victim to engage in any conduct (including sexual conduct), confining the victim against his/her will, destroying property to cause distress to the victim, causing psychological or emotional injury to the victim, or causing the victim to suffer delusions using intoxicating substance without his/her consent (including where the consent was unlawfully obtained). Where the victim is a child, his/her consent to use intoxicating substance or any other substance is irrelevant.148

The Domestic Violence Act protects spouses, former spouses, children, any other member of the family, and even any incapacitated adult living with the offender from psychological abuse. The Act includes ‘a de facto spouse’ which it defines as ‘a person who has gone through a form of ceremony which is recognized as a marriage ceremony according to the religion or custom of the parties concerned, notwithstanding that such ceremony is not registered or not capable of being registered under any written law relating to the solemnization and registration of marriages’.149 This restriction to de jure and de facto spouses discriminates against women cohabiting with a man but who has not undergone any religious or customary marriage ceremonies. The Joint Action Group for Gender Equality has proposed that the category of victims/perpetrators be broadened to include intimate partners, so that relationships outside of marriage can be included under the protection of the DVA.150

As the CEDAW Report acknowledges, the Domestic Violence Act is gender neutral: it covers spousal abuse against both men and women.151 As such, it is only incidental that the Act’s primary beneficiaries are women. The Report stated that most reported cases involve a woman victim: ‘In the year 2000, out of a total of 2,462 reported cases of domestic violence, 98 per cent of the victims were women.’152 The numbers show that women are most likely to be abused in a domestic relationship and thus most in need of protection from their spouses.

The CEDAW Report noted that the main recourse the DVA provides is the right of a victim to apply for protective orders (POs) against his/her abuser.153 One critical question that should arise is whether or not a gender-neutral legislation such as the DVA is sufficiently sensitive to the psychological, physical and economic conditions that are more often identified with women. The Act also covers domestic violence against children; the same criticism against this broad-brushed approach can be levelled here. This concern gave rise to the amendment in 2011, which expanded the definition of domestic violence to mental, emotional and psychological abuse.154

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146 In relation to women’s rights for instance, the NGO Shadow Group recommended that the many policies and action plans be streamlined and consolidated. *NGO Shadow Group Report* (cited in note 13) (on article 104).

147 See e.g. Beatrice a/p At Fernandez v Sistem Penerbangan Malaysia & Anor [2005] 3 MLJ 681 (‘Federal Court decision’) highlighted by the CEDAW Committee in their deliberations on Malaysia’s report where the Malaysian courts held that article 8 ‘does not extend its substantive or procedural provisions to infringements of an individual’s legal right by another individual; thus limiting the scope of article 8’s prohibition against gender discrimination to matters involving state action. See Jaclyn Ling-Chien Neo, *Malaysia’s First Report to the CEDAW Committee*, 13, *Asian Yearbook of Int’l Law* 303 (2007); Jashpal Kaur Bhatt, *Gender Discrimination in Employment - How far Does Article 8 of the Federal Constitution guarantee gender equality?* 6 MLJ xliv (2006).


151 CEDAW Report, 456 (cited in note 8).


It should be noted however that the DVA does not criminalize domestic violence as a specific crime punishable by new penalties. It merely supplements existing criminal legislation. Perpetrators of domestic violence are prosecuted under general crimes in the Penal Code. Consequently, there is a concern that charges for domestic violence offences under the Penal Code do not reflect the seriousness of domestic violence which is often more damaging because of its persistent and repetitive nature.\textsuperscript{155} In addition to the Penal Code, the Islamic Family Law Act (applicable to federal territories) makes it an offence for any person to ill-treat his wife mentally, emotionally or physically.\textsuperscript{156} Section 127 of the IFLA states: ‘Any person who ill-treats his wife or cheats his wife of her property commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or both.'\textsuperscript{157}

(ii) Forced Marriages

Officially, forced marriage is not an accepted practice in Malaysia society.\textsuperscript{158} The Law Reform (Marriage and Divorce) Act 1976, which applies to non-Muslim marriages, requires the Registrar of Marriage to be satisfied that both parties freely consent to the marriage before solemnizing the marriage (section 22(6)).\textsuperscript{159} Furthermore, it is an offence for a person to use force or threats to compel a person to marry against his or her will or to prevent a person who has attained the age of 21 from contracting a valid marriage.\textsuperscript{160} Invalidity of consent is a ground for voiding a marriage. Women formally have the same freedom as men to choose their spouses.

Muslim marriages similarly require consent. Section 13 of Islamic Family Law Act states that a marriage shall not be recognized or registered under the Act unless both parties freely consent to the marriage and either the Wali (the woman’s guardian for marriage) or in the absence of Wali the Sharia Judge has also consented.\textsuperscript{161}

(iii) Child Marriages

Child marriage is prohibited among non-Muslims unless one obtains special dispensation. The Law Reform (Marriage and Divorce) Act 1976 prescribes the minimum age for marriage as eighteen years. The Chief Minister of a particular State may in his discretion grant a license authorising the solemnisation of a marriage of a girl child who is under the age of eighteen years and has completed her sixteenth year.\textsuperscript{162}

The legal age of marriage for Muslims is 18 for males and 16 for females. However, there are developments towards lowering the legal age for marriage among Muslims.\textsuperscript{163} Furthermore, current Sharia laws allow Muslims who want to marry underage persons to do so by seeking the permission of the kadi.\textsuperscript{164} It has been argued that child marriage is not strictly prohibited under Islamic law although scholars are divided on the issue. More attention and research is needed to determine de jure and de facto practice of forced marriages and child marriages in the different states. Data on child marriages should also be disaggregated according to ethnic groups to distil cultural determinants on the problem.

(iv) Female Genital Mutilation

Malaysia does not have specific laws prohibiting female genital mutilation.

(v) Sexual Harassment

There is no specialized omnibus legislation addressing the problem of sexual harassment in Malaysia. However, after much lobbying by women’s groups, the Malaysian parliament finally amended the 1955 Employment Act in 2011 to include provisions defining sexual harassment and putting in place a procedure for complaints to be investigated.\textsuperscript{165} The amended Employment Act now defines ‘sexual harassment’ as ‘any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural

\textsuperscript{155} Joint Action Group: The amendments to the Domestic Violence Act are not comprehensive enough, (cited in note 150).

\textsuperscript{156} CEDAW Report at ¶459 (cited in note 8).


\textsuperscript{158} See CEDAW Report, 390 (cited in note 8).

\textsuperscript{159} CEDAW Report, 390 (cited in note 8).

\textsuperscript{160} Ibid, 390 (cited in note 8).

\textsuperscript{161} Ibid, 391 (cited in note 8).
or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment.\textsuperscript{166} This legalizes the Code of Practice on the Prevention and Handling of Sexual Harassment in the Workplace,\textsuperscript{167} which provided non-binding working definitions of sexual harassment and guidelines for employers on how to deal with it.\textsuperscript{168}

The new provisions are designed to ensure that internal processes of a company so far as possible deal with complaints of this nature. In particular, employers must inquire into complaints received about sexual harassment, and take or recommend disciplinary action where sexual harassment has occurred. A person found ‘guilty’ of sexual harassment may be dismissed, downgraded or suspended without wages for up to two weeks. Unlike other sections of the Act, the Bill offers protection from sexual harassment to all employees, regardless of their salary. This presumably responds to one criticism that merely amending the Employment Act to include sexual harassment provisions would be of limited effect since the Act generally only applies to employees earning below RM1,500, thus excluding other categories of workers.\textsuperscript{169} The Act makes it an offence for an employer not to investigate a complaint of sexual harassment.\textsuperscript{170}

It should be noted that a 2006 Amendment to the Penal Code now includes within its rape definition abuse of authority to coerce a woman into having sex. The new section 375(f) provides that a woman's consent to sexual intercourse does not provide a valid defence to rape 'when the consent is obtained by using his position of authority over her or because of professional relationship or other relationship of trust in relation to her.' This new section is aimed at protecting women who are vulnerable to the sexual advances of their employers and superiors.

\textit{(vi) Violence against Sex Workers}

As the CEDAW Report stated, there are no special provisions relating to violence against a sex worker and in such an instance, the offence would come under the Penal Code which legislates against acts such as assault, using criminal force, wrongful restraint or confinement and causing hurt or grievous hurt.

\begin{itemize}
  
  \item \textsuperscript{166} Employment Act (1955), 2.
  
  \item \textsuperscript{167} CEDAW Report, 210 (cited in note 8).
  
  \item \textsuperscript{168} \textit{Ibid.}, 211 (cited in note 8).
  
  \item \textsuperscript{169} Women's Centre for Change, Penang (WCC), \textit{Amendments to Employment Act To Address Sexual Harassment}, (May 29, 2007), online at http://www.wccpenang.org/media/archive/107/(accessed Jul 25, 2012).
  
  \item \textsuperscript{170} The punishment is a fine not exceeding ten thousand ringgit.
\end{itemize}

3. \textbf{Implementation, Monitoring and Prevention}

a. \textbf{Implementing and Monitoring Mechanisms}

There appears to be a greater willingness on the part of the government to channel resources into addressing the problem of domestic violence and child abuse, as well as to address rising sexual violence against women in Malaysia. There is also a greater effort to address the problem of abuse of domestic foreign workers in Malaysia, following public outcry and increased pressure from sending countries like Indonesia.

(i) \textit{Institutionalization}

The Ministry of Women Affairs (now Ministry of Women, Family and Community Development) was established in 2001. It created the institutional structure for a comprehensive approach towards protecting and advancing women's and children's rights in Malaysia. In December 2004, this was complemented by the creation of a Cabinet Committee on Gender Equality chaired by the Prime Minister; this ensures that gender issues, especially those under CEDAW, are being taken into consideration at the highest level of government.\textsuperscript{171} As the NGO Shadow Report highlights, the creation of a separate Ministry has been a positive measure; as a full-fledged ministry, there has been an increase in staff capacity and, over the years, a steadily increasing budget allocation.\textsuperscript{172} For instance, the number of personnel in the Ministry increased from 67 in 2001 to 246 in 2006 and budget allocation has increased from RM4.11 million in 2001 to RM96.75 million in 2006.

The Department of Social Welfare (housed under the Ministry) was restructured in 2005. A Coordinating Council for Protection was established under the 2001 Child Act to advise the Minister of Women, Family and Community Development on all aspects of child protection as well as to coordinate resources between various governmental departments involved in child protection.\textsuperscript{173} The Council renders advice on the management and operation of Child Protection Teams throughout the country.\textsuperscript{174} This Council is chaired by the Director-General of the Department of Social Welfare and is represented by relevant Government departments, child experts

\begin{itemize}
  
  \item \textsuperscript{171} Responses to CEDAW Questions, 13 (cited in note14).
  
  \item \textsuperscript{172} NGO Shadow Group Report (cited in note 13).
  
  \item \textsuperscript{173} CRC Report, 129 (cited in note 9).
  
  \item \textsuperscript{174} \textit{Ibid.}
\end{itemize}

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and NGOs. These institutionalization measures are important advancements in the implementation and monitoring process of women's and children's rights in general.

(ii) Mainstreaming

Gender focal points have been appointed in all government ministries and departments. To raise awareness, the Department of Social Welfare with the funding support of UNICEF, trains social welfare officers and other governmental personnel to deal with child abuse cases professionally.

Due to the federal nature of Malaysia, most mainstreaming efforts have to be implemented at the state level. This means that efforts and effects are not uniform. More progressive and urbanized states like Penang and Selangor tend to be more concerned and successful in mainstreaming gender awareness and implementing protection measures for women and children. For instance, the Penang government recently set up the Penang Women's Development Corporation (PWDC), a special state-run body to promote gender equality. The PWDC will advise the state government in formulating policies to realise gender and social equality, undertake advocacy to promote good governance, as well as monitor laws and policies that are gender discriminatory. As a flagship programme, the PWDC will implement a 3-year Gender Responsive Budgeting project to mainstream gender equality in the budgetary process and policies of local governments. One of the expected outcomes of this project is to have sex-disaggregated data. The Penang state government has allocated RM1.5 million to the PWDC's programmes and operations for 2012.

(iii) Grassroots Activation

The establishment of State Women and Family Development Councils in all states and parliamentary constituencies facilitate the implementation of governmental programmes and activities more effectively at the grassroots level. A Child Unit was also set up at all state and district levels.

The CRC Committee observed that Malaysia's CRC Report tends to focus on legal provisions rather than de facto implementation of the conventions. The Committee also notes the lack of a national central database on children and the lack of indicators to ensure that data is collected and that they are disaggregated by age, sex, urban, and rural area and by group of children in need of special protection, as well as by ethnicity. Furthermore, the Committee noted the lack of attention and thereby insufficient data on vulnerable groups of children, such as children of indigenous populations living in remote places, children of migrant workers and child victims of trafficking.

b. Complaints Process

The Malaysian Police Force records a high rate of successful closure of rape cases, i.e. 95.65% in 2009. Malaysia considers 'the best defence against child abuse [to be] the public participation in reporting the cases.'

The Malaysian government, through the Ministry, has sought to create awareness as to the prevalence of the problem of child abuse, as well as to educate the public about the impact of violence. In a 2009 press statement, the Minister for Women, Family and Community Development made a clear statement that children who complain of abuse should be given the benefit of the doubt, and the most immediate and broadest protection. She stated:

‘When a child complains that ‘someone touched me’, the person to whom the child complained should take the matter seriously and immediately call the Department of Social Welfare, Police or Talian Nur 15999 so that action can be taken to rescue the child. Children at young ages do not lie about such matters.'
.... Non-abusing parents usually keep silent about the abuse because of fear, hopelessness and isolation or lack of support from other family members. 189

Talian NUR, launched in 2007, now serves as a single point of contact for reporting, complaints and queries concerning domestic violence, child abuse and even natural disasters. 190 Talian NUR also administers Childline Malaysia for children in need of assistance (see below under Non-State Actors). It replaces the toll-free helpline Teledera, which the Department of Social Welfare started in 1994 to allow members of the public and victims to report child abuse directly to the Department for immediate action. 191 In its CRC Report, Malaysia noted that as of December 2005, a total of 4,163 cases of child abuse and domestic violence were reported through the hotline. 192 This toll-free Teledera hotline was terminated on 15 January 2010 in a streamlining effort to channel complaints of all social problems an integrated one-stop call centre Talian NUR 15999.

Malaysia has not signed the Optional Protocol to CEDAW, which allows the CEDAW Committee to consider individual communications concerning discrimination in Malaysia. Nonetheless, as the reports stated, the Human Rights Commission of Malaysia (SUHAKAM) was established in 1999 with the mandate, inter alia, to ‘inquire into complaints regarding infringements of human rights.’ 193 In discharging this function, SUHAKAM may act on its own motion in addition to acting on complaints submitted to it. SUHAKAM has the power to advise the Government in relation to the complaints and recommend appropriate measures. 194 The one constrain is that SUHAKAM may not investigate complaints which are the subject matter of proceedings pending in a court of law or which have been finally decided by any court. In other words, such investigations have to cease if the matter being investigated is brought before the court.

c. Protection and Rehabilitation

(i) Protective/Restraining Orders

The primary legislation empowering state intervention in cases of violence against women and children are the Domestic Violence Act and the Child Act. The DVA gives women the right to obtain a court-issued protective order (PO) against her abuser. The Court may also issue an interim PO pending investigation of an alleged domestic violence offence, or during the course of proceedings. 195 A court granting a PO is also empowered to grant other protective orders such as granting the right of exclusive occupation to a protected person and excluding the ‘abuser’ from any shared residence. A court may also prohibit or restrain a person against whom the order is made from entering any protected person’s place of residence, school or other institutions. The restrained person may also be prohibited from making written or telephone communications with the protected person. Besides that, the court may require an enforcement officer to accompany the restrained person when entering the place of residence to collect his belongings. 196

Besides issuing POs, the court may also order the parties concerned to be referred to bodies providing counselling, rehabilitation therapy, psychotherapy and reconciliation counselling. 197 The law also provides that a protection order may be sought during any criminal proceedings where the accused is charged for a domestic violence offence under the Penal Code as a condition for the accused to be released on bail or upon the compounding of such offence. 198

The reports state that Muslim wives have the alternative of applying to the Sharia Court for a restraining order against her own husband. 199 Section 107(1) of the Islamic Family Law Act empowers the Sharia court to order any person to refrain from acts of molestation pending any matrimonial proceedings, or on or after the grant of an

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191 CRC Report, 190 (cited in note 9).

192 Ibid., 190 (cited in note 9). The CRC Committee commended the existence of such a hotline. CRC, Concluding Observations, 57 (cited in note 18).


194 Ibid.


196 CEDAW Report, 456 (cited in note 9).

197 Ibid, 457 (cited in note 8).

198 Ibid.

199 Ibid, 458 (cited in note 8).
order of divorce or annulment. However, to obtain such an order, the applicant must usually prove that there has been molestation in the past or that the wife is in a dangerous situation and that an order is necessary for her protection. It is not clear if there are any differences, and if so, what the differences are between a PO and a restraining order issued by the Sharia court.

(ii) Shelters

According to the CEDAW Report, there are shelters for abused and battered women and children that are provided by both governmental as well as voluntary organisations. These homes provide temporary shelter to women and children who are victims of violence. Furthermore, the Rumah Nur (Women Centre) in Selangor will be a dedicated shelter for foreign victims of trafficking. There are currently 11 Shelter Homes for neglected, abused, abandoned and orphaned children under the direct purview of the Department of Social Welfarein Malaysia. More information is required on the number of shelters available in Malaysia, and if such shelters are spread throughout the country and are accessible to both urban and rural women. There needs to be more attention given to violence against women in rural areas. The NGO Shadow Report for instance highlighted that there have been a number of cases of abuse against women in the agricultural estates (more rural parts of Malaysia).

(iii) One-stop Crisis Centres at Government Hospitals

The Ministry of Health in partnership with the National Council of Women’s Organisations (NCWO) and women’s groups, other agencies, established one-stop crisis centres at all major hospitals for proper and co-ordinated management of rape and other forms of violence against women and children. These crisis centres provide a broad range of services to help survivors of violence, besides medical attention. These include protection, safe accommodation, support, counselling, and legal assistance. The first One-Stop Crisis Centre was established at the University Hospital, Kuala Lumpur in 1986 as the result of a campaign against violence against women by women’s organisations the previous year. By 1997, they were established in 90 per cent of government hospitals across the country.

The standard protocol is that when a woman appears at the Accident and Emergency Department of one of these hospitals alleging injuries from domestic violence, the victim/survivor is first examined and treated by a doctor and seen by a counsellor within 24 hours in a separate examination room to protect her privacy and to ensure confidentiality. Subsequently, should it appear that the victim will be in danger if she returns home, the doctor or counsellor would arrange for her to go to an emergency shelter or admit her to the accident and emergency ward for 24 hours. If the patient chooses not to seek shelter, she is encouraged to return to see a social worker at the hospital at a later date. She is also encouraged to make a police report at the police unit based in the hospital. In cases involving severe injury, the police see the patient in the ward to record her statement and start investigations.

A 2011 article on One Stop Crisis Centres in Malaysia shows that a close and clearly defined partnership between NGOs and health staff can be a very powerful influence to the legal and policy environment in which health care services for domestic violence are developed. The article concludes that it is critical to gain high-level support from the Ministry of Health in order to institutionalize the response to violence across the entire health care system. Otherwise, without clear operational details and resources, policy implementation cannot be fully ensured and taken to scale.

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200 Ibid.
201 Ibid.
202 Ibid, 97 (cited in note 8).
203 Statementon Agenda Item 65 (cited in note 121).
204 NGO Shadow Report, article 14 (cited in note 13).
205 CEDAW Report, 268 (cited in note 8).
(iv) Child Protection Teams

The CRC Report highlights several measures taken by the Department of Social Welfare to build the capacity of its officers to address the problem of child abuse. First, Child Protection Teams were established throughout the country to provide counselling, crisis intervention services, and other support services. According to the reports, there were 131 Child Protection Teams established as of 2005. These Teams are trained to address issues pertaining to child welfare, with special focus on working with abused children, affected families and perpetrators. It appears from the reports that Child Protection Teams are based in and manage Child Activity Centres and Crisis Intervention Centres. More information is needed to analyse and better evaluate the work of such Child Protection Teams.

Secondly, the Child Activity Centres established by the Teams conduct lectures, seminars and workshops on parenting and other family-oriented topics. According to the reports, the ‘activities carried out at the Child Activity Centres have, in some ways, contributed to the prevention of many social ills such as child abuse, child neglect, school dropout, truancy and moral decadence’. Furthermore, the reports state that such Centres established at state and district levels are aimed at mobilizing community participation to assist the Department of Social Welfare in implementing prevention programs and to deal with child abuse cases by coordinating locally based services to families and children.

(v) Court of Children

Furthermore, the Child Act empowers the Court of Children to separate the child from his or her parents or guardian where such parent or guardian have ill-treated, neglected, abandoned them, or have exposed the child to moral danger, used the child as prostitutes or beggars or have unlawfully transferred possession, custody or control of the child. The Court will order such a child in need of care, protection and rehabilitation to be cared for in a place of safety, place of refuge, in the custody of a foster parent, or in the care of a person who is willing and whom the Court considers to be fit and proper to undertake the care of such a child. The Court for Children may order parents or guardian of a child to attend ‘an interactive workshop to enable them to establish positive relationship and mutual understanding in overcoming their problems towards a harmonious family’. The Child Act also provides for the identification, reporting, referral, investigation, treatment and follow-up of the child in need of care, protection and rehabilitation.

(vi) Children’s Homes

All Children’s Homes (run by the Department of Social Welfare) are considered as Places of Safety. The duration of stay in the Homes is only for a specified period as determined by the Court for Children. The children may be returned to their own families or placed by Social Welfare Officers with suitable foster families. In 2010 the Department of Social Welfare have developed minimum standards of care for children in care centres / homes managed by NGOs to ensure the child is protected and cared for in an institutional setting. This shows the government’s acknowledgment that ultimate accountability in ensuring that children’s rights are upheld and their welfare promoted rests with the Government.

(vii) Profession of Social Work

In April 2010, the Malaysian government approved Social Work Competency Standards to serve as guidelines for social workers. The Competency Standards aim to equip and professionalize the human resource capacity of government to deliver quality primary, secondary and tertiary interventions in child protection. The competency standards will be used as a key tool for the government and the Malaysian Association of Social

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214 CRC Report, 268 (cited in note 9).
216 Ibid, 268 (cited in note 9).
218 CRC Report, 202 (cited in note 9).
219 Ibid., 202, 237 (cited in note 9).
220 Ibid., 180 (cited in note 9).
221 Ibid., 236 (cited in note 9).
222 Ibid.,223 (cited in note 9).The Child Act, in section 54, states that such places of safety as those that have been gazetted by the Minister accordingly for the care and protection of children.
223 Ibid.
224 Ibid.
227 Ibid.
Workers (MASW)\textsuperscript{228} to set up systems to generate professional, competent and accountable social workers and deliver competent and timely welfare services. This will include building capacity to efficiently prevent, intervene and respond to incidences of abuse, neglect and violence among women, children and other vulnerable groups. Specifically the Government approved the following six recommendations:

i. Establish the National Competency Standards for Social Work Practice and Education;

ii. Enact a Social Workers Act;

iii. Set up a regulatory licensing board;

iv. Recruit social work graduates into social work positions in the civil service;

v. Standardise all social work programmes in Institutions of Higher Learning;

vi. Develop social work courses at certificate and diploma levels.\textsuperscript{229}

There are further plans to pass a Social Worker Act to legalise these requirements and to formally regulate the profession of social work in Malaysia and strengthen the provision of welfare services towards the care, safety and protection of all citizens in Malaysia.\textsuperscript{230}

d. Prevention Strategy

Malaysia sees gender stereotypes as a major contributory factor to violence against women (and children). Thus, much of the national policies addressing this problem focus on awareness and training programmes relating to understanding gender roles and expectations.\textsuperscript{231} These include ‘[g]ender sensitisation courses … for agencies involved in the handling and management of domestic violence cases’ and the development of standard operating procedures to ensure better coordination between agencies to increase effectiveness.\textsuperscript{232}

The two national policies on children and child protection set the framework for two national reform processes.\textsuperscript{233} According to Malaysia’s 2009 National Child Policy and Child Protection Policy, a holistic approach is needed to protect and preserve the rights of children. The National Child Policy directs the development of a conducive environment to safeguard the rights of children to survival, protection, development and participation.\textsuperscript{234} The National Child Protection Policy and Child Policy expressly aim to mobilize intra and inter-ministerial involvement to address the needs of children and community. They also intend to maximize the efforts and leverage the roles of the private sector, media, civil society and the community. The policies additionally encourage a systematic approach to advocacy and building evidence to help make in-depth analysis related to children, and propose interventions that would promote child well-being.\textsuperscript{235}

The Legal and Advocacy Division of the Department of Social Welfare has taken steps to advocate child issues, including conducting training courses on handling child abuse cases throughout the country for social welfare officers. The Department of Social Welfare has developed Training Modules on Handling Child Abuse Cases with UNICEF’s funding, which are directed at training Social Welfare Officers, members of the Child Protection Teams, Health Department, police and prison personnel to handle child abuse cases professionally.\textsuperscript{236} More information as to the scope and content of such courses, the efficacy of the training as well as whether there has been increase in the quantity of such courses conducted would be useful.

Malaysia has launched various campaigns to counter problems of gender-stereotyping and cultural biases. The Women, Family and Community Development


\textsuperscript{230} \textit{Ibid.}, 2.


\textsuperscript{233} \textit{Child Protection and Child Welfare Services in Malaysia} (cited in note 225).


\textsuperscript{235} \textit{Child Protection and Child Welfare Services in Malaysia} at 7 (cited in note 225).

\textsuperscript{236} CRC Report, 120 (cited in note 9).
Women's rights NGOs are among the best-organized and most effective civil society groups in the country. There are broadly speaking two types of civil society groups addressing women's rights, advocacy groups and service providers. Among advocacy groups are two sub-groups, those engaged in general advocacy and those engaged in specialized advocacy for gender equality within Islamic laws. Some more prominent advocacy groups for women are:

- Women's Aid Organisation (WAO);
- All Women's Action Society Malaysia (AWAM);
- Women's Centre for Change (Penang) (formerly Women's Crisis Centre);
- Tenaganita;
- Islam-focused advocacy group: Sisters in Islam;
- EMPOWER
- Good Governance & Gender Equality Society Penang (3Gs).

Women NGOs in Malaysia are extremely active in advocacy, awareness and assistance efforts. They have become well organized, effective in mobilization and in enlisting media assistance in broadcasting issues affecting women. They also provide strong community assistance to survivors of violence. Many NGOs also provide legal advice and service to survivors. There are also cooperative efforts between the respective state governments, on the one hand, and women rights NGOs, on the other.

Child rights activists usually focus on empowerment. The Mousedeer Group for example uses social media to encourage children in Malaysia to be involved in active discussion about human rights. UNICEF also collaborates with local individuals and organizations to promote awareness of the rights of children. This is aimed at changing parents' mind-sets and empowering children. For example, UNICEF enlisted Marina Mahathir (a social activist and daughter of former Prime Minister Mahathir Mohammad) as one of its advocates. Marina Mahathir pioneered the popular television programme 3R, which stands for Respect Relax Respond. It is an award-winning programme that addresses a range of issues affecting the young, such as family ties, careers, romantic relationships, sexuality, and substance abuse.

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4. Role of Non-State Actors

There is strong women's rights activism in Malaysia. Women's rights NGOs are among the best-organized and

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238 CEDAW Report, 83 (cited in note 8).
239 CEDAW Report, 83 (cited in note 8).
240 CRC Report, 190 (cited in note 9).
241 Responses to CEDAW Questions, 19 (cited in note 14).
242 CRC Report, 191 (cited in note 9).
243 CRC Report, 191 (cited in note 9).
a. Assistance to Victims

According to the CRC Report, non-state actors provide assistance to child victims through the Family System Children’s Homes (Rumah Tunas Harapan) scheme. The scheme is broadly conceived as an innovative alternative to institutional care for children who are unable to stay with their natural families due to unavoidable circumstances (which presumably would include abuse). Children are placed in groups of eight or ten in specially built homes under the care of married couples selected from the community to act as foster parents. As the report states, this scheme relied on partnerships and collaborations among the government, corporate bodies, NGOs, community based organizations and the National Welfare Foundation. As of 2006, there were 8 Homes with 25 house units operating with 225 children.

The Women’s Aid Organisation (WAO) provides shelter for abused women and their children, as well as a Child Care Centre (CCC) for children of former residents at the shelter. At the shelter, social workers offer face-to-face counselling and telephone counselling. The WAO shelter is a Ministry-designated safe house for victims of domestic violence. The WAO publishes an annual review containing important data on the clients who receive its services. In 2011, the WAO counselled 104 women face-to-face, and 1,347 over the phone. About 110 women received shelter with the WAO in 2011; domestic violence was the main reason women sought shelter. Besides that, a total of 16 children lived at its CCC where they are provided a home, education at local schools and a support system to meet their physical, mental and emotional needs.

In addition, WAO also runs an Anak Angkat program which invites the public to sponsor children who were victims of domestic violence or whose mothers were victims of violence. The aim is to help pay for the daily living costs and school expenses of a child so as to reduce the financial burden on the women and children as the mothers seek and establish themselves in work, after leaving their abusive partners.

Women’s Centre for Change Penang also operates a shelter home where the women and their children can stay temporarily. Staff from the centre will accompany them to the police and hospitals to make official reports, and to other agencies such as the welfare department or the Courts. Since 2009, the Women’s Centre for Change manages the Pusat Perkhidmatan Wanita S. Perai (PPW), a project initiated by the Penang State Women, Family and Community Development. The PPW provides crisis intervention services such as direct counselling, telephone counselling, e-counselling, temporary shelter for abused women and children, as well as legal advice. According to its website, the WCC provides direct counselling to more than 270 women, serves about 1,000 telephone calls for counselling, and provides emergency shelter to more than 10 women and 20 children each year. WCC expanded its services to provide victim support to rape survivors in court trials; in 2011, the WCC undertook three rape cases, including that of a 4-year old child who was allegedly raped by a director of the kindergarten she attended. WCC also worked with the Deputy Public Prosecutor’s Office to educate and brief victims about the court process prior to trial.

In East Malaysia, the Sarawak Women for Women Society (SWWS) operates a crisis hotline for women and a one-stop centre to provide counselling and support for survivors of domestic violence and rape. The SWWS’ work is crucial for women in rural areas.

Information outside of the reports does show that civil society is very involved in providing assistance and protection to victims of violence. For instance, Childline Malaysia, launched in 2010, is a national non-profit public safety project aimed at creating a national 24-hour phone

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249 CRC Report, 226 (cited in note 9).
250 Ibid.
251 CRC Report, 226 (cited in note 9).
252 Ibid.
253 NGO Shadow Report (cited in note 13) (on article 7).
255 Ibid.
256 Women’s Aid Organisation, WAO Services, online at http://www.wao.org.my/Services_11_3_1.htm
257 The monthly sponsorship is RM70 per month per child and goes towards items such as school uniforms, books and stationery, milk etc. We hope that you will commit to helping a child for a full year at RM860.00 (inclusive of an administrative fee of RM20). WAO also welcome one-off donations to the Anak Angkat Programme Fund. Women’s Aid Organisation, WAO Anak Angkat Program, online athttp://www.wao.org.my/WAOs+Anak+Angkat+Programme+me_39_4_1.htm (accessed Jul 25, 2012).
service for children under 18 years who are in need of information, care and protection.261 It is the country’s first helpline dedicated to children below 18. Childline is a collaborative effort between non-governmental and private sector organizations in partnership with government agencies such as the Ministry of Women, Family and Community Development (MWFCD), the Social Welfare Department Malaysia (JKMM), UNICEF Malaysia, MCTF and Child Helpline International (CHI). It aims to link children to short and long-term intervention and rehabilitation services.262 While Childline deals with a wide range of issues involving children from eating disorders to serious abuse, it remains a useful avenue for children and other adults to report instances of child abuse. Indeed, the helpline service number 15999 has been publicized through the mass media as an appropriate channel to report instances of child abuse.

b. Prevention Programs

All NGOs run campaigns to raise community awareness as part of preventive measures. The Association of Women Lawyers (AWL) organizes legal literacy programmes to teach people about the legal rights of a rape survivor and legal protections against rape.263 Many women’s and children’s organisations work closely with the Ministry of Women, Family and Community Development.264 More importantly, many women’s NGOs work closely with one another. The Joint Action Group (JAG) coordinated by the All Women’s Action Society (AWAM) was formed in 1986, comprising ten (now eleven) organizations concerned with gender equality.

(i) Campaign against Rape

JAG’s first major collaboration was a public campaign against rape in 1986-1987. It consisted of a traveling road show to present issues concerning rape and domestic violence to communities through dramas, skits and workshop discussions.265 Street theatre, public opinion surveys, petitions, exhibitions at shopping malls, and seminars in educational institutions and with community groups were also used.266 This was supplemented by a broad public initiative called Citizens against Rape in 1987 and again 2003. AWAM played a major role in the CAR initiatives. The CAR campaigns were reactions to the brutal rape and murder of a nine year-old girl, Ang May Hong, in 1987; and to the violent rape and murder of another young woman, Canny Ong.267 NGOs in the JAG group disseminate information and run programs to increase awareness about violence. For instance, WAO publishes on its website, among other helpful information, 15 ways to help a survivor of violence, which includes assuring the woman that she is not to blame.268

(ii) Campaigns against Domestic Violence

AWAM, WAO and WCC have been at the forefront of campaigning efforts against domestic violence. Not only did they organize activities and petitions to raise awareness, they also successfully lobbied the government to enact the Domestic Violence Act and, later, to amend it to broaden the definition of ‘domestic violence’. However, they have yet to achieve their initial goal of making domestic violence a specific crime. Women’s groups have been monitoring the implementation of the DVA.

(iii) Campaign Sexual Harassment Out (SHout)

In 2011, the women’s groups formed a joint-committee specifically directed at campaigning against sexual harassment in Malaysia.269 The Sexual Harassment out (SHout) Joint-Committee has the following objectives:

- To build awareness on the issue of sexual harassment at all levels of society, from homes, schools, workplaces to public spaces.
- To have a specific law against sexual harassment either at Federal level or at State level.

The SHout campaign aims to educate women about their rights and to draw the line between permissible and impermissible attention so that they can identify

261 Sagayam, Record High Child Abuse, (cited in note 37). The helpline reportedly received about 3,000 calls from children in six months since it was established. Of these, 484 reported abuses by parents.


264 E.g. CRC Report, 192, 230 (cited in note 9).


266 Organizations Addressing VAW: Malaysia (cited in note 265).


sexual harassment, particularly in the workplace. The Joint-Committee sees sexual harassment as a form of discrimination contrary to CEDAW and a form of violence against women.

(iv) An Integrated Approach to Preventing Child Sexual Abuse

Since 1997, the Women’s Centre for Change (WCC, previously known as Women’s Crisis Centre) developed a comprehensive and integrated approach to help parents, teachers, and children prevent and counter child sexual abuse. It launched a successful primary school project to provide talks to teachers and students to increase their awareness of sexual violence and worked with the Young Theatre Penang to conduct a drama roadshow titled ‘Ok Tak Ok’ (Ok Not Ok) to teach children to distinguish between good touches and bad touches, and how to respond to possible situations of sexual abuse.270 These efforts involve experts in child psychiatry and psychology, representatives from the police and the Social Welfare Department, and medical and social staff from hospitals.271

Following that, WCC developed an educational package ‘Bijak itu Selamat’ (Smart is Safe) in 2001 to help teachers, school counsellors and educationists to teach children to be aware of the dangers of child sexual abuse. This package is specially produced for children between 10 and 12 years of age and consists of following materials.

The WCC uses the ‘Bijak itu Selamat’ (BIS) package to conduct personal safety programmes in primary schools. The programmes consist of a one-hour interactive session and a half-day workshop aimed at the following objectives:

• Create awareness in children about preventing sexual abuse
• Help them differentiate between good touch and bad touch
• Teach them what steps to take if they are in a risky situation
• Encourage them not to keep secrets which make them feel uncomfortable
• Urge them to inform a trusted adult who can help them

WCC’s website contains extensive information about child sexual abuse, how to identify and how to prevent it.272

(v) Lobbying for Reform of Religious Laws

The Sisters-in-Islam’s central objective is the advocacy for the rights of Muslim women under Islamic (Sharia) laws. SIS has established a specific law reform project to educate the public and lobby for better legal protection of Muslim women. SIS also seeks to sensitize Sharia lawyers, Kadis and Muslim counsellors to the discrimination and biases against women that exist in the Sharia laws, or in their implementation. The organisation has published simple pamphlets such as ‘Can Muslim Men Beat their Wives?’ and ‘Are Women and Men Equal before Allah?’ to disseminate information to women who face abuse.

(vi) Services for Women in Rural Areas

The Sarawak Women for Women Service provides a range of services for women facing violence, including young women from rural areas. As the only women’s organisation providing support for rape survivors in Sarawak, SWSS lobbied for the creation of a Rape Survivor Support Group. Since 1989, this committee has brought together medical personnel, welfare officers and representatives from the police department to provide support for rape survivors. Rape victims are also assisted at a special room in the General Hospital that has been specially reserved for SWWS volunteers. SWSS also has a Crisis Phoneline, which provides women with a listening ear, empathy and emotional assistance, assists them to explore ways to resolve their crises and encourages them to make their own decisions.

c. Monitoring and Cooperation

The government also closely involves NGOs in formulating policies on women and children. Representatives from NGOs such as the National Council of Women Organisations (NCWO) and All Women Action Malaysia (AWAM) have been appointed to sit on various advisory councils in order to promote co-operation between governmental agencies and NGOs.273 NGOs have played a critically important role in highlighting areas of oversight and in suggesting needed improvements. The Joint Action Group for Gender Equality for instance, campaigned for a long time for a specific law on sexual harassment in Malaysia and in 2001 submitted a proposed Sexual Harassment Bill to the government.274


271 Organizations Addressing VAW: Malaysia (cited in note 265)


273 CEDAW Report, 21 (cited in note 8).

The Coalition of Malaysian NGOs in the UPR Process (COMANGO) has recommended for more governmental efforts to address rising violence against women in Malaysia.

Suggestions included the criminalization of marital rape, legislation to prohibit sexual harassment and stalking, more efficient implementation of the Domestic Violence Act 1994, and active training of the police and judiciary on gender awareness.275 This echoed many of the earlier recommendations by the NGO Shadow Report Group to CEDAW. There has been much valuable work by NGOs in Malaysia in collecting and publicizing much needed data and information on the problem of violence against women and children.

5. Progress Indicators and Challenges

a. Challenges

(i) Need for Comprehensive and Comparable Data

In general, the reports show that there is a need to broaden and deepen Malaysia’s data collection and reporting practices to include more empirical data on the prevalence of violence against women and children in Malaysia. Such data needs to be more comprehensive, showing for example the severity of such violence or otherwise, to the identity of the primary perpetrators of such violence, the breakdown of such cases by social class, racial or religious groups, and so on. Malaysia noted in its CEDAW Report that it has developed a Gender Disaggregated Information System (GDIS) to monitor the progress of women’s program and activities.276 Malaysia’s CEDAW Report stated that information available in the GDIS include data on child abuses, drug addicts, incest, rape, molest, domestic violence and sodomy but that the information are available only from 1997 to 2004.277

In any event, the GDIS should continue to be usefully applied to gather and analyse the necessary data on the problem of violence against women and children. This data should be made publicly available. In the same vein, the Police Force should release its collected data on sex crimes for broad dissemination to the public.

It should be noted that the respective women’s non-governmental organisations collect valuable data on their clients, which can help to provide insights into the prevalence of the problem of violence against women and children, its causes, the background of the victims and perpetrators (age, income levels, nationality, etc.), as well as information on how to alleviate and deal with the problems.278 A central aggregation and analysis of the data would be helpful.

(ii) Need to Expand Perceived Coverage

Furthermore, there is a fundamental need to recognize that Malaysia’s human rights obligations extend also to indigenous women and children, as well as to foreign women and children. In general, it appears that there is a severe lack of reliable data concerning rural, migrant, aboriginal or indigenous women.279 This would include data on the prevalence of and the root causes of violence against such women.

(iii) More Effective Law Enforcement

In Malaysia’s Millennium Developmental Goals Report, it was noted that there is a pressing need to address the low rate of prosecution. The report noted that for rape, there were only 184 prosecutions in 2008, and 162 in 2009. The concern is that the low rate of prosecutions makes it appear that perpetrators can commit violence against women with impunity, indirectly rendering their actions acceptable.280

Similarly, there is still concern over effective implementation of the Domestic Violence Act.281 Related laws such as the Evidence Act and the Criminal Procedure and Penal Codes still have to be amended. Furthermore, women’s groups express worry over the attitude of frontline agencies, including the police. There has been anecdotal observation that some police officers still consider domestic violence to be a private matter and would sometimes ask the abused wives to go back home.282 Gender sensitization among law enforcement authorities is crucial to ensure proper implementation.

275 OHCHR Summary, 17 (cited in note 20).
276 CEDAW Report, 83 (cited in note 8).
277 Responses to CEDAW Questions at 12 (cited in note14).
279 See e.g. CEDAW Report, 243, 354 (cited in note 8).
b. Progress Indicators

Malaysia’s MDG report identified the following progress indicators to promote gender equality and empower women:

1. Ensuring mainstreaming of gender into all government policies through establishment of a gender management system.
2. Integrating gender into strategic planning and implementation processes such that gender is included in all development targets.
3. Implementing a gender and development budget policy requiring all government departments and agencies to identify those components of their budget aimed at addressing gender issues.
4. Intensifying the implementation of gender training programmes in the public and private sector to improve skills for gender analysis and policy formulation.
5. Training gender specialists in line ministries and sectors to implement gender mainstreaming.
6. Requiring public and private organizations to develop a gender equity policy—the Tenth Malaysia Plan’s objective of getting all organizations to publish the gender and ethnic composition of their employees is a significant step.
7. Shaping public discourse by engaging civil society in identifying appropriate indicators and by regularly publishing the results of monitoring and evaluation of these indicators.

(i) Optional Protocol to CEDAW

The ratification of or accession to the Optional Protocol to CEDAW would allow women a direct channel of recourse. Malaysia has indicated that it will look into the possibility of ratifying or acceding to the Optional Protocol ‘when and only if’ all obligations of the country to the provisions of the Articles in CEDAW have been fulfilled.283

(ii) Genderizing Laws

Despite enactment and revision of laws protecting women, such as the Domestic Violence Act and expanding the law relative to rape, there remain several laws, which still indirectly discriminate against women and children. For instance the Evidence Act and the Criminal Procedure Code still do not afford adequate consideration to the specific vulnerabilities of women and children victims.

(iii) Gender-Sensitizing Law Enforcement

Although the DVA now includes psychological abuse as a form of domestic violence, there is concern that frontline law enforcement and implementation agencies, including the police, are not sufficiently well-acquainted with the need to protect women and children against such abuse.284 For instance, there is concern that there is a lack of qualified persons to determine if psychological abuse has taken place. Furthermore, existing counsellors and psychiatrists may not be adequately qualified or experienced to deal with psychological abuse in a domestic situation.

(iv) Public Health and Developmental Issue

Malaysia’s Millennium Developmental Goals’ Report noted the worrying prevalence of violence against women. The Report recognized the need to recognize gender-based violence as ‘a public health and development concern’.

(v) Gender Equality Act

The Ministry of Women, Family and Community Development has started discussions and consultations with governmental agencies, NGOs, and SUHAKAM on the proposal to enact a Gender Equality Act. SUHAKAM has stated that it is in full support of the proposal as it will enhance women’s rights and promote gender equality.285

6. Recommendations for Further Study

Violence against women and children is a problem that has gained much attention in the past few decades, no less due to the success of women’s groups in mobilizing the public and with the support of the media. This success is manifest in the increased data collected and the attention that the government has given to the issue. Nonetheless, there remain some areas of concern, which were alluded to earlier. These are:

(i) Inconsistencies between general laws and Sharia laws, especially where the former is more protective of women and children. Practices such as child marriages and subordination of wives have been justified on the basis of Sharia.

283 Responses to CEDAW Questions at 31 (cited in note 14).

284 Lee, Concern over Effective Implementation of Domestic Violence Act (cited in note 281).

There is a need for Malaysia to reconcile the gap consistently with its CEDAW and CRC obligations. Malaysia should also withdraw its reservations to CEDAW and CRC, which were justified on the basis of Sharia.

(ii) Gap between law on the books and law in action due to lack of enforcement commitment.

(iii) Incest and sexual abuse of children by family members need to be given more attention. More disaggregated data and analysis into the causes and how to prevent family sexual abuse is critical.

(iv) Overt sexist and chauvinistic behaviour even among politicians was observed. Sexist remarks and behaviour should be condemned.

(v) Sexual harassment should be seen as a serious, and not a trivial matter. In this regard, data on the extent of the problem of sexual harassment needs to be collected.

(vi) Sexual violence against indigenous women involves particular dimensions of power and needs special attention.

C. EXPLOITATION

1. Description of the Problem

a. Prevalence of Exploitation

(i) Trafficking in Women and Children to Malaysia

Malaysia is a major transit point for human trafficking in the Eastern and Southeast Asia region. It is also a significant destination state for human trafficking. Trafficked persons are subjected to conditions of forced labour; women and children are often subjected to sexual exploitation. Malaysia has been on the US Department’s Trafficking in Persons Tier 2 Watch List for the past two years (2010-2011). Countries on the Tier 2 Watch List are those that do not fully comply with the [United States’ Trafficking Victims Protection Act’s] minimum standards, but are making significant efforts to bring themselves into compliance with those standards. In addition, these countries have a significant or significantly increasing number of victims of severe forms of trafficking or have failed to combat severe forms of trafficking.

Trafficking in persons mostly involves women and children who are smuggled across borders and made to work under extremely exploitive conditions. Data provided by the Malaysian The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Majlis Antipemerdagangan Orang dan Antipenyeludupan Migran or MAPO) show that between 2008 and mid-2012, a total of 1,086 victims of human trafficking have been rescued and placed under Protection Order.

A breakdown of the relevant figures from 2008 to 2011 is as follows:

Statistics for Trafficking in Persons Cases From Feb 28, 2008 to Jun 30, 2012

<table>
<thead>
<tr>
<th>CASES</th>
<th>YEAR</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td></td>
<td>2008</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>151</td>
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<td></td>
<td>2010</td>
<td>132</td>
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<tr>
<td></td>
<td>2011</td>
<td>116</td>
</tr>
<tr>
<td></td>
<td>2012 (till Jun 30, 2012)</td>
<td>119</td>
</tr>
</tbody>
</table>

TOTAL CASES | 535 |
TOTAL NO OF ARRESTED | 728 |
TOTAL NO OF VICTIMS (INTERIM PROTECTION ORDER) | 2,923 |
TOTAL NO OF VICTIMS (PROTECTION ORDER) | 1,086 |

Source: Ministry of Home Affairs

In 2010, Malaysia amended its laws to differentiate voluntary from involuntary trafficking. The former is


classified as smuggling in migrants. This reduced the number of persons classified as trafficked persons since a significant number of those persons were instead classified as smuggled migrants.

The TIP Reports and other reports show that the majority of trafficking victims are foreign workers who migrate willingly to Malaysia, but subsequently subject to exploitative work conditions.\[295\] Trafficked women victims are at high risk of being subject to sexual exploitation. A significant number of young women were falsely induced by promises of lucrative job contracts.\[296\] Many recounted being recruited for work in Malaysian restaurants and hotels, and were granted ‘Guest Relations Officer’ visas.\[297\] They were subsequently coerced into Malaysia’s commercial sex trade. Traditionally, the main source countries of trafficked women have been Indonesia, Nepal, India, Thailand, China, the Philippines, Burma, Cambodia, Bangladesh, Pakistan, and Vietnam.\[298\] In recent years however, the list of source countries have expanded. In October 2011, Malaysian police rescued 21 Ugandan women who had been lured with promises of lucrative jobs and opportunities to study in colleges but were forced into prostitution by their captors.\[299\] The women were brought first to China and then to Malaysia on social visit passes.\[300\]

(ii) Trafficking of Malaysians

Malaysia is also a very small source state; every year, a small number of Malaysian women and children, primarily of Chinese ethnicity, have been trafficked abroad to Singapore, Macau, China, and Japan for commercial sexual exploitation, and the United States.\[301\] The Malaysian Ministry of Foreign Affairs and NGOs estimate that fewer than 100 Malaysian women were trafficked abroad annually, and that the number had declined in recent years.\[302\] Many of these women and girls were from rural areas and were enticed by promises of employment.

(iii) Internal Trafficking

There is also the problem of internal trafficking. Women and girls from rural areas, especially from East Malaysia, are particularly vulnerable to trafficking for sexual and labour exploitation in more prosperous states like Selangor and Johor.\[303\] According to Tenaganita and Sarawak Women for Women Association (SWWS), there were many cases of Sarawak women who were promised jobs in West Malaysia but were later coerced into the sex trade.\[304\] In 2011, the Secretary-General of the Ministry of Home Affairs Mahmood Adam announced that 136 people had been rescued between January and August in 53 human trafficking cases. Of the survivors, 8 were


296 See NGO Shadow Report, art. 6 (cited in note 13).


303 Group to hold seminar (cited in note 260).

Malaysians.305

(iv) Child Trafficking

Child trafficking is a growing problem in Malaysia, which recorded 118 cases between February 2008 and October 2010.306 Between January and August 2011, a total of 10 boys and 15 girls were rescued from human traffickers.307 These children were subsequently detained in government facilities.308 Reported forms of child trafficking involve labour exploitation, sexual exploitation, forced marriage, criminal activities, armed conflict, adoption and begging.309 Commercial sexual exploitation is the most commonly reported purpose of child trafficking.310 Small children and babies are also in high demand; syndicates use them to beg or they are sold to childless couples.311 Women are also trafficked to Malaysia for the purpose of selling their children for illegal adoptions.312 There are also cases where Malaysian children were bought or abducted for sexual exploitation.313

(v) Child Labour and Child Begging

There are no official statistics to show the number of children (under 15 years) who work in Malaysia. Many of these children work informally for their families, whether in markets, hawker centres, plantations or farms. It has been observed that many middle and lower class families in Malaysia have tended, for a long time, to see child labour as not abusive and even necessary for the welfare and prosperity of the family.314 However, there are long-term negative effects for the child who has to bear the stress of long and vigorous work hours. Many child labourers neglect their school work or end up not attending school, thereby foregoing opportunities to acquire education and skills for their personal and future development.

There are also reported incidences of children being used as beggars whether on their own or accompanied by adults. There are likewise no official statistics on this. Nonetheless, the predicament of child beggars has been highlighted in media reports315 and by NGOs such as Suka Society.316 These reports suggest that in some instances, parents are responsible for ‘exploiting’ their children, where as in other situations, syndicates are involved.

b. Root Causes of Exploitation and Aggravating Practices

(i) Socio-economic Factors

Poverty and/or persisting unemployment are key contributing factors to human trafficking.317 Furthermore, substance abuse, which frequently leads to financial and familial problems, as well as other stressors associated with financial hardships, may also be a reason for parents to ‘sell’ their children to human traffickers.318 Children with low levels of education and lack viable employment opportunities are also more frequently vulnerable to exploitation because they are more likely

309 UNICEF, Child Trafficking in East and South-East Asia (cited in note 286).
310 Ibid.
312 Responses to CEDAW Questions at 18 (cited in note 14)
313 Kurniawati Kamarudin, Child Trafficking in Malaysia (cited in 306).
316 Suka Society or Persatuan Kebajikan Suara Kanak-kanak Malaysia is a registered non-governmental organization set up to preserve and promote the best interests of children, online at: http://www.sukasociety.org/?page_id=2 (accessed Jul 15, 2012).
317 UNICEF, Child Trafficking in East and South-East Asia, 8 (cited in note 286).
to accept unskilled or lower-skilled employment such as domestic service or factory work. Discriminatory practices within their home countries may also restrict the opportunities available to certain groups of people thereby causing them to voluntarily allow themselves to be trafficked or make persons more susceptible to abuse and exploitation.

(ii) Individual Factors

Factors relating to a person’s individual circumstances, life experiences, skills and knowledge, personal documentation and physical environment may also contribute to his/her susceptibility to human trafficking. The lack of educational qualification and work opportunities can result in making one vulnerable to labour exploitation as well as human trafficking for labour exploitation. Children living on the street also typically lack proper adult supervision and support and are more susceptible to exploitation. In addition, those lacking citizenship and/or proper official documentation are also more vulnerable to labour and sexual exploitation. (See further chapter below on Stateless and Street Children.)

Internal conflict can also lead to displacement of persons, forcing them to move internally and across borders to seek shelter and employment. Their conditions make them more susceptible to human trafficking.

(iii) Market Demand

However, as has been observed, poverty per se does not cause trafficking. Instead, the demand for cheap or exploitable labour, for sex with children, for adoption outside the legal channels, and for women or girls for marriage all contribute to the trafficking phenomenon. Malaysia still does not give sufficient attention to address the trafficking problem from the demand side. There needs to be stricter laws and enforcement against persons who use the services of trafficked women and children.

(iv) Governmental Commitment

For some time, Malaysia saw its capacity to address the problem of human trafficking as being secondary to that of the source state. This is reflected in its UPR which states that ‘[t]he problem can never be solved by the transit or destination State’. Instead, ‘[t]he onus has to be on the source State to address the root cause of migration’. The UPR states:

‘Malaysia acknowledges its human rights obligations to every person, but due to Malaysia’s porous borders the influx is increasing despite pledges by source states that they have taken progressive measures and ranked higher in the Annual US State Department’s Trafficking in Persons Report. The problem can never be solved by the transit or destination State. The onus has to be on the source State to address the root cause of the migration.

All the actions taken by the transit and destination State would only be deemed as temporary as it would be unable to address the root cause of the migrations. As such Malaysia feels that the international community should place more emphasis on the source State both in financial and capacity building.’

Consequently, the Malaysian government have tended to approach the problem as one concerning illegal immigration rather than as a human rights issue. As the NGO Shadow Report noted, many foreign women who have been trafficked for sex are charged with immigration offences instead of prostitution, thereby making it harder to determine the extent of the problem. NGO Shadow Report states that it is crucial for the state to monitor and provide statistics as to the number of arrests, prosecutions and convictions obtained over the years under these laws to assess the effectiveness of these laws in dealing with what appears to be a growing phenomenon.

Furthermore, many victims of trafficking are also asylum seekers, refugees or stateless persons. However, their status as refugees and/or stateless persons are not always recognised and as such, they are subject to deportation back to their home country after being held in the Malaysian government’s shelters for trafficked persons. It is said that many victims of trafficking who were rescued are placed in immigration detention depots. Conditions of the Malaysian immigration detention depots are

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320 Ibid.
322 Ibid.
323 Ibid.
324 Ibid.
325 Ibid, 27.
326 UNICEF, Child Trafficking in East and South-East Asia at 8 (cited in note 286).
327 Ibid, 8, 27.
328 Malaysia’s UPR, 94 (cited in note 10).
329 Ibid.
330 Ibid, 94-5.
331 NGO Shadow Report, art. 6 (cited in note 13).
332 NGO Shadow Report (cited in note 13) (on article 6).
deplorable and completely unsuitable to house detainees, much less rescued victims of trafficking.

There are positive signs of change. In January 2012, Malaysia jointly hosted the Bali Process Workshop on Protection of Victims of Trafficking in Persons with the International Organization for Migration (IOM). It is increasingly shifting its policies towards a victim-centred approach, consistent with international standards (see below on change in policy to allow trafficking victims to work).333

There is also evidence indicating that Immigration Officers are themselves complicit in human trafficking activities. Several NGOs drew attention to the human rights violations and discrimination faced by non-citizens. MWG-JUMP reported that deportees testify that Immigration officials collude with human smugglers/traffickers.334 It further reported that gender-based violence is significant amongst non-citizens with irregular status, since perpetrators are aware that victims are reluctant to lodge police reports for fear of getting arrested on immigration offences.335 In 2010, nine individuals, including seven Immigration Officers, were detained for their involvement in human trafficking. They were detained under the Internal Security Act 1960 (ISA), which provides for detention without trial, instead of being charged under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants 2007 (hereafter ‘Anti-Trafficking in Persons Act’).336

(v) Negative Public Misperception

The NGO Shadow Group report further identifies negative public perception as one of the causes for the lack of support and help for trafficked victims.337 Negative media imaging suggests that women involved in prostitution, even those who have been trafficked, are corroding public morality and even responsible for their own predicament.338 The illegality of their immigration status further dehumanizes them.

(vi) Evolving and Developing Legal System for Immigration

Malaysian immigration policy is still evolving which requires more consistent and long-term planning. The status of migrants in Malaysia is not properly managed nor planned in the long term; they are not adequately protected against unscrupulous recruitment agencies and employers.339 Furthermore, there is an absence of coordination between the various national Ministries involved in the management of migrant workers.340 The absence of written immigration policy or immigration quotas reflects an ad hoc approach,341 which contributes to the abuse and discrimination of migrant workers, including migrant women and children.

The HRW has criticised Malaysia’s process of employing migrant workers.342 Under the current system, companies are not responsible for sending unwanted migrant workers back to their countries of origin.343 Furthermore, there are no strict laws prohibiting agents from imposing heavy administrative fees on workers. This entraps them in a system of debt bondage, which is exacerbated in cases where the employers or the agents refuse to hand over the wages earned after the employment period. The government does not screen or accredit the recruitment agencies for domestic workers.

(vii) Corruption

According to a 2011 Issue Paper by the United Nations Office on Drugs and Crime, there are consistent indications that corruption plays an important role in facilitating and fostering the crime of trafficking

334 OHCHR Summary at 49 (cited in note 20).
335 Ibid.
337 NGO Shadow Report (cited in note 13) (on article 6).
in persons. The World Bank’s working definition of corruption is ‘the abuse of public power for private benefit.’ Transparency International takes a broader approach and understands corruption as ‘the misuse of entrusted power for private gain.’

Corrupt behaviour can be active (violating duties, accepting or transferring bribes, and facilitating transactions) or passive (simply ignoring or failing to follow-up on indicators that corruption may be taking place). As was highlighted in a 2005 Council of Europe report, corruption can facilitate human trafficking at many points:

(a) in the trafficking chain e.g. recruitment or acquisition of victims, provision of documentation, transportation within or across countries, control and exploitation of victims, and laundering of proceeds;

(b) in the criminal justice chain, e.g. refraining from drafting and adopting legislation, investigate or prosecute offenders, or generally enforce laws;

(c) in the victims support and protection chain, e.g. revealing or selling information on victims, or preventing victims from testifying against their traffickers.

According to the United Nations Convention against Corruption (UNCAC), manifestations of corruption would include: bribery of national public officials, foreign public officials, and officials of public international organizations; embezzlement, misappropriation and other diversion of public property, trading in influence, abuse of functions, and illicit enrichment by public officials; and bribery and embezzlement in the private sector, as well as laundering of the proceeds of crime, concealment and obstruction of justice. Malaysia is a party to the UNCAC.

Official corruption is a crime in Malaysia. There is increasing effort to enforce the law and recent cases involve high-level officials in the government. There still remains an enforcement gap. Furthermore, there is still a broadly held and persistent public perception of widespread corruption and cronyism in government.

At present, Transparency International (TI) Corruption Perception Index (CPI) ranks Malaysia as the 60th least corrupt nation among the list of 183 countries worldwide included in the survey. This ranking however has been declining for three consecutive years. The Whistleblower Protection Act was passed in 2010 to encourage persons to disclose information on corrupt practices in both the public and private sectors. The whistleblower is immune from civil or criminal charges.

Corruption is a serious impediment for good governance. It is becomes egregious and abusive when corrupt officials take advantage of the weak and the poor such as migrant workers. According to the 2011 TIP Report, for instance, RELA volunteers have used the threat of immigration detention to extort money from migrant workers.

c. Impact of Exploitation

Women and children are trafficked primarily for sexual and labour exploitation. These women and children have their rights violated at multiple levels: when she is forced into prostitution, forced to have unprotected sex, is physically abused, not paid for services and punished by the law. Their health risks and special needs associated with such exploitation needs to be further studied.

The government recognises that trafficked victims often experience severe emotional trauma, and have taken measures to provide psychological counselling in shelters.

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346 Ibid.

347 Ibid, 6.


351 United States State Department, Country Reports on for 2011: Malaysia (cited in note 305).


353 United States State Department, Country Reports on for 2011: Malaysia (cited in note 305).

354 2011 TIP Report (cited in note 288). The Report states that this practice has continued although there are decreased reports of it.

355 NGO Shadow Report (cited in note 13) (on article 6).
for trafficked victims. Counsellors point out that the trauma experienced by the victims often manifests in the form of aggressive behaviour or suicidal tendencies.356

2. De Jure State Responses

a. Bases of State Responsibility

Malaysia grounds its anti-trafficking efforts in the following regional and international instruments:

(i) The 2004 ASEAN Declaration against Trafficking in Persons Particularly Women and Children;
(ii) The United Nations Declaration on Human Right;
(iii) CEDAW;
(iv) CRC;
(v) United Nations Convention Against Transnational Organised Crime (UNTOC);357
(vi) UNTOC’s Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children;358
(viii) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.359

The signing of the OP on Child Sale, Prostitution and Pornography deserves special attention as it obligates states to criminalize the sale, prostitution and pornographic portrayal of the child, and to foster increased public awareness and international cooperation in efforts to combat them.

In addition, Malaysia's state responsibility is also informed by the following conventions.

- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery;
- ILO Convention Concerning Forced or Compulsory Labour;
- ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Labour, and
- ILO Convention concerning Migration for Employment.

(b) State Policies against Exploitation

(i) Trafficking of Persons

Malaysia enacted a specialized legislation targeting anti-trafficking in 2007360 and, following criticisms of under-enforcement of the law, established the National Action Plan in 2010 as a proposed coordinated effort to combat human trafficking. The 2007 Anti-Trafficking in Persons Act criminalizes human trafficking and sets up a legal mechanism for providing care, protection and shelter for the victims. It establishes the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) whose function is to implement the Act, formulate policies and programmes to prevent and suppress trafficking in persons including programmes in rendering assistance to trafficked persons, formulate protective programmes for trafficked persons and initiate education programmes to increase public awareness of the causes and consequences of the act of trafficking in persons.361

The prescribed penalties for human trafficking are maximum 15 years of imprisonment for trafficking in adults and 20 years for trafficking in children. The penalties are commensurate with those of other serious offenses, such as rape. Section 12 of the Act states:

‘Any person, who traffics in persons not being a child, for the purpose of exploitation, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years, and shall also be liable to fine.’

Furthermore, section 14 states:

‘Any person, who traffics in persons being a child, for the purpose of exploitation, commits an offence and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.’

357 Ratified in 2004.
358 The CEDAW Committee and the CRC Committee had urged Malaysia to accede to the Protocol. CEDAW Concluding Comments, 24 (cited in note 15); CRC Concluding Observations, 96 (cited in note 18).
359 The CRC Committee had urged Malaysia to accede to the two Protocols. CRC Concluding Observations, 107 (cited in note 18). Malaysia announced its accession in 2011.
360 The CEDAW Committee criticized Malaysia for not having enacted legislation on trafficking and has not established a comprehensive plan to prevent and eliminate trafficking in women and to protect victims. CEDAW Concluding Comments at 23 (cited in note 15).
361 Anti-Trafficking in Persons Act (2007), §§6, 7.
The Act defines a ‘child’ as a person who is under the age of eighteen years.

Trafficking in persons is broadly defined under the Act as the ‘recruiting, transporting, transferring, harbouring, providing or receiving of a person for the purpose of exploitation.’ Exploitation is further defined as including ‘all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs.’ In 2010, the government amended the Act to broaden the definition of trafficking to include all actions involved in acquiring or maintaining the labour or services of a person through coercion, and to create a new offence of smuggling of migrants which targets non-coerced acts of illegal migration.

Malaysia’s anti-trafficking policies involving women and children is said to be ‘viewed from a holistic perspective and not isolated from violence against women or abuse of children or confined solely to migrant women.’ Its anti-trafficking legislation is supplemented by other measures protecting women and children from rape, criminal force and assault, kidnapping, abduction, slavery and forced labour. The Anti-Trafficking in Persons Act supplements existing law such as the Penal Code which makes it an offence to import, export, buy, sell or dispose of any person as a slave or to accept, receive or detain any person against his will as a slave (section 370). In addition, section 373A of the Penal Code makes it an offence to use false pretences or false representations to bring into Malaysia any woman for prostitution. Anti-Money Laundering Act 2001 makes the trafficking and prostitution offences under the Penal Code predicate offences, which means that proceeds from those unlawful activities can be frozen, seized and forfeited under the Act.

Section 26A of the Anti-Trafficking of Persons Act criminalizes the smuggling of migrants:

‘Any person who carries out smuggling of migrants commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years, and shall also be liable to fine, or to both.’

The smuggling of migrants is defined as:

‘(a) arranging, facilitating or organizing, directly or indirectly, a person’s unlawful entry into or through, or unlawful exit from, any country of which the person is not a citizen or permanent resident either knowing or having reason to believe that the person’s entry or exit is unlawful; and
(b) recruiting, conveying, transferring, concealing, harbouring or providing any other assistance or service for the purpose of carrying out the acts referred to in paragraph (a), thereby targeting non-coerced acts of unlawful entry.

According to the Secretariat of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, the key distinctions between trafficking in persons and smuggling of migrants is determined as such:

<table>
<thead>
<tr>
<th>TRAFFICKING IN PERSONS</th>
<th>SMUGGLING OF MIGRANTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The instrument/international law involved is Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children under UN Convention on Transnational Organised Crime.</td>
<td>The instrument/international law involved is Protocol against the Smuggling of Migrants by Land, Air and Sea under UN Convention on Transnational Organised Crime.</td>
</tr>
<tr>
<td>The main element to prove any offence relating to trafficking in persons is exploitation and it may happen in a country without being a cross-border offence. It may also happen at the domestic level.</td>
<td>The important element in the smuggling of migrants is the cross-border occurrence.</td>
</tr>
<tr>
<td>Involving the elements of exploitation, manipulation, threat against victims. Continuous and repeated exploitation.</td>
<td>Involving consent of the smuggled persons and profits for the people smuggling syndicates. The smuggling activity ends upon arrival at the destination.</td>
</tr>
</tbody>
</table>

362 Anti-Trafficking in Persons Act (2007), art. 2.  
363 Ibid.  
365 Malaysia’s UPR, 91 (cited in note 10).  
366 Ibid.  
367 CEDAW Report, 105(iii) (cited in note 8).  
368 Ibid, 105(iv)  
(ii) Child Act / Trafficking in or Selling of Children

The Child Act also criminalizes trafficking and selling of children. Section 48 for instance makes it an offence for any person to take part in any transaction aimed at transferring or conferring possession, custody or control of a child for valuable consideration. The prescribed punishment is a fine not exceeding ten thousand ringgit or to imprisonment not exceeding five years or to both.

(iii) Forced Prostitution

Malaysian law criminalizes the exploitation of women for sex, although prostitution itself is not a criminal offense. Section 372 of the Penal Code makes it an offence to sell, let for hire, procure, buy or hire any person with the intent that such a person is to be employed for prostitution and have sexual intercourse with any other person within or outside Malaysia. It is also an offence to use false representations or false pretences to bring or assist in bringing any person into or out of Malaysia with the intention that the person is to be employed or used for the purpose of prostitution. Other related offences include receiving or harbouring a victim of forced prostitution, restraining someone for prostitution, acting as an intermediary for prostitution, soliciting for prostitution, and living on the earnings of a prostitute (sections 372, 372A and 372B). In addition, section 373 criminalizes the owning of a brothel.

(iv) Child Prostitution

The Child Act supplements the Penal Code’s framework of criminal laws against forced prostitution. Section 43 of the Child Act specifically provides that it is an offence for a person to sell, procure, harbour, detain and advertise any child for the purpose of prostitution or having sexual intercourse either within or outside Malaysia. A child is defined as a person who has not yet completed his/her fourteenth year of age, while a young person is defined as a person who is above fourteen years old but has not yet completed his/her sixteenth year of age. Exploitation in the form of using a child for begging is criminalized under section 32 of the Child Act. The causing or procuring of a child for the purposes of ‘begging, receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for

sections 48 and 49 of the Child Act prohibit the unlawful transfer of possession, custody or control of child and importation of child by false pretences respectively.

(v) Child Labour

As highlighted in the CRC Report, Malaysia’s Children and Young Persons (Employment) Act 1966 regulates the employment of a child or young person in Malaysia. The Act prohibits the employment of a child unless under the following circumstances:

a. employment involving light work suitable to his capacity in any undertaking carried on by his family;

b. employment in any public entertainment, in accordance with the terms and conditions of a license granted in that behalf;

c. employment requiring him to perform work approved or sponsored by the Federal Government or the Government of any State and carried on in any school, training institution or training vessel; and

d. employment as an apprentice under a written apprenticeship contract.

Similarly, the employment of a young person is prohibited except under the following circumstances:

a. employment as a domestic servant;

b. employment in any office, shop (including hotels, bars, restaurants and stalls), warehouse/godown, factory, workshop, store, boarding house, theatre, cinema, club or association;

c. employment in any industrial undertaking suitable to his capacity; and

d. employment on any vessel under the personal charge of his parent or guardian.

A child is defined as a person who has not yet completed his/her fourteenth year of age, while a young person is defined as a person who is above fourteen years old but has not yet completed his/her sixteenth year of age.

Exploitation in the form of using a child for begging is criminalized under section 32 of the Child Act. The causing or procuring of a child for the purposes of ‘begging, receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for

370 CEDAW Report, 105(iii).

371 See CRC Report, 354 (cited in note 9). This is presented as fulfilling Malaysia’s obligations under article 34 of the CRC.

372 Child Act, art.43; CRC Report, 354 (cited in note 9).

373 Ibid, 354.

374 CRC Report, 207 (cited in note 9). This is presented as fulfilling Malaysia’s obligations under article 11 of the CRC.


376 See section 2(3) of the Act. CRC Report, 348 (cited in note 9).

377 See generally CRC Report, 145 (cited in note 9).
sale’ is prohibited and punishable by imprisonment of up to two years and a fine of up to five thousand ringgit. The same section criminalizes the causing or procuring of a child to carry out ‘illegal hawking, illegal lotteries, gambling or other illegal activities detrimental to the health and welfare of the child.’ A person having care of the child may also be prosecuted under this section for allowing a child to be on the street, premises or place for the prohibited purposes.

**(vi) Rape and Abuse of Authority**

A 2006 Amendment to the Penal Code inserted a new basis for invalidating consent of a woman so as to constitute rape. The new section 375(f) provides that a woman’s consent to sexual intercourse does not provide a valid defence to rape ‘when the consent is obtained by using his position of authority over her or because of professional relationship or other relationship of trust in relation to her.’ This new section is aimed at protecting women who are vulnerable to the sexual advances of their employers and superiors.

c. **Assessment of State Policies**

According to the National Plan on trafficking of persons, the main sources of reference for the Anti-Trafficking in Persons Act are the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (TIP Protocol) and the Protocol Against the Smuggling of Migrants by Land, Sea and Air, which supplement the United Nations Convention Against Transnational Organized Crime (UNTOC). Malaysia signed and ratified the UNTOC, and acceded to the TIP Protocol in 2009. According to the Ministry of Home Affairs, as at 2010, up to 180 people have been prosecuted under the Anti-Trafficking in Persons Act.

Malaysia takes a crime and punishment perspective on the problem of trafficking and exploitation of women and children. It further identifies the Royal Malaysian Police as the main law enforcement agency addressing the problem of trafficking and exploitation, while the Social Welfare Department plays a secondary role in protecting and rehabilitating women below the age of 21 who have been victimized or coerced or forced into prostitution. This crime and punishment approach also means that action against exploitation of women can only be taken if such exploitation is criminal in nature.

Malaysia’s policies differ based on whether the person exploited is a foreign national or a Malaysian national. The policies also differ according to whether the exploited Malaysian national is below 18 years of age. In the latter situation, there is a stronger policy for the protection and rehabilitation of such exploited girls. Thus, girls found to have been exposed to moral danger or involved in prostitution are placed in rehabilitation centres throughout the country (see Child Act). The primary agency monitoring and implementing such measures is the Social Welfare Department (as opposed to the Police Force).

3. **Implementation, Monitoring and Enforcement**
   a. **Monitoring Mechanisms**

(i) **Legal Framework and Prosecutorial Practices**

Malaysia now has in place a legislative framework specially targeting human trafficking and has increased the number of convictions obtained under the Anti-Trafficking Act. Between 2008 and March 2012, a total of 621 persons had been arrested for trafficking in persons. Of these, 412 persons had been charged and 78 convicted. In 2011, the government prosecuted and successfully convicted 11 sex trafficking offenders and three individuals involved in labour trafficking; the convicted offenders were sentenced to three to eight years’ imprisonment. In another case, in 13 February 2012, a Myanmar national was jailed a total of 23 years (to run concurrently) and sentenced to four strokes of the cane for entering the country illegally, smuggling of six persons in his car in January, and having 17 false visit passes.

However, there remains an implementation gap. The

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379 CEDAW Report, 104 (cited in note 8).

380 CEDAW Report at 106 (cited in note 8).


382 Ibid.


2011 TIP Report highlights that there are still cases which Malaysia have yet to effectively investigate and prosecute its offenders in 2011.\textsuperscript{388} At the end of 2011, for instance, a total of 141 trafficking cases remained pending in Malaysian courts.\textsuperscript{389} There is also a high acquittal rate in trafficking cases – at 68% in 2011. Observers attribute this high rate of acquittal to lack of adequate victim-witness protection (whose testimonies are key evidence).\textsuperscript{390} Some also attribute this to poor judicial training on human trafficking.\textsuperscript{391}

Furthermore, Malaysia has yet to address problems of government complicity in trafficking.\textsuperscript{392} There are reports of collusion between police and trafficking offenders.\textsuperscript{393} A case against a Malaysian immigration official arrested in July 2009 for the trafficking of Burmese refugees to Thailand is still pending.\textsuperscript{394}

(ii) Key Agencies

Malaysia has also established an Inter-Agency Committee on Protection and Rehabilitation of Trafficked Victims in which NGOs and academicians are also members.\textsuperscript{395}

One of the key issues that this Committee needs to tackle is to change perceptions among law enforcement officers and the public such that, instead of seeing the women and children criminals, they are seen as victims in need of compassion and help. Practical issues such as providing trafficked victims with translators who can speak their home language would allow them to communicate their problems and allow them to seek the legal, medical and emotional help they need.

While authorities continued some anti-trafficking training for officials with responsibilities to combat trafficking, including trainings conducted through cooperation

with a foreign donor, international organizations, and NGOs, the lack of understanding of human trafficking by many Malaysian front-line officers, such as police and immigration, continues to hinder the identification and proper investigation of trafficking cases and identification and assistance to trafficking victims.\textsuperscript{396}

Furthermore, it is not clear if there is effective inter-agency coordination among the Council on Anti-Trafficking of Persons, the police, Department of Immigration, Attorney-General’s Chambers, Department of Welfare in carrying out all of the steps involved in fighting trafficking, including identifying a location, performing raids, identifying the victims, providing them with services, taking statements from victims, investigating criminal activity, prosecuting the perpetrators, as well as assisting victims with return and repatriation.\textsuperscript{397}

As the CEDAW NGO Shadow Report Group emphasized, while statistics on trafficking and prostitution might be difficult to obtain due to the nature of the crime, it is important for the Government (especially the Royal Malaysia Police and the Department of Immigration) to put in place mechanisms to identify the extent of the problem and analyse the patterns and movements of trafficked persons in and out of the country.\textsuperscript{398}

(iii) Informal and Underground Child Labour

The nature of child labour (informal and within the domestic setting) and of other forms of child exploitation (tending to be underground) makes it more difficult for governmental monitoring. Nonetheless, the existing legislative framework under the Child Act allows legal action to be taken wherever such exploitation becomes known.

b. Complaints Process

The government’s policy of detaining trafficking victims against their will (see section below) provides a disincentive for victims and their advocates to bring cases to the government’s attention or to cooperate with authorities.\textsuperscript{399} There is no specialized complaints process for women and children victims of exploitation, or for members of the public to report trafficking or exploitation

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390 Ibid.

391 Ibid.

392 Kishna, Talk on US Trafficking in Persons (TIP) Repor (cited in note 388); NGO Shadow Report (cited in note 13) (on article 6).


394 Ibid.

395 Malaysia’s UPR, 93 (cited in note 10).


397 The NGO Shadow Group had criticized the government for lacking inter-agency coordination, NGO Shadow Report (cited in note 13) (on article 6).

398 NGO Shadow Report (cited in note 13) (on article 6).

The hotline for cases of trafficking is 999, which is the general number for emergency police and ambulance services.⁴⁰¹

Since the launch of Talian NUR, the Council for Anti-Trafficking in Persons should also list 15999 as a possible contact. Malaysia’s immigration policies of charging victims with immigration offences and lack of protection for victims of trafficking (detention in government facilities)⁴⁰² may discourage victims from coming forward even if they had the opportunity to do so.

The UPR states that Malaysia is setting up a One Stop Information Centre which would provide comprehensive information on the statistics of traffickers and victims.⁴⁰³ The lack of a one-stop centre was one of the criticisms raised by the NGO Shadow Group in relation to Malaysia’s CEDAW Report.⁴⁰⁴ However, it appears that this one stop centre is only informational. The NGO Shadow Group’s proposal was for the establishment of a one-stop centre where trafficked victims can access the full range of legal, medical and emotional assistance needed for the individual situation.⁴⁰⁵ Further information is required on the work of the Centre, including its progress and effectiveness. There also needs to be more information on the accessibility of the Centre and as to how information about the Centre itself is disseminated so that trafficked victims may access the information and help available there. As noted by the NGO Shadow Group, sex workers are often subject to close monitoring and control by syndicates and are therefore unable access information for help. It is therefore vital that when the opportunity presents itself for them to get out, they or any person helping them know exactly whom they can call for help.⁴⁰⁶ Therefore, the public also needs to be made aware of where and how to access help for trafficked victims.

Enforcement of the Anti-Trafficking in Persons Act lies with the Royal Malaysian Police, Immigration Department of Malaysia, Malaysian Maritime Enforcement Agency, Royal Malaysian Customs and Labour Department.⁴⁰⁷

**c. Protection and Rehabilitation**

According to the 2011 TIP Report, Malaysia has some, though limited and inadequate, efforts at improving victim protection in recent years.⁴⁰⁸ There remain serious concerns concerning Malaysia’s legal framework for addressing victims of trafficking, as well as the conditions to which these victims are subjected.⁴⁰⁹

First, the government continues to treat victims of trafficking as illegal aliens and subject them to deportation to their countries of origin after their cases have been heard.⁴¹⁰ The Anti-Trafficking in Persons Act legally provides immunity to trafficking victims for immigration offenses such as illegal entry, unlawful presence, and possession of false travel documents.⁴¹¹ Nonetheless, victims continued to be detained and deported, thereby treated akin to illegal immigration offenders.⁴¹² Furthermore, some victims who were not formally identified as trafficked persons are routinely processed as illegal migrants and held in prisons or immigration detention centres prior to deportation. Foreign embassies have complained that Malaysian authorities do not always inform them that their nationals have been detained in shelters, and have not always granted diplomatic mission access to these nationals.⁴¹³

Secondly, victims identified by authorities are issued an ‘interim protection order’ or ‘protection order’ which allows their detention in ‘shelters’ (‘places of refuge’ under sections 44 and 51 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act).⁴¹⁴ These shelters are operated by the Ministry of Women, Family and Community Development.⁴¹⁵ Residents are

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400 Ibid.
402 Kishna (cited in note 392).
403 Malaysia’s UPR, 92 (cited in note 10).
404 NGO Shadow Report (cited in note 13) (on article 6).
405 Ibid.
406 Ibid.
410 See 2011 TIP Report (cited in note 288) and Malaysia’s UPR, 92 (cited in note 10).
412 Ibid.
413 Ibid.
415 There are three shelters for women (one in Sabah and the other two in Kuala Lumpur), one for children victims (in Kuala Lumpur),
provided accommodation, meals, recreational activities and counselling.\footnote{416} Suspected and confirmed foreign trafficking victims are detained in the shelters for 90 days, or more often, longer pending the resolution of their cases.\footnote{417} The conditions of detention can be said to amount to re-victimization: they are not allowed to work (except temporary jobs within the shelter), and are confined to the shelter.\footnote{418}

Furthermore, while Malaysia has endeavoured to provide counselling services to the victims of trafficking in persons,\footnote{419} there are suggestions that such services remain limited and inadequate. For instance, the \emph{2011 TIP Report} states that the residents have little or no access to legal or psychological assistance provided by the government or NGOs.\footnote{420} The facilities did not employ medical officers or trained psychologists. Instead, the government reported employing two counsellors who visit the shelters on a weekly basis but their level of expertise and training was not clear.\footnote{421} According to the \emph{2011 TIP Report}, victims had experienced being locked in their rooms, handcuffed to and from court appearances, subjected to body patdowns and searches prior to entering the facilities.\footnote{422} In addition, they were frequently not informed about the legal processes to which they were subjected, or of why or for how long they were being detained.\footnote{423}

There are positive developments. In January 2012, the Ministry of Home Affairs announced a new policy to provide better protection for victims of human trafficking by allowing victims of labour exploitation to work in Malaysia after they have been released from the shelters (i.e. after their cases have been resolved).\footnote{424} These victims no longer have to return to their country of origin.\footnote{425} However, certain conditions have to be satisfied. Not only must the victim provide personal consent and approval from their respective diplomatic missions, they must also show that their safety is not guaranteed if they return to their country of origin and that they have entered the country legally.\footnote{426} Under this changed policy, 32 Bangladeshi workers who were former victims of human trafficking for labour exploitation were allowed to take up employment in March 2012. An additional five Indian nationals who were also victims of human trafficking for labour exploitation were allowed to stay and work in Malaysia in May 2012.\footnote{427}

This new policy has its limits. It only affects victims released from shelter homes, i.e. whose cases have been resolved.\footnote{428} Those detained in shelters under protection orders are still not allowed to work; instead, they are given temporary jobs in shelter homes.\footnote{429} Also, it remains to be seen how this change in policy would assist sex trafficking victims or child trafficking victims.

On the other hand, Malaysian women who have been involved in prostitution and/or have been sexually exploited are housed in centres called ‘Rumah Nur’ all over the country.\footnote{430} Such centres offer rehabilitative programs such as education (formal and non formal) as well as vocational training for instance handicrafts, ICT literacy and other relevant skills to prepare them for re-entry into society.\footnote{431} Although the CEDAW Committee requested the Malaysian delegation to provide ‘a description on the effectiveness of [the rehabilitative and protective measures], this was not provided. Such centres are primarily for Malaysian women. Women below 18 years of age who have been involved in prostitution are placed in rehabilitation centres.\footnote{432} These centres provide protection and rehabilitation programs such as formal education, religious/moral education, vocational training and counselling.\footnote{433}

\begin{itemize}
\item \footnote{416} Council for Anti-Trafficking in Persons, \emph{Information Leaflet on Trafficking} (cited in note 288).
\item \footnote{417} \emph{2011 TIP Report} (cited in note 288).
\item \footnote{418} \emph{Ibid}.
\item \footnote{419} Malaysia’s UPR, 92 (cited in note 10).Kamarudin, \emph{Helping Human Trafficking Victims to Get on with Life} (cited in note 356).
\item \footnote{420} \emph{2011 TIP Report} (cited in note 288).
\item \footnote{421} \emph{Ibid}.
\item \footnote{422} \emph{Ibid}.
\item \footnote{423} \emph{Ibid}.
\item \footnote{424} \emph{First Batch of 32 Victims of Human Trafficking to Work Here – Lee} (cited in note 333).
\item \footnote{426} \emph{First Batch of 32 Victims of Human Trafficking to Work Here – Lee} (cited in note 333).
\item \footnote{427} \emph{Five Human Trafficking Victims Allowed to Remain and Work},(cited in note 333); Soong Sook Kin, \emph{Trafficking Victims Allowed to Work}, (cited in note 333).
\item \footnote{428} \emph{Victims of Trafficking Allowed to Take Up Employment in Malaysia} (cited in note 425).
\item \footnote{429} \emph{Ibid}.
\item \footnote{430} \emph{Responses to CEDAW Questions}, 19 (cited in note 14).
\item \footnote{431} \emph{CEDAW Report}, 110 (cited in note 8).
\item \footnote{432} \emph{Ibid}.
\item \footnote{433} \emph{Responses to CEDAW Questions, loc.cit}.
\end{itemize}
In November 2011, the government announced that it was in the process of drafting a Memorandum of Understanding to participate in DNA-Prokids, a program founded by Dr Jose A. Lorent at the University of Granada in Spain aimed at creating an international DNA database to help match and reunite victims of child-trafficking with their families.434

**d. Prevention Measures**

Malaysia raises public awareness on trafficking in persons by conducting seminars and workshops as well as disseminating brochures.435 The government acknowledged in its National Action Plan that the problem of trafficking, its seriousness and its implications for national security and human rights are not fully understood by the Malaysian public, as well as government agencies, the private sector and NGOs.436 As such, public awareness campaigns are required to educate the public and to disseminate information widely.437 It recognizes that efforts to combat and prevent trafficking in persons require the support and cooperation of all sectors including participation of civil society.438

The Ministry of Women, Family and Community Development publish pamphlets on the indicators of trafficking; these pamphlets are distributed at border checkpoints.439 The Department of Social Welfare has also implemented preventive measures against sexual exploitation of women by raising community awareness about gender equality and women’s rights. This includes Legal Literacy Programs, which were implemented in 219 parliamentary constitutions all over the country by Women and Family Development Councils.440 Recommendations to avoid being trafficked include: making sure there is an official job offer letter, understanding the job contract, making sure the salary is reasonable and consistent with the scope of work, verifying the agency/company’s credentials, sharing information on the job and destination country with family, and to arm oneself with the address and telephone of the embassy at the destination country.441 Besides these efforts, the government also provided anti-trafficking training to Malaysian troops prior to their deployment abroad on international peacekeeping missions.442

Furthermore, there is increased cooperation with NGOs to improve anti-trafficking responses. For instance, the government provided a group of 125 women’s organizations with $64,500 in funding to promote capacity building and awareness programs related to human trafficking.443 There are also state-level (as opposed to federal-level) efforts; for example, the state of Selangor created its own state level anti-trafficking council in 2011 staffed with leaders from the NGO community.444

Unfortunately, as the 2011 TIP Report pointed out, there is a lack of measures to address the problem from the demand side. No measures have been taken to reduce the demand for forced labour or commercial sex acts.445

**4. Role of Non-State Actors**

**a. Assistance to Victims**

Women’s groups in Malaysia are closely involved in providing assistance to victims. For instance, groups such as Tenaganita and WAO offers services for women in need of support and assistance, and this includes trafficked women and girls.446

Several NGOs that provided comprehensive services to trafficking victims reported that they no longer refer cases to the police, as it is clear that doing so was detrimental to the welfare of the victims.447 Additionally, the referral of victims to authorities led to the transfer of custody to government facilities, where NGOs were reportedly barred from additional contact with the victims.448

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435 Malaysia’s UPR, 93 (cited in note 10).


437 Ibid.

438 Ibid.


440 Responses to CEDAW Questions at 19 (cited in note 14). It was stated that in 2004, 30,799 participants attended the Legal Literacy Programmes.

441 Council for Anti-Trafficking in Persons, Information Leaflet on Trafficking (cited in note 401).


443 Ibid.

444 Ibid.

445 Ibid.

446 NGO Shadow Report (cited in note 13) (on article 6).


448 Ibid.
b. Prevention Programs

Civil society has been increasingly involved in engaging the public in preventing human trafficking generally. For example, SUHAKAM publishes and disseminates a helpful Anti-Trafficking in Persons Brochure. On 9 December 2011, the Bar Council of Malaysia hosted a talk on 'US Trafficking in Persons (TIP) Report and Advocacy to Combat Human Trafficking', in collaboration with the Coalition against Modern-Day Slavery in Asia ('CAMSA') and with the support of Embassy of the United States, Kuala Lumpur ('US Embassy'). Thirty participants, comprising representatives of SMRIA, Malaysian Trades Union Congress, civil society organisations and law students, attended the talk.

c. Monitoring and Cooperation

NGOs and UNICEF work closely to deal with child trafficking and sexual exploitation of children. For instance Against Child Trafficking (ACT) Asia conducted a four-day workshop in February 2011 in collaboration with child rights organisation P.S. Save the Children.

5. Progress Indicators and Challenges

It is commendable that Malaysia has given increasing attention to address the problems of trafficking in women and children as well as of street children and stateless children, all of whom are especially subject to economic and sexual exploitation. However, while several measures have been taken, including the passing of legislation such as the Child Act and Human Trafficking Act to address these issues, more needs to be done to squarely deal with these problems. It is possible that there is still a misconception that the primary responsibility of such problems lies with the home countries of the trafficked women and children as well as of the undocumented migrants. As such, these issues tend to be seen as foreign (rather than domestic) problems that just happen to occur in Malaysia.

Furthermore, although Malaysia has acknowledged that trafficking in persons is a major crime and violates basic human rights, the current framework is still rooted in treating trafficking as an immigration problem. More needs to be done to overhaul the current framework and the attendant attitudes of persons in positions of authority towards trafficked victims.

The reports suggest several recommendations to address the problem of trafficking in women and children:
First, it is crucial for the state to monitor and provide statistics as to the number of arrests, prosecutions and convictions for trafficking in order to assess the effectiveness of the laws in dealing with trafficking.

Secondly, there is a need to establish monitoring mechanisms on the enforcement of laws and policies related to trafficking in women and the exploitation of prostitutes.

Thirdly, there needs to be effective and equal enforcement of current laws against the entire network that sustains the trafficking industry, and not just the women and children who are trafficked and exploited. This includes brothel owners, agents who bring in the women from other countries and clients who solicit sex services.

Fourthly, the public and enforcement agents need to be better educated as to the problems of trafficking and exploitation so they may see trafficking and exploitation as human rights violation rather than as purely and issue of crime and punishment. Law enforcement officers need to be trained to identify rapidly and accurately victims of trafficking so as to be able to render the necessary assistance and protection.

The National Action Plan identifies nine main goals that will lead to the realisation of the national vision in combating trafficking in persons while ensuring effective implementation of the National Action Plan:

1) Improve the anti-trafficking response by strengthening legal framework.
2) Implement integrated action among enforcement agencies.
3) Raise public awareness through information dissemination to the public.
4) Provide protection and rehabilitation services that conform to international standards in collaborations with the NGOs.
5) Combating labour trafficking.

449 SUHAKAM, Anti-Trafficking in Persons, online at http://www.suhakam.org.my/anti_trafficking_in_persons (accessed Jan 25, 2012). This was also noted in the 2011 TIP Report (cited in note 288).

450 Kishna (cited in note 392).

451 Ibid.

452 NGO Shadow Report (cited in note 13) (on article 6).

453 Ibid.

454 Ibid.

455 Ibid.

456 Ibid.
7) Develop information management system for government agencies involved in fighting trafficking in persons.
8) Develop local and international partnership.
9) Strengthen Governance.\footnote{National Action Plan Against Trafficking in Persons, 8 (cited in note 436).}

In ensuring the sustainability of the outlined measures, specific parameter and systematic evaluation approach is vital to assess the effectiveness of the efforts.\footnote{Ibid, 7.}

\section*{6. Recommendations for Further Study}

Exploitation is not one incident but the result of an entire worldview that fails to see each and every human being as valuable and imbued with dignity. The current legal and political system of Malaysia still has a tendency to view trafficking and exploitation as primarily a law and order, and economic issue; as opposed to it being a human rights issue. There needs to be systematic and targeted efforts to change this.

Furthermore, it is likely that the escalating racial and religious rhetoric in the country contributes to an overall intolerant environment that sees people of a different race, colour, religion, socio economic status as unequal and less valuable. Not only is there a need for better and clearer data on the extent of exploitation of women and children in the forms mentioned above, there is also a need to interrogate why Malaysians are willing to engage in such exploitative acts, as well as the possibility that the hostile (racist and intolerant) environment engendered by the constrictive democratic space causes or at least contributes to such systemic exploitation in the country.

In addition, specific data and in-depth analysis of the role of corruption in trafficking in persons remains limited.\footnote{UNODC, \textit{The Role of Corruption in Trafficking in Persons} (2011),6, (cited in note 344).} This is detrimental to establishing integrated and effective strategies to understand and combat trafficking in persons.\footnote{See generally UNODC, \textit{The Role of Corruption in Trafficking in Persons} (2011) (cited in note 344).} It has been hypothesized that states with high level of corruption also tend to be states with low standards and efforts against trafficking.\footnote{Council of Europe, \textit{Trafficking in Human Beings and Corruption}, 8, (cited in note 348).} Considering the allegations of corruption, more attention and scrutiny on the interrelations between corruption and human trafficking is required to better understand and combat trafficking of women and children in Malaysia.

Lastly, there is a need to review and map out the background of persons convicted of trafficking to determine if existing prosecutorial practices and convictions are adequately directed at all culpable persons, and not only those who are disadvantaged (e.g. foreigners and/or low-level assistants) and/or less acquainted with the criminal justice system.

\section*{D. ABUSE AND DISCRIMINATION IN MIGRATION}

\subsection*{1. Description of the Problem}

\subsubsection*{a. Prevalence of Abuse and Discrimination in Migration}

According to the Migration Working Group and the Northern Network for Migrants and Refugees’ (MWG-JUMP) representations to the UPR Working Group, Malaysia hosts around 2.1 million documented migrant workers, amongst whom there were 315,703 domestic workers in 2009.\footnote{OHCHR Summary, 49 (cited in note 20). See also \textit{2010 TIP Report} at 223 (cited in note 288).} It is further estimated that there may be an additional estimated 1.9 million undocumented migrant workers in the country,\footnote{2010 TIP Report at 223 (cited in note 288).} although there is no reliable way of determining the numbers. Most female documented migrant workers in Malaysia are domestic workers.

\subsubsection*{(i) Domestic Workers}

Migrant domestic workers in Malaysia are exposed to various kinds of abuse and discrimination such as physical abuse, sexual abuse, psychological abuse and economic victimization, including restrictions on movement, non-payment of wages, passport confiscation, or debt bondage.\footnote{See \textit{NGO Shadow Report} (cited in note 13) (on article 11); \textit{2011 TIP Report} (cited in note 288); SUHAKAM, \textit{Migrant Workers and Undocumented Persons in Malaysia: Research Findings}, (Nov 24, 2008), online at: http://www.suhakam.org.my/c/document_library/get_file?p_l_id=35723&folderId=213272&name=DLFE-7704.pdf (accessed Jul 25, 2012).} Abused domestic workers report employers beating and overworking them, withholding their salary, subjecting them to malnourishment and deny them contact with family.\footnote{Responses to CEDAW Questions at 17 (cited in note 14). (quoting report E/CN.4/2003/75/Add.1 of 27 February 2003, 1079).} Furthermore, domestic migrant
workers are also subject to forced confinement in training centres where the workers live in squalid quarters, with inadequate food and water. Systematic abuse and discrimination of migrant domestic workers start from the moment of recruitment in their home country and is not confined to the host country or limited to their employers. Such restrictive conditions have been described as ‘indicative of trafficking.’

Most reports of domestic worker abuse involve Indonesian workers since they form about 90% of domestic workers in Malaysia. Consequently, most of the abused maids have been Indonesians who report beatings, torture, harsh and exhausting working conditions, failure of employers to pay salaries and even rape. Indonesia has criticized Malaysia as being the most problematic of all Asian countries that hire Indonesian domestic workers.

The CEDAW Committee expressed concern about the lack of legislation and policies on the rights of migrant workers, particularly migrant domestic workers who are mostly women. At present, official police statistics do not provide separate statistics on domestic worker abuse cases. Most of the available data on the extent of and modes of migration and violence, abuse, exploitation of migrants, the impact of their countries of origins, and the extent of their vulnerability are from non-governmental sources, media reports, and are based on anecdotal accounts.

The number of abuse cases involving domestic workers is relatively low, considering the number of workers present in Malaysia. Malaysia’s response to the CEDAW Committee states that less than 1% of workers (not gender disaggregated) have lodged complaints of abuse before the Ministry of Human Resources and other relevant authorities. The police department has also stated in media reports that the number of reported abuse cases is not very high, especially relative to the number of domestic workers in Malaysia. For instance, there were 39 cases in 2005, 45 in 2006, 39 in 2007 and 42 in 2008. However, incidences of domestic worker abuse tend to be highly publicized and the severity of those few incidences of abuse have tended to invoke public outcry.

It should nonetheless be noted that the low number of reported police cases may also be due to under-reporting: first, because many domestic workers continue to suffer in silence partly because they lack knowledge of their rights or are unable to gain access to such authorities; and secondly, because many prefer to approach their own embassies for help.

Indonesian media reports had claimed in 2009 that there were up to 150 complaints of abuse, overwork, ill treatment and unpaid salaries lodged by maids each month. The police reports show that most cases of physical abuse (beatings) were carried out by wives of the employer, their children, relatives, and even by agents. In 2009, Indonesia declared that it has ceased sending domestic workers to Malaysia after news reports highlighted gory incidents of Indonesian domestic workers tortured by employers. The ban was only lifted in 2011 after Malaysia signed a Memorandum of Understanding guaranteeing more protection for Indonesian domestic workers.

Nonetheless, even though the reported cases of abuse form a small percentage of the number of domestic workers, the accounts that have surfaced have shocked the public for their inhumanity and brutality. The police department has stated that more than 65% of the cases reported involved sexual abuse of maids aged between 25 and 35. Between 2005 and 2008 for instance, police handled 85 cases of maids who were raped, mostly by employers; and 29 cases of outrage of modesty. There have also been instances of deaths following brutal beatings by their employers. In 2011, Cambodia banned its citizens from working as domestic workers in Malaysia following the death of three Cambodian maids, as well as accusations of abuse including two reported rapes and

466 HRW, Help Wanted, (cited in note 26).
467 HRW, They Deceived Us at Every Step, (cited in note 27); Human Rights Watch, Help Wanted, (cited in note 26).
470 D'Cruz, Slave Maids a Black Mark for Malaysia (cited in note 469).
471 CEDAW Concluding Comments, 25 (cited in note 15).
472 Responses to CEDAW Questions at 17 (cited in note 14).
474 Pandiyan, Only a small percentage of domestics are abused (cited in note 473).
475 Ibid.
477 Pandiyan, Only a small percentage of domestics are abused (cited in note 473).
forced isolation.\(^478\) Several Cambodian domestic workers also report of their employers refusing to pay their wages.\(^479\)

There is also a problem of minors working as migrant domestic workers in Malaysia. Lax monitoring and supervision of agency practices have facilitated this. Foreign minors are not allowed to work as domestic workers in Malaysia. For example, according to the Women’s Aid Organisation, three out of the nine migrant domestic workers who sought shelter with the organisation in 2011 were younger than 20 years old.\(^480\) This is even though they possessed passports stating that they were 21 years of age.\(^481\) The youngest migrant domestic worker the WAO sheltered in 2011 was a 12 year old from Cambodia.\(^482\)

More needs to be done to fully understand the extent of the problem of discrimination and abuse suffered by migrant domestic workers in Malaysia, but more importantly a stronger commitment on Malaysia's part is needed to address the problem.

(ii) Undocumented/Stateless Children

As the CRC Committee noted, there is a lack of relevant data on ‘non-Malaysian children living in Malaysia.’\(^483\) Non-Malaysian children born in Malaysia, including asylum-seeking/refugee children and children of undocumented migrant workers, are at high risk of not being registered at birth.\(^484\) According to NGO and international organizations, many stateless children were born to Filipino and Indonesian immigrants of irregular status in Sabah. Most of these immigrants entered the country illegally whereas others are refugees holding IMM13 immigration stay pass. These immigrants often fail to register their children's birth.\(^485\) Without a birth certificate, the child would not be able to trace his/her family's country of origin and therefore would be unable to apply for a passport.\(^486\) Under those circumstances, the child would be stateless or at a high risk of being stateless.\(^487\)

It has been highlighted that many undocumented migrants did not register their children's birth because, in order to obtain a birth certificate in Malaysia, migrants are often required to produce a valid passport for each parent and a certificate of marriage—documents which they are unlikely to possess.\(^488\) Even if parents are able to register the birth of their children and are able to obtain birth certificates, the citizenship status of their children can be uncertain. Malaysia does not grant citizenship by birth; children born in Malaysia are citizens only if one parent is a citizen of Malaysia.\(^489\) These undocumented children or even those with foreigner status in their birth certificates suffer discrimination in many aspects.

The lack of citizenship or documentation proving their status makes these children especially vulnerable to exploitation and trafficking.\(^490\) There are no official figures on the total number of undocumented and/or stateless children in Malaysia. It has been estimated that there are at least thousands of street children in Sabah itself, mostly of Filipino descent.\(^491\) These numbers have yet to be accurately verified since many of these children are transient and highly mobile – moving within the city,
from city to city and even across Sabah's porous borders. The CRC Committee expressed regret in its concluding observations that '[a]s regards children living and/or working in the streets, particularly in Sabah … [Malaysia] could not present studies on the extent and nature of this problem.'

Furthermore, a significant number of undocumented children end up living on the streets when their parents are arrested for their undocumented status and deported. The CRC Committee noted that while Malaysia expressed a firm intention not to separate migrant children from their migrant parents to be deported, the implementation of current provisions of the Immigration Act 1959/63 (Act 155) has resulted in detaining and deporting migrant workers without effective efforts to prevent the separation of children from their parents. Consequently, unless they have other family or guardian in Sabah, most children whose parents have been deported end up living and working on the street at a very young age, and often in fish markets. These street children earn meagre sums for labour-intensive work and are discriminated against by the local population who see them as undesirable or criminal elements. These children are also targets for arrest and detention by immigration and police; in 2006 for instance, Sabah police arrested about 160 street children for unknown reasons. The CRC Committee noted such 'cleaning operations' with concern.

It should be noted that monitoring irregular migration in Sabah is a problem that extends beyond street children. The historical, cultural and geographical conditions of Sabah make it highly susceptible to intractable irregular migration. NGO and media reports highlighting the predicament of these undocumented/stateless children have led to increased attention on the issue.

Besides Sabah, another locality that has been identified for the higher concentration of stateless and/or street children is Chow Kit in Kuala Lumpur. Presently, the Malaysian government have identified more than 500 children have of primary and secondary school age without proper education in the Chow Kit area. This corresponds with NGO and media reports concerning a large number of children loitering at night in the back streets of Chow Kit, with some as young as six-years old. Children in Chow Kit are often neglected by the mothers/parents, as well as exposed to the risk of child labour, child trafficking, sex work and exploitation by drug dealers and pornographers. They also are at high risk of multiple diseases including mumps, chicken pox, rubella, skin afflictions and sexually transmitted diseases. It should be noted that street children in Chow Kit are not limited only to children of undocumented migrants; a significant number are of Malaysian origin whose parents have neglected to register their births. A collaborative study between UNICEF and the Education Ministry revealed that there were many homeless children in the Chow Kit area who were unable to get proper education due to poverty and the poor environment.

(iii) Refugees and Asylum Seekers

In 2011, Malaysia entered into a 'people swap' agreement with Australia, according to which 800 asylum seekers would be sent to Malaysia in exchange of 4,000 United Nations verified refugees. The 800 include unaccompanied children (children who are alone). The pact was heavily criticized because Malaysia is not a signatory to the


Zaman, Faceless Street Kids of Chow Kit (cited in note 500).

Ibid.

Education for Chow Kit Kids (cited in note 501).
United Nations convention on refugees, raising questions about the treatment of the 800 asylum seekers it has agreed to accept.506 Malaysia’s immigration detention centres are over-crowded and detainees are subject to poor living conditions.507 There was also criticism that the move would endanger the lives of the young, thus violating the CRC, to which Australia is a party.508 The worry is that asylum seekers, particularly children, could face starvation and abuse, failure to attend school and be at risk of being detained for more than 4 or 5 years once they arrive in Malaysia.509

The Australia-Malaysia deal is now in abeyance after the Australian High Court struck it down.510 Lawyers representing asylum seekers successfully challenged the deal on the basis that Malaysia was not a signatory to the UN Refugee Convention and therefore could not guarantee the protection of asylum seekers sent from Australia, including unaccompanied children.511 The High Court agreed, ruling that under Australian law the government could not send asylum-seekers to any country that could not adequately protect them.512 Despite this, Australia has told Malaysia that it is still keen to go ahead with the deal, but must first get the support to bring the matter to Parliament.513

Malaysia estimates that there are almost 178,000 refugees, stateless persons and other ‘people of concern’ to the United Nations in the country.514 As at January 2012, the UNHCR had registered about 97,000 asylum-seekers and refugees, of which 19,700 were children below the age of 18.515 However, UNHCR has acknowledged that a large number of people are still waiting to be registered by the United Nations High Commissioner for Refugees for refugee status determination.516 Refugees and asylum-seekers have no legal right to work in the country. They do not receive assistance from the government, and some resort to working without authorization to survive.517 The UPR Working Group noted that as of 1 August 2008, the UNHCR had registered 41,405 persons of concern, of which 11,172 were children.518 Furthermore, it was noted that an additional 61,314 Muslim refugees from a nearby country reside in Sabah with documented status under IMM13 work permits.519 It is estimated however that thousands more individuals remain unregistered and outside UNHCR’s protection.520

Prior to 2009, both UNHCR-registered and unregistered asylum seekers, refugees and stateless persons were considered irregular migrants by most government agencies, in particular the Immigration Department and People’s Volunteer Corps (Ikatan Relawan Rakyat or RELA), which continued to arrest them for immigration offences.521 However, beginning in 2009 the government provided preferential treatment to those individuals carrying a UNHCR card.522 Reports of government deportation of some refugees and asylum seekers with UNHCR refugee cards effectively ceased.523 Nonetheless, there remain occasional reports by refugees of needing to pay bribes to police to avoid detention, despite carrying a UNHCR card.524
Prior to 2009, prison and immigration detention centre officials tended to deny the UNHCR access to unregistered asylum seekers in detention. However this has since changed. Since 2009, immigration detention centres have scheduled UNHCR visits to interview some unregistered potential refugees. Through these interviews, the UNHCR secured the release of 1,351 refugees from detention centres from January to August 2011.\textsuperscript{525}

There have also been incidences of refoulement.\textsuperscript{526} For instance in August 2011, the government deported to China 11 ethnic Uighur individuals who had been denied access to the UNHCR.\textsuperscript{527} This attracted strong condemnation from several human rights groups who feared the Uighurs would be mistreated, tortured, or killed upon their return.\textsuperscript{528} The government justified the deportation on the basis that the individuals had been involved in a people-smuggling ring and that China had requested their extradition.\textsuperscript{529} Three others, who had applied for refugee status with the UNHCR, were charged with possession of falsified documents, released on bail, and at year’s end were awaiting trial.\textsuperscript{530} Two others were released without being charged.\textsuperscript{531}

\textbf{b. Root Causes of Abuse and Discrimination in Migration and Aggravating Practices}

According to reports, Malaysia sees the presence of foreign workers as a temporary phenomenon. In its UPR, Malaysia states that the employment of foreign workers ‘is a measure to overcome the current shortage of labour in the country.’\textsuperscript{532} Employers who employ foreign workers are subject to certain conditions, one of which is the responsibility of eventually returning foreign workers to their countries of origin.\textsuperscript{533} This is symptomatic of the existing legislative and policy framework, which does not adequately protect the rights of foreign workers, thereby exposing them to discrimination.

(i) \textit{Social Isolation in a Domestic Environment}

Domestic migrant workers are especially vulnerable to abuse and discrimination because they work in the domestic environment and are thereby shielded from public observation. Domestic migrant workers are socially isolated because they often do not have contact with their family and friends. Many are not allowed a day off (except for Filipina workers) and may be confined to the employer’s home, often with little outside contact. Letters may be monitored, telephone calls curtailed or banned.\textsuperscript{534}

(ii) \textit{Slave-Owner Mentality}

It has been suggested that Malaysians’ abusive practices arise from cultural misunderstandings about the nature of domestic help. Human Rights Watch for example has observed that some Malaysians adopt ‘a slave owner mentality in their relationship with their foreign domestic help.’\textsuperscript{535} According to the Women’s Aid Organization, many Malaysians have negative perceptions of migrant domestic workers, which contributes to the frequency, and severity of abuse.\textsuperscript{536} Foreign domestic workers are often viewed as culturally inferior, sometimes ‘less than human,’ and not considered as deserving of the same respect and consideration given to other human beings.\textsuperscript{537}

The following factors the Malaysian Women’s Aid Organization identified contribute to domestic migrant workers’ especial vulnerability to abuse by their employers:

\textbf{References}

\textsuperscript{525} United States State Department, \textit{Country Reports on for 2011: Malaysia} (cited in note 305).

\textsuperscript{526} The forced return of a person to a country where he or she faces persecution.\textit{OHCHR Summary} at 9 (cited in note 20). The MWG-JUMP Report cited the U.S. Committee for Refugees and Immigrants (USCRI) report that in 2007, nearly 2,300 asylum seekers and refugees were deported to Thailand, of which at least 14 were deported by Thai authorities to Myanmar, of which 3 were arrested by Myanmarese authorities upon arrival. See \textit{MWG-JUMP Submission} (cited in note 24).

\textsuperscript{527} United States State Department, \textit{Country Reports on for 2011: Malaysia} (cited in note 305).

\textsuperscript{528} \textit{Ibid.}

\textsuperscript{529} \textit{Ibid.}

\textsuperscript{530} \textit{Ibid.}

\textsuperscript{531} \textit{Ibid.}

\textsuperscript{532} \textit{Malaysia’s UPR}, 27 (cited in note 10).

\textsuperscript{533} \textit{Ibid.}

\textsuperscript{534} Women’s Aid Organization, \textit{Migrant Domestic Worker Abuse}, online at:\textit{http://www.wao.org.my/Migrant+Domestic+Workers_54_5_1.htm} (accessed Jun 25, 2012).


\textsuperscript{536} WAO, \textit{Migrant Domestic Worker Abuse} (cited in note 534).

\textsuperscript{537} \textit{Ibid.}
(iii) Unfair Terms

There is no standard, fair contract of employment or adequate legislation to protect migrant domestic workers. Domestic work is often de-valued and domestic workers are not considered as ‘proper’ employees. There is a tendency for state and local policies to safeguard the interests of employers, rather than migrant domestic workers. 538

(iv) Economic Discrimination

The Malaysian government’s policy towards migration is one of a temporary solution to a domestic problem. This can contribute to discriminatory and/or abusive practices against domestic workers since they are seen as transient. As stated in its UPR, Malaysia sees the employment of foreign workers as a necessity to ‘overcome the current shortage of labour in the country.’ 539 The government does not encourage or facilitate foreign workers settling in Malaysia. It stated in the UPR that ‘it is the employment of foreign workers that is subjected to certain terms and conditions, such as, the responsibility of employer for the return of foreign workers to their countries of origin and the provision of suitable living condition and wages.’ 540 Furthermore, Malaysia appears to regard the protection of foreign workers as primarily a function of its foreign relations with the source countries. 541 Its UPR refers to two agreements with the Government of Indonesia as positive measures in addressing the problem of migration and employment of foreign workers. 542

(v) Statelessness

The plight of stateless/undocumented street children has come to public attention only in more recent times. A direct cause is the failure of the Malaysian government to grant children born in Malaysia citizenship. Malaysia has chosen not to adhere to the principle of *jus soli*. 543 However, this is mitigated by article 14(1)(b) of the Federal Constitution, read with section 1(e) of Part II of the Second Schedule, which provides for the possibility that children born to non-citizens in Malaysia may gain citizenship. The relevant provision reads: ‘every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph’ are citizens by operation of law’. As such, it is open to Malaysia to recognize children born in Malaysia who are not registered as citizens of another country to be granted citizenship. This however has not been done.

(vi) Public Prejudice

The CRC Committee has also identified ‘negative public attitudes and prejudices against street children’ as a factor exacerbating their difficult situation. 544 For instance, it has been observed that the local population in Sabah tends to see street children as forced by circumstances to live in the fish markets as undesirable or criminal elements. 545 Street children in Chow Kit face similar discrimination and more because of their mothers’ sex work. This is why some conservative segments of society are not fully supportive of initiatives to assist street children in Chow Kit; they are concerned that the initiatives may be perceived as sanctioning prostitution since the children’s mothers are not prosecuted. 546 As an activist who has been working to provide a safe environment for street children in Chow Kit observed: ‘Many people think it is useless to help such children, claiming that they would eventually end up like their parents.’ 547

(vii) Legal Deficiencies and Corruption

Malaysia’s immigration policies do not distinguish between refugees, asylum seekers, trafficking victims, and undocumented migrants. This means that there is no calibrated response to the specific vulnerabilities and predicament of each irregular migrant. This critically undermines their human rights. Corruption exacerbates the matter when labour and immigration officers make migrants pay for services that should be free. There are increasing incidences of corruption and extortion to which undocumented asylum seekers and even UNHCR-confirmed refugees are vulnerable. 548

Furthermore, the government does not have a consistent or well thought out policy to deal with legal migrants who


539 *Malaysia’s UPR*, 27, (cited in note 10).


543 *Undocumented Children in Sabah Vulnerable to Statelessness* (cited in note 500).


545 *Undocumented Children in Sabah Vulnerable to Statelessness* (cited in note 500).

546 *Singh, Helping Malaysia’s Street Children* (cited in note 502).


548 *Loh, Australia-Malaysia Deal Endangers Asylum Seekers* (cited in note 507).
are refugees or asylum seekers. For instance, when it started implementing the 6P amnesty program for undocumented workers, it suddenly decided (without clear explanation) that it would also include documented workers. Later, the Home Ministry announced abruptly that refugees would also have to be registered. Thousands of refugees with UNHCR cards, including the elderly, young children, and mothers with babies, stood in waiting for hours in a cramped place, only to be told that they had to come the next day as the Immigration department could only register up to 2500 persons a day. According to information received from refugees who had registered, they received slips called ‘Slip Pendaftaran PATI’ which had another statement: ‘Tujuan: Pulang Ke Negara Asal’ (Purpose: Return to Home Country). This return slip has created a host of uncertainties and fears among the refugees that they could now be deported to their country of origin despite the fact they are recognized as refugees by UNHCR.

### c. Impact of Abuse and Discrimination in Migration

Migrant women and children can suffer from serious health problems due to malnutrition and abuse. There are reported instances where domestic migrant workers are not properly sent home to their countries after their period of work expires, but are left on their own without money or documents. This may drive them to despair and to work on the streets as prostitutes to earn their way home. Children who are left behind find no way of supporting themselves except on the streets and in vice activities. There is a heavy social and economic cost involved in the abuse and discrimination of migrant women and children. There needs to be more systematic study on the physical, psychological, and social impact of abuse and discrimination against women and children in migration.

### 2. De Jure State Responses

#### a. Bases of State Responsibility

Malaysia’s CEDAW Report and CRC Report did not discuss the issues arising from abuse and discrimination of domestic workers or of undocumented/stateless street children, although Malaysia did provide some response as to measures taken to protect domestic workers from abuse and discrimination. In general however, there is a need to reinforce the commitment that Malaysia’s CEDAW and CRC obligations extend to women and children regardless of nationality. This is especially since Malaysia committed to protecting and promoting the rights of migrant workers when it signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007.

#### b. National Policies against Abuse and Discrimination in Migration

(i) **Entry into Malaysia: Immigration Act and Passports Act**

The Immigration Act 1959/63 (Act 155) forms the cornerstone of the Malaysian immigration system. In addition, the Passports Act 1966 (Act 150) specifies requirements relating to presentation of passports on entering or leaving Malaysia, and possession of the relevant visas. Entering and staying in Malaysia without a permit (illegal entry) is punishable with a fine of up to 10,000 ringgit (US$2,915), imprisonment of up to five years and, since 2002, ‘whipping of not more than six strokes’. The same punishment, including caning, applies to those who unlawfully re-enter or reside in Malaysia after they have been deported. Overstaying a visa is punishable by a fine and imprisonment on the same terms as illegal entry – up to 10,000 ringgit and five years – although caning is not included. The same punishment applies to those who enter or leave Malaysia other than at an authorized immigration control post.

(ii) **Immigration Enforcement**

The police and a volunteer citizens’ police force, the People’s Volunteer Corps (RELA) are authorized by law to examine people’s identification documents and investigate their immigration status. RELA has been criticised for conducting raids targeting illegal migrant communities in which refugees, asylum seekers, and trafficking victims are detained along with allegedly illegal migrants. This practice has reportedly decreased compared to previous years.

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553 Ibid.
(iii) Payment of Wages

According to Malaysia’s responses to the CEDAW Committee, foreign domestic workers are protected under the provisions of Part III (Payment of Wages) of the Employment Act 1955 (the Act). This means that any domestic worker, whose salary has been unfairly withheld by her employer, is entitled under the law to lodge a complaint with the nearest Department of Labour (DL) for action to be taken against the errant employer. The responses also noted that the government is taking steps to formulate memorandums with sending countries to ensure domestic workers are socially protected and that their working environment is enhanced.

(iv) Citizenship and Education

Malaysia’s UPR states that non-citizens can be accepted into Government-assisted schools, as long as the provisions of the Education Regulation are fulfilled and approval from the Ministry of Education had been obtained. The Report did not say what such provisions are; neither did it explain how approval from the Ministry of Education can be obtained and the success rates of such applications. On the other hand, other observers have noted that children without documentation (e.g. birth certificates) are not able to attend government schools. The CRC Committee have also noted that many asylum-seeking and refugee children, among them the Muslim children from Myanmar, including the Rohingya refugee children who have lived in Malaysia since 1990s, lack access to formal education, because of their undocumented/stateless status. The UPR states that non-citizens are nonetheless free to enrol in any private schools throughout the country. According to Refugees International, the cost of attending private schools is prohibitive for most families, although there are church and community organizations in Sabah that offer private education at a reduced cost.

c. Assessment of State Policies

(i) Restricted Registration System

Several discriminatory laws and policies contribute to the vulnerability of domestic workers in Malaysia. Firstly, Malaysia practices a restricted registration system that permits migrant workers to enter Malaysia on work permits that restrict them to be employed only by their sponsor employer. This is exacerbated by the fact that a migrant worker’s employment can be terminated, and the worker’s work permit cancelled, by the employer at any time. Without the permit, the migrant worker becomes immediately subject to deportation. Such a registration system restricting workers to the specific employer discriminates against migrant workers and generates conditions of vulnerability, especially for domestic workers. As the South East Asia National Human Rights institutions Forum (SEANF) noted, registration systems restricting workers to only the employer who

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554 Responses to CEDAW Questions at 17 (cited in note 14).
555 Ibid.
556 Ibid.
557 Malaysia’s UPR, 37, (cited in note 10).
558 United States State Department’s Country Reports on for 2011: Malaysia (cited in note 305).
559 CRC Concluding Observations, 84, (cited in note 18).
560 Malaysia’s UPR, 37 (cited in note 10).
561 Undocumented Children in Sabah Vulnerable to Statelessness (cited in note 500).
562 Malaysia’s UPR, 37, (cited in note 10).
563 Ibid.
564 CEDAW Concluding Comments, 25-6 (cited in note 15).
567 Robertson Jr., Migrant Workers in Malaysia (cited in note 566).
brought them into the country may also ‘fuel irregular migration because migrant workers with grievances (and facing debts from recruitment fees) will flee into the underground economy when they are not permitted to change their employer.’

(ii) Mandatory Health Checks and Deportation

Secondly, migrant workers are subject to mandatory health checks while in Malaysia. If the worker is found with one of the communicable diseases on the government’s exclusion list (such as TB, HIV/AIDS, etc.) or is found to be pregnant, he/she is automatically excludable and will be deported without treatment or medical assistance. This has disproportionate impact on domestic migrant workers who have been abused or sexually assaulted as it causes them to fear obtaining help in case they are deported. Furthermore, since migrant workers are not allowed to marry, a domestic worker found to be pregnant even through consensual sex has no option of marrying her partner but will instead be deported and separated from her partner. These policies violate the migrant women’s right to health (to treatment and the confidentiality of results), as well as their reproductive rights (to have a family, children). It should be noted that Malaysia practices a single entry policy, which does not allow migrant workers to enter the country with their spouse/partner.

(iii) Lack of Wage and Other Protection

Thirdly, Malaysia has resisted introducing a minimum wage for domestic workers. In the absence of government regulations, employment agencies and employers typically set domestic workers’ salaries based on their country of origin instead of their education and experience.

The extent to which domestic workers are protected from discriminatory practices depends primarily on the ability of their source countries to negotiate for better terms with the Malaysian government. Indonesian and Cambodian domestic workers often work for monthly wages of 400 to 600 ringgit (approximately US$133 to 200). Filipino domestic workers are the best protected, with the highest salary and guaranteed rest days. Filipina domestic workers in Malaysia earn the highest salary, at US$400 a month, because of requirements imposed by the Philippines government.

Following Indonesia’s moratorium on sending maids to Malaysia, the two countries have now agreed, among other safeguards, that the minimum wage for Indonesian maids would be set between RM600 and RM700.

(iv) Abuse of Power

There have been complaints that the police and RELA employ questionable tactics to harass, extort and abuse migrants during raids and immigration checks. RELA’s approach is particularly problematic, consisting of crude profiling based on apparent race or ethnicity, and a general attitude of ‘arrest now, investigate later.’ There are also reports that these largely untrained RELA agents frequently subject the people they arrest to humiliation, physical abuse, theft and extortion.

On 17 March 2007, the Malaysian Bar Council passed a motion at its Annual General Meeting, calling for the repeal of the legislation that established RELA and extended the powers of RELA officers to, amongst other things, enforce immigration law. This has received support from human rights groups who take the view that the involvement of poorly trained volunteer RELA officers who are paid to secure arrests in the enforcement


569 NGO Shadow Report, art. 12, (cited in note 13).

570 Ibid.

571 Ibid.


573 SEANF Migrant Workers Paper (cited in note 568)


575 Human Rights Watch, They Deceived Us at Every Step,(cited in note 27); Malaysia MoU Fails to Provide Needed Safeguards for Migrant Workers (cited in note 574).

576 Malaysia MoU Fails to Provide Needed Safeguards for Migrant Workers (cited in note 574).


of immigration law is highly questionable. The fact that those powers can be exercised without a warrant violates due process of law, and the conduct of RELA officers in raids on migrant communities is of extreme concern. Despite assurances from the Director General of Immigration that RELA’s immigration enforcement role would end in 2009, NGOs and the UNHCR confirmed that they are still operating in that role.

Undocumented/Stateless Street Children

The CRC Committee expressed concern at the absence of a legal framework in Malaysia for the protection of refugee and asylum-seeking children. In particular, the Committee regretted that Malaysia has not acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Optional Protocol, nor to the 1954 Convention relating to the Status of Stateless Persons or to the 1961 Convention on the Reduction of Statelessness. The Committee is particularly concerned that the implementation of the current provisions of the Immigration Act 1959/63 (Act 155) has resulted in detaining asylum-seeking and refugee children and their families at immigration detention centres, prosecuting them for immigration-related offences and subsequently imprisoning and/or deporting them.

Malaysia made representations during the UPR process that it is improving its legislative framework and has instituted administrative arrangements to provide assistance and protection to persons claiming refugee status and/or asylum seekers in possession of identification documents issued by the UNHCR. Malaysia also stated that it has established a Technical Committee to coordinate implementation of recommendations of the CRC Committee, including the protection of the rights of children of minority groups, indigenous peoples and migrant workers.

Malaysia’s policy responses to the problem of undocumented/stateless street children do not appear to be informed by standards set by CRC or the recommendations from the CRC Committee. Instead, the policy responses appear to be motivated by public order concerns and a domestic outlook. For instance, Malaysia launched a nation-wide amnesty program called the 6P Program (Program Penyelesaian Menyeluruh Pekerja Asing dan Pendatang Asing Tanpa Izin or Illegal Immigrant Comprehensive Settlement Program) in 2011, which could have positive impact on the status of undocumented/stateless children.

The six-step program involves registration, legalization, amnesty, monitoring, enforcement and deportation. Those required to register include foreign nationals who entered the country illegally and are now working and living in Malaysia, foreign nationals who have overstayed, foreign nationals who have abused their entry permit, or have falsified passes or travel documents and foreign nationals who have violated their permits. Children of illegal immigrants are also required to register under the program. Under the program, registered workers may be allowed to stay if they wish to do so and if the ministry determines that there is a need in the sector they work in. More than 2.3 million foreign workers and undocumented workers reportedly registered under the program. However, there is, as yet, no disaggregated data on how many illegal/undocumented women and children registered, and no information on actions taken to further resolve the problem of statelessness amongst some of these children.

Furthermore, the government may aggravate the predicament of undocumented/stateless children by requiring the National Registration Department to issue red birth certificates to children born to foreigners in...
This distinguishes them from Malaysian babies who will receive green-collared birth certificates. The government states that this is to ensure that such ‘foreign’ babies do not automatically gain Malaysian citizenship.

There have nonetheless been some positive measures undertaken by the government. For instance, NUR SALAM is a children activity centre established in collaboration between the Department of Welfare’s Pusat Aktiviti Kanak-Kanak (PAKK) and Yayasan Salam. It provides programs for all children in and around the Chow Kit area. Furthermore, the Education Ministry has plans to set up a school offering free education to homeless children in the Chow Kit area. The school, called Jalinan Qaseh Guidance Centre, would offer training in basic skills such as reading, writing and mathematics at the primary school level.

3. Implementation, Monitoring and Enforcement

a. Monitoring Mechanisms

The reports do not study mechanisms that monitor public authorities and private organizations and individuals in their implementation and observance of laws protecting female migrant workers and migrant children. In relation to domestic workers, the reports also do not identify any accreditation and monitoring system to ensure respect of rights and good practices among recruitment agencies. Neither is there a system in place for monitoring of workplaces of migrant women. The monitoring process is piecemeal and depends largely on complaints of abuse made to the police department, as well as to the respective embassies.

b. Complaints Process

The Bar Council has stated that redress for criminal offences perpetrated against migrants is unlikely as the possibility of arrest of a migrant complainant when lodging a complaint is high. The police department has publicly stated that it would investigate crimes regardless of whether the complainant is a migrant worker. However, this may not apply to undocumented migrant workers. In relation to complaints of domestic worker abuse, the police department has stated that whenever a domestic worker makes a complaint, the standard procedure is to inform the respective embassy, rescue the victim (if necessary), and ensure that the victim is sheltered. The police would also inform the maid agency and notify Interpol about the case and the whereabouts of the victim. As stated above, SUHAKAM provides a possible recourse for domestic migrant victims.

c. Protection and Rehabilitation

In its UPR responses, Malaysia stated that it has introduced guidelines on the requirements for employers for the recruitment of foreign domestic workers on the treatment and protection of the rights of foreign domestic workers. The Malaysian government only recently agreed to greater protection for Indonesian domestic workers after the two governments signed a protocol on 30 May 2011 to amend several provisions in the 2006 Memorandum of Understanding for the employment of domestic workers. The amendments included making it a requirement for an employer to have a working contract with the domestic worker personally, fixing the cost of recruiting Indonesian maid at RM4,511, guaranteeing one day rest day per week and allowing domestic workers to keep their own passport.

The CRC Committee stated that in light of articles 3 and 22 and other relevant provisions of the Convention, and taking into account the Committee’s General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6), Malaysia should take the following measures:


594 Hiew King Cheu. New Born Non-Malaysian be Given Red Birth Certificates (cited in 593).


596 Education for Chow Kit Kids (cited in note 501).


598 Pandiyan, Only a Small Percentage of Domestics are Abused (cited in note 473).

599 Ibid.

600 Ibid.


a) Take urgent measures not to detain children in connection with immigration proceedings unless it is necessary to protect their best interests- and then for the shortest time possible, and establish a screening process to ensure that groups with special needs, such as refugees and asylum-seekers, including their children, are rapidly identified;


c) Develop a legislative framework for the protection of asylum-seeking and refugee children, particularly unaccompanied children, in line with international standards;

d) In the absence of a national law on refugees, amend the Immigration Act 1959/63 (Act 155), or at least make use of the exception foreseen under Section 55 of the Immigration Act, with a view to legalizing the status of asylum-seekers and refugees in Malaysia;

e) If detention is necessary in a particular, exceptional case, take all measures necessary to make this as short as possible and provide for special protection and assistance measures for refugee and asylum-seeking children and their families while in detention, in line with relevant international standards.

d. Prevention Measures

The Ministry of Human Resources has put in place a compulsory half-day seminar on workers’ rights for foreign domestic workers and their employers. Furthermore, there is now a requirement that a portion of a domestic worker’s salary must be placed into a bank account in the employee’s name. This is aimed at reducing wage disputes.

The CRC Committee recommended that Malaysia ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and to seek technical assistance from the International Organization for Migration (IOM).

4. Role of Non-State Actors

a. Assistance to Victims

(i) Legal Assistance

The Women’s Aid Organization (WAO) and Tenaganita are two NGOs who have provided assistance to domestic migrant workers who have complained of abuse.

WAO’s website states that it has put in place the following protocol to handle complaints of abuse by domestic workers:

a) filing complaints with the police, Welfare and Labour Departments
b) processing applications with the Immigration Department,
c) gathering medical reports, and other evidence of abuse,
d) assisting women in obtaining lawyers and initiating civil and criminal suits,
e) lobbying the media for case coverage and advocacy.

Tenaganita has a Legal Aid Clinic that handles cases of employment violations (e.g. unpaid wages, wrongful dismissal, harassment), exploitation of workers etc. Yayasan Salam, an NGO working in the Chow Kit with the support of the Malaysian government, has helped some children obtain birth certificates so that they may register to attend government schools.

605 Ibid.

607 Ibid.

608 For instance, Tenaganita stated in August 2010 that it rescued and handled 41 cases of Cambodian domestic workers who complained of discrimination and abuse. In all of the cases, the passports of the domestic workers were held by their employers, they were not given a single day-off for rest, and none of them had a contract signed directly with the employer. Irene Fernandez, Malaysian Employers and the Misery of Cambodian Maids, (Harakah Daily, Aug 12, 2011), online at http://en.harakahdaily.net/index.php/berita-utama/press-unedited/3328-malaysian-employers-and-the-misery-of-cambodian-maids.html (accessed Jun 24, 2012).

609 Women’s Aid Organization, Migrant Domestic Workers, online at: http://www.wao.org.my/Migrant-Domestic-Workers_54_5_1.htm#prob (accessed Jun 24, 2012).


611 Doc: Treat children of sex workers like other kids (cited in note 547).
(ii) Shelters for Abused/Homeless Female Migrants

Tenaganita also runs a shelter to provide care, protection and rehabilitation to female victims of migration abuses and trafficking. WAO’s shelter also takes in domestic workers who have been abused or abandoned.

(iii) Community Assistance

Yayasan Salam helps street children and seeks to create a safer environment for these children. The organization collaborates with the Malaysian Department of Welfare to run a 24-hour Children Activity Centre where children are taught English and participate in activities such as drawing, singing and dancing. Yayasan Salam has plans to convert a three-storey office space into a hostel to house the children.

b. Prevention Programs

Women’s organizations such as WAO and Tenaganita have been involved in campaigning for stronger legislative protection for domestic migrant workers. Tenaganita advised Cambodia to continue its moratorium on its citizens working as domestic workers in Malaysia. Measures advocated include obligating the Ministry of Human Resources and Labour Department to conduct arrival orientations for migrant domestic workers during which migrant workers can be provided with emergency telephone numbers and other resources for dealing with abuse. Domestic migrant workers should also be informed of their rights. At the same time, employers should undergo educational training or provided a guide outlining employers’ responsibilities, application processes and a list of offences and their penalties under law.

The ILO Tripartite Action to Protect Migrant Workers from Labour Exploitation (the TRIANGLE project) collaborates with local constituents and partners in Malaysia to study local attitudes and promote local understanding of migrant workers. The broader project aims to strengthen the formulation and implementation of recruitment and labour protection policies and practices.

A number of local NGOs and SUHAKAM are active on the issue of stateless children, doing research, conducting workshops, and running public awareness campaigns. In relation to street children, there are also creative initiatives to engage children in the Chow Kit area. ChowKit Kita was started by two individuals, Fahmi Reza and Lew Pik-Svon, as a community-mapping project by teens and for teens of Chow Kit. The aim is to engage children in the area so as to create a sense of belonging and self-empowerment.

c. Monitoring and Cooperation

In their representations to the UPR Working Group, the Migration Working Group and the Northern Network for Migrants and Refugees Jaringan Utara Migrasi dan Pelarian (MWG-JUMP) recommended that the Malaysian government extend an invitation, inter alia, to the Special Rapporteur on the Human Rights Situation of Migrants and the Working Group on Arbitrary Detention. MWG-JUMP noted that there have been numerous reports of excessive violence and abuse by the Immigration Department of the Ministry of Home Affairs and the Malaysian Volunteer Corps (RELA) created in 1972 to assist, maintain, and safeguard peace and security. Officers arrested asylum seekers, refugees and stateless persons, including pregnant women, children and babies, during Immigration-RELA operations and denied those without UNHCR documents access to the UNHCR while in detention. Some claimed that RELA officers destroyed their UNHCR documents at the point of arrest. MWG-JUMP expressed concern that RELA officers have been granted wide powers but are exempted from prosecution.

612 Ibid.
616 WAO, Migrant Domestic Workers (cited in note 609).
617 Ibid.

619 United States State Department, Country Reports on for 2011: Malaysia (cited in note 305).
621 OHCHR Summary, 3, (cited in note 20).
622 MWG-JUMP Submission, 17, (cited in note 24); OHCHR Summary, 5, (cited in note 20).
623 Ibid.
624 Ibid.
5. Progress Indicators and Challenges

**Domestic Workers**

The paper on migrant workers issued by the Southeast Asia National Human Rights Institutions Forum (SEANF) in 2010, emphasized that a human rights approach mediated through the core concept of ‘national treatment’ should form the foundation of ASEAN countries’ approach to migrant workers. ‘National treatment’ is non-discriminatory treatment that ensures migrant workers receive treatment no less favourable than the treatment accorded to nationals of the labour receiving state.\(^{625}\) Non-discrimination on the basis of nationality is foundational to protecting migrant workers from exploitation. SEANF recommended that the proposed regional ASEAN instrument for the protection and promotion of the rights of migrant workers must require ‘the elimination of all forms of discriminatory policies and practices against migrant workers and ensure[,] that all aspects of laws and regulations on wages, labour, housing, social protection, access to grievance handling and legal procedures and judicial redress and other relevant anti-discrimination laws, are equally applied to all categories of migrants in adherence with the principle of ‘national treatment’\(^{626}\). In addition, the SEANF recommended the ratification of ILO Conventions 97 and 143, the two key ILO Conventions related to migration, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.\(^{627}\)

**Refugees and Asylum-Seekers**

Malaysia needs to re-haul its immigration system:

1. One of the first and most crucial steps is to provide refugees and asylum-seekers with formal legal status and establish a system of registration where they are issued with identity documents. These documents should come with access to relevant entitlements including the right not to be subjected to arbitrary arrest or detention.
2. Refugees and asylum-seekers should be given the formal right to work.\(^{628}\)

3. Refugees and asylum-seekers need to be protected from abuse and extortion.\(^{629}\)
4. Malaysia has to immediately cease all operations by RELA and to revoke their power and privileges.

Malaysia should ratify the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol, the major international instruments governing refugee protection. Furthermore, it should ratify the following international treaties to strengthen its commitment to international standards protecting and promoting the rights of refugees and asylum-seekers:

- International Covenant on Civil and Political Rights (ICCPR);
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- International Convention on the Elimination of All Forms of Racial Discrimination;
- International Covenant on Economic, Social and Cultural Rights (ICESCR);

**Undocumented/Stateless/Street Children**

The CRC Committee made the following recommendations to Malaysia:

a) Undertake a study on children living/working in the streets to identify the magnitude of this problem and based on the results of this study develop a comprehensive national strategy with the active participation of street children, NGOs and relevant professionals to address the situation of street children;

b) Ensure that children living in the streets are not unlawfully arrested and detained, protect them from police brutality and, where needed, secure their access to adequate legal services;

c) Ensure that street children are reached through trained street educators and counsellors and provided with adequate identity documents, nutrition, clothing and shelter as well as with social and health services and educational opportunities, including vocational and life skills training, in order to support their full development;

625 SEANF Migrant Workers Paper at 14 (cited in note 568)
626 SEANF Migrant Workers Paper at 15 (cited in note 568)
627 SEANF Migrant Workers Paper at 16-7 (cited in note 568)
629 Ibid.
d) Provide street children with adequate recovery and social reintegration services for physical, sexual and substance abuse and promote reunification with their families, when it is in the best interests of the child;

e) Raise awareness about children living in the streets in order to change negative public attitudes about them; and

f) Collaborate with and support NGOs working with and for street children and seek technical assistance from, among others, UNICEF.630

The Committee also recommended that in the light of article 7 of the CRC, Malaysia ‘continue to implement an efficient and at all stages free-of-charge birth registration system, which covers its territory fully, and undertake awareness-raising campaigns to reach the most remote areas of its territory.’631 More specifically, the Committee recommended that Malaysia ‘improve the birth registration system of non-Malaysian children born in Malaysia, children of single mothers and children born in remote areas of the country.’632 Furthermore, it urged Malaysia to allow children without official documentation access basic services, such as health and education, while waiting to be properly registered.633

6. Recommendations for Further Study

More information on the number of stateless and street children in Malaysia is required. It is acknowledged that such data is difficult to collect due to the transient nature of these children’s movements. Nonetheless, the lack of data not only makes it difficult to determine the appropriate policy responses, but also to determine the amount of resources necessary to ensure that these children are cared for.

There remains much confusion about the status of refugees and asylum seekers; there are reports that law enforcement officers treat them the same as illegal migrants. While Malaysia has sought to represent itself to the world as a liberal and progressive country committed to protecting the rights of refugees and asylum seekers,634 NGO reports suggest systemic and widespread violations of their rights.635 There have been increasing attention given and measures taken. Periodic evaluation of the efficacy of these measures is necessary to ensure that the problem is adequately addressed.

Furthermore, critical surveys and analysis of the social and personal conditions of employers who mistreat their domestic workers is necessary to ensure that prevention programs can be better designed to address the problem of domestic worker abuse.

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632 Ibid.
633 Ibid.
634 Tun Razak, War on Human Trafficking Must Continue, (cited in note 451).
635 See e.g. Amnesty International, Abused and Abandoned: Refugees Denied Rights in Malaysia at 18 (cited in note 85); FIDH & SUARAM, Undocumented migrants and Refugees in Malaysia (cited in note 339).
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C. Reports and Publications of International Organisations


**D. Government’s Reports and Publications**


Jabatan Kebajikan Malaysia


Department of Statistics Malaysia


Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study


Portal Rasmi Polis Diraja Malaysia


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F. NGOs’ Reports and Publications


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