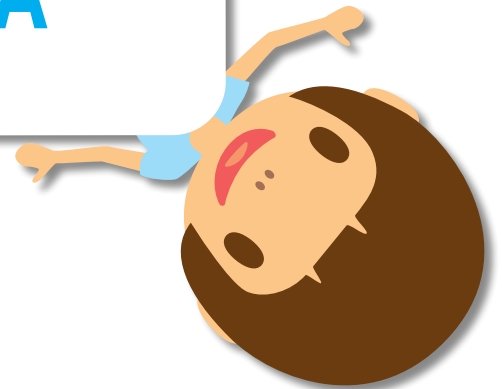
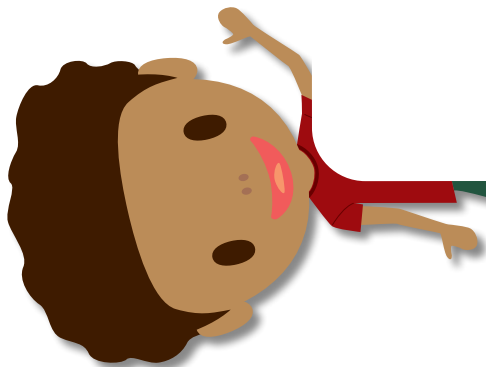


# STATUS REPORT ON CHILDREN'S RIGHTS IN MALAYSIA



BY  
CHILD RIGHTS COALITION MALAYSIA  
DECEMBER 2013

## CHILD RIGHTS COALITION MALAYSIA

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Greetings from the Steering Committee of Child Rights Coalition Malaysia (CRCM) and thank you for your interest in our Second Annual Status Report on Children's Rights! This report aims to highlight some of the significant children's issues in a year marked by such important events as the 13th General Elections and the Universal Periodic Review of Malaysia's human rights record at the United Nations.

We are pleased to note some milestones in child rights, such as the landmark case awarding citizenship to N. Yanessa and the announcement of amendments to the Child Act. However, CRCM remains concerned about the rate of violence against children: children continue to be abused, to go missing and to perish. Malaysia is advancing towards a developed nation status in 2020, but as a society we fail to protect children and preventable cases of death and abuse continue to occur. We remember for example; the deaths of 5 year-old M Thinasraj, 5 year-old Ho Yan Hui, 6 year-old William Yau Zhen Zhong, 11 year-old Nur Amyliana Shuhada Mohd Noor, and 15 year-old Ng Yuk Tim.

Children's issues cannot be viewed in isolation: they are made complex by their connection with other societal challenges. Stigma and discrimination remain towards different categories of children, including children with Special Needs, indigenous children, LGBTIQ children and the *'invisible'* children amongst us, children who are refugees, undocumented or stateless. The civil, cultural and political rights which have garnered so much attention of late are also rights to which children are entitled.

The sections of this report aim to be objective presentations of various aspects of current child rights issues in Malaysia. With our tight resources and limited access to data, it is necessarily limited in scope. We regret any omissions or errors, and invite other NGOs and civil society representatives to join the Coalition to raise awareness on these and other issues, develop our collective capacity to advocate for and with children, and initiate productive dialogue. We also acknowledge the many organisations and individuals who have participated in our data-gathering and who continue to support our work.

As party to the UN Convention on the Rights of the Child (CRC), Malaysia is obligated to prepare regular reports for the UN Committee on the Rights of the Child. Since signing the Convention in 1995, only one state report has been submitted. CRCM encourages the Government to make up for this shortcoming by releasing a combined 2nd, 3rd and 4th report soon. CRCM looks forward to working with the different Government ministries and departments on our three priority areas: child protection, birth registration and access to education.

In line with the Convention, CRCM views children as children – by which we mean that children are valued *"regardless of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status"*<sup>1</sup>. The advancement of child rights for all children in Malaysia is a reflection of our society's view of children as human beings worthy of dignity and respect. It is also an important contribution for the development of a peaceful future for the nation.

Children are our FUTURE,  
so we must not neglect their issues in the PRESENT!

CRCM follows the news media on a continuous basis to monitor children's issues in Malaysia. The chronology below is a list of just some of the notable occurrences from January to November 2013. It highlights child rights violations as well as important milestones in the realisation of child rights in the country. It also acknowledges steps taken by the Malaysian Government during the year.

This brief chronology helps us keep in view the issues children in Malaysia still face until they can enjoy their full rights under the UN Convention on the Rights of the Child.

### January

- A 13-year-old boy allegedly molested a woman at a petrol kiosk toilet may face charges under Section 354 of the Penal Code for using criminal force with intent to outrage modesty. His identity went viral when the woman reported incident with his photo on her Facebook page in violation to his right to privacy.<sup>2,3</sup>
- Disappearance and death of six-year-old William Yau Zhen Zhong.<sup>4</sup>
- Nine children who were illicitly adopted removed from their homes during crackdown on baby selling syndicate in George Town.<sup>5</sup>
- Parents given five-year sentence for child abuse.<sup>6</sup>
- A parenting seminar on how to curb LGBT was organized by Yayasan Guru Malaysia Berhad. Deputy Education Minister Datuk Dr Puad Zarkashi who spoke there described lesbians, gays, bi-sexuals and transgenders (LGBT) as an illness that can be treated. The seminar, aimed to raise awareness and promote early prevention, was attended by hundreds of teachers and parents. It was the 20th in a nationwide series organized by Yayasan Guru Malaysia Berhad.<sup>7,8</sup>
- The Director-General of the Social Welfare Department, Datuk Noraini Mohd Hashim said in a statement that parents who bring their children along to illegal rallies can be prosecuted under the Subsection 31(1) of the Child Act 2001.<sup>9</sup>

### February

- Kidnapping case of Dutch boy Nayati Shamelin Moodliar (from 2012) in the courts.<sup>10</sup>
- 2 missing girls found.<sup>11</sup>
- Further crackdowns on baby selling syndicates.<sup>12, 13, 14, 15</sup>
- Stateless man's children barred from school but Deputy Education Minister Wee Ka Siong said a circular states that children of non-citizens are allowed to attend public schools.<sup>16</sup>
- Malaysia records fewer people smuggling and human trafficking cases.<sup>17</sup>
- Gov't allocated RM 540 million as education aid for all students from Primary 1 to Primary 5 for 2013 schooling session.<sup>18</sup>

### March

- On 1st March 2013, the Penang state government became the first in Malaysia to pass a Childcare Policy and Action Plan with the theme *"Putting Children First"* that looks into children's well-being and safety, increasing women's participation in the workforce, and work and family-life balance. The Childcare Policy and Action Plan were officially launched on 8th March 2013 in conjunction with the International Women's Day celebration. The Penang State Government will be starting its very own childcare centre for all its staff at its administrative centre in Kompleks Tun Abdul Razak ( KOMTAR ), George Town. The activities spelt out in the 3-year Childcare Action Plan are currently being carried out by the Penang Women's Development Corporation (PWDC), which is chaired by the Penang State EXCO Member for Youth and Sports, Women, Family and Community Development, YB Chong Eng. Moving forward, the Penang State Government is hoping to set up its own Child Rights and Care Unit.<sup>19</sup>
- Children who were the subjects of an alleged child trafficking ring and who were being sheltered in a home in Johor, were placed under protective custody until April 29 pending the child trafficking cases being heard in court.<sup>20</sup>
- UPR report of CRCM released with that of other NGO groups.

- The Bar Council Criminal Law Committee (“**CLC**”) organised a dialogue relating to the establishment of a sentencing council to develop sentencing guidelines to enhance the administration of justice. This was in response to the public uproar over statutory rape cases of 2012 and the proposed amendments to section 294 of the Criminal Procedure Code to limit judges’ discretionary powers. <sup>21</sup>
- 4 people, including 2 children, were killed in Sabah in clashes between Malaysian forces and suspected followers of self-proclaimed Sulu Sultan Jamalul Kiram III. <sup>22</sup>
- Launch of the fifth Family Wellbeing for the People Exploration Series programme in Kampung Changkat Kelubi. The programme which is in its fifth year aims to help the Orang Asli community by improving their access to healthcare and education. <sup>23</sup>
- Controversy over government-backed musical ‘**Asmara Songsang**’ that aims to warn young people about the perils of being lesbian, gay, bisexual and transgender (LGBT). <sup>24, 25</sup>
- Court of Appeal upholds the acquittal of a man convicted of raping a 4-year-old. The case highlighted Section 133A of the Evidence Act 1950 which calls for independent corroboration of a child’s testimony based on the reasoning that a child cannot differentiate between fact and fantasy. <sup>26</sup> Watching briefs were held for child victims in sexual crime trials, at the Sessions Court, High Court and Court of Appeal level, to advocate on the child’s right to justice and protection. <sup>27</sup>

## April

- Magistrate’s Court in Bukit Mertajam granted conditional interim custody and protection orders of 28 children rescued from a baby-selling syndicate to their adoptive parents. Guardianship rights have been given to welfare officers for one year. <sup>28,29</sup>
- From April 25 no functioning human rights commission due to delay in appointing SUHAKAM commissioners. <sup>30</sup>
- Orang Asli Education Transformation Program in peninsula and Rural Education Transformation Program in Sabah and Sarawak launched among the rural and Orang Asli communities. <sup>31</sup>

## May

- 13th Malaysia General Elections 2013. <sup>32, 33</sup>
- In Sabah, permission was granted by the Syariah Court for a 13-year-old girl and the man who allegedly raped her to be married. RM 5,000 was paid to the girl’s father by the accused, which was referred to as a ‘**sogit**’, which is a form of compensation under the Sabah native laws. Attorney-General Tan Sri Abdul Gani Patail said it is equivalent to a bribe and requested the Malaysian Anti-Corruption Commission to get involved. <sup>34, 35, 36</sup>
- Sexual assault and asphyxiation of Nur Amyliana Shuhada Mohd Noor. <sup>37</sup>
- Debate on whether or not to close vernacular schools. <sup>38, 39</sup>
  - Deputy Prime Minister Tan Sri Muhyiddin Yassin assured that vernacular Tamil and Chinese schools would not be abolished. <sup>40</sup>
- Joint Action Group created a petition to End Child Marriage addressed to the Malaysian Prime Minister, YAB Dato’ Sri Mohd Najib Razak. <sup>41</sup>
- Malaysia aims to reduce its maternal mortality rate to 11 per 100,000 live births by 2015 in an effort to achieve the United Nation’s Millennium Development Goal (MDG) towards better maternal health. <sup>42, 43</sup>

## June

- Coroner’s Court rules no foul play in the death of William Yau Zhen Zhong. <sup>44</sup>
- Women Deliver international conference was held in Kuala Lumpur. <sup>45, 46</sup>
- Landmark inter-religious child custody case involving the unilateral conversion of two children, aged five and eight, who were reportedly converted to Islam earlier in the year by the estranged husband of a Hindu woman, without her knowledge. <sup>47, 48, 49</sup>
- Haze from Indonesian fires showed high air pollutant index (API) readings leading to school closures. <sup>50, 51, 52</sup>

- Five-year-old M Thinasraj fell to his death from the 14th floor of Block D of the flats while playing, after rusty guard railings gave way. Five years ago another child died in similar circumstances. <sup>53</sup>
- IPGM (Institut Pendidikan Guru Malaysia) offers a second round of training to local Malaysians to teach in Humana Child Aid Society, Sabah learning centres for children of migrant workers. The training is endorsed by the Education Ministry.

## July

- Children rescued from child begging-syndicate on North-South highway. <sup>54</sup>
- Children made to eat in the change room during Raya. Children were later questioned by police without the presence or prior knowledge of their parents. Child of parent whistle-blower harassed at school by teachers. <sup>55</sup>
- Forgetful mom returns to a dead child she had left unattended in a car. <sup>56</sup>
- 14 year-old N. Yanesha awarded Malaysian citizenship. <sup>57</sup>
- Shipping clerk pleads not guilty after being accused of performing oral sex on a boy. <sup>58</sup> Legal support was provided for a child victim throughout police investigations, advocating for the understanding of psychological evidence in sexual abuse cases. <sup>59</sup>
- Home Minister Datuk Seri Dr Ahmad Zahid Hamidi makes a statement that the government would consult the United Nations High Commissioner for Refugees (UNHCR) and the Immigration Department on the possibility of allowing refugees to work legally as there were pressing needs for foreign labour in the country. The ability to work legally would have significant impact on refugee families. <sup>60</sup>
- Malaysia and the US held a session on human trafficking. <sup>61</sup>
- ASEAN draft declaration on the Elimination of Violence Against Women (VAW) and Elimination of Violence Against Children (VAC) finalise. The Declaration was scheduled to be adopted at ASEAN summit in October. <sup>62</sup>

## August

- Announcement of the nation’s biggest immigration crackdown in operations that would last until the end of the year. <sup>63, 64, 65</sup>
- Jiao Zong (United Chinese School Teachers Association) may launch a nationwide signature drive to oppose the Malaysian Education Blueprint 2013-2025. <sup>66</sup>
- Prime Minister Datuk Seri Najib Abdul Razak launched the first PERMATA Children’s Specialist Hospital Project.
- In August, N. Yanesha’s case was up for appeal. Her Malaysian citizenship was ultimately upheld. <sup>68</sup>
- The Minister of Women, Family and Community Development announce a 11.8% increase in the number of reported cases of child abuse compared to the same period last year. <sup>69</sup>
- Death of a five-year old child who was allegedly abused by her mother. <sup>70</sup>
- In Malacca, six child prostitutes all under 14 years of age were detained during an anti-narcotics operation by several enforcement agencies. They revealed they were forced into prostitution. Authorities found it difficult to prosecute those who had sex with these underage girls as the identities of the clients were not known. <sup>71</sup>
- Public forum, The Rights of Women and Children: A National Concern, was initiated by the Attorney-General’s Chambers and organised by the Razak School of Government. <sup>72</sup>
- A proposed training module for Deputy Public Prosecutors that includes child victim’s rights and professional handling of their evidence in court was agreed on by the Attorney-General’s Chambers and the National Judicial & Legal Training Institute (ILKAP), to be included in their 2014 training program. <sup>73</sup> Attorney-General to look into the issue of illegitimate Muslim children being denied the right to have their father’s name recorded on their birth certificates. <sup>74</sup>
- Four organising committee members of last year’s Himpunan Hijau Raub rally to be charged in court under Section 15 (3) of the Peaceful Assembly Act 2012. The charge is related to bringing underage children to attend the rally in Padang Milo, Jalan Bukit Koman on Sept 2, last year. <sup>75</sup>



September

- Deputy Prime Minister Tan Sri Muhyiddin Yassin stated that vernacular schools will not be side-lined in Putrajaya’s massive education overhaul. <sup>76</sup>
- Inspector General of Police in a statement says that children can be questioned by police without parental consent or presence of parent/guardian. <sup>77</sup>
- Reports on the immigration crackdown state that children have been detained in the operations. <sup>78</sup>
- Hosted by World Youth Foundation and organized in co-operation with Ministry of Youth and Sports
- Malaysia and others - International Conference on Trafficking of Women and Children was held from 3rd-7th September in Melaka, Malaysia. <sup>79</sup>
- The Education Ministry ordered SMK Sri Sentosa in Kuchai Lama to remove the closed-circuit television (CCTV) cameras installed in both its male and female toilets. It was reported that the 64 CCTVs were installed in the school in March. Only 30% of parents objected hence the school followed majority vote. Installation was also funded by the Parent-Teachers Association and approved by the Education Ministry. <sup>80</sup>
- A Permata Kurnia centre for about 100 children with autism is scheduled to be opened in 2015 in Kuala Lumpur. This seems to indicate segregation of children with special needs from inclusive education. <sup>81</sup>
- The case of an Indonesian maid, Wilfrida Soik, on trial for killing her employer, attracted attention due to the defendant’s claim that she was a child victim of human trafficking. She was charged with murder which carries the mandatory death sentence upon conviction. <sup>82</sup>
- 2013-2025 Education Blueprint launched on Sept 6 by Deputy Prime Minister Tan Sri Muhyiddin Yassin. <sup>83</sup>
- UN Human Rights Council adopts a resolution to end child, early and forced marriages. <sup>84</sup>
- Together with the Ministry of Education and the Federal Special Task Force (Sabah/Labuan), the United Nations Children’s Fund (UNICEF) launched a second education centre in Sabah for undocumented children. <sup>85</sup>
- Too young to be hanged: Sibu High Court found a teenage boy guilty of murdering 4 members of a family in their house in January last year and spared him the death penalty. <sup>86</sup>

October

- 15-year-old girl Ng Yuk Tim was found dead stuffed in a suitcase in Jalan Kebun Nenas, Shah Alam. <sup>87</sup>
- A police officer accidentally shot 10 year-old Mohd Amar Mohd Azizi while cleaning his gun. <sup>88</sup>
- Child rights raised in statements made by UN member countries at the Universal Periodic Review of Malaysia’s human rights record in Geneva. <sup>89</sup>
- The Malaysian Government announces the Child Act is being reviewed. <sup>90</sup>
- Announcement of a 2-year child protection project by the Social Welfare Department (JKM) with the Department of Islamic Development Malaysia (JAKIM). <sup>91</sup>
- Asia Pacific Governments adopt New Delhi Declaration on cooperation for children’s rights. <sup>92</sup>
- Two teens discovered by school teacher to be having sex in school toilet. Media reported that the boy was later arrested. <sup>93</sup>
- Homes in historic village, Kampung Hakka, demolished by developers leaving families homeless.
- Villagers were refused a stay order following an appeal to save their homes. <sup>94</sup>
- A public-friendly “Surviving Court” guidebook for vulnerable victims of crimes (including children) was launched by the Women’s Centre for Change Penang to empower victims in court. <sup>95</sup>
- A Memorandum was prepared on behalf of the Women’s Parliamentary Caucus, during the most recent Dewan Rakyat Session, to call for amendments to laws that affect women and children. <sup>96</sup>

November

- Detention and release of two Penan children at the Murum dam blockade. <sup>97</sup>

- Abduction of toddler in Bangsar. The child was subsequently found and reunited with his mother. <sup>98</sup>
- Four year-old and three year-old siblings drown in a drain near their home. <sup>99</sup>
- Seven-month old baby rescued from ‘alleged’ traffickers en route to Malaysia. <sup>100</sup>
- Permata Negara to collaborate with the Qatar foundation on education and health of refugee children, including those in Malaysia. <sup>101</sup>
- DiGi CyberSafe survey results show that 49% of children know of a friend who has been bullied online and 27% of children have been bullied online. <sup>102</sup>

December (scheduled)

- Visit of the UN Special Rapporteur on the Right to Food

3

Child Protection 2013: Recurring Themes and Priorities

The Context: Malaysia & Child Rights

Children’s rights in Malaysia have significantly progressed since Malaysia acceded to the UN Convention on the Rights of the Child (CRC) in 1995. Many initiatives to realize and uphold the rights of children have been performed by the government, civil society organizations, concerned individuals, as well as Corporate.

In 2010, the Government lifted reservations to Article 1 (defining the age of a child); Article 13 (regarding freedom of expression); and Article 15 (regarding freedom of assembly and participation). In 2012, the government also signed the two Optional Protocols to the CRC, being the Optional Protocol on the sale of children, child prostitution and child pornography, and the Optional Protocol on the involvement of children in armed conflict.

Although many efforts had been made by the government of Malaysia, there is still a lot more to be done to fulfil the Rights of the children and to ensure that every child in the country, irrespective of the race, religion, ethnicity, and socioeconomic status is able to access every right as enshrined in the CRC.

Malaysia is yet to lift its reservations towards the five core articles under the convention, which plays a crucial role in ensuring its implementation effective. Malaysian government still has its reservations towards Article 2 (regarding non-discrimination), Article 7 (regarding birth registration, the right to a name and nationality), Article 14 (regarding freedom of thought, conscience and religion); Article 28(1) (a) (regarding compulsory and free primary education for all); and Article 37 (regarding torture or other cruel, inhuman or degrading treatment or punishment and unlawful or arbitrary deprivation of liberty).

Malaysia has also not shown any positive sign towards signing and ratifying the third Optional protocol on a Communications procedure.

Child Protection

UNICEF uses the term ‘*child protection*’ to refer to preventing and responding to violence, exploitation and abuse against children – including commercial sexual exploitation, trafficking and child labour and harmful practices such as female genital mutilation and child marriages. Like many other countries, Malaysia is not immune to issues relating to protection of children. Although Malaysia has acceded to the CRC and taken the first steps to carry out the rights of the children, a growing concern remains on issues relating to protection of children; involving cases of abuse (sexual, physical, emotional and neglect), exploitation (domestic and commercial forms), and harmful practices such as child marriage. However, there is lack of established statistics to support the extent of prevalence of such concerning matters.

Violence & Abuse against children

In 2012, according to the statistics from the Department of Social welfare (JKM), about 3831 children were reported to need care & protection under section 17 of Child Act 2001. The statistics reported by the police department (PDRM) in the years 2011 and 2012, revealed either an increase or no major changes in issues relating to offences against children, such as abuse, rape & violence in the different States. The department has recorded about 2,299 child rape cases for the year 2012.

NEW CASES OF CHILDREN WHO NEEDED CARE AND PROTECTION, 2012			
STATE	Male	Female	Total
JOHOR	71	91	162
KEDAH	105	308	413
KELANTAN	10	35	45
MELAKA	43	65	108
NEGERI SEMBILAN	72	98	170
PAHANG	29	115	144
PERAK	73	214	287
PERLIS	24	70	94
PULAU PINANG	67	120	187
SABAH	19	28	47
SARAWAK	46	110	156
SELANGOR	439	694	1133
TERENGGANU	32	42	74
KUALA LUMPUR	257	554	811
LABUAN	0	0	0
<b>Total</b>	<b>1287</b>	<b>2554</b>	<b>3831</b>

Source: JKM

RAPE CASE - VICTIMS BELOW 18 YEARS OLD FOR THE YEAR 2011 AND 2012		
CONTIGENT	2011	2012
JOHOR	434	387
KEDAH	243	227
KELANTAN	216	205
MELAKA	73	78
NEGERI SEMBILAN	118	125
PAHANG	190	173
PERAK	175	157
PERLIS	39	34
PULAU PINANG	90	93
SABAH	165	172
SARAWAK	107	139
SELANGOR	359	293
TERENGGANU	116	136
KUALA LUMPUR	94	80
<b>Total</b>	<b>2419</b>	<b>2299</b>

Source: PDRM (Royal Malaysian Police)

The above statistics only provide a glimpse of the rising trend on abuse and violence against children, according to the documented incidences. In actuality, it is possible that many more cases of child's offences happen without being reported every year due to lack of awareness, fear of stigmatization, fear of future of the child, fear of going through the reporting system and court process, among other factors.

### Child Trafficking

Malaysia is placed under Tier 2 watch list for the third consecutive year in the "2012 U.S Department of State's Trafficking in Persons Report" for not fully complying with the Trafficking Victims Protection Act's minimum standards for the elimination of trafficking. The Malaysian Government is required to demonstrate to the US State Department that significant efforts are being made to combat human trafficking in order to advance on the Tier list. If it fails to do so, Malaysia will automatically be downgraded to Tier 3, the lowest ranking.

A report of Human Rights Commission of Malaysia (SUHAKAM) in 2004 mentions that trafficking is the underside of globalization, as pointed out by the International Labour Organization (ILO). No country is immune to trafficking. It has become a transnational crime of which women and children are the most vulnerable. UN estimates indicate that trafficking in persons generates US\$7 to US\$10 billion annually for traffickers. Trafficking in human beings (THB) has become the third most important source of revenue for criminal syndicates after narcotics and arms.

While it is known that Malaysia is a destination, transit, and to a lesser extent, source country for child trafficking, there is a need for greater information on the nature and magnitude of child trafficking in Malaysia. Disaggregated data on the number of children trafficked in and out of Malaysia is not publicly available. In March 2012, the government confirmed that from 2008 to 2012, a total of 977 survivors of human trafficking were rescued and placed under a Protection Order (PO); of these, 122 were children. It is likely that the actual number of trafficked children in Malaysia is much higher given the clandestine nature of human trafficking. It is also likely that many cases of child trafficking go undetected and/or are not properly investigated, given the general lack of specialized training on recognizing indicators of child-trafficking and on child-sensitive techniques for interviewing and protecting child survivors of trafficking.

Another key issue is the lack of proper age verification procedures for child survivors of trafficking. It is believed that a large number of trafficked children in Malaysia comprise girls trafficked into domestic work. NGOs have documented numerous cases of girls, some as young as 13, who were recruited from Cambodia to be domestic workers in Malaysia. A significant complication is that the ages of children are sometimes falsified; in such cases, authorities reportedly take the age stipulated in a person's identity documents at face value and do not conduct proper age verification procedures. The end result is that the child is deprived of the rights and special protection measures that he or she would be entitled to under the CRC.

The above situation provides only a glimpse of the child trafficking situation in the country, and many such cases could still be hidden under the carpet. This is also seen as a shot in the arm for the stakeholder departments, since the personnel within these departments were involved in these cases. This reveals the gaps within the system in addressing the issues. Malaysia can no longer turn blind eyes to the issue of child trafficking and it's time to act on the issue in the best interests of the children and to protect them.

### Protection of Children under Institutional care

The issue of protection of children from various forms of abuses within the institutional care services, especially long term care, remains a concern. Malaysia has children's homes functioning without registration, and the number of such homes keeps on rising. The data of the children who live in such centres is not being collected systematically. Compulsory registration of such centres would therefore mean enhanced monitoring of the quality of services for children by the government agencies, and would also put in place the Minimum standards. It would be advantageous to make public interagency protocols for a better coordination between Child Protectors, police, health care officials, NGOs and other service providers in the handling of all cases of violence, abuse, neglect, maltreatment, and exploitation of children. These protocols should define roles and responsibilities, processes and procedures for reporting, investigating, prosecuting and referring cases of abuse, and information sharing between agencies, and should be disseminated to the wider civil society.

### Children in Conflict with the Law/Contact with the Law

Children in conflict with law refer to anyone under 18 years, who comes into contact with the legal/justice system, as a result of being suspected or accused of committing an offence. Most of these children have committed petty or minor crimes such as begging, truancy or alcohol abuse. In most cases, it is believed that the children are coerced by adults or at least influenced by their actions<sup>6</sup>.

According to Articles 37 and 40 of the Convention on the Rights of the Child (1989), children in conflict with the law have the right to treatment that promotes their sense of dignity and worthiness, taking into account their age, and aiming at their reintegration into society. Furthermore, placing children in conflict with the law in an enclosed facility should be a measure of last resort, to be avoided whenever possible. The convention prohibits the imposition of the death penalty and sentences of life imprisonment for offences committed by persons under the age of 18.

The Minimum Age of Criminal Responsibility (MACR) is the lowest statutory age at which children may potentially be held criminally liable for infringements of the penal law in a given country. The MACR in Malaysia currently is 10, according to the provisions under the section 82, Penal code. The CRC has disapproved of MACRs of 12 years and lower, supporting MACRs of at least 13 years, and preferring the highest possible MACRs<sup>7</sup>.

### Recommendations

- Lift the reservation to Article 2, 14 & 37 of CRC to ensure protection of all children, irrespective of their background (ethnicity, religion, status, etc.) from torture, degrading treatment, and punishments.
- Ensure that the necessary steps are taken to sign & ratify the third Optional protocol of the CRC on a Communications procedure.
- Enact and enforce national legislation that rises the age of marriage to 18 for all, regardless of religion, and with no exception.
- Ensure compulsory registration for all institutional care services for children to ensure compliance and service standards recognizing Rights of the children.
- Establish and ensure regular monitoring systems for institutional care services for children to safeguard their Rights.
- Enhance the capacities of counsellors, law enforcement agencies, child care providers and other stakeholders for effective execution of Child Protection Policies.
- Enhance meaningful partnership & collaboration with CSO/NGO working on Child Rights for effective and wider reach of programs.
- Initiate national level programs on Child Rights & protection to enhance the awareness level among all members, including children.
- Increase the Minimum Age of criminal responsibility to 13 or above, as recommended by the Committee on Rights of the Child.

Civil rights are rights belonging to a person by reason of citizenship. These include all the freedoms and privileges guaranteed by the constitution and other laws of a state. A child has civil rights from the moment of birth once the birth is registered and all other rights a child is entitled to are granted thereof. For most people and nations, the right to health and education for children are easily understood and accepted. However, that children have civil rights is often not known or understood.

Together with all the rights for their survival, children also have a right to information, justice, equality and non-discrimination, as well as the right to freedom of movement, association, assembly, speech, thought and religion. It is the responsibility of States to not only honour these rights, but also provide the necessary laws or policies, so children have the necessary platforms to practice these rights. Granting these rights, but restricting the practice of them, amounts to violation of rights.

Unfortunately, the Malaysian government has operated in this contradictory manner when it comes to the civil rights of children. Articles 13 and 15 of the CRC guarantee the freedom of expression and assembly, respectively. However, the Peaceful Assembly Act 2012 has strict conditions for street protest. According to the Act, children under the age of 15 cannot participate in protests and those under 21 are barred from organising one.

In September 2012, residents of Kampung Baru Bukit Koman in Raub, Pahang, staged a rally against the use of cyanide at a nearby gold mine which was causing serious health issues, elderly and children being

the most affected<sup>103</sup>. In June 2013 members of the Pahang Raub Ban Cyanide in Gold Mining Action Committee (BCAB) were told they will face legal action if they don't retract their "*potentially defamatory*" statements made against Raub-Australian Gold Mining Sdn Bhd. BCAC refused to apologize and charges were brought against four members, two of whom were charged for bringing A year after the rally, in August 2013, two members of the organising committee were charged for bringing underage children to the rally despite being told by the authorities not to do so. At the trial on September 19, the lawyers for BCAC asked for rescheduling because they had asked for a meeting with the Attorney General. The trial will take place in December 2013 (after the publication of this document).

In November two Penan children aged between 13-16 were arrested at a blockade at the Murum Dam in Ulu Belaga, Sarawak. The children were reportedly not involved in the blockade; one of them arrested for taking pictures of the arrest and the other for visiting other detainees at the police station. The children were kept in remand for three days in complete violation of Article 37(b) of the CRC requiring that formal arrest and detention of a child be used only as a measure of last resort. The children and 8 other adults arrested were subsequently released and the court hearing is set for November 25, 2013 (after the publication of this document).

These occurrences are of great concern, since a child's right to assembly are being violated. Moreover, the conversion case that will be mentioned in the birth registration section below violates the child's right to freedom of religion.

### Birth Registration

The right to identity is popularly known as the 'right to have rights'. At the moment of birth, a child is provided an identity with the birth certificate. Yet birth registration continues to be a serious challenge;

Lack of standardized procedures leads officers to operate differently from one National Registration Department (NRD) Office to another. Thus, while one birth certificate is issued with a given set of documentation in one NRD Office, the exact same set of documentation presented in another Office results in denial of the issuance of the certificate. Another cause for declining birth certificates is completing the long and complex application forms which is a difficult feat to accomplish for marginalized communities who have very little or no education. No alternatives are in place if proof of parentage or birth is impossible through the standard requirements, which is mostly the case with marginalized groups or children caught in the generational cycle of lack of documentation.

Children from the indigenous and minority, refugee and asylum seeking, irregular migrant, and the rural and urban poor communities still have difficulties in obtaining birth certificates. Generally *knowledge of the importance of birth registration is weak* amongst the marginalized communities. Where the importance of this document is recognized, cost, access to the registration offices, rigid requirement of documents like parents' birth/marriage certificates are conditions either difficult or impossible for the refugee, migrant, indigenous, rural and urban poor communities to meet. Without a birth certificate children are unable to access services like education and healthcare.

An area posing huge problems is when there is no account of a "*legal marriage*". Getting the necessary papers for children if the mother is Malaysian poses fewer problems than when a mother is non-Malaysian. In these instances, even if the father is Malaysian and accepts paternity, birth certificates are not granted and a DNA test is required for proof of paternity, a very expensive undertaking for most families.

Similar problems are faced in the Muslim community.

"Currently, there are over 234,000 children who have "no-information" written in the space for their father's name in their birth certificate. Some 85,000 of them are Muslims. For Muslims, the illegitimate children status is attributed to babies whose parents have not performed the akad nikah or to those born less than six months after the solemnization."



Article 7 of the CRC, as well as Articles 5 and 8 of the Federal Constitution; give a child the right to life, privacy, identity, to equal treatment under the law, and to non-discrimination. What's more, there is no law stipulating that birth registration or granting of citizenship will be done after proof of marriage is established. In relation to the fatwa for children born less than six months after marriage, the Attorney General said in a Forum with Women and Children's Rights organizations in August that a fatwa is not above the law. A fatwa is a directive and not a formal piece of legislation. Individual states or Syariah Court can choose to apply it but it cannot be imposed on Federal Law. The National Registration Department (NRD/JPN in Bahasa) being part of the Federal Law, no fatwa by an individual state can be imposed on their operations. In actual fact what happens is NRD officials refuse to issue a birth certificate and refer couples with "illegitimate" children to the Syariah Court. This is a gross violation of the right of the child. The Attorney General in the above Forum promised that there would be a solution to this problem.

Dual religion marriages, that is, Muslims marrying to non-Muslims pose a great challenge for birth registration. There are numerous cases of Indonesian women married to non-Muslims in Malaysia. In these cases, the child has to be Muslim. If the parents don't want their child to be Muslim, the identity of the mother is hidden to prevent this. Without the mother's identity, even though a birth certificate can be issued, the child cannot get citizenship. Unfortunately, in these cases, parents opt to neglect getting the proper documentation for their children, instead of converting them to Islam.

Dual religion poses problems also to a child's right to religion. The Administration of Islamic Law (Federal Territories) Bill 2013 tabled before Parliament, granted conversion of a minor with the consent of only one parent. This has led to major constitutional issues. In 2013 in a case pertaining to an estranged Hindu couple, the father, having converted to Islam, decided to convert all three of their children without the consent of the mother. The judgment was overturned in favour of the mother in the High Court in June, and pressure from civil society resulted in the withdrawal of the above Bill from Parliament, but this matter is in no way settled.

Despite these difficulties, there were some positive developments in 2013. One of them was the lifting of the late registration fee. This new measure will help the poor and marginalised groups who are unable to register the birth of their child due to cost, the remote areas where they live or lack of awareness of the importance of this document much later after the birth of the child. Furthermore, there have also been successful cases of granting of citizenship and birth certificates. This has been partly due to the fact that birth registration became a political issue in the May 2013 elections when the opposition took on the problems faced by the Indian community in 2012. In addition, a number of organizations have been actively working on this issue, and have successfully managed to secure documents for many people. Though these organizations started with the aim of providing services to the Indian community, they soon faced the huge problem of lack of documentation among them and had to address this before anything else. It is important to note that children's birth certificates are related to whether their parents have documents or not, so even though the drive in 2012-2013 was for adults to get documentation, children also benefitted from this drive.

In **June**, it was reported in the news that the government is planning an automatic birth-registration system, but not much is known about this scheme. Even if birth registration becomes automatic, it will be only in government hospitals. Registration of births in private hospitals, at home and in remote areas will continue to be problematic. A universal birth registration plan to include all children, Malaysian and non-Malaysian, should be developed as a comprehensive approach to this problem.



March 2013 - Public awareness talk on the development of a child's brain.

### Three Generations of Statelessness

Letchumy & 2 others v National Registration Department, Home Ministry and the Malaysian Government

This case is that of a mother (Letchumy Suppiah), her two daughters (Mala Kothandu and Sarojini Kothandu) and Sarojini's two daughters, Hemarani 12 and Puvaneswaran 7. Letchumy had on numerous occasions attempted to get MyKad's (Identity Cards) for her daughters but had failed. Though they have birth certificates, their citizenship status is marked as "not determined" as Letchumy never obtained the proper birth and identity documentation for herself.

Both her daughters were not able to get formal education due to this undetermined citizenship status and Sarojini has not been able to obtain a marriage certificate. This has resulted in Sarojini's two young children having the same undetermined citizenship status and running the risk of being stateless, as the National Registration Department (NRD) has refused to recognize conferring of citizenship by a father without a legal marriage certificate.

Letchumy was born in Malaysia in 1943 and has lived here all her life but has never applied for the relevant identity documentation until the year 2008. Despite being born to Malaysian parents, Letchumy was given Permanent Resident (PR) status in 2011. In September 2012 Mala and Sarojini's request for citizenship was denied on the grounds that it cannot be granted under any provision of the Constitution.

A judicial review application was then initiated highlighting the irrationality of the decision by looking at the errors in interpreting (or lack thereof) the Constitution and procedural failings. The citizenship provisions in the Constitution are very clear in Schedule II Part 1, Article 14 (1) (b).

Even though this Article provides citizenship when at least one parent is a citizen or PR, Sarojini and Mala's status on their birth certificates were recorded as "**not determined**". This is a serious error in the application of the law and a major procedural fault that rests with NRD as Paragraph 1(e) of Article 14 (1) (b)\* of the Federal Constitution clearly supports their claim.

The main point to note is that there is no conditionality in the right to citizenship under the constitution. When NRD insists on a marriage certificate or other documents, it is in fact denying citizenship rights granted under the Constitution through procedural irregularities. Nowhere in the Constitution is the requirement of a marriage certificate stated. Even if there were, how is a stateless person supposed to provide such a document?

By way of this judicial review, the courts instructed parties to settle the matter out of court and instructed NRD to look into the citizenship claims again. NRD subsequently conferred Malaysian citizenship status to Letchumy, Sarojini and Mala. The parties then successfully obtained their MyKad the next day. Sarojini is now looking into registering her marriage and obtaining documentation for her young children.

The NRD's attitude towards people with such cases is a cause for concern. Rather than deal with these cases as rights of citizens and be supportive in providing all the necessary guidance, to manoeuvre around the bureaucratic procedural systems, they do not provide the necessary information and impose conditions that are impossible for people to satisfy.

Though this case was successful after years of struggle by the family and with legal intervention, many more families remain in legal and/or procedural limbo with no opportunity to access legal representation. A complete picture of the extent of the problem is not possible due to non-existence of exact figures, but this problem affects thousands of people<sup>105</sup>.



### In Identity Limbo for 14 years

#### Yanesha v National Registration Department, Home Ministry and Government of Malaysia

On 9th January 2013, Yanesha (14 years old), whose father S. Nanthakumar is a Malaysian and mother Judith Guballo is a Filipina, filed a civil suit through her aunt S. Yogeswari seeking a declaration that she is a Malaysian citizen as per Schedule II Part 1, Article 14 (1) (b)<sup>104</sup> of the Federal Constitution and that she be issued a MyKad. Though she has a birth certificate, her status is marked as 'Bukan Warganegara' (not Malaysian citizen) making it difficult for her to enroll in a government school. Every year, she has to pay, apply and obtain a pas pelajar (student pass) from the Immigration Department to continue her studies. Due to her status, Yanesha was also facing difficulties in sitting for her final exams. Yanesha and her auntie have been to the National Registration Department (NRD) many times since 2006 to resolve the problem but her status remained the same. On 26th April 2013, a DNA test confirmed that Nathakumar (Malaysian) was the biological father of Yanesha and so on 18th May 2013, the High Court accepted the DNA finding and directed the National Registration Department (NRD), the Home Ministry and the Government to look into the possibility of settling the issue and providing citizenship to Yanesha.

Yanesha's lawyer decided to pursue the case by applying for the details in Yanesha's birth certificate to be corrected since she is a Malaysian citizen before proceeding with the citizenship application. The intention was to set precedence, but NRD made it clear that they would revoke Yanesha's citizenship if her lawyers choose that path and didn't settle this matter at the NRD counter with her citizenship application taken care of first and then the birth registration. This is a longer and costlier process but finally Yanesha got all her papers.

### LGBTIQ: The Musical

In March 2013, the staging of a government sponsored musical, Asmara Songsang (Abnormal Desire) shocked the human rights community. The musical was extremely misleading and misinforming on the LGBTIQ community. It portrayed the community as gangs you had to register with in order to become a part of them, almost giving it a cult like image. Furthermore, the usage of language and manner in which the LGBTIQ actors spoke was very prejudicial. The LGBTIQ characters were from rich backgrounds and educated in the west, giving the impression that this issue is a Western concept, irrelevant to the realities of the Muslim community in Malaysia. Since the musical was targeted at Muslims, the religious message of repentance and death was strong, for those who did not repent were struck by lightning.

The play was shown in Kuala Lumpur and many other states free of charge. Together with the official list of how to identify a gay or lesbian published in 2012, this was a further attack on the community. Schools were targeted because of the widespread belief among authorities that LGBTIQ tendencies can be reversed if identified at an early age. The Director of the musical stated:

**"Nowadays in Malaysia you read so many things in newspaper articles or write-ups about LGBT because [LGBT] are going into schools and influencing the children. Children need to recognize that men are for women, and women are for men. They [LGBT] are all out to have homosexual and lesbian sex, and although right now it is not so serious [in Malaysia], we need to act, to do something, to say something, to say that this is bad and not to follow it."**

The impact this has on both LGBTIQ and non-LGBTIQ children is tremendous, with the former bullied and scared to reveal their sexuality, and the latter feeling they have the right to bully or discriminate against the LGBTIQ children. This indoctrination is also impacting parents' relationships with their children. Children, especially in the rural areas, have no one to turn to, and there have been reports of children running away from home.

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### Juvenile Justice

Following the public outcry on decisions made on the 2012 statutory rape cases, the Bar Council in March organised a forum to discuss the possibility of setting up a Sentencing Council, in order to ensure consistency in penalisation. The Forum was divided on this issue, and no further action has been taken on this matter since then.

In May, the statutory rape case that was to end with the accused offender, 40 years old, marrying the victim, 13 years old, met with a huge public outrage. There was intervention by the Ministry of Women, Family and Community Development, as well as the Attorney-General, who assured the public that even if a marriage takes place, the offender would face charges on statutory rape. Marrying rape victims after being accused of rape is common in Malaysia among young people. This was the first case that came into the public eye where a much older man was involved. The debate on statutory rape remains heated, since the law emphasises that it is not rape once the minor (girl) gives consent. However, rights based organizations are arguing if it is possible for a 12 or 13 year old to give consent in such matters and how can it be determined that consent was given.

In July, there were once again shock waves when the public learnt of non-Muslim children having to eat their lunch in the washroom of the school during Ramadhan. The police, who went to the school to investigate this matter, interrogated the children without the presence of their parents, deed that amazed the nation and human rights organizations. What's more, the police said there is no need for parental consent for investigating an incident, and Minister Rohani (Minister for Women, Family and Community Development) quoted that such a provision does not exist in the Child Act 2001, thus the police have done nothing wrong.

Granted, gaps exist in the law, but in any incident occurring in a school, parents should always be informed. If as they reassure the public, the police have the necessary training on how to deal with children, then why did they not take the best interest of the child into consideration and ensure the presence of the parents during interrogations. The children were reportedly traumatised by the police interrogations, and parents' complaints only resulted in their being threatened by the headmaster. This incident is a clear indication of the poor quality of training of the police and the lack of understanding of the best interest of the child by school authorities.

## 5

### Focus on the Girl Child: Child Marriage in Malaysia

The case of a 13 year-old girl who was married to her alleged 40 year-old rapist this year garnered media and public attention. In what would have been a case of statutory rape, charges were dropped against the accused when the girl 'agreed' to marriage and permission was granted by the Syariah court for them to marry.

Child marriage is a form of discrimination that disproportionately affects girls and highlights a serious protection issue for Muslim girls. This case follows highly publicised statutory rape cases in 2012 where two men were found guilty, but were spared custodial sentences. (One of the men is a national sportsman who was portrayed as a young man with a *"bright future"*).

Child marriages in Malaysia fall into two categories: marriage between an underage girl and an underage boy; and marriage between an underage girl and an older man. Child marriage continues to occur in Malaysia for a variety of reasons:

- Onset of puberty still seen in some communities as a sign of marriageability;

- Marriage seen a way to avoid maksiat or sexual immorality (tradition/religious belief);
- Relieve families of financial burden;
- Belief in the myth that marriage provides protection for the child bride;
- There are also reports that underage Rohingya 'mail-order brides' are being smuggled into the country from Myanmar to be wed to refugees<sup>106</sup>. (Stateless Rohingya have been fleeing ethnic violence in Myanmar to seek refuge in Malaysia. The majority of these refugees have been young men who now are looking for brides from their own communities)<sup>107</sup>.

### Legal Aspects

The legal age of marriage for non-Muslims is 18. Non-Muslim females are permitted to marry between the ages of 16 and 18 with the consent of the Chief Minister.<sup>108</sup> Under Section 8 of the Islamic Family Law (Federal Territories) Act stated that the minimum legal age for Muslim boys is 18, and Muslim girls is sixteen<sup>109</sup>.

Section 375(g) of the Penal Code (Act 574) makes sexual intercourse with a girl with or without her consent when she is less than 16 years of age an offence of statutory rape. Marital rape is not criminalized in Malaysia at present. During the Universal Periodic Review of Malaysia at the UN in October 2013 however, Canada recommended criminalizing marital rape through reform of Section 375 of the Penal Code and Chile recommended strengthening legal provisions to protect victims of marital rape.

### Frequency and Nature of Child Marriage

Obtaining accurate data on the incidence of child marriage is difficult due to under-reporting, in particular due to unregistered/unofficial customary marriages.

Available data is piecemeal and conflicting. However, the latest statistics indicate that in 2012, 1,165 applications for marriage were made in which one party, usually the bride, was younger than the legal marrying age. Of those cases, the Syariah Courts approved 1,022 of them. This is an increase from the 2011 record, when some 900 marriages involving at least one Muslim minor were approved. Statistics for 2013 indicate the numbers are on the rise<sup>110</sup>. According to UNFPA, 1.4% of all married women in Malaysia in 2011 were aged between 15 and 19, which amounts to 82,000 girls<sup>111</sup>.

The Malaysian government maintains its reservation to Article 16 (2) of CEDAW-Convention to Eliminate All Forms of Discrimination Against Women which states: "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."

#### EXAMPLES OF CHILD MARRIAGES REPORTED IN THE MEDIA

##### 2010:

In March 2010, newspapers covered reports about the discovery of an 11 year old girl in a semi-conscious state in a mosque near Batu Caves, Selangor. She had married a 41 year old man on 20 February 2010 after the man reportedly "convinced her father that there was nothing wrong with the marriage."<sup>112</sup> This marriage was later annulled by the Kelantan Syariah court; albeit not because of the age of the child, but because Syariah law was not complied with.<sup>113</sup>

Another girl aged 10 was married to a man in his 40s in Kelantan<sup>114</sup>.

In October 14-year-old Siti Maryam Mahmod married 23-year-old schoolteacher<sup>115</sup>.

##### 2011:

YouTube video of bride and groom identified only by their first names: Syafiq, a 16-year-old boy and his 14-year-old bride Yana<sup>116</sup>.

##### 2012:

12 year-old Nur Fazira Saad and 19 year-old Fahmi Alias married last week in northern Kedah state after the girl's father agreed to the union stating and an Islamic court granted permission.<sup>117</sup> The father was quoted as saying "*It is better for them to get married rather than doing something that istak elok (improper)*".<sup>118a</sup> In November 2013, the media reported that Nor Fazira Saad and her alleged rapist Mohd Fahmi Mohamed Alias were married because she had been raped and that the marriage had ended in divorce.<sup>118a</sup>

### Child Marriage and Child Rights

Child marriage is a violation of children's human rights. Despite being prohibited by international human rights law and many national laws, child marriage continues to rob millions of girls around the world of their childhood. It forces them out of education and into a life of poor prospects, with increased risk of violence, abuse, ill health or early death. While boys are also married as children, child marriage affects girls in greater numbers and with consequences which can be devastating for their health and well-being.

Marriage before the age of 18 is a reality for many young women. In many parts of the world parents encourage the marriage of their daughters while they are still children in hopes that the marriage will benefit them both financially and socially, while also relieving financial burdens on the family. In actuality, child marriage is a violation of human rights, compromising the development of girls and often resulting in early pregnancy and social isolation, with little education and poor vocational training reinforcing the gendered nature of poverty.

The right to '**free and full**' consent to a marriage is recognized in the Universal Declaration of Human Rights – with the recognition that consent cannot be 'free and full' when one of the parties involved is not sufficiently mature to make an informed decision about a life partner. While marriage is not considered directly in the Convention on the Rights of the Child, child marriage is linked to other rights – such as the right to express their views freely, the right to protection from all forms of abuse, and the right to be protected from harmful traditional practices – and is frequently addressed by the Committee on the Rights of the Child. Child marriage was also identified by the Pan-African Forum against the Sexual Exploitation of Children as a type of commercial sexual exploitation of children<sup>119</sup>.

Child marriage occurs when one or both of the spouses are below the age of 18. Child marriage is a violation of article 16(2) of the Universal Declaration of Human Rights, which states that "**marriage shall be entered into only with the free and full consent of the intending spouses**". Article 16 of the convention on the elimination of all Forms of discrimination against Women (CEDAW) states that women should have the same right as men to "**freely choose a spouse and to enter into marriage only with their free and full consent**", and that the "**betrothal and marriage of a child shall have no legal effect**".

The Convention on the Rights of the Child (CRC) sets out the human rights of children: the right to survive; the right to develop to their fullest; the right to protection from harmful practices, abuse and exploitation, and the right to participate fully in family, cultural and social life. In signing the convention, governments also committed to take "**all effective and appropriate measures with a view to abolish traditional practices prejudicial to the health of the children**", which includes, among other practices, female genital mutilation/ cutting and child marriage<sup>120</sup>.

Child marriage can have a very degrading impact the child especially on the girl child in the following aspects in the overall life cycle:

- Health & wellness
- Self-protection (from Abuse & exploitation)
- Education
- Poverty
- Human Rights & Justice

### Child marriage and the Millennium Development Goals (MDGs)

Child marriage directly hinders the achievement of 6 of the 8 Millennium Development Goals. Simply put, the international community will not fulfil its commitments to reduce global poverty unless it tackles child marriage. The Final Report of the UN High-Level Panel on the Post-2015 Development Agenda, which was released on May 30, 2013, recommended a new indicator 'child marriage'.<sup>121</sup> It is hoped the indicator will help to monitor the issue and raise the profile of the child marriage.

### Latest Developments

Civil society groups have been raising awareness about the serious consequences of child marriage. JAG-Joint Action Group for gender equality for instance started a campaign to collect signatures. The issues were also raised during the Women Deliver conference which was hosted in Kuala Lumpur in May.

A study into the incidences of child marriages in Malaysia with a focus on their causes and consequences is currently being undertaken by the Women's Development Research Centre (Kanita) of Universiti Sains Malaysia.



In 2011, the Minister in the Prime Minister’s Department stated that the government had no plans to review law allowing for underage marriages because the practice is permitted by Islam.<sup>122</sup> In November 2013, Malaysia did not cosponsor a resolution at the UN General Assembly to end child, early and forced marriage. Calls were made by UN member countries in Geneva during the UPR-Universal Periodic Review of Malaysia’s human rights record as well for the State to consider ending child marriage.

There are encouraging signs that change is possible and that the legal age of marriage for all children will be amended to age 18. Beyond legal reform, broad steps for translating legislation into reality will be needed. Understanding current customary and traditional practices is important to understanding child marriage as it occurs in different communities. Child marriage in Malaysia is not just about technicalities of marriage under Syariah law, but is linked to other complex issues such as access to reproductive health, access to education and gender equality.

Making a commitment to end child marriage will entail bold steps, including educating society on the consequences of child marriage, ensuring economic opportunities and gender equality for young women and facilitating dialogue with key community leaders. Taking such steps would send a signal that Malaysia is truly advancing towards a developed nation status in line with its 2020 vision.



May 2013 - CRCM representing on the expert panel for Girls Not Brides at the Women Deliver Conference.

CASE STUDY – Refugee Girl Being Forced into Marriage

Lina (not her real name) is 14 years old, a child refugee born in Malaysia. Her father Salam has 2 wives and 9 children. She is the eldest of the 6 children of the second wife. Her parents, both Rohingyas, fled their country of birth, Myanmar, to escape the ethnic persecution by the Junta Government there and came to Malaysia to seek safety and asylum.

As a Rohingya, Lina faces the added scenario of not being accepted as the citizen of any country. As a stateless person, she is ‘invisible’ – neither her identity nor her existence is legally recognised, neither in Malaysia nor in Myanmar.

Lina loves to go to school and study. She has a passion for education and loves to draw (and is good at both). However, early this year she had to stop attending school to care for her two baby sisters, a 3 and a 1 year old. She tried to attend school with her baby sisters and many a times she would attend classes while her sisters slept on her lap. But unfortunately this too came to an end around middle of this year.

In July this year, her parents “surprised” her with their plans to marry her off. The “groom”, Rohingya in his mid-20s, had promised her father a sum of RM6000 (approx. 1900USD) and various other promises to marry her.

Even though, Lina does not want to get married, her parents are forcing her to do so. Her mother, also a child bride, was married off at the age of 13 and tells her it is no big deal.

Because Lina is a non-citizen, she has no protection from the community or from the Malaysian authorities. If she tries to get help, she risks being detained or even deported. She has tried to retaliate at home but her parents have been hard on her.

Lina is not alone as there are reports of other refugee girls arriving in Malaysia as child brides. Her situation highlights a gap in the child protection system, leaving children such as her vulnerable and unprotected.

Prepared by MCRI with the help of Dave and Marianne Kameron of New Thessalonian Apostolate.

The Children Behind the Stereotypes:  
Immigration Crackdowns and Obligations under the UN CRC

On August 28, 2013 Immigration director-general Datuk Alias Ahmad announced the “Nation’s biggest ever crackdown”, which was expected to target 500,000 irregular migrants in an operation lasting until the end of the year. Individuals arrested during the operations would be deported “immediately”<sup>123</sup>. Media reports stated that children were also detained in the operations <sup>124, 125</sup>. Publicly available details are scarce, so the exact numbers of children detained are unknown. Information concerning the crackdown as it is occurring in Sabah is difficult to obtain and substantiate.

Figures Released in the Media <sup>126</sup>	
Location	Detainees
Johor Baru	101 individuals, comprising 23 children from age 2
Saujana Putra, Selangor	70 individuals, aged between 2 and 58
Near Bachang, Melaka	403 individuals, aged between one month and 55 years
Seremban	621 individuals, between age 6 and 54
Miri	Undisclosed number of children

Our attitudes and beliefs about migrants determine how we behave towards them. Negative beliefs and misconceptions can lead to discrimination and behaviours that are unjustly harmful towards migrants, including violations of human rights. For example, an International Labour Organization(ILO) study on public attitudes to migrant workers showed over 80% of Malaysian respondents believe migrants commit a high number of crimes. However, recently Home Minister Datuk Seri Ahmad Zahid Hamidi stated that most crimes are committed by local Malaysians<sup>127</sup>.

One of the guiding principles of the CRC is the principle of non-discrimination. This signifies that all children are entitled to the rights laid out in the Convention. Article 2 of the CRC encapsulates this principle. However, news media use words such as “hunt down”, “unwanted aliens” or “dens for illegals” when reporting, which stigmatizes concerned individuals.

The term “illegal” carries with it a negative connotation, which unfavorably brands migrants and hides the difficult realities lived by many vulnerable populations in Malaysia. It reinforces social stratification and stereotypes (e.g. foreigners as criminals and the cause of social ills) and has serious consequences for non-citizen children.

Principle of Non-Discrimination  
Article 2 of the UN CRC

- 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
- 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.



The Malaysian Immigration Act 1959/1963 does not differentiate between asylum-seekers, refugees, irregular migrants and undocumented/stateless persons, deeming these groups to be “illegal immigrants” and thus, vulnerable to get arrested for immigration offences. However, can a child be illegal? What is implied by the use of the word? What does it mean for actions towards children?

When the word “illegal” is used, it implies that someone is guilty of a crime. The terms “irregular” or “undocumented” are often employed instead of “illegal” to be more neutral and to reflect the fact that many migrants arrive at their status through administrative irregularities rather than through criminal action. The term “illegal” denies migrants their humanity, depersonalising them and hiding the individual underneath the negative label.

Refugee and asylum-seeking children seek refuge in Malaysia. Some are fleeing the conflict in Syria; others escape persecution in countries such as Myanmar. These children are not able to avail themselves of the protections of their home countries. At the end of October 2013, there were 27,677 children registered with the UNHCR which is the UN Refugee Agency. Like Malaysian children, they have rights to survival and development as granted by the CRC.



September 2013 - Public awareness talk on children's homes in Malaysia.

Consequences for Children in Malaysia

Refugee, asylum-seeking, stateless, and migrant children face multiple forms of discrimination as a result of their status in Malaysia. They have very limited access to health care and education, are vulnerable to abuse, exploitation and other violations of their human rights. They have difficulties with birth registration and accessing child protection services. Cases of children who have been separated from their parents during immigration raids have been documented. Some of these children remain behind living in the streets after their parents have been deported.<sup>128</sup>

The Malaysian Government is not party to the 1951 Convention relating to the Status of Refugees and its 1967 Optional Protocol, nor has the Government ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Serious human rights violations are committed due to the lack of legal framework in Malaysia for the acknowledgement and the protection of the rights of refugee and asylum-seeking children. However, as a signatory to the CRC, Malaysia is supposed to ensure that the rights of children are respected, regardless of their nationality or immigration status in order to uphold its international obligations. The Child Act also recognises that “every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any other status”. However, current immigration policies, such as the ones enacted for the current immigration crackdown, have damaging consequences for groups of vulnerable children. The Malaysian government still maintains a reservation to Article 2 of the CRC, which upholds the principle of non-discrimination. Actions to stop illegal migration should take into account the best interests of children, instead of committing injustices towards them.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

It is often said that a measure of the greatness of a society is how well it treats children. What will be the consequences for Malaysia in the future due to actions which at present deny children opportunities to learn and develop in peace and security? Are the values of Malaysian society duly reflected in the detention of children or the restrictions on healthcare and education? Malaysia has set high standards and signed on to important human rights commitments. However, we are currently failing to live up to those standards when the status becomes more important than the child, and the stigma greater than the human being.

Immigration Detention of Children: One Child in Detention is One Child Too Many

Immigrant, refugee and asylum-seeking children continue to be arrested and detained in Malaysia's immigration detention centres where they face difficulties accessing protection. The poor conditions in detention centres have been well-documented: release of children from detention can take several months to process, and until then, children have to live in overcrowded and unsanitary conditions with inadequate food, lack of bedding, clean water, and medical care.

Although the Immigration (Administration and Management of Immigration Depots) Regulations 2003 provide that a child under the age of 12 may remain with any of his/her parents (Regulation 11), there are no provisions for the protection of unaccompanied children and adolescents. Children also lack access to education and legal representation, and are particularly vulnerable to abuse in such conditions. Official data on the number of children in immigration detention is not publicly available.

According to a Bernama report of July 24, 2013, Malaysia's Permanent Representative to the United Nations, Datuk Hussein Haniff demanded the release of Palestinian children in Israel's detention centres. Datuk Hussein Haniff himself underscored the long term psychological damage caused when children are held in detention: “These children [in Israel] have been denied the request to be accompanied by their parents, access to a lawyer and bail, and in some cases have even faced solitary detention. This situation and the appalling conditions the children have had to endure will do nothing but inflict long-term psychological damage on such young minds”.

As noted by the UN Committee on the Rights of the Child in 2012, detention based upon a child or their parent/guardian's immigration status is never in the best interests of the child. The Committee also called upon States to “expeditiously and completely cease the detention of children on the basis of their immigration status”. With children in Malaysian immigration detention facing similar challenges, the best interests of the children should prevail – without any double-standards and with respect to the principle of non-discrimination.

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Cracking Down on Baby Selling Syndicates: Illicit Adoption or Human Trafficking?

On the night of January 11-12, 2013, police in George Town cracked down on a baby selling syndicate and removed nine children from their homes. The children had allegedly been sold to their parents with the purpose of illegal adoption. This was the first of a series of operations which took place in the first two months of 2013, and which were heralded as evidence of the successful efforts of the Malaysian authorities to combat human trafficking.

Arrests were made using the Anti-Trafficking Act, Section 14, which overrules the Child Act, Section 48. Care of the children therefore no longer fell under the jurisdiction of the Social Welfare Department (JKM), and since the Anti-Trafficking in Persons Act lacks specific measures to care for rescued children, questions arose related to their right to protection and whether decisions regarding their welfare were made with the children's best interests in mind.

In Penang, the children involved in the cases were between the ages of 2 months to 9 years old. Some of them had been with their adoptive families for several years. Based on our information, the police operations took place in the middle of the night, and the children were immediately removed from their “parents”, and remained in such a manner for more than a month. Their regular routine, such as going to school, was also disrupted, with the children being removed to Johor. Such a sudden separation from their “parents”, and break from their daily lives, can cause children to suffer serious trauma and distress, which may cause permanent emotional damage.

By international definition, the sale of children and the trafficking of children are two distinct concepts covered by different legislations. It is therefore essential to clarify what is considered as trafficking in persons falling under the Anti-Trafficking in Persons Act, and whether child selling for the purpose of illegal adoption is under such category.

Comparing the Sale of Children to Child Trafficking

Article 35 of the Convention on the Rights’ of the Child<sup>129</sup> stipulates that “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form”.

Considering the above provision, the CRC separates the act of the sale of children from the act of the traffic in children, indicating that even though the two concepts are similar to each other, they are not identical<sup>130</sup>, and State Parties have the obligation to take the necessary measures to prevent both forms of violation of the rights’ of the child.

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography<sup>131</sup> provides the definition of the sale of children<sup>132</sup> (subparagraph (a) of Article 2) as follows: “sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.

The Optional Protocol requires from all Member States to “take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments”<sup>133</sup> which refers to other participants as well not only the intermediaries.

The minimum requirement of the Optional Protocol on the Sale of Children from Member States, with regards to penalization for illegal adoption, covers only the improper inducing of consent, as an intermediary, for the adoption of a child (subparagraph (ii) (a) 1. Article 3 of the Optional Protocol on the Sale of Children). However, when ratifying the Optional Protocol on the Sale of Children, Malaysia highlighted that its understanding is that it only applies to Member States to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption<sup>134</sup>, which has not yet been ratified by Malaysia<sup>135</sup>.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, is one of three protocols known as Palermo Protocols, which complement the 2000 Convention against Transnational Organized Crime. It is known for its internationally recognized definition of trafficking in persons:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Main differences between trafficking in children and the sale of children

Although the concept of the sale of children is similar to the trafficking in children, they are distinct concepts, as highlighted by Unicef<sup>136</sup>. The main differences are summarized in the chart below, which takes into consideration the above protocols. It is to be noted that in certain cases, trafficking in children and sale of children do overlap, but regardless of it, protection needs to be provided against all forms of child selling and all forms of trafficking in children.

Trafficking in children	Sale of children
The sale of children is not a condition of the definition of trafficking in children.  A child can be a victim of trafficking in persons without being sold, without any form of remuneration or consideration.	Transfer of the child for remuneration or any other consideration (so a purchase transaction) is a core element of the definition of the sale of children.
The purpose of exploitation is an element of the definition.	The purpose of exploitation is NOT an element of the definition.
Selling a child for the purpose of illegal adoption would NOT constitute trafficking in persons, since the purpose is not the exploitation of the child.	Selling a child for the purpose of illegal adoption fulfills the definition of the sale of the child.
It includes an element of movement of the child <sup>137</sup> .	The child is not necessarily moved physically.

The above differentiation is necessary to take better measures in the matters of prosecution, consideration of the best interests of the child (the question of the child’s return to his/her family), different causes of the crimes (requiring different preventative mechanisms), and different defects in child care and protection systems.

Legal framework in Malaysia

Although cases of child selling for the purpose of illegal adoption have been treated as trafficking in persons, as seen following the crackdowns in early 2013, it is, however, questionable whether the elements of the statutory national definition of trafficking in persons are fulfilled in order to secure criminal conviction.

Malaysia passed the Anti-Trafficking in Persons Act 2007 (hereinafter as “Anti-Trafficking in Persons Act”), which was amended in 2010 by the Anti-Trafficking in Persons (Amendment) Act 2010 (hereinafter as “Amendment”). The Amendment specifies the definition of trafficking in persons in Article 4 (g):

“trafficking in persons” means all actions involved in acquiring or maintaining the labour or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this Act.

Compared to the previous definition originally included in the Anti-Trafficking in Persons Act<sup>138</sup>, the current definition incorporates “coercion” as a new element of the definition<sup>139</sup>. In addition, instead of “a person” the ‘object’ of the action is “the labour or the services of a person”. It is not clear how this element of the definition can be fulfilled in case of selling a child for the purpose of illegal adoption, since it is a transaction over a person, which does not include any labour or services. Furthermore, it is also not clear how the second part of the definition referring to actions “of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this Act” can be interpreted.

The expression of “this Act” refers to the Anti-Trafficking in Persons Act (and any subsidiary legislation made under such Act) and, although the “purposes of this Act” are not defined, from the title we can conclude that such purpose is to combat against trafficking in persons so the above wording is contradictory. <sup>140</sup>

The current definition of trafficking in persons is not suitable to cover all forms of child selling, and in practice, it can lead to failure to convict persons involved in child selling. This can result in the failure of Malaysia to fulfill its international legal obligation to take measures to prevent and provide protection



against all forms of child selling. It is not clear the reason why the Malaysian authorities choose to treat child selling cases, with the purpose of illegal adoption, under the Anti-Trafficking in Persons Act, which may result in the failure to convict the persons involved in the alleged crime, instead of the provision of the Child Act on the unlawful transfer of possession, custody or control of child.

The above discrepancy has been highlighted by the Council for Anti-Trafficking in Persons (MAPO) as well as in its Plan of Action to Combating Trafficking in Persons 2012/2013 Progress Report:

*"Even though the number of convictions is relatively low for trafficking in persons cases, efforts are made to ensure convictions based on other existing domestic legislations."*<sup>141</sup>

*"There are no provisions concerning selling of babies under ATIPSOM 2007. ..."*<sup>142</sup>

Malaysia remains on the Tier 2 Watch List for the fourth year. In 2014, it will automatically fall to Tier 3 should the State fail to demonstrate that it is making significant efforts to curb human trafficking. Current practices of the Malaysian authorities fall short of meeting Malaysia's international legal obligations to take all measures to prevent all forms of the sale of and trafficking in children. Review of the above definition of trafficking in persons under the Anti-Trafficking in Persons Act (and its Amendment) and the development of care and protection system for child victims of trafficking would be a step in the right direction.

### Illicit Adoption: What is driving the sale of babies and children?

Malaysian law<sup>143</sup> recognizes two methods of legal adoption: adoption under the Registration of Adoption Act 1952 (the RAA)<sup>144</sup> which covers both Muslims and non-Muslims; and through Court order as provided for by the Adoption Act 1952 (the AA), which applies only to non-Muslims.<sup>145</sup> The separate laws grew out of a need to cover both Muslims and non-Muslims and to account for cases of de facto, or informal, adoptions.<sup>146</sup> Adoptions under both methods are overseen by JKM (Welfare Department).

Abandoned children or children born as a result of affairs can be adopted or be given to foster parents under s. 35 and s. 31(e) of the Child Act, respectively. However, both situations require an investigation by JKM (Ministry of Women, Family and Community Development) to ensure the child is not a foreigner. This information is then provided to the court that authorises NRD/JPN to issue the necessary documents.<sup>147</sup>

Some people engage biological parents directly or through other contacts and offer money or some kind of transaction in exchange for the baby. While there is no hard data on the number of adoptions that go through these channels, there has been a general consensus that they far outweigh the number of adoptions done legally. In the view of many social workers, one of the primary reasons for the exchange of young children or for infants is an unclear understanding of how to go through legal adoption, the process, etc. In addition, the official procedure for prospective parents to obtain an infant seems very time-consuming. The two year waiting period—mandatory for Muslim adoptions—for the initial application to be approved in a Departmental adoption is considered too long, most notably by the parents and social workers.

JKM's waiting list is insufficient to meet the demand for infants, as few abandoned babies are placed under its care. And the vast majority of parents prefer to adopt an infant or toddler who is less than a year old, which will eventually lead many of these couples to seek alternative ways of obtaining an infant rather than wait for years.<sup>148</sup>

A positive development, since mid-2012, is that legal adoptions are now possible even if the child has '*foreigner*' written on their birth certificates. However this process is also extremely lengthy and sophisticated such that it cannot be completed without a lawyer<sup>149</sup>.

Prospective parents complain that the adoption process is too slow, which drives them into the far-riskier arena of non-legal adoptions.

As evidenced by a day-long seminar in April 2012, hosted by NGOs and attended by both government and civil society,<sup>150</sup> there is a perceived increase in baby selling syndicates that provide infants to prospective parents. A newborn infant can sell for as much as RM60, 000 (approximately USD 20,000) on the black market, and low-income parents may sell their children to support themselves or to settle debts.<sup>151</sup> Prospective parents will contact organizations that may know of available babies,<sup>152</sup> and some social workers have observed that there are unregistered children's homes that source infants and toddlers and then sell them to couples or to syndicates. In addition, there are doctors and nurses from certain private hospitals who are rumoured to line up buyers for a newborn infant from migrant mothers who cannot afford to pay the hospital bills.<sup>153</sup>

#### Statistical Data

Malaysia faces significant challenges due to the lack of a comprehensive and structured system to collect data on children with disabilities. Available statistics on the actual number of children with disabilities in Malaysia is questionable as there is lack of awareness among parents on the need to register and a child who is registered as a 'person with disabilities' may be stigmatized. These children have a higher likelihood to be enrolled into special class in the national school system, without assessment on whether they would benefit more in mainstream or special education classes. NGOs have received reports that there have also been cases where children with special needs who are high functioning are also put into special education class to prevent them from sitting for public examinations in order for the school to maintain its overall performance and ranking in the national school system. As such, these reasons have attributed to instilling fear in parents to register their children with disabilities with the Social Welfare Department or Ministry of Education.

There is also a lack of coordination between the government agencies in terms of Online OKU ('orang kurang upaya'/disabled person) registration that was set up to collect data. Moreover coordination between government ministries has yet to be seen to tackle the issues on lack of data or the lack of transparency in making the data known to the public.

#### Access to Education

There is no known data on the effectiveness and progress of the National Council for Persons with Disabilities, which is chaired by Ministry of Women, Family and Community Development, as raised up in the Roundtable Discussion on "Persons with Disabilities Act 2008 – Rights to Education", held at the Bar Council<sup>154</sup>. Some loopholes mentioned included Section 28, which states that "... children with disabilities shall not be excluded from pre-school, primary, secondary and higher education on equal basis with persons or children without disabilities." Regulation 3 of the Education Act (Special Education) still remains with the terms "educable and non-educable", which in practice, often means the children must be able to "manage themselves" and are toilet-trained. Another point raised was the lack of penalties for infringement of the Act, and this would not give power to the Act for effective implementation. Some suggestions given by the participants of the discussion were to increase disability awareness among the public, for the progress report of the People with Disabilities Act 2008 be made accessible to the public to ensure accountability of the government, and monitoring and research to be done to assess the effectiveness of Community Based Rehabilitation centers.

In its appeal to the MOE to listen and respond to the feedback of the public on the education system, the President of the National Early Childhood Intervention Council (NECIC), representing 61 NGOs throughout Malaysia, commended the Prime Minister and the MOE for extending invitations for feedback for the improvement on the education system. However the feedback appears to have been ignored with the lack of response from the government sectors after receiving it. For example, the Memorandum-Inclusive Education as National Policy for Children with Special Needs, which was submitted and endorsed by 57 NGOs throughout Malaysia to the MOE has not been accepted by the ministry. It was submitted on 9 June 2012. The Council also raised their concern that the revisions to the



education system are being done without the involvement of NGOs, parents and professionals who are able to provide valuable feedback before they are implemented as laws<sup>155</sup>. Similarly, the Memorandum on Early Childhood Intervention submitted to the wife of the Prime Minister at the 1st National Early Childhood Intervention Conference in 2006 has also received no response<sup>156</sup>.

Even though inclusive schooling for children with disabilities should be practiced as widely as possible, it may not cater to the learning needs of all children. With the strong belief that all children are educable and research findings that all children are able to benefit from inclusive education regardless of their abilities, the Memorandum-Inclusive Education as National Policy for Children with Special Needs recommends that only children with severe learning difficulties should be placed in special education classes in school.<sup>157</sup> Teaching staff in schools need to be trained in disability awareness and simple screening measures so that they will be better equipped to make inclusion a reality in schools. It is also recommended in the memorandum that personnel trained in special education should be recruited as teachers, Special Education Needs Coordinators (SENCO) and teacher aides, and sufficient budget should be allocated to this end. Parent should be given the options to enrol their child with disabilities in an inclusive setting if they wish to; with the condition that inclusion is also recommended by the SENCO.<sup>158</sup>

On the issues of furthering education for older children, the JKM has an Industrial Training and Rehabilitation Centre in Kajang, Selangor. The training offered are pre-vocational courses such as Electronics, Computers, Art, Tailoring and Batik crafting. These courses are open for those between 14 and 25 years of age and have literacy, numeracy and writing skills. The centre also offers vocational courses like Fashion Designing and Tailoring, Multimedia, Prosthetic and Orthotic, etc. It is, however, only open to individuals in between 18 and 40 years of age and have passed the PMR (Form 3) and SPM (Form 5) public examinations. Other qualifying criteria for applications to both programmes are that the individuals must only have physical disabilities, are registered with the JKM and are able to manage themselves.<sup>159</sup>

Meanwhile, the Permata Kurnia, an early intervention programme for children with high functioning autism is set to be launched in 2015 in Sentul, Kuala Lumpur. This seems to contradict the trend to move towards inclusive education for high functioning children at preschool level, because the programme is planned to cater to the needs of the children at 4-6 years old from 8:30 a.m. to 4:30 p.m. from Monday to Thursday.<sup>160</sup> These children will not have the opportunities to be in an inclusive kindergarten setting.

### Recommendations

The recommendations in the Malaysian resolution on the Incheon Strategy to *"Make the Right Real"* for Persons with Disabilities to strengthen social protection and expand early intervention and education of children with disabilities are to:

- Strengthen early detection network within relevant agencies (Ministry of Education, Ministry of Health, Ministry of Women, Family and Community Development).
- Enhance access to early intervention services
- Enhance service quality and effectiveness
- Capture data immediately upon diagnosis in the Ministry of Health to be shared with the Ministry of Education and Ministry of Women, Family and Community Development.
- Ensure enrolment of 75% of children with disabilities into inclusive school setting by 2015.

Other recommendations:

- Include prohibition against discrimination of OKU in Federal Constitution – Articles 8(2) and 12 (1)
- Amend the PWD Act to include penalties and redress mechanism and to lift reservations on the Act, as well as to remove Regulation 3
- Use Incheon strategy as a blueprint for revised national plans and strategies
- Lift reservations in PWD
- Adoption of a standard definition of child with disabilities for all sectors of service
- Establish a system and comprehensive data collection mechanism
- Unified screening process

Launched on Sept. 6, 2013 and said to be in line with UNESCO's strategy to achieve Education for All, the Malaysian Education Blueprint (MEB) is a roadmap for the country's education system. The Blueprint was developed through discussions with education experts at UNESCO, World Bank, OECD, and six local universities, as well as principals, teachers, parents, and students from every state in Malaysia<sup>161</sup>.

Targets include *"achieving Universal enrolment from pre-school to upper secondary education in 10 years; halving the achievement gaps between the rich and the poor, urban and rural, and between the Malaysian states in eight years; rising from the bottom-third to the top-third of countries in international assessments like Programme for International Student Assessment (PISA) or Trends in International Mathematics and Science Study (TIMSS) in 15 years; and building an education system that gives children an appreciation of their unique identity as Malaysians"*.<sup>162</sup>

Developed in line with the National Education Philosophy 1989 (NEB), the Blueprint has suggested 11 strategic and operational shifts to achieve its visions. Within 100 days of the launch, six of the 25 initiatives targeted under the Blueprint had already been achieved such as the *"Agenda, Education Performance and Delivery Unit (PADU), Parents' Toolkit, Cambridge Placement Test for English language teachers, District Transformation Programme and the compilation of education videos."*<sup>163</sup>

The Blueprint commits to providing better facilities and equipment in schools for the special needs, indigenous and other minority groups by 2025 in order to create a *"conductive and supportive learning environment"*.<sup>164, 165, 166</sup> Priority will be given to schools in rural and remote areas, where infrastructure support is even more needed.<sup>167</sup>

The MEB has not been without its critics however and challenges remain.

### Education in Mother Tongue Language

Despite the Government's claim in support of mother tongue education as well as the large and growing class sizes in vernacular schools, there is no mention of plans to build new national-type schools or even religious schools.<sup>168, 169</sup>

Rather than simply adapting the language learning syllabus of National Primary schools (Sekolah Kebangsaan) to National-type schools (Sekolah Jenis Kebangsaan) where students whose mother tongue is not Bahasa Malaysia, the Blueprint should have addressed the special challenges that Chinese and Tamil national-type schools should overcome in terms of learning second languages and in turn tailor the curriculum based on the students' language proficiency.<sup>170, 171</sup>

The indigenous community is lacking the much needed language and literature materials for their learning.<sup>172, 173</sup> To support the enrolment of the indigenous children, the Blueprint will continue with the implementation of Kurikulum Asli dan Penan (KAP), a contextualized curriculum to Orang Asli and Penan students based on their needs, experience, environment and socioculture that aims to help the students become proficient in reading, writing and arithmetic.<sup>174</sup> The program has now been expanded to include other elective language choices such as Iban, Kadazan-Dusun and Semai.<sup>175</sup> Although many more indigenous languages have not been included, this could be seen as a positive step towards greater inclusion of students of other indigenous groups.

### Education for Children with Special Needs

The Ministry of Education (MOE) aims to place at least 75% of students with special needs (SSN) in mainstream schools by 2025, compared to the current 8.3%.<sup>176</sup> They also aim to increase student enrolment for the Inclusive Education Program.<sup>177</sup> Providing better infrastructure is also among the initiatives for special needs education<sup>178</sup>. (For further information on the situation for children with disabilities and education, see page 24).

**Child Abuse in Schools**

The Blueprint also does not address internal school issues, involving students’ safety and disciplinary acts such as abuse and bullying. In his report of 20 March 2009 to the Human Rights Council of the UN General Assembly, the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos stated that corporal punishment was still practiced extensively in schools. In the study referenced in para 290, students reported, inter alia, being slapped in the face, pinched, hit on the back of the head, having their hair, eyebrows, ears, and sideburns pulled, verbally abused, and being forced do to physical activity such as squats while crossing their arms and holding their ear-lobes.<sup>179</sup>

- In March 2011, Saiful Syazani Saiful Sopfidee, a 7 year old pupil in Perlis died after being tied up, beaten and strangled by his teacher as punishment for allegedly stealing cash from his classmate.<sup>180</sup>
- In September and October 2013 two cases of physical abuse were reported where students were abused by their teachers. Both students were threatened not to report the matter to the police.<sup>181, 182</sup>
- Malay, Chinese and Indian students from 2 different schools have also experienced verbal abuse when told by their teachers to return to Indonesia, China, and India, respectively.<sup>183, 184, 185</sup>
- A discipline teacher was detained for sexual abuse for molesting a 13 year old primary school student.<sup>186, 187</sup>
- A headmaster from a primary school was been accused of being racist when students were made to have their recess lunches in the school changing room.<sup>188</sup>

The incidence of bullying in schools is a concern. The bullying issues highlighted in the news this year include a prefect who was beaten by 15 school boys,<sup>189</sup> a Year One girl who was forced by two brothers to perform oral sex after they browsed an adult movie site on their school computer,<sup>190</sup> and a “junior” student who was forced by his “seniors” to meet them in the school pantry where they attacked him.<sup>191</sup>

Also of concern is the discrimination in schools towards LGBTIQ children. As reported in the news in early 2013, Yayasan Guru Malaysia Bhd and the Putrajaya Consultative Council of Parents and Teachers Associations offered a controversial seminar for teachers and parents on how to curb LGBT with Deputy Education Minister Datuk Dr Puad Zarkashi who claimed that it is a treatable illness.<sup>192, 193</sup> Guidelines were provided to identify signs of homosexuality in children such as males who wear V-necks and females who “have no affection for men”.<sup>194, 195</sup> According to the federal government, homosexuality is described as “against the order of nature” and both male and female can be jailed for up to 20 years, caned or fined under the civil law.<sup>196</sup>

Corporal punishment has also been used as a form of punishment for homosexuality, or perceived homosexuality. In government-run schools, being homosexual or ‘gender confused’ is deemed a ‘serious offence’, and students may be subject to whipping (1-3 times on padded derriere using a light ‘rotan’/cane) as well as other forms of non-corporal punishment.<sup>197</sup>

**Non-citizen children (refugee, asylum-seeking, irregular migrant and stateless children)**

In a 2009 study by the Malaysian Educational Policy Planning and Research Division, almost 44,000 school-age children who had never attended school were identified.<sup>198</sup> The majority of such children were refugees or asylum-seekers, or children of irregular immigrants and foreign workers. According to testimony given in January 2013 at the Royal Commission of Inquiry (RCI) on immigrants in Sabah, 15,000 children of Sabah immigrants have been denied access to public schools as the Government does not recognize their status.<sup>199</sup> In February 2013, a stateless man’s 3 children were barred from going to school despite having valid Malaysian birth certificates because of his stateless status.<sup>200</sup> Although Deputy Education Minister Wee Ka Siong said that there is a circular stating that “children of non-citizens are allowed to attend public schools”, this circular does not seem to be publicly available.

There are numerous contradictions from the Malaysian Government when it comes to education for non-citizen children (including refugee, asylum-seeking, irregular migrant and stateless children). Firstly, Article 12 of the Federal Constitution “prohibits discrimination against any citizen on the grounds only of religion, race, descent or place of birth”. The Government claims that the Blueprint is in line with UNESCO’s strategy to achieve Education for All and <sup>201</sup> that they also aim to achieve universal primary education. However, there has been no mention of provision of education for non-citizen children in the Malaysian Education Blueprint 2013-2025.

The Government’s reservations for Articles 2 and 28(1)(a) of the CRC on non-discrimination of children and providing education for all still remains. The reservations will only serve as a barrier to access education for non-citizen children.<sup>203</sup> It has been recommended by Finland, Belgium and Mexico in the 2009 UPR that Malaysia withdraw its remaining reservations to the CRC as soon as possible.<sup>204</sup> This recommendation was echoed during the 2013 UPR session by Albania, Norway and Slovenia. Norway encouraged Malaysia to ensure the educational rights of children from marginalized and disadvantaged communities and to guarantee universal access to free primary education, irrespective of citizenship and immigration status<sup>205</sup>.

Nonetheless, an alternative education for stateless children was announced by Malaysia’s Deputy Prime Minister Muhyiddin Yassin in 2010 that “the government will ensure that stateless children are given education in line with the principles of ensuring education for all children irrespective of religion, race or location”.<sup>206</sup> In September 2013, the MOE announced plans to set up a school for stateless children called the Sekolah Bimbingan Jalinan Kasih (SBJK) in Kuala Lumpur.<sup>207</sup> Also in September, Deputy Education Minister Datuk Mary Yap Kain Ching stated that the Education Ministry is considering allowing children of non-citizens to sit for UPSR (Ujian Pencapaian Sekolah Rendah). Non-citizen children who attend alternative education could be registered as private UPSR candidates. Their curriculum is different from the curriculum of national schools, but the same textbooks are used<sup>208</sup>.

Malaysia is also not party to the 1951 United Nations Convention relating to the status of refugees. 27,677 child refugees and asylum-seekers were registered with UNHCR in Malaysia at the end of October 2013<sup>209</sup>. These children have difficulties accessing education due to their status.

**Schools as Safe and Nurturing Environments for All Children**

The UN CRC Committee has stated that “education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) [of the CRC].. Discrimination on the basis of any of the grounds listed in article 2 of the [CRC], whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities”. The Malaysian Education Blueprint lays out plans recognizing education as an important contribution to the development of the nation. However as plans now transform into action, there is much to be done if the New Education Blueprint is to fully respect the rights of children and provide Education for All children in Malaysia.

The release of SUHAKAM’s *National Inquiry Report into the Land Rights of Indigenous Peoples*<sup>210</sup> in Malaysia was a significant event in 2013. The inquiry was a response to numerous land rights complaints received by the Human Rights Commission of Malaysia. The creation of a task force by the government to look into the report however is a setback for the indigenous peoples of Malaysia as it delays implementation of recommendations made in the report.

Why are customary land rights so important to the indigenous peoples of Malaysia? And how are they linked with the fulfilment of rights for indigenous children?

The *Orang Asal of Malaysia* (which consists of the Orang Asli of Peninsular Malaysia and the indigenous peoples of East Malaysia) represent more than 80 ethno-linguistic groups, with each group having its own culture, language, and traditional lands. There are approximately 4 million indigenous people in the country and they are amongst the poorest populations in Malaysia.

A common characteristic of indigenous peoples of Malaysia is the connection between their culturally distinct identity and their traditional lands.<sup>211</sup> For the Orang Asli, appropriation of traditional lands has placed *communities under social stress* and contributes to continued poverty and marginalisation.<sup>212</sup> Other indigenous peoples of Malaysia have experienced forced or involuntary resettlement.<sup>213</sup> Confiscation of land for logging, oil palm plantations, dams and other so-called development programs have had *a profoundly negative impact on the lives of indigenous communities* in Sabah, including the health of indigenous children.<sup>214</sup>



Cultural Rights of Indigenous Children

The CRC contains articles which are specific to indigenous children<sup>215</sup>. This reflects the need for special attention so that the rights of these children can be respected. It also recognises that indigenous children continue to be discriminated against, whether in terms of access to healthcare and education or recognition of their rights to enjoy their cultural identity.<sup>216</sup> Indigenous children have distinct cultures, languages and history. The fulfilment of their right to enjoy their cultural identity is tied to a way of life which is inextricable from customary land.

The Malaysian government voted to adopt the *UN Declaration on the Rights of Indigenous Peoples (UNDRIP)* on 13 September 2007, during the 61st session of the UN General Assembly in New York. According to article 43 of the UNDRIP, the declaration presents the “*minimum standards for the survival, dignity and well-being of the indigenous peoples of the world*”. For the indigenous children, Article 8 aims to ensure their ability to enjoy their ethnic identities<sup>217</sup>.

Article 30 – UN Convention on the Rights of the Child

*In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her culture, to profess or practice his or her own religion, or to use his or her own language.*

Article 8 – UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

*Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.*

Concerns also exist over the ability of indigenous children to exercise their rights to freedom of thought, conscience, and religion. *Indigenous communities have reported “extreme pressure” to convert to Islam*, in clear violation of Article 12 of the UNDRIP.<sup>218</sup> The perception of Orang Asli communities is that they have been subject to an ‘undisguised Islamization policy’ and an attempt to assimilate them within the dominant Malay ethnic group.<sup>219</sup> Though it is not always clear whether activities are systematically or informally occurring, reports indicate that non-Muslim indigenous children are under pressure to adopt behaviours such as reciting the ‘doa’ (Islamic prayer) before having their meals at school<sup>220</sup>, or being punished for bringing pork to school.<sup>221</sup>

There is also evidence of Orang Asli children being given Muslim names by birth registration officers.<sup>222</sup> In particular, parents have complained that when they register the births of their child, the patronym ‘bin’ or ‘binti’ is added to the birth certificate. As ‘bin’ (meaning ‘son’) or ‘binti’ (meaning ‘daughter’) has a Muslim connotation, at age 12 when the child’s Malaysian IC (identity card) is prepared, his or her religion will be listed as ‘Islam’.<sup>223</sup> Reports have also emerged of orphaned indigenous children who, upon being sent to JKM homes, have had their race and religion changed.<sup>224</sup> In this manner, cultural identity is denied despite the State’s responsibility to ensure that the child can retain his or her cultural identity.

Resettlement and the Best Interests of Indigenous Children

State appropriation of customary lands and forced resettlement of communities undermine the *constitutionally guaranteed land rights and their cultural identity* of indigenous people. According to the UPR report submitted by Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOASM, Network of Orang Asli Villages in Peninsular Malaysia), the Aboriginal Peoples Act 1954 (Act 134), the principal act for the administration of the Orang Asli in Peninsular Malaysia, does not guarantee the rights of the Orang Asli. Sections 6(3) and 7(3) provides that the individual State Authorities have the rights to revoke

Orang Asli areas and Orang Asli reserves without the need for prior consultation with Orang Asli. The decision on whether or not Orang Asli land is protected lies in the sole discretion of the individual State Authorities (see sections 6(1) and 7(1) Act 134).

Although plans for resettlement of indigenous communities might be well-intentioned, abandonment of the traditional lifestyle can have unintended consequences which may not be in the *best interests of indigenous children*. Resettlement for indigenous peoples often results in a loss of an independent livelihood with serious consequences for health and standard of living<sup>225</sup>. Many children from indigenous communities continue to live in poor conditions. The loss of land has deprived the children of a crucial source of protein and the types of food that indigenous communities are able to gather are reduced and/or less diverse.<sup>226</sup>

A report by Survival International, a global movement for tribal peoples, highlights the strains caused by relocation on the mental health of indigenous communities and states that “*there are shockingly high rates of suicide among young tribal people from all corners of the world*”<sup>227</sup>. The impact of resettlement on the mental health of indigenous children of Malaysia is not known. Given the global trend, a study on the prevalence and causes of mental health issues among indigenous youth is warranted.

Forced resettlement neglects the rights of indigenous peoples to free, prior, informed consent (FPIC). Indigenous children are similarly denied their right to participate and be heard due to the lack of meaningful consultation.

Committee on the Rights of the Child: General Comment No. 11 (2009)

*“State parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children’s right to life, survival and development to the maximum extent possible”.*

“Outsiders who come here always claim they are bringing progress.  
But all they bring are empty promises. What we’re really struggling for is our land.  
Above all else this is what we need”.

*Arau, Penan Man, Sarawak – quoted in Survival International Publication Progress Can Kill*

Education

In the recent Malaysian Education Blueprint 2013-2025, the MOE has made plans to improve the learning environment of students, provide additional training for teachers, and counselling support for students.<sup>228</sup> On one hand, the government’s past efforts and commitment have shown increase in the enrolment of Orang Asli children in primary and secondary schools but the number of students who complete their education have been declining.<sup>229, 230, 231, 232</sup> This raises a question of whether the provision of education for indigenous children is culturally sensitive enough to be mindful of their way of life and traditions.

Languages are said to be the basis for development, growth, and nation building.<sup>233</sup> For many children of minority ethnic groups such as the indigenous peoples, learning in their mother tongue is a step forward *“against illiteracy, discrimination, and contributes to the quality of education and equity.”*<sup>234</sup> More so, it is part of their cultural identity.<sup>235</sup> There is overwhelming evidence from studies in many countries that the intellectual development in the early stages of a child’s development is best established through the mother tongue before a second language can be used as the learning medium at a later stage.<sup>236</sup> This is advocated by UNESCO to which the Malaysian Education Blueprint has made references to and yet there is hardly any mention of the Government’s commitment to mother tongue education.



Children in the Penan community prefer to return to their jungle communities after receiving a primary education. The connection with the jungle and with their own community means that children are reluctant to continue with secondary education as it does not seem relevant to their future.<sup>237</sup> Indigenous organisations have been advocating for support in establishing their own learning institutions in line with Article 14 of the UNDRIP. In Sabah, financial support is not available for community learning centres run by PACOS Trust to teach children life skills and indigenous cultures.<sup>238</sup>

Mainstream education does not incorporate any aspects of Orang Asal culture. However, the Malaysian government recently announced that the history of the Orang Asli will be included in the history syllabus of the Secondary School Standard Curriculum (KSSM) to be implemented from 2014<sup>239</sup>.

**Committee on the Rights of the Child:  
General Comment No. 11 (2009) – Excerpts from Articles 61 and 62**

*States parties should only establish boarding schools away from indigenous communities when necessary as this may be a disincentive for the enrolment of indigenous children, especially girls. Boarding schools should comply with culturally sensitive standards and be monitored on a regular basis. Attempts should also be made to ensure that indigenous children living outside their communities have access to education in a manner which respects their culture, languages and traditions.*

*Article 30 of the Convention establishes the right of the indigenous child to use his or her own language. In order to implement this right, education in the child's own language is essential. Teachers of indigenous children should to the extent possible be recruited from within indigenous communities and given adequate support and training.*

**Significant Developments in 2013**

Malaysia's human rights record was reviewed for the second time at the UN during the Universal Periodic Review in October 2013. Many UN member countries made statements about the recognition of traditional native land and called for compliance with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). In the first quarter of 2014, the Malaysian Government will respond to the statements made by accepting or rejecting them. These rights are also the rights of indigenous children so the actions taken by the Government will be significant for them.

Know Your Rights, the adolescent-friendly version of the United Nations Declaration on the Rights of Indigenous Peoples, was launched at a special event in New York on May 22, 2013<sup>240</sup>. The document was prepared to help young indigenous people become more familiar with the UNDRIP and with their rights. This is an exciting development to spread knowledge and to nurture indigenous adolescents to advocate themselves for the recognition of the special rights to which they are entitled.

**Article 12 of the UN Convention on the Rights of the Child**

*1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

One of the aims of Child Rights Coalition Malaysia is to promote children's participation in advocating for child rights. We believe children are rights holders who are key *'makers and shapers'* of their own destinies and their own societies. Participation gives children the opportunity to shape the process and outcome of our research on children's rights in Malaysia, which in return will help influence child-related policies in the country.

We believe that children have a right to express their own viewpoints. We present below three examples where children played a major role and shared their views on different issues affecting them.

**Child Participation in the Campaign to End the Immigration Detention of Children: a Positive Development**

In early September 2013, civil society organisations coordinated a 2-day stay-over camp for Malaysian, Somali and Burmese refugee youth (ages 13-19). The fun and educational weekend camp had three main goals – to bring refugee and Malaysian youth together to build bonds and facilitate interaction, to help the youth understand each other's culture and lived experiences, and encourage participants to advocate for children in immigration detention. These objectives were achieved through various team building activities, including rock climbing, obstacle and rope courses, and other fun physical activities. Discussions around a short documentary on the challenges faced by refugee and asylum seekers in Malaysia also provided the youth with a platform to explore their perceptions towards each other's culture and circumstances. Finally, drama, video and writing workshops on advocating against the harmful practice of detaining children gave camp attendees the opportunity to explore what freedom and detention meant to them. As a follow-up, youth from the camp also advocated on behalf of children in the Malaysian Campaign to End Immigration Detention of Children. These advocacy activities included sharing their experiences on radio, performing a skit on the detention experience of refugees, and sharing their experiences from the camp during a main campaign event at a local shopping mall.

**"Be The Change. Speak up!" Children for Child Protection Forum and Carnival**

In conjunction with Universal Children's Day (UCD) celebrated on the 20th November, Childline Malaysia, in collaboration with Sime Darby, UNICEF Malaysia and Ministry of Women, Family and Community Development, got together to support **"Be The Change. Speak up!" Children for Child Protection Forum and Carnival on 18th November 2012.**

This was the first time that a national Forum for children by children was held with about 450 children from a variety of backgrounds (government schools, private schools, international schools, government run homes, private and NGO care centres, individuals) from all over the country including East Malaysia, came together to meet and discuss issues they were concerned with.

The main objective of the Forum was to engage and consult with children. With input from children directly, we create much better policies etc. The Child Protection Policy and National Action Plan for children were drafted by adults without the involvement of the average child. It is hoped that with consultation with children this will help address what children need and wants Children know what it is like being a child and what is important to them.

Child participation was clear from the start as the following were discussed and decided by children:

- Selection of topics and titles
- Selection of theme of forum
- Contribution towards the creative work
- Child advocates as emcees, facilitators, rapporteurs, media reporters, photographers, media spokespersons, twitterers

The 6 key issues were earlier identified by 40 child advocates who were trained on facilitation advocacy and media skills over a period of two months prior to the Forum with funding from UNICEF Malaysia These issues were:

- X@%&! Words CAN hurt me. (Emotional Abuse)
- Mr Facebook and Ms Twitter (Internet Safety)

- Bully... You Don't Scare Me! (Bullying)
- Home Safe Home (Feeling Safe at Home)
- I Love You, But... (Being Safe in a Relationship)

The six breakout sessions were facilitated by 40 child advocates aged between 10 years to 18 years thus giving children the opportunity to lead and facilitate sessions assisted by adult facilitators hence bridge the gap between adult facilitators and child participants. These 40 were selected over a period of time from about 120 child participants and trained under the Child Advocate Development Programme.

At the end of the Forum the children submitted a Memorandum to the government as follows:-

We are the participants of the **C4C Child Protection Forum 2012** who represent the voices of children in Malaysia.

Today we are here to recommend our resolutions to the government of Malaysia for a safer, friendlier environment for the children of Malaysia. To speak up and be the change before it is too late.

***The recommendations are as follows:***

1. A holistic approach for adults and children on healthy relationships. Design a program to include topics like safe dating and safe sex for children and their peers, for their parents and anyone that takes care of children
2. To create greater awareness through more programs and initiatives like the C4CP and should be inclusive for minority groups, for example the deaf communities
3. We children want to feel safe against bullies. The community should be aware and take action against bullies, while the government MUST provide support by listening and taking our suggestions seriously.
4. We, the children, want the government to listen to us and involve us in decisions about anything that will affect us.
5. Children need a safe and secure environment to live, play and learn.

Subsequent to the Forum some of the Child Advocates have been involved with other child related events such as the Star Anti Bullying Campaign 2013 and DIGI Cyber safe in Schools Programme. It is hoped that the children will work towards the next C4CP Forum in 2014.

**Looking Towards the Future: Dialogue with Youth**

On Nov. 19, 2013, Malaysian Child Resource Institute (Secretariat of Child Rights Coalition Malaysia) organized a child participation event with Yayasan Chow Kit (YCK). Seven children attended; three girls and four boys, aged 13 to 17. The session was conducted mostly in Bahasa Malaysia, the children's more fluent language.

Two questions were posed to the children:

1. What are some important issues for children/teenagers in Malaysia?
2. What worries you as a child/teenager?

The recurring themes they raised were directly in line with the four basic concepts of the CRC (1) right to survival, (2) right to protection, (3) right to development, and (4) right to participation.

**Right to Protection**

Based on the answers from the YCK children, they want greater protection for children. They are worried about kidnappings and murders from the news they hear. Aside from that, based on their personal experiences, some of the children are also worried about being harassed when they go out and also being bullied.

**Right to Survival**

The YCK children also believe that having a stable place of shelter and having clothes is important for children's survival. One child also mentioned the fear of losing his or her parents.

**Right to Development**

The YCK children generally agreed that it is important for them to have friends and meet up with them for activities such as having meals together, participating in sports such as gym or football, and also dance and educational activities at the Kuala Lumpur Krash Pad (KLKP) that is managed by YCK.

**Right to Participation**

The elder YCK teenagers cited their freedom as very important. They also believe that teenagers' voices in certain matters should be given weight and be taken into account.

The children of YCK are very future-oriented such that some of the personal concerns voiced include their ability to achieve their ambitions, doing well for their SPM (school exams) and subsequently deciding which future path to take, and after to become a successful person. Money concerns to be able to play football and have the necessary equipment, and eventually achieve his or her dream of becoming a footballer was also a recurring concern for one teenager.

The children are also afraid of issues in school. A number voiced their concerns about strict and fierce teachers and they are also afraid of being bullied. Aside from that, some are worried about the negative peer pressures in school.

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**About CRCM**

**Child Rights Coalition Malaysia (CRCM)** was launched on Human Rights Day, December 10, 2012, by a group of Malaysian NGOs who had been worked together to write the first comprehensive NGO Alternative Report on the Convention of the Rights of the Child (CRC) for Malaysia. Through their work, the CRCM had built networks with child-based NGOs around the country and had become recognized among Malaysian NGOs. At the launch, the inaugural Annual Report on the Status of Children's Rights in Malaysia was released.

The CRCM works to support implementation of the UN CRC and promote children's rights in Malaysia. The CRCM membership consists of organisations and individuals committed to promoting children's rights and we work together to advance a child rights agenda.

**Vision Statement**

All children in Malaysia are ensured and guaranteed of their full rights, particularly the four General Principles of the UN Convention on the Rights of the Child (CRC) concerning non-discrimination; the best interests of the child; the right to life, survival and development; and respect for the views of the child.

**Mission Statement**

The Child Rights Coalition Malaysia (CRCM) works to support implementation of the UN CRC and promote children's rights in Malaysia. The CRCM membership consists of organisations and individuals committed to promoting children's rights and we work together to advance a child rights agenda.

The CRCM's activities fall under three main areas: advocacy, capacity-building and child participation.

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**Membership and Getting Involved**

**Who are Child Rights Coalition Malaysia Members?**

Our members support the mission and vision of Child Rights Coalition Malaysia and receive benefits in the areas of Engagement and Networking, Training and Capacity-Building, Sharing of Resources, and Strengthened Advocacy.



There are four categories of membership with Child Rights Coalition Malaysia: **Steering Committee NGO members, Associate NGO members, Corporate/Corporate Foundation associates and Individual Expert associates.**

Steering Committee members are required to attend regular meetings and head different working groups. They also are in charge of different research clusters and are expected to conduct research and contribute text for Coalition reporting and other documentation.

To ensure the coalition continues to function in an efficient manner but at the same time to ensure a democratic process is adhered to, the present Steering Committee will continue to serve until the first scheduled Coalition General Assembly (GA) This GA is scheduled for June 2014 where there will be an election and the new Steering Committee will be elected. Each Steering Committee member will continue to hold the responsibility of managing one 'cluster' of the annual status of children report.

Steering Committee members once elected serve terms of two years after which time they will be up for re-election. The maximum number of consecutive terms is two. One NGO representative at a time will sit on the Steering Committee with one alternate person to attend meetings. A Steering Committee member who misses more than three meetings in a row will be expelled from the Steering Committee. The Secretariat prepares and circulates Steering Committee minutes.

#### **Applying for Membership**

Potential members apply for membership by completing the membership form, which contains basic information on the organisation, the name of the contact person, and an agreement with the criteria for membership. Membership will be approved by consensus of the CRCM Steering Committee and will be confirmed in writing.

- Child Rights Coalition Malaysia Steering Committee Members reserve the right to refuse or revoke membership to any organisation or individual it believes to be ineligible. A member who does not fulfil membership commitments or who no longer meets membership criteria will have membership revoked.
- Child Rights Coalition Malaysia has the right to ask an organisation for information about their governance framework, financial situation and length of operation.
- Organisations and individuals undertaking and/or affiliated to a political party activity are not eligible.
- Only Steering Committee NGO Coalition members who have been briefed are permitted to represent the Coalition publicly.
- Only Steering Committee NGO Coalition members will be identified for the release of communications to the press, unless written permission is granted.
- Memberships are valid for one year and are subject to renewal.

#### **a) Release of the inaugural Status Report on Children's Rights in 2012**

Core issues impacting children have been highlighted and reported based on two years of research and consultations with NGOs in Malaysia and other civil society members. CRCM hopes that this and future reports will be used across Malaysia and the region to protect and support children's rights.

#### **b) Preparation of the Annual Status Report in 2013**

Since the release of the Status Report in December 2012, CRCM has been monitoring and updating details of the report in preparation for the 2013 Status Report and for advocacy purposes. Research and writing is also being conducted by the Secretariat.

#### **c) Press releases**

CRCM writes media releases in response to child rights issues in the media. CRCM also releases statements proactively to raise awareness and inform the public. In 2013, CRCM has released press releases on a range of topics such as children and GE13 and a variety of child protection issues.

#### **d) Advocacy for the UPR**

In March 2013, CRCM released a report for the UPR (Universal Periodic Review) of Malaysia. The Coalition has actively participated in diplomat briefings organized by COMANGO (Coalition of Malaysian NGOs) and has also held meetings on its own with local missions.

#### **e) Other Advocacy Activities**

Advocacy also includes participation in consultations, conferences and meetings with policymakers, as these settings will allow us to engage and advocate on selected topics and thematic areas/priority areas in child protection with stakeholders during various fora.

#### **f) Referrals**

CRCM does not provide direct child-based services. However, CRCM is glad to assist any individuals or organizations by providing referrals through its network of NGOs throughout the country.



*Coalition partners working together for child participation.*



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(b) every person born outside the Federation whose father is at the time of the birth a citizen and either was born in the Federation or is at the time of the birth in the service of the Federation or of a State;  
(c) every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph.
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- 138 The sale of child can take place without the physical movement of the child, while the concept of child trafficking always involves an element of movement. Moving a person out of his/her social environment is a key element of the trafficking concept, as it enhances the vulnerability of the trafficked person".
- 139 Article 2 "trafficking in persons" or "traffics in persons" means the recruiting, transporting, transferring, harbouring, providing or receiving of a person for the purpose of exploitation".
- 140 The term "coercion" is defined in Article 2 of the Anti-Trafficking in Persons Act meaning: "coercion" means— (a) threat of serious harm to or physical restraint against any person; (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (c) the abuse or threatened abuse of the legal process." We assume that in case of child selling for the purpose of illegal adoption the prosecution may refer to the above point (c).
- 141 Further to the above, the current definition of trafficking in persons does not cover the element of "exploitation". It is, however, a condition specified in the definition of the offence of trafficking in children: "Any person, who traffics in persons being a child, for the purpose of exploitation, commits an offence and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine." (Article 14 of the Anti-Trafficking in Persons Act) The definition of "exploitation" is covered under Article 1 of the Anti-Trafficking in Persons Act: "exploitation" means all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity the removal of human organs".
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