



ASYLUM ACCESS MALAYSIA

**INDEPENDENT SHADOW REPORT TO THE COMMITTEE ON THE CONVENTION ON THE
ELIMINATION OF DISCRIMINATION AGAINST ALL WOMEN (CEDAW)**

REFUGEE AND ASYLUM-SEEKING WOMEN

STATE PARTY:

MALAYSIA

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Asylum Access Malaysia
18-B Jalan Bangsar,
59200 Kuala Lumpur, Malaysia
(+60) 3 2201 5439
www.asylumaccess.com

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INTRODUCTION

This submission is an independent shadow report to the Committee for the Elimination of Discrimination Against Women ('CEDAW Committee'). It examines the implementation of Malaysia's obligations under CEDAW between 2006 and 2017 as they relate to asylum-seeking and refugee women and girls in Malaysia.¹ It focuses on relevant issues for consideration by the CEDAW Committee in their plenary review under the Convention for the Elimination of Discrimination Against Women² ('CEDAW') during the 69th session taking place in February-March 2018. This submission follows the publication of the CEDAW Committee's List of Issues published in July 2017³ ('List of Issues 2017') and the Government's Reply to the List of Issues 2017,⁴ which was received by the Committee in November 2017.

The current document focuses on **Malaysia's state practice** in relation to four key issues:

1. Detention and non-refoulement;
2. Sexual and gender-based violence and access to justice;
3. Lack of formal access to employment; and
4. Lack of access to healthcare.

The annex to this report ('Annex') contains:

1. An overview of asylum-seeking and refugee women in Malaysia;
2. An executive summary of the issues for consideration during the plenary; and

¹ Since refugee status is declaratory and not dependent on adjudication, any person who satisfies the definition under the Convention Relating to the Status of Refugees ('Refugee Convention') is a refugee. For the purpose of this submission however, the term "refugee" will be used to refer to any person whose refugee claim has been recognised by the UN High Commissioner for Refugees (UNHCR). The term "asylum seeker" will be used to refer to any person seeking refugee status who is yet to be recognised by the UNHCR. Asylum seekers may be registered with the UNHCR, in which case their application under the Refugee Status Determination process is pending. Individuals may also be unregistered asylum seekers where the UNHCR has no record of them. The term "UNHCR card-holder" can refer to both refugees and asylum-seekers who are registered with the UNHCR and who are issued UNHCR cards.

² Convention on the Elimination of all Forms of Discrimination against Women, 18 December 1979, available at: <http://www.refworld.org/docid/3ae6b3970.html>, Part V ('CEDAW').

³ Committee on the Elimination of Discrimination against Women, 69th session, 19 February-9 March 2018, *List of issues and questions in relation to the combined third and fifth periodic reports of Malaysia*, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/TBSearch.aspx?Lang=en&CountryID=105&TreatyID=3 ('List of Issues 2017')

⁴ Committee on the Elimination of Discrimination against Women, 69th session, 19 February-9 March 2018, *List of issues and questions in relation to the combined third and fifth periodic reports of Malaysia – Addendum: Replies of Malaysia*, received on 16 November 2017, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/TBSearch.aspx?Lang=en&CountryID=105&TreatyID=3

3. A list of recommendations.

The Annex also provides the following further information related to these four key issues:

- a) Malaysia's legal obligations and political commitments;
- b) Prior observations by the CEDAW Committee; and
- c) The Malaysian government's position on each issue.

For questions or comments about this report and the accompanying Annex, please contact:

Ms Deepa Nambiar
Director
Asylum Access Malaysia
deepa.nambiar@asylumaccess.org

ISSUES FOR CONSIDERATION DURING THE PLENARY SESSION

ARTICLES 1,2, 12: DETENTION AND NON-REFOULEMENT

Malaysian state practice and assessment of the Government's response with respect to detention and non-refoulement of asylum-seeking and refugee women

Contrary to international law,⁵ the Malaysian Government continues to detain refugee and asylum-seeking women and children, including pregnant and lactating women, in inadequate conditions, exposing them to risk of harm. Of extreme concern is that vulnerable asylum-seeking and refugee women continue to be deported in contravention of the principle of non-refoulement.

Arbitrary arrest and detention with no alternatives to detention

We share the CEDAW Committee's concern⁶ that in Malaysia 'asylum seekers and refugees, including women, are prosecuted for immigration related offences and may be indefinitely detained at immigration detention centres or deported.'

Despite the Government's assertions to the contrary⁷, UNHCR card-holders in Malaysia do not always enjoy freedom of movement and are routinely arrested, charged and detained for immigration-related offences. Although UNHCR card-holders have increased protection from

⁵ See Annex, p. 9.

⁶ Expressed in paragraphs 27 to 28 of their 2006 Concluding Comments.

⁷ See Annex, p. 10.

arrest, detention and deportation,⁸ (particularly with recently-issued UNHCR cards that have enhanced security features),⁹ this policy is not legally codified and subject to the discretion of the Government – leading to inconsistent application.¹⁰ A recent initiative by the Government to register all UNHCR card-holders for national security purposes may also lead to an increased risk of arrest and detention for asylum-seekers and refugees who are not registered in the system.¹¹

Asylum seeking women not yet registered with UNHCR remain particularly vulnerable to arrest and detention, which is concerning given the long processing times for recognition of refugee status with the UNHCR for some groups, including Rohingya women.¹² In its Reply to the List of Issues 2017,¹³ the Government failed to address the fact that there appears to be no mechanism to identify and release from detention asylum-seeking women not yet registered with UNHCR, including women with vulnerabilities. There have even been reports made to UNHCR by NGOs and community-based organisations of unregistered asylum-seeking and refugee women who sought antenatal treatment at public hospitals being sent to detention upon delivery of their children, in some cases with their newborn babies, and in other cases being separated from their children.¹⁴

⁸ This protection is provided for in a written directive issued by the Attorney General's Chambers (AGC) in 2005; International Federation for Human Rights (FIDH) and SUARAM, *Undocumented migrants and refugees in Malaysia: Raids, Detention and Discrimination*, March 2008, available at <https://www.fidh.org/IMG/pdf/MalaisieCONJ489eng.pdf> p. 9; Equal Rights Trust, *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*, 2014, available at <http://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>.

⁹ Tasnim Lokman, 'UNHCR rolls out new ID card for refugees with increased security features' (New Straits Times, 21 June 2016) available at <https://www.nst.com.my/news/2016/06/153416/unhcr-rolls-out-new-id-card-refugees-increased-security-features>.

¹⁰ Ibid.

¹¹ Aina Nasa, 'Gov't issues Tracking Refugee Information System to update, gather data on refugees' (New Straits Times, 2 August 2017) available at <https://www.nst.com.my/news/nation/2017/08/263348/govt-introduces-tracking-refugee-information-system-update-gather-data>.

¹² Estimates from refugee community groups indicate that there are tens of thousands of refugees who have yet to register with the UNHCR.

¹³ List of Issues 2017.

¹⁴ Health Equity Initiative, *Press statement: Stop the Arrest and Detention of Asylum Seeking Women Accessing Maternal Health Care*, 3 April 2014, available at <http://www.healthequityinitiatives.com/2014/04/03/stop-the-arrest-and-detention-of-asylum-seeking-women-accessing-maternal-health-care/>; Migration Working Group, *Joint UPR Submission – Malaysia*, October 2013, available at <http://wao.org.my/file/file/Migration%20Working%20Group%20Joint%20UPR%202013%20Submission.pdf>; Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the*

The detention of refugees and asylum-seekers is mandatory and automatic under the Immigration Act 1959/63, with no individual assessment and no automatic or periodic review by the court – leading to the possibility of indefinite detention for refugees – including vulnerable women. The detention of refugee and asylum-seeking women in Malaysia therefore continues to be arbitrary and in violation of international laws and detention standards.¹⁵

Lack of information on asylum-seeking and refugee women in detention

There is currently no publicly available disaggregated data on the number of asylum-seeking and refugee women (as distinct from irregular migrants) held in or released from immigration detention between 2012 and 2017. We acknowledge the Malaysian Government's inclusion of numbers of women and girls in immigration detention as of September 2017 in the annexes to their Reply to the List of Issues 2017. However, we note that although the data is disaggregated by age and nationality, it does not indicate the percentage of asylum-seeking and refugee women who have UNHCR cards, or who are not yet registered with UNHCR but who are seeking protection under their mandate.

According to the Ministry of Home Affairs, from 1 January 2015 to 30 September 2015, there were 14,924 women detained in 13 detention centres across the country.¹⁶ Data from the Malaysian government as at September 2017 indicates that there were 1,825 women and girls in 12 immigration detention centres across the country.¹⁷ We commend the Malaysian government for the significant reduction in numbers of women and girls in immigration detention. However, it is unclear to what extent the situation has improved for asylum-seeking and refugee women specifically given that the data does not distinguish them from women and

highest attainable standard of physical and mental health, Dainius Pūras – Addendum – Visit to Malaysia (19 November-2 November 2014), 1 May 2015, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/087/06/PDF/G1508706.pdf?OpenElement>.

¹⁴ Ministry of Health Directive 10 (2001) requires medical practitioners and support staff to report undocumented patients from government health facilities to the police. The Directive was reiterated in a Letter by the Director General of Health (ref.(9) dlm.KKM-171/BKP/03/13/0191 Jld.3) dated 27 January 2014 and said that all hospitals and health clinics should report illegal immigrants seeking health services to the relevant authorities such as immigration and police authorities. See also US Department of State, *Malaysia 2015 Human Rights Report – Executive Summary*, available at <https://www.state.gov/documents/organization/252989.pdf>.

¹⁵ Annex, p. 14.

¹⁶ Parliamentary reply by the Ministry of Home Affairs to a question posed by MP Ong Kian Ming, Third Parliamentary Session 2015, 20 October 2015, available at: <http://pardocs.sinarproject.org/documents/2015-october-november-parliamentary-session/oral-questions-soalan-lisan/2015-10-20-parliamentary-replies/soalan-24.pdf>: A total of 71,362 irregular migrants were detained across this period.

¹⁷ Reply to List of Issues 2017, Annex 7.

girls who are in immigration detention for other reasons. Further, as at 2015, the average period in detention was estimated to be anywhere between two months and two years.¹⁸

There is limited information on whether police and immigration detention staff/officers are provided gender sensitivity training or what is being done to ensure separate facilities and materials are provided to meet the specific needs of asylum-seeker and refugee women in detention. As stated above, the Malaysian government's Reply to the List of Issues 2017 indicates that there are standard operating procedures in place to protect female immigration detainees, and that detention centres are 'monitored directly by the Human Rights Commission of Malaysia (SUHAKAM) and Enforcement Agency Integrity Commission (EAIC)',¹⁹ however, no detailed information was provided on what this monitoring entails and how effective it has been. This failure to provide details is particularly concerning given that the 2016 annual report of SUHAKAM revealed that between 2015 and 2016 there were more than 100 deaths in immigration detention centres, including 24 refugees and asylum-seekers.²⁰ It is unclear what percentage of these were deaths of women.

Reports by SUHAKAM and the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health note that detention centres are overcrowded,²¹ detainees are subject to abuse, there is inadequate food, water, and medical care, and poor sanitation,²² and female detainees lack adequate facilities and services appropriate to their particular needs as women.

The Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health noted in his 2015 Report²³ that at the Lenggeng Immigration Depot women were only provided two meals per day and clean water was only

¹⁸ Global Detention Project, Malaysia Immigration Detention [updated: July 2015], available at <https://www.globaldetentionproject.org/countries/asia-pacific/malaysia>.

¹⁹ Reply to List of Issues 2017, para 60.

²⁰ A. Ananthalakshmi, *Malaysia rights panel disturbed over more than 600 deaths in prisons and detention centres*, Reuters, 4 April 2017, available at <https://www.reuters.com/article/us-malaysia-detention-deaths/malaysia-rights-panel-disturbed-over-more-than-600-deaths-in-prisons-and-detention-centers-idUSKBN1760S3>.

²¹ National Human Rights Commission of Malaysia (SUHAKAM), *Roundtable on Alternatives to Immigration Detention*, 12 November 2013, available at <http://www.suhakam.org.my/wp-content/uploads/2013/12/Report-on-Roundtable-on-ATD-Malaysia.pdf>.

²² Human Rights Council, *Report of the Working Group on Arbitrary Detention: Mission to Malaysia – Addendum*, 16th session, 8 February 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/106/38/PDF/G1110638.pdf?OpenElement>.

²³ Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras – Addendum – Visit to Malaysia (19 November-2 November 2014)*, 1 May 2015, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/087/06/PDF/G1508706.pdf?OpenElement>.

available on specific request, which was clearly inadequate for the needs of breastfeeding mothers.²⁴ He also found that in some cases women and their babies did not receive appropriate medical attention during the postnatal care period.²⁵ Detainees, including women, were also noted to lack access to psycho-social support.²⁶

As recently as May 2017, The Guardian reported severe deprivation of medical care in Malaysian immigration detention centres.²⁷ In 2016, SUHAKAM reported appallingly unsanitary conditions in immigration detention,²⁸ and a disturbingly high number of deaths in immigration detention resulting from disease.²⁹ To the best of our knowledge, there are no independent reports that confirm the government's recent assertions that adequate medical care is provided to female immigration detainees, including asylum-seeking and refugee women. The Government's Reply to the List of Issues does not indicate when the policy or standard operating procedure providing for monthly check-ups of pregnant women in detention was put in place or the success of its implementation.

SGBV in detention

Reports by NGOs working with asylum seekers and refugees note that some female detainees are subject to SGBV whilst in detention.³⁰ A July 2013 report produced by the United States Department of State noted that 'one female key informant reported to the evaluation team that she had been taken out of the detention centre and raped by a male guard.'³¹

The Malaysian government has not addressed these distressing reports in their Reply to the List of Issues 2017 or in any of their prior reports to the CEDAW Committee. Absent from the Government's Reply to the List of Issues 2017 is information on when the policy of having only female officers work with female immigration detainees was implemented and how far it has

²⁴ Ibid.

²⁵ Ibid.

²⁶ UNHCR, *Progress Under the Global Strategy Beyond Detention 2014-2019, Mid 2016*, available at: http://www.ecoi.net/file_upload/1930_1474362656_57dff0a82.pdf.

²⁷ Laignee Barron, *Malaysia opens investigations into immigration detention abuse* (The Guardian, 19 May 2017) available at <https://www.theguardian.com/world/2017/may/19/malaysia-opens-investigation-into-immigration-detention-abuse>

²⁸ SUHAKAM (Human Rights Commission of Malaysia), *Annual Report 2016*, available at <http://www.suhakam.org.my/pusat-media/sumber/laporan-tahunan/> p3

²⁹ SUHAKAM (Human Rights Commission of Malaysia), *Annual Report 2016*, available at <http://www.suhakam.org.my/pusat-media/sumber/laporan-tahunan/> p61

³⁰ Erica Holzapfel and Diane Paul through Social Impact, Inc on behalf of the United States Department of State, *Evaluation Report: Evaluating the Effectiveness of Gender Based Violence Prevention Programs with Malaysia*, 2013, available at: http://www.ecoi.net/file_upload/1226_1441694758_233056.pdf ('Holzapfel and Paul') Jonathan Vit, *Rohingya Girls for Sale: Malaysia's Forced Marriage Problem*, 2016, available at: https://www.vice.com/en_id/article/rohingya-girls-for-sale-malysias-forced-marriage-problem.

³¹ Holzapfel and Paul, p24.

gone in addressing problems of SGBV being perpetrated against asylum-seeking and refugee women in detention.

Breaches of non-refoulement

The Government's response with respect to this does not correspond with the situation on the ground. Their commitments to the CEDAW Committee to abide by the principle of non-refoulement have not been upheld.

Asylum Access Malaysia has received several recent reports of *refoulement* of UNHCR card-holders and asylum seekers from immigration detention centres from community based-organisations. These reports indicate the deportation of asylum-seeking and refugee women from a range of communities, including the Kachin, Shan, Mon, Karen and Pakistani Ahmadi communities in the last few years. Many of these women were deported from immigration detention centres and some were pregnant or had just given birth. The Kachin and Shan refugee community organisations have confirmed that a total of 7 Kachin and 41 Shan asylum-seekers and refugees have been deported since the start of 2016 alone. Asylum Access Malaysia also received a report from the Arakan Refuge Relief Centre ('AARC') on a woman registered with the AARC who gave birth in a public hospital and was reported to the immigration authorities by hospital staff in April 2017. She was held in immigration detention until June 2017, when she and her newborn child were deported to Myanmar.

ARTICLE 15, 2(d)-(e): SEXUAL AND GENDER BASED VIOLENCE AND LACK OF ACCESS TO JUSTICE

Malaysian state practice and assessment of the Government's response with respect to SGBV and lack of access to justice

The Government's failure to address the issue of SGBV perpetrated against asylum-seeking and refugee women is extremely problematic given its prevalence. Lack of legal status exacerbates their vulnerability to violence and is a major obstacle to victims being able to access justice and treatment.³²

In relation to access to legal aid, apart from cases involving capital punishment³³ and children in the criminal justice system³⁴, the government does not provide access to legal aid for

³² UNHCR, *Age, Gender and Diversity Accountability Report 2014*, available at: http://www.ecoi.net/file_upload/1930_1436957479_55a61f794.pdf; Holzaepfel and Paul; Jonathan Vit, *Rohingya Girls for Sale: Malaysia's Forced Marriage Problem*, 2016, available at: https://www.vice.com/en_id/article/rohingya-girls-for-sale-malysias-forced-marriage-problem ('Vit')

³³ Reply to List of Issues 2017, para 9.

refugees and asylum-seekers, including those who are survivors of SGBV. There is very limited access to legal aid provided through the Bar Council and non-profit organisations.

NGOs working with asylum-seeking and refugee women and girls report that generally SGBV has been perpetrated against asylum-seeking and refugee women by their partners, by the police and immigration officers and in a range of contexts including detention, at work, in the home, and through forced prostitution and forced marriage.³⁵

Between January and October 2017, UNHCR conducted 538 SGBV assessments on 'people of concern',³⁶ and 95% of the cases concerned women and girls who were survivors of SGBV.³⁷ As at October 2017, UNHCR and the International Catholic Migration Commission have had reported to them 361 cases of domestic violence, 53 cases of rape, 22 cases of sexual abuse and exploitation, and 70 cases of child marriage.³⁸ Generally speaking, however, there is extremely limited gender-disaggregated data available on the prevalence and forms of SGBV being perpetrated against asylum-seeking and refugee women in Malaysia, which further limits effective action being taken to tackle and prevent this issue.

Domestic violence

In 2016, there were 5,796 police reports alleging domestic violence against women in Malaysia.³⁹ It is unclear what percentage, if any, of these reported incidents were asylum-seeking and refugee women.

Of the 196 incidents of SGBV reported to UNHCR as of October 2014, 136 were cases of domestic violence.⁴⁰ Although asylum-seeking and refugee women and girls fall within the

³⁴ Malaysian Bar, "Legal aid shrinking due to delayed payments, Malaysian Bar report says", 18 March 2017, available at:

http://www.malaysianbar.org.my/bar_news/berita_badan_peguam/legal_aid_shrinking_due_to_delayed_payments_malaysian_bar_report_says.html.

³⁵ Holzaepfel and Paul; Vit.

³⁶ This is a category that includes refugees and asylum seekers, both registered and not yet registered with UNHCR.

³⁷ UNHCR, *Malaysia: Sexual and gender-based violence (SGBV factsheet)*, October 2017; UNHCR, *SGBV Prevention and Response (2016) Plan*, available at: <http://reporting.unhcr.org/node/10049>.

³⁸ Information obtained from UNHCR Malaysia in December 2017. See also International Catholic Migration Commission, *2015 Annual report*, 2015, available at: <https://www.icmc.net/resources/annual-reports>.

³⁹ Women's Aid Organisation, *Statistics on Violence against Women*, available at http://www.wao.org.my/Statistics+on+Violence+Against+Women+2000-2016_99_6_1.htm.

⁴⁰ UNHCR, *SGBV Prevention and Response (2016) Plan*, available at: <http://reporting.unhcr.org/node/10049>

scope of national legislation, namely the Domestic Violence Act⁴¹ and the Penal Code,⁴² this provides virtually no protection due to poor implementation of these Acts, as well as their lack of legal status. In addition, fears of arrest, detention, and police extortion deters asylum-seeking and refugee women from reporting domestic violence,⁴³ making it difficult for them to leave unsafe familial situations.⁴⁴

Lack of legal status also means that asylum-seeking and refugee women have no access to safe and legal employment, causing economic reliance on partners who may also be perpetrators of domestic violence. Shelters providing protection for victims of domestic violence are also few and far between. Lack of legal status also means that for victims of SGBV, treatment is expensive and therefore inaccessible.⁴⁵

Children

A study conducted by the Health Equity Initiative in 2012 found that out of 114 refugee children from Burma (aged 10-19), 8% of girls reported being touched below the waist and 75% of all children surveyed did not know where to seek help in the event that SGBV was perpetrated against them.⁴⁶ A report published in July 2013, by the United States Department of State Bureau of Population, Refugees and Migration entitled, 'Effectiveness of Gender-Based Violence Prevention Programs with Refugees in Malaysia' also noted that the Malaysian Department of Social Welfare does not intervene to assist a refugee child who is a victim or at risk of SGBV.⁴⁷

Victims of Rape

NGOs noted that victims of SGBV were deterred from accessing assistance at the government's One Stop (Rape) Crisis Centres due to the requirement that an individual must

⁴¹ Domestic Violence Act 1994 (Act 521), available at https://www.wcwoonline.org/pdf/lawcompilation/malaysia_DVact1994.pdf.

⁴² Penal Code (Act 574), available at <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf>.

⁴³ Holzaepfel and Paul, p19.

⁴⁴ There are also other factors contributing to underreporting, including stigma, shame and victims' lack of awareness of their rights and of reporting mechanisms.

⁴⁵ Holzaepfel and Paul, p22 and 33.

⁴⁶ Health Equity Initiatives, *Sexual Education in Burmese Refugee School-Aged Adolescents*, 2012; Migration Working Group, *Joint UPR Submission – Malaysia*, October 2013, available at <http://wao.org.my/file/file/Migration%20Working%20Group%20Joint%20UPR%202013%20Submission.pdf> para 40.

⁴⁷ Holzaepfel and Paul, p22.

lodge a police report in order to be provided any assistance.⁴⁸ There have also been incidents of victims of SGBV being reported to the immigration authorities if they are unable to afford medical treatment for harm inflicted by SGBV.⁴⁹ As a result, reporting of SGBV amongst asylum seekers and refugees is extremely low.

ARTICLE 6, 11: LACK OF FORMAL ACCESS TO EMPLOYMENT

Malaysian state practice and assessment of the Government's response with respect to lack of formal access to employment

As asylum-seeking and refugee women lack legal status under immigration laws, they have no lawful access to the labour market and are often forced into the informal labour market. A 2008 study of Burmese women in Malaysia by the Women's Refugee Commission noted that jobs in the informal sector are often more difficult for female asylum seekers and refugees to access, and are commonly restricted to waitressing and dishwashing.⁵⁰

Lack of legal status means that asylum-seeking and refugee women who are able to secure informal employment are vulnerable to exploitation in the workplace, including a heightened risk of SGBV, withheld wages, unsafe or unreasonable working conditions and unfair dismissal. As of October 2017, UNHCR received reports of 10 cases in which employers were perpetrators of SGBV.⁵¹ In a 2012 survey conducted by the International Rescue Committee involving 1,003 refugee respondents, including women, just over 30% reported experiencing abuse in the workplace.⁵² Refugee and asylum-seeking women are also exposed to unacceptable risks when travelling to work and within the workplace.⁵³

⁴⁸ One Stop Rape Crisis Centre, *Flowchart in the management of One Stop Rape Crisis Centre*, available at <http://osccmy.org/Flow%20Chart%20in%20Management%20of%20OSCC.pdf>; Holzaepfel and Paul.

⁴⁹ Ibid.

⁵⁰ Women's Refugee Commission, *Desperate Lives: Burmese Women Struggle to Make a Living in Malaysia*, May 2008, available at http://www.womensrefugeecommission.org/docs/_mys_rep.pdf; Women's Refugee Commission, *Desperate Lives: Urban Refugee Women in Malaysia and Egypt*, June 2015, available at <https://www.womensrefugeecommission.org/empower/resources/620-desperate-lives-urban-refugee-women-in-malaysia-and-egypt>

⁵¹ Source: UNHCR Malaysia.

⁵² International Rescue Committee, *In Search of Survival and Sanctuary in the City: Refugees from Myanmar/ Burma in Kuala Lumpur, Malaysia*, 2012. Of these, 80% reported unpaid wages or receiving only partial wages; 42% experienced verbal abuse; 15% suffered from an injury in the workplace; 15% had been dismissed without reason; and, 6% suffered from physical abuse, with employers committing most of these abuses.

⁵³ UNHCR, *Age, Gender and Diversity Accountability Report 2014*, available at: http://www.ecoi.net/file_upload/1930_1436957479_55a61f794.pdf and <http://www.unhcr.org/548180b69.pdf>

For those women who are unable to access jobs within the informal sector, lack of income exacerbates risk of exploitation, contributes to marginalisation,⁵⁴ and can also lead to negative coping mechanisms such as survival sex or early marriage.⁵⁵

Asylum-seeking and refugee women who work informally owing to lack of legal status have an increased vulnerability to being trafficked.⁵⁶ Despite the amendments to the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act allowing, amongst other things, freedom of movement and work rights to victims, it is unclear to what extent this is applicable to refugees and asylum-seeking women.

In 2015, the Special Rapporteur on trafficking persons, especially women and children, '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.'⁵⁷

We note that the Malaysian government has recently launched a pilot labour migration project to allow 300 Rohingya refugees to legally take up employment opportunities in certain sectors.⁵⁸ At the time of writing, the pilot project is limited to the plantation and manufacturing sectors and for men only. Pursuant to CEDAW article 11, failure to take appropriate measures to eliminate discrimination against women in the field of employment could constitute discrimination.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Addendum : Mission to Malaysia*, 1 June 2015, available at: <http://www.refworld.org/docid/5577eadc4.html> para 6, 19.

⁵⁷ Ibid para 51.

⁵⁸ World Bulletin, *Malaysia mulls opening job market to Rohingya refugees*, 17 November 2015, available at <http://www.worldbulletin.net/todaysnews/166421/malaysia-mulls-opening-job-market-to-rohingya-refugees>; UNHCR, *UNHCR Lauds Government Work Scheme for Refugees*, 2017, available at: https://www.unhcr.org/my/News_Views/@-UNHCR_Lauds_Government_Work_Scheme_For_Refugees.aspx.

ARTICLE 12: LACK OF ACCESS TO HEALTH CARE

Malaysian state practice and assessment of the Government's response with respect to lack of access to health care

There are enormous obstacles in the ability of asylum seekers and refugees to access health care. While UNHCR card-holders are entitled to a 50% discount on foreigners' health care rates in government hospitals, even with this discount, the costs of health care for refugees remain prohibitive.

Asylum seekers and refugees are also deterred from accessing health care due to fear of arrest and detention when travelling to and from health treatment centres, and insurmountable language barriers.⁵⁹ Due to lack of access to healthcare, they face specific risks, including pregnancy complications, pregnancy-related death and infant disease or death.⁶⁰

Lack of access to family planning services

A November 2011 Report by the Women's Refugee Commission and the Centres for Disease Control and Prevention,⁶¹ found that amongst the Myanmar refugee community in Kuala Lumpur, the quality of family planning services available were adequate, but access to these services was curtailed by the cost of services and fears associated with arrest and detention.⁶²

Lack of access to reproductive healthcare

⁵⁹ Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras – Addendum – Visit to Malaysia* (19 November-2 November 2014), 1 May 2015, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/087/06/PDF/G1508706.pdf?OpenElement>; UNHCR, *Health Refugees and Asylum Seekers (Urban)* ((2016), available at: <http://reporting.unhcr.org/node/10048>

⁶⁰ Women's Refugee Commission, *Livelihoods Facts and Figures*, available at: <https://www.womensrefugeecommission.org/empower/resources/practitioners-forum/facts-and-figures>

⁶¹ Women's Refugee Commission, UNHCR & Centres for Disease Control and Prevention, 2011, *Special or analytical report: Baseline Study: Documenting Knowledge, Attitudes and Behaviours of Burmese Refugees and the Status of Family Planning Services in UNHCR's Operation in Kuala Lumpur, Malaysia*, available at <http://www.unhcr.org/4e8c0d1c9.pdf>

⁶² Women's Refugee Commission, *Refocusing Family Planning in Refugee Settings: Findings and Recommendations from a Multi-Country Baseline Study*, November 2011, available at: <https://www.womensrefugeecommission.org/srh-2016/resources/792-refocusing-family-planning-in-refugee-settings>

According to UNHCR figures, women in the reproductive age group comprise approximately 18% of the asylum seeker and refugee population in Malaysia.⁶³ Although women are not prevented from accessing hospitals for reproductive care, the services are similarly extremely expensive. For example, ongoing pre-natal care, when charged at the foreigner's rate, can range from RM120 (USD 24, EUR 24) to RM400 (USD 102, EUR 82) per month, not including costs for blood tests and ultrasounds.⁶⁴ NGOs working with asylum-seeking and refugee women report that many do not attend antenatal care appointments due to financial constraints, which can lead to maternal, foetal and infant mortality, and morbidity.⁶⁵

Inquiries undertaken in November and December 2014 into the Rohingya community by the Special Rapporteur on "The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health," found that inability to access maternal and general health care was having serious consequences for asylum-seeking and refugee women and their children.⁶⁶ Of 87 children studied, 74 were underweight, 11% stunted, 16% thin, 18% had low birth weight and 12% had received no immunisations – either use numbers or percentages.

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⁶³ UNHCR, *Health Refugees and Asylum Seekers (Urban)*, 2016, available at: <http://reporting.unhcr.org/node/10048>

⁶⁴ Dr Veena Pillai, Malaysian Social Research Institute (MSRI).

⁶⁵ Ibid.

⁶⁶ Mohd Shariff, Z. and Tan, S. T., *Nutritional status of Rohingya children in Kuala Lumpur*, Malaysian Journal of Medicine and Health Sciences, 7 (1), 2011, pp. 41-49.; Equal Rights Trust, *Equal Only in Name*, available at: <http://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

⁶⁷ Ibid.