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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Report of the Special Rapporteur on trafficking in persons,
especially women and children, Maria Grazia Giammarinaro****Addendum****Mission to Malaysia* *****Summary*

The Special Rapporteur on trafficking in persons, especially women and children, visited Malaysia from 23 to 28 February 2015, at the invitation of the Government. In the present report, the Special Rapporteur highlights the country's commitment to combating trafficking in persons, as evidenced by its legislative and policy framework, and its multidisciplinary approach in anti-trafficking measures which involves key Government agencies and some civil society organizations. She nonetheless expresses concern about, inter alia, the focus on trafficking for the purpose of sexual exploitation to the neglect of other forms of trafficking, particularly labour trafficking; and the restrictive national immigration policy focused on rapid deportation of irregular migrants, which does not provide the opportunity for accurate identification and provision of assistance to victims of trafficking. Other concerns include the placement of victims in shelters without freedom of movement and the capacity gap of enforcement officials which is further exacerbated by reported prevalence of corruption of some officials. On that basis, the Special Rapporteur makes a number of recommendations to the Government, including with regard to ratification of key international legal instruments, strengthening of national legislation and policies to combat trafficking, and increasing capacity-building activities for government officials. The Special Rapporteur also encourages the Government to address key gaps in the assistance to victims of trafficking, especially in terms of providing them effective remedies, increasing the involvement of CSOs in the provision of assistance to victims. She also calls for an

* Late Submission.

** The summary of the present report is circulated in all the official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission only.

improved justice delivery system and for strengthening its regional and international engagement in cooperating with countries of origin to address the root causes of trafficking and create more opportunities for safe migration options.

Annex

[English only]

Report of the Special Rapporteur on trafficking in persons on her mission to Malaysia

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I. Introduction and methodology

1. The Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, visited Malaysia from 23 to 28 February 2015, at the invitation of the Government. The objectives of the visit were to examine prevalent forms of trafficking in persons in the country and to assess the effectiveness of measures taken by the Government to combat trafficking in persons and to protect the human rights of trafficked persons.

2. During her mission, the Special Rapporteur visited Kuala Lumpur, Melaka, Rembau and Kota Kinabalu in Sabah. She met high-level officials including the Minister and Senior Deputy Secretary General (security) of Home Affairs; the Director General of Labour Department (Peninsular) of the Ministry of Human Resources; the Minister of International Trade and Industry; the Minister of Women, Family & Community Development, the Deputy Secretary General (Multilateral Affairs) of the Ministry of Foreign Affairs. She also met with the Chief Registrar of the Federal Court, the Deputy Inspector General of Police of the Royal Malaysia Police; and the Secretary General of Ministry of Plantation Industries and Commodities. She also exchanged with members of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants.

3. She interacted with various interlocutors including the representatives of relevant authorities at the State level, particularly the Sabah State Government in Kota Kinabalu. The Special Rapporteur also met representatives of civil society organizations working in the field of trafficking in persons. She visited an immigration detention centre (Semenyih), as well as 3 government shelters for women (Sabah), children (Rembau) and men (Melaka) victims of trafficking and interviewed some of them. She also met with representatives of the National Human Rights Commission and civil society. Finally, she exchanged with representatives of the United Nations Agencies and programmes as well as representatives of the diplomatic community. The Special Rapporteur expresses her gratitude to the Government for its invitation and cooperation and to the civil society organizations for their valuable inputs

II. Main findings

A. Forms and manifestations of trafficking in persons

4. In the context of Vision 2020 – a national program which aims to propel the country to become a developed nation by the year 2020, Malaysia has achieved remarkable economic growth over the last five decades, bolstered by low wages, oil revenues, foreign direct investment targeted at the manufacturing sector, and high global demand for its commodities – especially palm oil.¹

5. The Malaysian economy relies largely on foreign migrant workers. In an estimated labour force of 12.9 million in 2012, 1.6 million documented and an estimated 1.3 million undocumented foreign workers contributed to its low-wage economic growth strategy.² The geographic location and extended cost line of Malaysia further draw a large influx of foreign migrant workers from the Asian region notably from Bangladesh, Burma, Cambodia, Indonesia, India, Laos, Myanmar, Nepal the Philippines, Thailand, Viet Nam

¹ UNDP, Country Programme Action Plan (CPAP) 2013-2015, p. 6

² UNDP, Country Programme Action Plan (CPAP) 2013-2015, p. 6

who willingly embark on the journey to Malaysia in search of better employment opportunities in manufacturing, plantation, construction and agriculture sectors as well as domestic work.

6. While not all cases of migration result in trafficking situation, there are cases of mixed migration which include, amongst others, asylum seekers, refugees and migrants that end up in trafficking. Moreover, the prevalence of undocumented migrant workers increases their risk of becoming victims of trafficking.

7. Malaysia faces challenges as a destination and, to a lesser extent, a transit and source country for men, women, girls and boys subjected to trafficking in persons. As a destination country, it receives trafficked persons, mainly from East Africa, Middle East, and South Asia. Trafficked persons may also transit through Malaysia to destination countries in the Middle East. As a source country, Malaysians are trafficked to countries such as China, France, Japan, Singapore, Thailand, and the United Kingdom.

8. This report focuses on prevalent forms of trafficking in Malaysia as a destination and transit country and assesses the effectiveness of its counter-trafficking responses within the country. The Special Rapporteur learnt that the below forms of trafficking are particularly widespread in the country.

1. Trafficking for labour exploitation

9. Typically, cases of labour trafficking in Malaysia involve primarily semi-skilled and low skilled migrant workers from the Asia Pacific region for arduous and unpleasant work in the agricultural, construction, manufacturing sectors and domestic work. There are also indications that fishermen mainly from Cambodia, Burma and Myanmar, are trafficked for bonded labour to work on Thai fishing boats in Malaysian waters. The Special Rapporteur was informed that those who escape from those boats in Malaysian coasts are often reportedly re-trafficked into palm oil plantations in Sarawak State.

10. Victims of labour trafficking are recruited through fraud and deception about the type and conditions of employment by unscrupulous recruitment agents -in source countries and Malaysia- and employers, most commonly through breaches of contracts, payment of excessive recruitment and immigration fees, reduction or non-payment of salary, excessive working hours, and lack of rest. Many find themselves in situation akin to debt bondage to repay exorbitant debts for their journey owed to traffickers (including recruitment agencies) when promises of well-paying employment turn into exploitative situations.

11. Migrant workers are dependent on their employers for their work permit, which is necessary to legally remain in Malaysia. This leaves trafficked workers in a vulnerable position: if they report or escape their exploitative conditions, employers can simply revoke their work permit making them irregular migrants, lose their livelihood and be expelled from the country. In some cases, foreign workers' vulnerability to exploitation is heightened when employers neglect to obtain proper documentation for workers or employ workers in sectors other than those for which they were granted an employment visa. Practices such as withholding of passports by employers are reportedly common and contribute to the trafficking situation.

2. Trafficking for domestic servitude

12. There are over 300,000 migrant domestic workers estimated in Malaysia,³ the majority of whom are women from Indonesia, the Philippines and Cambodia. While all domestic workers are not victims of trafficking, a large number of these women and girls are trafficked into domestic servitude by employment agencies in their home country and in Malaysia, and employers in Malaysia, at times with the alleged complicity of state officials. Many fall victims to debt bondage when they assume an initial debt as part of the terms of employment. Widely reported abuses and exploitation that further contribute to the trafficking situation include breaches of contract, excessive recruitment fees, non-payment of salary, deductions from low wages, excessive working hours, lack of rest days and withholding of passports. Many domestic workers have also experienced unimaginable physical and mental abuse at the hand of their employers from being deprived of food, to beatings with electrical wires, scalding with hot water, harassment, psychological abuse and sexual assault.

13. Owing to the hidden nature of their work conducted in private homes, fear of arrest and eventually deportation, they are unable to leave their employers and seek redress for human rights violations. The rare instances where complaints are lodged to police by the victims or NGOs are not acted upon. Instead, it is not uncommon for the victims to be intimidated for leaving their employers and be returned back to them or employment agencies with threats rather than being offered protection and alternative employment.

14. Moreover, underage victims whose information and age are incorrectly reflected in their passports/documents by recruitment agencies face additional distress to escape their abusive employers for fear of being caught and reprimanded for having falsified documents.

3. Trafficking for sexual exploitation

15. Malaysia is a destination for trafficking of women, girls and boys into the sex industry. Factors contributing to trafficking in women and children for sexual exploitation include the demand for sexual services, the prevalence of tourism and the existence of a large migrant workers community. Young foreign women (including those from East Africa, Middle East, Russia South Asia) are lured with false promises of legal work in Malaysia such as domestic workers, babysitting, waitressing and modelling, but are subsequently coerced into the commercial sex trade. Since 2014, CSOs have also noted an increase in the prevalence of trafficking in boys in the sex industry in Malaysia. Trafficking of children for sexual exploitation is reportedly emerging within communities of irregular migrants.

16. Additionally, there is a growing trend of trafficking victims to employers/businesses to gratify the sexual needs of male migrant workers. Some employers are also known to reward the performance of employees by providing sexual incentives. Moreover, there are indications of Vietnamese women and girls who enter into brokered marriages in Malaysia and are subsequently forced into sexual exploitation to repay their 'marriage' debts which ranges from between USD4, 000 – USD6, 000. Trafficking of Malaysian girls and women for sexual exploitation, to tourist destinations within the country have also been noted.

17. As a transit country, victims from Indonesia primarily transit through Malaysia en route to Middle Eastern countries to circumvent anti-trafficking protection measures put in place by the their government.

³ Migrant Working Group and Northern Network for Migrants and Refugees , Joint UPR Submission - Malaysia, (2009), p.2.

18. Organized crime syndicates are allegedly responsible for some trafficking cases. They usually take advantage of the vulnerable and disadvantaged situations of the victim, arrange for their travel to Malaysia, process their travel documents and visas including student visas. Once in Malaysia, the victims' passports are confiscated, and they are forced to provide sexual services to repay the debts incurred for their travel. If they refuse, they are beaten up and threatened that if they run away or go to the police they would risk imprisonment before being deported for immigration offenses and/or soliciting prostitution. They are watched and accompanied at all times.

4. Other forms of trafficking in persons

19. Refugees and asylum seekers in Malaysia lack recognition of their status or the ability to work legally in Malaysia who is not a signatory to the 1951 UN Convention on the Status of refugees or its 1967 Protocol.⁴ As a result, this category of persons is subject to becoming vulnerable to trafficking. This is true especially for Rohingyas from Myanmar who typically embark on maritime and overland journeys often via Thailand to arrive in Malaysia. Initially smuggled across borders, some are subsequently trafficked to fishing boats and palm oil plantations for labour exploitation ending up in bonded labour to repay their transportation debts. Others are held captive and abused in Malaysia until ransom is paid by their relatives.

20. There are also indications of child trafficking for the purpose of forced begging amongst the refugee population, mostly Rohingya children. Most perpetrators in the identified cases are alleged family members or traffickers who pass off these children as their own.

21. In addition, the Special Rapporteur was informed that a significant number of refugees, asylum seekers and stateless persons, particularly those from the Pilipino and Indonesian communities in Sabah, and Rohingyas from Myanmar are increasingly becoming victims of trafficking. Their lack of formal recognition significantly restricts their and their children's ability to obtain education, employment opportunities, health services, freedom of movement and access to justice. This in turn makes them easy preys of unscrupulous traffickers and employers who exploit them with impunity. Their children are vulnerable to being trafficked for labour exploitation. There is also anecdotal information that undocumented older children are easily trafficked for drug-running. Finally, there are also reports of children being trafficked for adoption purposes from Singapore to childless families in Malaysia as a destination country.

B. Criminalisation of irregular migration and the impact on trafficked persons

22. The Special Rapporteur recognises that the economy of Malaysia relies to a large extent on low- or semi-skilled labour of migrant workers, particularly in sectors such as construction, manufacturing, services, plantation, agriculture, plantations, and domestic work. However, the Special Rapporteur observed that Malaysia's approach to migration effectively relies on the criminalisation of irregular migrants. Where not carefully designed, such an approach which criminalises irregular migrants increases their vulnerability to become victims of trafficking. She cautions that what begins as a migration project could turn into trafficking when migrants are placed in exploitative situations during their journeys or at destination, and when their rights are drastically limited or completely

⁴ Nevertheless Malaysia provides assistance and protection on a case-by-case basis to some refugees and asylum seekers in collaboration with UNHCR and other international organizations

denied. The categorisation of all members of this group as irregular or undocumented is detrimental to the identification of potential victims of trafficking.

23. Irregular migration is prohibited under the Immigration Act (1959). The law envisages severe penalties for convicted undocumented workers who are subject to fines up to MR10,000, up to 5 years imprisonment and deportation. Whipping (canning) of those convicted for irregular entry is not an uncommon penalty.

24. Arrested undocumented migrants may legally be held up to 14 days before being brought to a magistrate contrary to the 24 hours time-frame guaranteed in the Constitution. Sentences are passed following summary hearings in special immigration courts by some magistrates whose capacity to deal with migration, refugee, asylum or trafficking issues are reported to be low. Given the expedited nature of the proceedings, it is also not clear to what extent judicial guarantees such as legal representation and explanation of available remedies is systematically provided to migrants who are subsequently placed in detention centres awaiting deportation.

25. The strong political inclination towards criminalizing and prosecuting irregular migrants may have unintended negative consequences for the victims of trafficking in spite of some protection against immigration related criminal prosecution in the Anti-trafficking Act (2007). Irregular migrants wanting to report abuse, including trafficking and labour exploitation, risk exposing themselves to the real danger of being charged for the offence of “irregular entry or stay”, detained and ultimately expelled. As a result, many irregular migrants are afraid to contact the authorities and avoid seeking legal protection and remedies, even when they are entitled to them. This approach that emphasizes national security also leads to the criminalization of victims for crimes committed while being trafficked and for which they should not be held liable.⁵

26. In order to promote a safer labour migration, the Government entered into bilateral memorandums of understanding with several neighbouring countries (see part J below) which facilitate and provide legal avenues for migration and recruitment of migrant workers from these countries. Furthermore, in an attempt to regularize the situation of irregular migrant workers already in the country, the Government launched an Illegal Immigrant Comprehensive Settlement Programme (6P Programme) in 2011, whereby irregular migrants were allowed to register and be either legalised and deported back to their countries without prosecution. It is noteworthy that Malaysia’s handling of irregular migrants has occasionally become an issue of contention in its relation with neighbouring countries.

27. However, opportunities for safe migration for low-skilled labour remain inadequate. Regulation of employment agencies is ineffective, regardless of the fact that licensing of new employment agencies is on hold and renewal of licenses of existing agencies will not be extended beyond 2021.

C. Legislative, policy and institutional framework

1. Legislative framework

International and regional framework

28. Malaysia is party to the Protocol to Prevent, Suppress and Punish Trafficking in persons, especially women and children supplementing the United Nations Convention

⁵ See OHCHR Principles and Guidelines on Human Rights and Human Trafficking.

against Transnational Organized Crime (hereafter Trafficking Protocol) and a number of international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It has also ratified the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105) and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization (ILO).

29. Regrettably, Malaysia is not party to the 1951 convention relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons and lacks a formal legislative and administrative framework to address refugee matters. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 2011 ILO Domestic Workers Convention and the 2014 Protocol on Forced labour are also not ratified, while the Abolition of Forced Labour Convention 1957 was denounced in 1990.

30. At the regional level, Malaysia is a founding member of the Association of Southeast Asian Nations (ASEAN). It is party to a number of binding and non-binding instruments including the ASEAN Human Rights Declaration and the Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries. It supports the ASEAN sectoral bodies such as the ASEAN Commission on the rights of Women and Children and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. As a member of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process), Malaysia continues to support the practical measures to help combat trafficking in persons and related transnational crime in the Asia-Pacific region.

National framework

31. At the national level, slavery and forced labour are prohibited in section 6 of the Federal constitution.

32. Malaysia's Anti-Trafficking in Persons Act of 2007 was amended in 2010 and renamed the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (hereafter Anti-trafficking Act). In line with the Trafficking Protocol, the adopted definition of trafficking in persons is comprehensive and criminalises all aspects of trafficking including labour trafficking (section 2(g)). Trafficking in persons for the purpose of exploitation carries up to fifteen years imprisonment and a fine (section 12). The Offence of trafficking in persons by means of threat; use of force or other forms of coercion; abduction; fraud; deception; abuse of power; abuse of the position of vulnerability; or payments/ benefits to obtain the consent of a person having control over a trafficked person, envisages between 3 to 20 years of imprisonment and a fine (section 13). Profiting from exploitation of a trafficked person leads to up to 15 years of imprisonment, payment of fines and forfeiture of the profits from the offence (section 15). Whereas the offence of bringing in transit a trafficked person through Malaysia or facilitating such act, result in imprisonment of up to 7 years and a fine (Section 15A).

33. Trafficking in children, is punishable with imprisonment ranging from 3 to 20 years and a fine (section 14). In line with the Trafficking Protocol, trafficking offence in cases involving children do not require specified consent to be used (section 13).

34. The law envisages punishment for trafficking offenses committed by corporate bodies, employees or their agents. (section 64) Offenses under the Act apply to cases of trafficking that occur in Malaysia as a source, transit or destination country. It is also applicable to offenses committed by Malaysian citizen and permanent residents outside Malaysia. (section 3 and 4)

35. In addition to the Anti-trafficking Act, other legislation may be invoked to prosecute trafficking or trafficking-related offences. The Penal Code punishes offences that may amount to trafficking and other forms of exploitation, such as trafficking for purposes of prostitution⁶ and forced labour.⁷ It criminalizes the habitual dealing in slaves (sections 371). Prostitution is not a criminal offense per se in the Penal Code, but soliciting prostitution leads to up to 1 year of imprisonment and/ fine (section 372 B). Exploitation of a person for purposes of prostitution; living on or trading in prostitution of another person; and owning and managing brothels lead to up to 15 years of imprisonment, whipping and payment of fines (Section 372 and 372). Moreover, foreign prostitutes or persons living on or receiving the proceeds of prostitutions are considered as prohibited migrants and subject to expulsion from the country under section 3e of the Immigration Act (1955).

36. The Employment Act (1955) sets out minimum labour protection standards and is applicable to employees whose wages are RM2,000 and below, and all manual labourers irrespective of wages. Among others, the Act provides for the limitation of working hours, the provision of paid leave and overtime pay. Its scope extends to foreign employees together with, inter alia, the Employment (Restriction) Act 1968 (Act 353) (Revised 1988) which governs employment permits, registration, and restrictions for non-Malaysian citizens and the Immigration Act (1957). Domestic workers, labelled as 'domestic servants', are covered by the Employment Act. However, they are excluded from protection under key articles of the law, including those on fair termination of contract (Articles 12 and 14), on minimum number of working days per month (Article 16), on maternity provisions (Parts IX), on rest days (Part XII), hours of work, holidays and other conditions of service (including annual leave and sick leave) and on termination, lay off and retirement (Part XIII). They are also out of the purview of the Domestic Violence Act 1994 (Act 521) which provides legal protection for victims of violence in the home and supplements the Penal Code.

37. The Children and Young Persons (Employment) (Amendment) Act 2010, provides for the conditions of their employment in light work within the family, specific public entertainment, apprenticeships, and work sponsored by the government. It forbids night work and underground work for children and young persons, and sets forth hours of work.

38. The Private Employment agencies Act (1981) regulates the recruitment agencies. It requires all recruitment agencies to be licensed and to deposit a security bond, and limits the amount of fees chargeable for recruitment services. It also provides the Director General of labour broad inspection and investigatory powers, including the ability to cancel licenses and to dispose of the recruitment bond for breaches. Listed offences include overcharging for recruitment agency services, and providing false or incorrect information. However, complaint mechanisms are unspecified and worker rights and obligations are not defined.⁸

39. The Child Act 2001 (Act 611) establishes standards for treatment of children and provides for the care, protection and rehabilitation of children in need. The act prohibits exploitative acts often committed in the process of trafficking, such as the procurement of a child for purposes of prostitution/the purposes of sexual intercourse either within/outside Malaysia.⁹ Moreover, the transfer of custody or control of a child for any valuable consideration is considered as an offense under Section 48. It also condemns the bringing in

⁶ Section 372 and 373, Penal Code [Act 574]

⁷ Section 374, Penal Code [Act 574]

⁸ UNIAP, Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region (201), p.17

⁹ Sections 43 and 44, Child Act

Malaysia of a child by false pretences and the taking out of Malaysia a child without appropriate consent of his/her legal custodian.¹⁰

40. The Passports Act 1966 (Act 150) which also aims at preventing the abduction and trafficking of children, criminalises the withholding of passports and documents with payment of fine or up to 5 years imprisonment or both (section 12 (d)).

41. Other legislation relevant to cases of trafficking in persons include the maritime Enforcement Agency Act (2004), Customs Act (1967), Security Offences Special measures Act, Anti-Money laundering and Anti-terrorism financing Act.

2. Policy framework

42. Since 2010, Malaysia has a 5 years National Plan of Action to Combat Trafficking in Persons which focuses on nine programme areas including strengthening the legal mechanisms, joint actions among law enforcement agencies, prevention, protection and rehabilitation, capacity building and partnership. While the policy is a positive initiative to address human trafficking, particularly labour trafficking, information was not provided regarding the achievements reached by the plan, its implementation and monitoring. At the time of the visit, the Special Rapporteur was informed that the Action plan for 2015-2020 was being finalised.

43. Other policies relevant to trafficking effort include the Policy on recruitment of foreign workers (1991) which provides guidelines for treatment of foreign workers. This includes inter alia that wages, benefits and terms of conditions of employment be similar to those for nationals, that migrant workers have written contracts and that costs of recruitment and repatriation be borne by the employer. Nevertheless the Special Rapporteur received information that this policy is not regularly enforced.

3. Institutional framework

44. The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (hereafter the Council) was established in 2008. It is responsible to inter alia co-ordinate the implementation of the Anti-trafficking Act in cooperation with governmental departments and international organizations. It is mandated to collect data and monitor migration patterns with a view to formulating and implementing anti-trafficking policies and programmes which focus on prevention and protection of victims. It also advises the government on developments at the international level.¹¹

45. This multidisciplinary structure of the Council is led by the Ministry of Home Affairs, which acts as its secretariat at the national and provincial levels. The Council comprises of the Attorney-General and high-ranking officials of various Government agencies including the Ministry responsible for Internal Security; Foreign Affairs; Women, Family and Community Development; Human Resources; Transport and Information. The Special Rapporteur noted with concern the absence of key government offices dealing with the sectors of industry, trade, plantations, construction, textile where human trafficking may take place. She encourages the Government to pursue its intention of enlarging the Council with relevant institutions at the peninsular and state levels.

46. The Council is composed of 5 committees: 1)Legislation Committee headed by the Attorney-General's Chambers; 2) Victim Protection and Rehabilitation Committee headed by the Ministry of Women, Family and Community Development; 3)Media and Publicity Committee headed by the Ministry of Information, Communications and Culture; 4)Special

¹⁰ Section 49 and 52 , Child Act

¹¹ Section 7, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM)

Committee to Study the Issues of Labour Trafficking headed by the Ministry of Human Resources and 5) Enforcement Committee headed by the Royal Malaysian Police. The main function of this committee is to rescue victims of trafficking, detain, investigate, prevent, raise awareness and build capacity of its members.

47. Furthermore, the National Human Rights Institution plays an active role in combatting trafficking in person as it also receives and inquires into complaints of alleged human rights violations including complaints relating to trafficking in persons, and monitors shelters and detention facilities. It proposes and formulates policies and standard operating procedures, raises awareness and engages with stakeholders at the national, regional and international levels.

48. The Special Rapporteur commends the establishment of the Council and its initiatives to combat trafficking. However, she observed that coordination of work between government bodies remains a challenge partly due to their varying level of commitment to the issue of trafficking, their understanding of trafficking and its impact/relevance to their work. Of further concern is the limited information sharing and incoherent coordination between government bodies at the federal and state levels particularly noted by the Special Rapporteur in Sabah for instance, where a number of authorities appeared not to be aware of the anti-trafficking initiatives and work undertaken by the Council. Moreover, while 5 NGOs are formally affiliated with the Council and included in policy discussions, there is a need to widen the scope of civil society participation.

D. Identification of trafficked persons

49. Members of the enforcement committee of the Council, namely officers within the Anti-trafficking Unit of the Royal Malaysian Police; the immigration department; the royal Malaysian customs; the maritime agencies and labour department have the primary responsibility for identifying trafficked persons in collaboration with each other. Identification of victims is undertaken on the basis of standard operating procedures for enforcement agencies dealing with human trafficking and smuggling of migrants developed by the Council in 2013.

50. While there is increasing recognition of trafficking for labour exploitation, trafficking in persons in Malaysia is viewed primarily as a problem concerning women and children trafficked for sexual exploitation. Statistics from the Royal Police reveal that from 2008 to 2014, 509 cases of trafficking for sexual exploitation were identified, while 291 were cases of forced labour and none was identified for other forms of exploitation.¹² This is partly explained by the fact that raids and rescues conducted by the police in entertainment industry are the main means of identifying victims of trafficking.

51. The Special Rapporteur heard allegations of corruption of law enforcement, which often hampers the effective identification of trafficked persons. She was informed of numerous cases in which immigration; police and maritime enforcement officers were directly implicated in trafficking in persons or turned a blind eye to the situations of trafficked persons. The prevalence of corruption coupled with the inadequate capacity of enforcement officers to accurately identify trafficked persons results in deep mistrust of law enforcement officers by trafficked persons and those at risk of being trafficked, such as migrants, refugees and asylum seekers.

52. There are two categories of labor officers within the Labor Department of the Ministry of Human Resources- generalists, who conduct inspection to identify forced labor

¹² Royal Malaysian Police, Statistic provided during the visit of the Special Rapporteur

in work places and specialists. As part of enforcement officers, specialist labour inspectors are also empowered to identify and investigate cases of trafficking, as well as rescue victims. They also apprehend suspects and testify in court.

53. In 2014, a total of 42,804 labour inspections were conducted in the country; 30,228 in Peninsular Malaysia; 7,952 in Sabah and 4,624 in Sarawak. Specialist labour inspectors investigated 7 cases, out of which 2 cases of trafficking were identified while 5 cases were referred for investigation under the Employment Act. This indicates that cases involving confiscation of passports or withholding of salaries are often misidentified as labour offenses owing to the absence of clarity between the notion of trafficking for the purposes of labour exploitation and other labour cases, the fact that labour inspectors specialised in labour trafficking are few compared to the number of workplaces and not sufficiently trained.

54. Other factors that contribute to low identification of cases of trafficking in sectors typically linked with it, is the lack of clear understanding of the issue of trafficking by authorities- an attitude which could hamper national anti-trafficking initiatives. A case in point is the apparent unwillingness by the Ministry of Plantation to identify possible situations of trafficking for labour exploitation on the grounds that the palm oil market is highly competitive, tightly regulated and the prevailing child labour in this sector is culturally accepted. The Special Rapporteur wishes to reiterate that in an industry relying on low skilled migrant workers, the prevalent recruitment practices of foreigners and credible information from stakeholders, human trafficking cannot be excluded from this sector.

55. There is also a real danger of misidentifying victims of trafficking as irregular migrants, resulting in their arrest, detention and deportation (as mentioned above). Once in the immigration detention centre, the Special Rapporteur found there was no possibility to identify potential victims and reversing their deportation. In this regard, she noted that out of the 4 random persons she interviewed at an immigration detention center in the course of her visit, 2 could have been identified as trafficking cases by trained officers. These persons will instead be deported without proper assessment of whether or not their return would be safe or at risk of re-trafficking.

56. In addition, there is a lack of appropriate infrastructures and services designed to facilitate the identification of trafficked persons, such as hotlines dedicated to trafficked victims. The Ministry of Women, Family and Community Development maintains a “15999” national helpline (Talian Nur), which operates 24 hours a day, seven days a week to address a variety of social concerns, such as domestic violence, child abuse. Similarly the Kuala Lumpur police hotline “999” operates 24 hours a day to receive public complaints on a number of issues. Regrettably, these hotlines are available only in Bahasa Malaysia and English, notwithstanding the fact that trafficked persons in Malaysia mostly speak other languages. The lack of capacity of operators to accurately identify victims from the callers and provision of information for their protection is an additional aspect that hinders identification.

E. Protection

1. Shelters

57. Protection officers appointed by the Ministry of Women, Family and Community Development are responsible for the protection, care and supervision of victims of

trafficking in shelters.¹³ Protection for identified or potential victims of trafficking is provided on the basis of Interim Protection Orders and Protection Orders issued by magistrates. Identified or potential victims of trafficking are placed by enforcement officers in temporary custody and brought before a Magistrate within 24 hours for the purpose of obtaining an Interim Protection Orders which places them in a shelter for fourteen days while investigation is carried out. Based on the outcome of the inquiry of both the enforcement and the protection officers, the status of the persons as a victim of trafficking in need of care and protection is determined by the magistrate through a Protection Order that places victims from Malaysia and those permanently residing in the country up to 2 years in a shelter.¹⁴ Foreigners who are identified as victims of trafficking stay in shelter for 3 months before being expelled to their country of origin. Whereas those not found as victims are immediately deported. Protection Orders can be extended under exceptional circumstances such as completing the recording of the victim's evidence.

58. In 2014, 1,684 rescued individuals were granted Interim Protection Orders out of which 303 were granted Protection Orders and placed at the Government Shelter Home. The overwhelming majority of identified victims were female (295 female and 8 male victims) mainly from Indonesia (141), Vietnam (91) and Philippines (31).¹⁵

59. The ministry of women currently runs 8 shelters. The Special Rapporteur was impressed by the standard of the 3 government shelters for children, women and men victim of trafficking she visited which were modern, clean and provided limited access to psychological, medical, language and other support services in collaboration with few NGOs. While the committed and dedicated staffs in the shelters do their utmost within available resources, there is an evident lack of capacity to provide comprehensive support to victims including psychological and legal. For instance, although trafficked victims in the shelters come from various countries spoke different languages and dialects, there are no onsite interpreters available to assist them on a daily basis. Furthermore, trafficked persons are not provided with suitable educational and vocational trainings during their stay in the shelter. Women and girls are provided with vocational training traditionally associated with women, such as sawing, cocking and handicraft, which may not correspond with their ambitions and talents, or the needs of the labour market.

60. What is perhaps more alarming is that assisted victims are kept in closed shelters deprived of freedom of movement and punished for escaping. The Special Rapporteur is concerned that in effect, such shelters are equivalent to detention centres where trafficked persons are treated as criminals in custody rather than victims placed in a refuge for care and protection from further harm. Victims are also prohibited from working while in shelters.

61. The fact that they are unable to leave and work outside the shelter is reported to create a strong disincentive among trafficked persons in Malaysia to be identified as such. Nearly all of the victims that the Special Rapporteur interviewed were not clear of the significance of their status and its resulting entitlement and expressed their wish to be released from the shelter to work and pay back debts.

62. Some civil society organizations have the capacity to provide protection and assistance to victims of trafficking. However, they are presently not legally considered as protection officers and are not able to contribute to the fight against trafficking. Their support is sought on an ad hoc basis because of the lack of enabling legislation designating them as protection officers with the responsibility for the care of victims and the

¹³ Section 43, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM).

¹⁴ Sections 51 -44, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM).

¹⁵ The Council, Progress report 2014/2015, p.iii

identification of victims of trafficking. The Special Rapporteur hopes that the pilot project being considered by the Ministry of Women, Family & Community Development to enable NGOs to manage shelters will be implemented taking into consideration inter alia, the need of victims, and the capacities and autonomy of NGOs. Moreover, NGO run shelters are not recognised as gazetted place of refuge for victims of trafficking. The Special Rapporteur hopes that the Council's intention to amend the anti-trafficking act for a more effective collaboration with CSOs is concretised without delay.

2. Non-criminalization of trafficked persons

63. Section 25 of the Anti-trafficking Act provides for the non-criminalisation of identified trafficked persons for offences related to their irregular entry and unlawful residence in Malaysia, as well as the procuring and possession of fraudulent travel documents for the purpose of entering the country. However, immunity from criminalisation is not provided to all offenses committed by victims as a consequence of their trafficking, though it would be possible to provide such exemptions on a case by case basis under the general exception part of the Penal Code.¹⁶

3. Rescue operations

64. According to information provided by the Council, in 2014, 6 integrated operations to rescue victims of trafficking were conducted jointly by the officers from the police, customs, maritime enforcement, immigration and labour, in addition to individual operations by one of those enforcement agencies. Raids, particularly in the entertainment/sex industry were the main means of identifying victims.

65. The Special Rapporteur noted with concern that such operations often do not fully respect victims' human rights as victims pointed out that limited information, often without translation, is offered to them with regard to why they have been apprehended or what their rights are at the time of the raid and in subsequent interviews and during detention. Physical and emotional abuses by law enforcement officials were also mentioned during the interviews. Moreover images and photographs of such victims regularly features in the media in spite of the guarantees of privacy envisaged in the Anti-trafficking Act.

F. Investigation, prosecution and punishment

66. Investigation for offences under the Anti-trafficking Act (Section 28) is conducted by enforcement officers which include police, immigration, customs and maritime officers with the power to arrest, conduct search and seizure, and examine persons. Considered as enforcement officers, labour inspectors are also empowered to identify and respond to trafficking for forced labour. A standard operating procedure for enforcement officers (mentioned in para 51 above), guides methods of accomplishing tasks and establishes general performance standards including in the area of investigation, raid, arrest, rescue, networking/ coordination among enforcement agencies among others.

67. A number of factors hamper effective and swift investigation of trafficking cases. These include limited coordination among enforcement agencies and skills to handle cases of trafficking, as well as corruption. Moreover, it has been brought to the Special Rapporteur's attention that on several occasions' credible requests to investigate further on

¹⁶ See for example section 94 of the Penal Code which provides general exceptions for acts to which a person is compelled by threats to commit.

cases of trafficking of children for begging in well-known hotspots have remained unheeded.

68. A corollary of this is the low rate of prosecution. The Attorney-general's office reported that 38 cases of trafficking were prosecuted in 2014, interestingly; the majority of cases (26 cases) were for forced labor exploitation, while 12 were for sexual exploitation. However only 3 convictions were secured related to labor exploitation, 2 ended in acquittals, 1 case was discharged and the rest were still pending trial. The Special Rapporteur was also informed about sanctions against an employer who had confiscated the passports of 29 victims of trafficking and who was fined for RM5,000.

69. The Special Rapporteur acknowledges the positive measures taken to prosecute cases of human trafficking. These include the appointment of 28 deputy public prosecutors within the Attorney General's chambers specialized in trafficking; the issuance of a directive to investigate all cases involving foreigners under the Anti-trafficking Act except where offences committed fall within the ordinary criminal law; the issuance of another directive for the referral of all investigated cases of trafficking to the Attorney-General's Office before the institution of prosecution, the possibility of converting charges made against perpetrators under the Penal Code and Immigration act to the Anti-trafficking Act; and the introduction of a coding system for registration of cases of trafficking to ensure priority proceedings in court. A Standard Operating Procedures (SOP) for Prosecution launched in 2013 further aims to standardise and create uniform approach when dealing with cases of trafficking.

70. Authorities cited the reluctance of victims to cooperate with law enforcement authorities as one of the main reasons for low prosecution rates. While noting that assistance to victims should be provided irrespective of their collaboration with authorities as provided in the Anti-trafficking Act and the Trafficking Protocol, the Special Rapporteur wishes to highlight that short reflection periods (3 months for foreigners), lengthy human trafficking trials, limited legal assistance and information on their case, confinement in shelters, inability to work while in confinement, fear of reprisal when reporting traffickers and deportation are factors that further discourage victims of trafficking from identifying themselves as such and collaborating with enforcement authorities.

71. Furthermore, in spite of ad hoc training on the anti-trafficking Act, prosecutors and judicial officers were not sufficiently familiar with this law. Lack of clarity between trafficking for forced labour and other labour crimes also emerged as a clear concern affecting investigations and adjudication of such cases.

G. Redress

72. Compensation and restitution are an integral part of effective remedies for victims of trafficking under international law and standards.¹⁷ In Malaysia, neither compensation nor a national compensation scheme for victims of trafficking is envisaged under the anti-trafficking act. Nevertheless, victims of trafficking may file separate civil and criminal claims for compensation, though information of cases in which victims were awarded such compensations was not available.¹⁸

73. Another important means of redress, specifically for victims of labour trafficking, is the recovery of unpaid wages. While not envisaged in the Anti-trafficking Act, victims may

¹⁷ Palermo Protocol art.6(6) and OHCHR recommended principles and guidelines on human rights and human trafficking, guideline 9

¹⁸ Section 426, Criminal Procedure Code (Act 593)

nevertheless raise claims against their employers through either of two administrative processes, one before the Labour Department for claims concerning wages or any other payments in cash due to them (wrongful deductions, unpaid wages, or unpaid compensation in the event of workplace injuries) and the other through the Industrial Relations Department for unfair dismissal.¹⁹

74. In certain circumstances, the Special Rapporteur is of the view that permanent or temporary residence in itself may be a necessary and appropriate form of remedy. This consideration is particularly pertinent in the case of Malaysia, where trafficked persons returned to their country of origin can be at serious risk of being re-trafficked or of severe violations of their human rights. In this regard, she acknowledges the recent steps taken by the Government to allow victims of labour trafficking to remain and work legally in Malaysia (see para 78 below).

75. Besides assuming that victims are aware of their rights and systematically benefit from legal assistance, the above-mentioned redress mechanisms require taking additional steps and incurring costs for lengthy trials. Moreover, tying restitution to the successful conviction of perpetrators in civil and criminal proceedings makes restitution contingent upon victims' cooperation in judicial processes. This deprives those victims who are reluctant to file complaints against their traffickers and those whose cases were unsuccessful in court, from obtaining restitution and compensation. There are also concerns that cases resulting in the awarding of compensation are limited to cases of labor exploitation in sectors other than the entertainment/sexual industry. Moreover, there is an imminent risk of deportation of victims of labour trafficked who file cases against their employers as a result of the possible cancellation of their work permits by employers. Finally, the capacity of practitioners to correctly distinguish between cases of labour trafficking and other labour disputes also affects the type of redress awarded to victims. In the face of these obstacles, many victims opt to give up their rights to pursue claims even if their cases are compelling.²⁰

H. Repatriation and reintegration

76. Under the anti-trafficking act, the fate of all victims of trafficking, whether identified or not, is their immediate removal from Malaysia.²¹ However, it is not clear what the procedures of return are and what safeguards are in place to ensure their safety and avoid their re-victimisation.

77. In January 2012, victims of trafficking were allowed to take up employment in the country after completion of their stay in shelters. Subsequently, the first batch of 33 victims composed of 32 Bangladeshi and 5 Indians took up employment offers. In March 2014, a government policy amending the Anti-trafficking Act provided victims of labour trafficking that do not require further care and protection, the possibility to work without completion of their Protection Order. Upon fulfilment of some conditions/requirements, victims involved mainly in cases related to wages dispute can obtain Special Immigration Passes renewable on a monthly basis. These Passes cost MR 100, are only renewable up to 3 months, and do not allow the right to work. Upon securing new employment, these will be replaced by Temporary Employment Work Passes. Those who are unable to secure new employment

¹⁹ Section 69 Employment Act (1955) and Industrial Relations Act 1967

²⁰ Amnesty International -Trapped: The Exploitation of Migrant Workers in Malaysia (March 2010), p. 67-69

²¹ Section 51 and 54, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM) , Sections 8 and 32, Immigration Act

within the stipulated period will be sent back to their countries.²² At the time of visit of the Special Rapporteur, 8 female victims of trafficking were allowed to remain and work in Malaysia as domestic workers and as workers in an international Hotel through this programme.

78. While these are encouraging initiatives, this policy may be applicable to only a very limited number of victims of trafficking. Having valid travel documents for entry into Malaysia; valid contracts of employment and financial means to pay the monthly fees for the Special Passes are required conditions for victims to be considered under this programme. They also depend on the approval of the Ministry of Home Affairs, embassies as well as employers' approval for time-off to enable victims to participate in legal procedures. Finally, the scope of this policy restricts its application only to victims of trafficking for the purpose of labour exploitation and does not address other types of exploitations contrary to both the Anti-Trafficking Act and the Trafficking Protocol.

I. Prevention

1. Public Awareness

79. The Government has taken a number of measures aimed at preventing trafficking in persons, primarily in the form of awareness-raising campaigns and publications. In 2014, it launched 5,126 campaigns²³ through media such as radio, television and publications to raise public awareness about trafficking issues, and distributed information about trafficking in Bahasa Malaysia, Mandarin, Tamil and other languages. NGOs and the National Human Rights Institution contribute to such dissemination. Yet, despite increased attention to the issue, some stakeholders have expressed concern about the difficulty of these awareness-raising efforts in appropriately targeting trafficked persons, those at risk of being trafficked or otherwise exploited, their employers or employment agencies.

80. While the Special Rapporteur acknowledges these efforts, she underscores the importance of addressing demand as prevention strategy, which, in the context of Malaysia, includes demand for exploitative labour and sex. With regard to the demand for exploitative labour of migrant workers, including domestic workers, the Special Rapporteur stresses that the protection of labour rights is essential in reducing demand and in preventing exploitation from occurring in the first place. The regulation, licensing and monitoring of recruitment/ employment agencies has yet to be effective in preventing exploitation of migrant workers. There is also a critical need to raise the awareness of employers and employment agencies about the labour rights of all workers under international human rights law and standards in order to avoid trafficking.

2. Safe migration

81. Current immigration practices focus on criminalising rather than protecting the migrant labour force, which among others, includes victims of trafficking, refugees and asylum seeker who lack formal recognition in Malaysia.

82. In this regard, she wishes to reiterate that more opportunities for "safe" migration, that is, legal, gainful and non-exploitative is needed if Malaysia is to effectively address the demand for exploitable labour and fulfil its obligations to respect, protect and promote the labour rights of all workers, including migrants.

²² Chairman of the Council, Media Statement, Permission to Work for Labour Trafficking Victims, (Mar. 5, 2014)

²³ The Council, Progress report : Plan of Action to combatting trafficking in persons 2014/2015, p.iii

3. Public- Private partnerships

83. Globally, the prevention of trafficking through public-private partnerships is increasingly gaining ground. Through self-regulatory mechanisms such as corporate social responsibility businesses have taken steps to inter alia try and clean their supply chains from trafficking.

84. In Malaysia, the Special Rapporteur was pleased to learn about the recent initiatives of the Council to engage with the electronic, airline and plantation industries. In this regard, she notes that dialogue and training sessions related to forced labour were provided to 4 companies within the electronic industry sectors in Shah Alam, Penang and Johor Bahru; a collaboration with Air Asia Foundation to implement an Air Asia anti-human trafficking program was initiated; and dialogues were held with several Palm Oil Associations and Plantation Workers Union within the plantation industry.²⁴ She was also encouraged by the recent initiative whereby an International hotel in Kuala Lumpur provided work opportunities for 4 victims of trafficking.²⁵ These initiatives are indeed encouraging, though they remain an exception. The prevention of trafficking for the purposes of labour exploitation and other exploitation from the majority of the national, international and multinational businesses should be the aspiration of all ethical business in Malaysia.

J. Cooperation and partnership

1. Cooperation with civil society

85. The contribution of and collaboration with CSOs are crucial in the fight against human trafficking. The 2010-2015 National Plan of Action aspires inter alia to establish close engagement and interactions with CSOs with relevant knowledge and skills in the areas of policy, prevention, protection, rehabilitation and prosecution. However in practice, only a very limited number of CSOs (5) is part of the Council and somewhat contributes to its anti-trafficking work, particularly in the provision of assistance to victims. The need for immediate steps to be taken to establish the necessary legal framework and support to enable, a larger pool of potential service providers and CSOs to, among others, provide protection and assistance to victims including running shelters, counselling, training victims has emerged.

2. International, regional and bilateral cooperation

86. Malaysia has concluded a number of memoranda of understanding on security and combatting translational organised crime with Australia Bangladesh, Canada, China, Saudi Arabia, United Kingdom and United States of America. Malaysia also benefits from cooperation with the UN, international and regional organisations in areas such as training, assistance to victims of trafficking, repatriation and awareness raising.

87. At the regional level, Malaysia spearheaded and ratified the Treaty On Mutual Legal Assistance In Criminal Matters Among Like-Minded ASEAN Member Countries 2002. As the current chair of the ASEAN, it is working towards the elaboration of the ASEAN Convention on Trafficking in Persons and Regional Plan of Action to Combat Trafficking in Persons. Malaysia continues to support the Bali process and is also part of the ASEANAPOL, an arrangement for informal cooperation on law enforcement efforts that could potentially also focus on trafficking in persons.

²⁴ The Council, Information provided during the visit of the Special Rapporteur

²⁵ The Council, Progress report : Plan of Action to combatting trafficking in persons 2014/2015, p.iv and viii

III. Conclusions and recommendations

A. Conclusions

88. The Special Rapporteur recognises the efforts of Malaysia to fight trafficking in persons reflected in the promulgation and amendment of the anti-trafficking act, and the multidisciplinary approach in anti-trafficking measures, which involves key Government agencies and some civil society organizations. Malaysia has also promoted bilateral and regional cooperation with other countries in the region.

89. Determination of the trends and scope of trafficking in Malaysia is difficult in the absence of a comprehensive assessment. Consequently, the State's main focus is on combatting the sexual exploitation of women and girls, with little attention paid to trafficking for labour exploitation. The restrictive immigration policy focused on rapid deportation of irregular migrants, does not provide the opportunity for accurate identification and provision of assistance to victims of trafficking. There is a capacity gap in terms of ability for quick and accurate identification of victims of trafficking which is further exacerbated by the prevalence of corruption of some enforcement officials. The rate of prosecution of trafficking cases also remains very low which perpetuates the impunity of traffickers and obstructs victims' access to justice.

90. The Special Rapporteur has serious concerns as the stay of victims of trafficking in shelters could amount to detention. In addition to infringing fundamental human rights relating to freedom of movement and protection from detention,²⁶ this presents a risk to their well-being. Staff in the shelters, despite being committed and dedicated, requires specialized training and capacity building. While acknowledging the Government's efforts to raise awareness, prevention is still at an early stage.

B. Recommendations

91. On the basis of the above findings, and in the spirit of cooperation and dialogue, the Special Rapporteur offers the following recommendations to Malaysia

- (a) Ratify without delay the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families;
- (b) Ratify, without delay, ILO Convention No. 189 (2011) concerning Decent Work for Domestic Workers; the ILO Protocol on Forced Labour (2014) and ILO convention Abolition of Forced Labour Convention (1957);
- (c) Ratify, without delay, the 1951 Convention relating to the Status of Stateless Persons, its 1967 Protocol relating to the Status of refugees and the 1961 Convention on the Reduction of Statelessness;
- (d) Establish, with countries of origin, transit and of destination, bilateral and multilateral agreements for exchange of information, mutual legal assistance and safe returns in order to jointly tackle the root causes of trafficking in persons in the region; and implement existing agreements focusing on the human rights of trafficked victims;

²⁶ See OHCHR, Human Rights and Human Trafficking Fact Sheet No. 36, p.18-19, and Report of the Working Group on Arbitrary Detention (A/HRC/22/44), para. 55 and 57

92. With respect to the national framework, she recommends that the Government:

- (a) Fast track the amendment of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act and other relevant policies in compliance with the requirements of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children. Among others, the amendment should have a human rights and victim-centered focus and include providing victims in shelters the freedom of movement, to legally stay in Malaysia and employment while awaiting the outcome of their legal proceedings and beyond; non-criminalization of victims for all crimes committed in relation with their status as victims; compensation of victims, and granting NGOs the status of protection officers to further contribute to the anti-trafficking work;
- (b) Recognize the need for foreign work force and develop, and review existing safe migration pathways, acknowledging that the current approach to migration management, especially in relation to the recruitment of foreign labour via unscrupulous employment agencies may favor human trafficking.
- (c) Amend the Employment Act in order to provide greater protection for migrant workers, including domestic workers in accordance with international legal standards.
- (d) Revise and implement a stringent regulation regarding employment agencies; regularly monitor the activities of those already licensed, and take immediate action to revoke their license and prosecute them where illegal action involving trafficking in persons exist;
- (e) Ensure that the ongoing revision of the Child Act 2001 (Act 611) provides further protection for children victims of trafficking.
- (f) Evaluate the outcomes and lessons learnt of the 2010-2015 National Action Plan to combat trafficking and migrant smuggling. Finalize and rapidly adopt, after concerting with all stakeholders, a national plan of action (2015-2020) based on a human rights and victim-centred approach, setting out clear objectives, responsibilities and indicators to measure progress, and allocate a dedicated budget for its implementation;
- (g) Carry out a national baseline study in collaboration with independent research institutes, bilateral partners and civil society to document the scope and trends of trafficking at the national level;
- (h) Establish a systematized and harmonized data collection system on the phenomenon of human trafficking. Data on victims of trafficking should include their countries of origin and be disaggregated by, inter alia, sex, age and the nature and type of trafficking involved; the system should also include information on traffickers and data on investigations, prosecution rates and sentencing;

93. With regards to identification, training and capacity building, she recommends that the Government:

- (a) Specifically outline and harmonize identification protocols to combat trafficking in persons, developing a range of red flags and indicators to be used while screening vulnerable persons including undocumented migrants; refugees, asylum seekers and stateless persons;
- (b) Ensure the possibility for identifying victims of trafficking, even those in immigration detention centers and avoid their repatriation and revictimisation;

(c) Provide legal clarity on the elements of trafficking and raise awareness on the distinction between cases of trafficking and other situations including irregular migration, labour disputes and prostitution to facilitate accurate identification of victims by front line officers;

(d) Continue providing comprehensive training programmes on trafficking in persons to enhance knowledge and awareness of human trafficking of all stakeholders, including police, immigration, customs and maritime officers, labour inspectors, prosecutors, judges, lawyers, employers/businesses, employment agencies, civil society organizations and the media;

(d) Train all service providers (protection officers) involved in the assistance and care of victims of trafficking.

94. With respect to support service for victims of trafficking, she recommends that the Government:

(a) Protect and assist all victims of trafficking, including child victims, victims of labour trafficking and domestic servitude with full respect for their human rights, and integrate a human rights-based approach in the investigation of trafficking cases;

(b) Make provision for unconditional and appropriate assistance, including social, psychological, medical, legal support, as well as translation assistance and interpretation services in accordance with article 6 (6) of the Palermo Protocol in shelters. Ensure victims inside shelters have freedom of movement, access to employment and legal stay in the country

(c) Amend the existing legal framework to enable adequately funded service providers and organizations working on trafficking in persons, to provide comprehensive assistance, such as social, psychological, medical and legal support, as well as translation and interpretation services, for victims of trafficking;

(d) Provide victims of trafficking who do not wish to return to their countries due to fear of retribution, hardship or re-trafficking, viable alternatives to remain and work legally in Malaysia, including through granting special work permits and employment visa.

(e) Ensure that the free 24-hour hotlines are accessible in the languages that may be the only ones that potential victims speak and are serviced by multi-lingual staff who have received specialized training on trafficking in persons;

(f) Maintain close cooperation with international and regional organisations, particularly the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees as well as diplomatic missions for the safe return of trafficked victims to their country of origin, having due regard to the need, if any, of international protection of the victims and the application of the principle of non-refoulement;

(g) Establish a fund that will provide for a comprehensive national compensation scheme for victims of trafficking.

(h) Ensure that appropriate procedures are in place to evaluate the best interest of the child during the stage of identification, protection and assistance and before making any decision on the eventual repatriation of the child.

95. With respect to prosecution, the Special Rapporteur recommends that the Government:

- (a) Improve the justice delivery system to ensure speedy adjudication of cases of trafficking while guaranteeing fair-trial rights consistent with a human rights-based approach to criminal justice responses;
- (b) Ensure that in the prosecution of cases of trafficking, victim/witness protection before, during and after the trial is duly implemented to avoid reprisal.
- (c) Ensure that the best interest of the child is at the heart of the criminal justice response.
- (d) With respect to prevention, the Special Rapporteur recommends that the Government:
- (e) Step up efforts to raise awareness about all forms of trafficking in persons, including for domestic servitude, forced labour and sexual exploitation, in order to promote understanding of what constitutes trafficking among the general population, the foreign community, employers and employment agencies;
- (f) Conduct surveys to assess the impact of the awareness-raising campaigns, which should be extended to the whole country and especially to areas where there is a high concentration of persons in vulnerable positions. Moreover, the language factors must be taken into account when developing public-awareness tools;
- (g) Empower non-governmental organizations, including through increased interaction and the provision of funds, to conduct sensitization on trafficking and to handle complaints related to trafficking;
- (h) Sensitise businesses about human trafficking and encourage them to make and maintain a supply chain free from trafficking including through the establishment of self-regulatory mechanisms and tools.
