As at the date of this report, the Child Rights Coalition Malaysia comprises the following non-governmental groups working to respect and uphold the rights of children in Malaysia.

**Malaysian Child Resource Institute**  
(Child Rights Coalition Secretariat)  
35 Lorong Maarof  
Bangsar Park  
59000 Kuala Lumpur.  
Tel/Fax: +60 3 2202 1302  
Email: info@mcri.org.my  
Web: www.mcri.org.my

**Childline Malaysia**  
(A Project of Malaysian Children  
TV Programme Foundation)  
c/o DAPAT Vista (M) Sdn Bhd  
Unit 842 & 846, Block A,  
Kelana Center Point  
No 3, Jalan SS7/19, Kelana Jaya,  
47301 Petaling Jaya, Selangor  
Tel: + 60 3 5569 2755  
Fax: +60 3 5560 3755  
Email: childline@mctf.org.my  
Web: www.facebook.com/childline15999

**National Early Childhood Intervention Council**  
26 Lorong Canning,  
Canning Garden, Ipoh  
31400 Perak, Malaysia  
Email: enquiries.necic@gmail.com  
Web: http://www.necicmalaysia.org/

**Voice of the Children**  
29C, Jalan 52/1  
46200 Petaling Jaya  
Selangor, Malaysia  
Tel: +60 3 7906 4776  
Fax: +60 3 7906 4778  
Email: info@voc.org.my  
Web: www.voc.org.my

**Malaysian Care**  
15, Jalan 3/146, Metro Centre  
Bandar Tasik Selatan,  
57000 Kuala Lumpur, Malaysia  
Tel: +60 3 9058 2102  
Fax: +60 3 9058 4057  
Email: mail@malaysiancare.org  
Web: www.malaysiancare.org

**Protect and Save the Children**  
No 5, Jalan 7/14, Section 7  
46050, Petaling Jaya  
Selangor, Malaysia  
Tel: + 60 3 9757 4244/4295 4235  
Fax: +60 3 9757 4232  
Email: Protect@psethechildren.org.my  
Web: www.psethechildren.org.my

**Yayasan Chow Kit**  
346 jalan Tuanku Abdul Rahman,  
50100, Kuala Lumpur, Malaysia  
Tel: +60 3 2697 0136  
Fax: +60 3 2697 0139  
Email: admin@vck.org.my  
Web: http://vck.org.my

© CHILD RIGHTS COALITION MALAYSIA 2012  
All rights reserved. No part of this book may be reprinted, reproduced or utilized in any form or by any means without permission in writing from the Child Rights Coalition Malaysia.  
Cover photo: Image courtesy of Arztsamui/FreeDigitalPhotos.net (Photo ID: 100111298)  
Layout and Design: Meera Krishnan - meera.loco@gmail.com  
ISBN Number: 978-967-11788-1-2
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. Yanesha 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". 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!
• 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. 21
• 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. 22
• 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. 23
• Controversy over government-backed musical ‘Asmara Songsong’ that aims to warn young people about the perils of being lesbian, gay, bisexual and transgender (LGBT). 24, 25
• 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. 26 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. 27

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. 28, 29
• From April 25 no functioning human rights commission due to delay in appointing SUHAKAM commissioners. 30
• Orang Asli Education Transformation Program in peninsula and Rural Education Transformation Program in Sabah and Sarawak launched among the rural and Orang Asli communities. 31

May

• 13th Malaysia General Elections 2013. 32, 33
• 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. 34, 35, 36
• Sexual assault and asphyxiation of Nur Amyliana Shuhada Mohd Noor. 37
• Debate on whether or not to close vernacular schools. 38, 39
  • Deputy Prime Minister Tan Sri Muhdyinidin Yassin assured that vernacular Tamil and Chinese schools would not be abolished. 40
• Joint Action Group created a petition to End Child Marriage addressed to the Malaysian Prime Minister, YAB Dato’ Sri Mohd Najib Razak. 41
• 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. 42, 43

June

• Coronor’s Court rules no foul play in the death of William Yau Zhen Zhong. 44
• Women Deliver international conference was held in Kuala Lumpur. 45, 46
• 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. 47, 48, 49
• Haze from Indonesian fires showed high air pollutant index (API) readings leading to school closures. 50, 51, 52
• 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. 53
• 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. 54
• 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. 55
• Forgetful mom returns to a dead child she had left unattended in a car. 56
• 14-year-old N. Yanesha awarded Malaysian citizenship. 57
• Shipping clerk pleads not guilty after being accused of performing oral sex on a boy. 58
• Legal support was provided for a child victim throughout police investigations, advocating for the understanding of psychological evidence in sexual abuse cases. 59
• 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. 60
• Malaysia and the US held a session on human trafficking. 61
• 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. 62

August

• Announcement of the nation’s biggest immigration crackdown in operations that would last until the end of the year. 63, 64, 65
• Jiao Zong (United Chinese School Teachers Association) may launch a nationwide signature drive to oppose the Malaysian Education Blueprint 2013-2025. 66
• Prime Minister Datuk Seri Najib Abdul Razak launched the first PERNATAMA Children’s Specialist Hospital Project. 67
• In August, N. Yanesha’s case was up for appeal. Her Malaysian citizenship was ultimately upheld. 68
• 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. 69
• Death of a five-year-old child who was allegedly abused by her mother. 70
• 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. 71
• 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. 72
• 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. 73
• 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. 74
• 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. 75
September

- Deputy Prime Minister Tan Sri Muhyiddin Yassin stated that vernacular schools will not be side-lined in Putrajaya's massive education overhaul. 76
- Inspector General of Police in a statement says that children can be questioned by police without parental consent or presence of parent/guardian. 77
- Reports on the immigration crackdown state that children have been detained in the operations. 78
- 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. 79
- 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. 80
- 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. 81
- 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. 82
- 2013-2025 Education Blueprint launched on Sept 6 by Deputy Prime Minister Tan Sri Muhyiddin Yassin. 83
- UN Human Rights Council adopts a resolution to end child, early and forced marriages. 84
- 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. 85
- 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. 86

October

15-year-old girl Ng Yuk Tim was found dead stuffed in a suitcase in Jalan Kebun Nenas, Shah Alam. 87
- A police officer accidentally shot 10 year-old Mohd Amar Mohd Azizi while cleaning his gun. 88
- Child rights raised in statements made by UN member countries at the Universal Periodic Review of Malaysia's human rights record in Geneva. 89
- The Malaysian Government announces the Child Act is being reviewed. 90
- Announcement of a 2-year child protection project by the Social Welfare Department (JKM) with the
- Department of Islamic Development Malaysia (JAKIM). 91
- Asia Pacific Governments adopt New Delhi Declaration on cooperation for children's rights. 92
- Two teens discovered by school teacher to be having sex in school toilet. Media reported that the boy was later arrested. 93
- Homes in historic village, Kampung Hakka, demolished by developers leaving families homeless. 94
- Villagers were refused a stay order following an appeal to save their homes. 95
- 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. 96
- 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. 97

November

- Detention and release of two Penan children at the Murum dam blockade. 98
- Abduction of toddler in Bangsar. The child was subsequently found and reunited with his mother. 99
- Four year-old and three year-old siblings drowned in a drain near their home. 100
- Seven-month old baby rescued from “alleged” traffickers en route to Malaysia. 101
- Pernama Negara to collaborate with the Qatar foundation on education and health of refugee children, including those in Malaysia. 102
- 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. 103

December (scheduled)

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

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 fulfill 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.
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.
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 disregarded MACRs of 12 years and lower, supporting MACRs of at least 13 years, and preferring the highest possible MACRs. 

**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 raises 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: 2013 Situational Review**

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. 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. 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) 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 with the drive in 2012-2013 for adults to get documentation, children also benefited 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.
The impact this has on both LGBTQI and non-LGBTQI 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 LGBTQI 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.

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, even now. Experts argue 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.

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 the victim, a 12 or 13-year-old, was pressured into “marriage” by an older man, with or without her parents’ consent. This case was never taken to court because the girl ‘agreed’ to marriage and the family was satisfied. 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 the victim, a 12 or 13-year-old, was pressured into “marriage” by an older man, with or without her parents’ consent. This case was never taken to court because the girl ‘agreed’ to marriage and the family was satisfied.

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,
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, which states that marriage shall be entered into only with the free and full consent of the intending spouses. Article 16(2) of the UN 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 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.

Child marriage can have a very degrading impact on 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 millenium development goals (MDGs)

Child marriage directly hinders the achievement of 6 of the 8 Millennium Development Goals. Simply put, the international community will not fulfill 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.” 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. 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, 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.

**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 Rohingya, fled their country of birth, Myanmar, to escape the ethnic persecution by the Junta Government 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 retaiate 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.

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”. Media reports stated that children were also detained in the operations. 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.

<table>
<thead>
<tr>
<th>Location</th>
<th>Detainees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johor Baru</td>
<td>101 individuals, comprising 23 children from age 2</td>
</tr>
<tr>
<td>Saujana Putra, Selangor</td>
<td>70 individuals, aged between 2 and 58</td>
</tr>
<tr>
<td>Near Bachang, Melaka</td>
<td>403 individuals, aged between one month and 55 years</td>
</tr>
<tr>
<td>Seremban</td>
<td>621 individuals, between age 6 and 54</td>
</tr>
<tr>
<td>Miri</td>
<td>Undisclosed number of children</td>
</tr>
</tbody>
</table>

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.

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 “dents 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 parents 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.
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 stipulates that "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or trafficking 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 trafficking in children, indicating that even though the two concepts are similar to each other, they are not identical 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 provides the definition of the sale of children (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", 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, which has not yet been ratified by Malaysia.

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. 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.

### Definition of Trafficking in 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.

The purpose of exploitation is 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.

It includes an element of movement of the child.

The child is not necessarily moved physically.

### Definition of Sale of Children

- **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 NOT an element of the definition.**
- **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.**
- 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 2002 (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 138, the current definition incorporates "coercion" as a new element of the definition. 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.

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

Malaysian law recognizes two methods of legal adoption: adoption under the Registration of Adoption Act 1952 (the RAA), 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. 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. 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 authorizes NRD/JPN to issue the necessary documents.

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. As 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.

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

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, 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. Prospective parents will contact organizations that may know of available babies, 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.

Focus on Children with Special Needs

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. 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 put forward valuable feedback before they are implemented as laws. Similar to the Memorandum on Early Childhood Intervention Conference submitted to the wife of the Prime Minister at the 1st National Early Childhood Intervention Conference in 2006 has also received no response.

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. 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.

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 and 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.

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. These children will not have the opportunities to be in an inclusive kindergarten setting.

Recommendations

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 and 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

Recommended

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 several universities, as well as principals, teachers, parents, and students from every state in Malaysia.

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) and 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.”

Developed in line with the National Education Philosophy 1989 (NEP), 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.”

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.” Priority will be given to schools in rural and remote areas, where infrastructure support is even more needed.

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.

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.

The indigenous community is lacking the much needed language and literature materials for their learning. 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. The program has now been expanded to include other elective language choices such as Iban, Kadazan-Dusun and Semai. 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 6.3%. They also aim to increase student enrolment for the Inclusive Education Program. Providing better infrastructure is also among the initiatives for special needs education. (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, Vernon Muñoz Villalobos stated that corporal punishment was still practiced extensively in schools. “...and strangled by his teacher as punishment for allegedly stealing cash from his classmate.”

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. “...and strangled by his teacher as punishment for allegedly stealing cash from his classmate...”

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.

A discipline teacher was detained for sexual abuse for molesting a 13 year old primary school student.

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.

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, 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, and a “junior” student who was forced by his “seniors” to meet them in the school pantry where they attacked him.

All 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 Ruad Zarzakhi who claimed that it is a teachable illness.

Guidelines were provided to identify signs of homosexuality in children such as males who wear V-necks and females who perform oral sex after they browsed an adult movie site on their school computer.

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 derrière using a light ‘rotan’ cane) as well as other forms of non-corporal punishment.

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. 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.

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. 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.

Non-citizen children (refugee, asylum-seeking, irregular migrant and stateless children) are amongst the poorest populations in 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 fulfillment 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 ethnolinguistic 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. For the Orang Asli, appropriation of traditional lands has placed communities under social stress and contributes to continued poverty and marginalisation. Other indigenous peoples of Malaysia have experienced forced or involuntary resettlement. 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.

The release of SUHAKAM’s National Inquiry Report into the Land Rights of Indigenous Peoples 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 fulfillment 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 ethnolinguistic 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. For the Orang Asli, appropriation of traditional lands has placed communities under social stress and contributes to continued poverty and marginalisation. Other indigenous peoples of Malaysia have experienced forced or involuntary resettlement. 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.
Cultural Rights of Indigenous Children

The CRC contains articles which are specific to indigenous children. 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. 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 (UNDPRP) on 13 September 2007, during the 61st session of the UN General Assembly in New York. According to article 43 of the UNDRP, 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.

There is also evidence of Orang Asli children being given Muslim names by birth registration officers. 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’. Reports have also emerged of orphaned indigenous children who, upon being sent to JKM homes, have had their race and religion changed. 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 administration of the Orang Asli in Peninsular Malaysia, does not guarantee the rights of the Orang Asli.

As demonstrated in 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 administration of the Orang Asli in Peninsular Malaysia, does not guarantee the rights of the Orang Asli.

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.”

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. 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. More so, it is part of their cultural identity. 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. 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. 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. More so, it is part of their cultural identity. 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. 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. 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.

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.

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


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.

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.

Children need a safe and secure environment to live, play and learn.
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 fulfill 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.

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.

CRCM Activity Report

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.
In another report by the Malaysian Ministry of Education it was stated that 44,000 undocumented children were not enrolled in schools. See http://www.malaysiakini.com/letters/230121

According to PKR vice-president, N. Surendran, there are 49,000 children who cannot attend school due to lack of proper documents. In addition there are 50,000 more children who have not been identified yet for inclusion in the programme. See http://www.thestar.com.my/News/Nation/2013/02/05/Two-missing-teenage-sisters-found.aspx

Sources Cited


http://www.malaysiakini.com/letters/230121

According to PKR vice-president, N. Surendran, there are 49,000 children who cannot attend school due to lack of proper documents. In addition there are 50,000 more children who have not been identified yet for inclusion in the programme. See http://www.thestar.com.my/News/Nation/2013/02/05/Two-missing-teenage-sisters-found.aspx

http://www.malaysiakini.com/letters/230121


http://www.malaysiakini.com/letters/230121

According to PKR vice-president, N. Surendran, there are 49,000 children who cannot attend school due to lack of proper documents. In addition there are 50,000 more children who have not been identified yet for inclusion in the programme. See http://www.thestar.com.my/News/Nation/2013/02/05/Two-missing-teenage-sisters-found.aspx

http://www.malaysiakini.com/letters/230121


http://www.malaysiakini.com/letters/230121

According to PKR vice-president, N. Surendran, there are 49,000 children who cannot attend school due to lack of proper documents. In addition there are 50,000 more children who have not been identified yet for inclusion in the programme. See http://www.thestar.com.my/News/Nation/2013/02/05/Two-missing-teenage-sisters-found.aspx

http://www.malaysiakini.com/letters/230121


http://www.malaysiakini.com/letters/230121

According to PKR vice-president, N. Surendran, there are 49,000 children who cannot attend school due to lack of proper documents. In addition there are 50,000 more children who have not been identified yet for inclusion in the programme. See http://www.thestar.com.my/News/Nation/2013/02/05/Two-missing-teenage-sisters-found.aspx

http://www.malaysiakini.com/letters/230121


http://www.malaysiakini.com/letters/230121

According to PKR vice-president, N. Surendran, there are 49,000 children who cannot attend school due to lack of proper documents. In addition there are 50,000 more children who have not been identified yet for inclusion in the programme. See http://www.thestar.com.my/News/Nation/2013/02/05/Two-missing-teenage-sisters-found.aspx

http://www.malaysiakini.com/letters/230121
Child Rights Coalition Malaysia would like to acknowledge the following individuals who helped with the preparation of this report. We thank you for your support and your contributions to improving the situation for children in Malaysia!

Yang Su Ying
Eszter Bernáth
Wendy K. Jo
Caroline Winkler
Maryam Johan
Dave and Marianne Kameron of New Thessalonian Apostolate

Mitch at PT Foundation
Nanthini Ramalo at DHRRA
Lattheefa Koya and Eric Paulsen at Lawyers 4 Liberty
Colin Nicholas – Center for Orang Asli Concerns (COAC)
Penang Women's Development Corporation (PWDC)
Women's Centre for Change (WCC), Penang
Children of YCK Krash Pad

Child Rights Coalition Malaysia wished to thank many NGOs, organisations and individuals who have participated in the collection of information, data and case studies for our work. We appreciate their support and hope that this and future reports will use these helpful and promote protect children's rights.

Yong Su Ying
Eszter Bernáth
Wendy K. Jo
Caroline Winkler
Maryam Johan
Dave and Marianne Kameron

ACKNOWLEDGEMENTS