



**STATUS REPORT ON CHILDREN'S RIGHTS  
IN MALAYSIA  
BY  
CHILD RIGHTS COALITION MALAYSIA  
DECEMBER 2012**

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**Cover photo:** Image courtesy of Arztsamui/FreeDigitalPhotos.net (Photo ID: 100111298)

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ISBN: 978-967-11788-0-5

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## Glossary of Key Terms

<b>Approved Schools</b>	Also known as Sekolah Tunas Bakti, these are one of the institutions designated for child offenders under the Child Act. Approved Schools are under the regulation, management and inspection of JKM and cater to child offenders, children who are 'beyond control', and to a lesser extent, children on remand.
<b>Child Act</b>	Child Act 2001
<b>CRC</b>	Convention on the Rights of the Child 1989
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities 2006
<b>ECCE</b>	Early Childhood Care and Education
<b>Irregular Migrant</b>	Any person who entered and lives in Malaysia without a valid visa, permit or other authorization by the Malaysian authorities
<b>JKM</b>	Jabatan Kebajikan Masyarakat (Department of Social Welfare)
<b>LGBTIQ</b>	Lesbian, gay, bisexual, transgender, intersex and queer
<b>MOE</b>	Ministry of Education
<b>MOH</b>	Ministry of Health
<b>MWFCD</b>	Ministry of Women, Family and Community Development
<b>MyKad</b>	The compulsory identification documentation for Malaysian citizens aged 12 and above, issued pursuant to Regulation 3 of the National Registration Regulations 1990. One of the key functions of the MyKad is that it serves as proof of citizenship
<b>MyKas</b>	The temporary resident identification card issued under Regulation 5 (3) of the National Registration Regulations 1990. The card is green in color and must be renewed every 5 years.
<b>National Plans of Action</b>	Collectively, the National Plan of Action for Children 2009 based on the National Child Policy/National Policy for Children 2009 and the National Plan of Action for Child Protection 2009 based on the National Child Protection Policy 2009
<b>NRD</b>	National Registration Department
<b>Orang Asal</b>	Collectively, the Orang Asli from Peninsular Malaysia and the indigenous people of East Malaysia (Sabah and Sarawak)

<b>Probation Hostels</b>	Also known as 'Asrama Akhlak', these are one of the institutions designated for child offenders. Probation Hostels are under the regulation, management and inspection of JKM. They cater mostly to children on remand, but also house children in transit to an Approved School, and children who have been sentenced to detention for 12 months because they are "beyond control" or have committed a crime.
<b>PWD Act</b>	Persons with Disabilities Act 2008
<b>RMP</b>	Royal Malaysian Police (Polis Diraja Malaysia (PDRM))
<b>SCAN Teams</b>	Suspected Child Abuse and Neglect Teams
<b>SOGI</b>	Sexual orientation and gender identity
<b>Undocumented Children/Persons</b>	Any child/adult who does not possess a birth certificate and/or a national identification document
<b>UNHCR</b>	United Nations High Commissioner for Refugees

# 1. Introduction

This report summarizes the key findings of a 2010-2012 research project conducted by the Child Rights Coalition Malaysia (the 'Coalition') on the current status of children in Malaysia, using the Convention on the Rights of the Child (the 'CRC') as a benchmark for analysis. This report is the first time civil society has compiled information of this depth and breadth about children in Malaysia, and we hope it will be useful for policy makers, practitioners, advocates and anyone who cares about children. The report is also envisaged as the first in a series of reports to be prepared by the Coalition, updating annually the status of children in Malaysia.

Although governments are ultimately accountable for complying with the CRC, we all have the responsibility to respect and safeguard the rights of children. For this purpose, the Coalition is working to share information about the core issues impacting children with all members of society, including professionals working with children, families, local communities, intergovernmental and non-governmental organizations, civil society members, and private businesses. We have also included constructive recommendations not just for the Malaysian government, but also for NGOs, the private business sector and the general public.

Our review of the core issues impacting children is followed by a summary of key challenges faced specifically by marginalized and disadvantaged groups of children in Malaysia. We intend this report to be a summary of the current status of children's rights in Malaysia, with a particular emphasis on issues identified by Coalition members in consultation with NGOs and other civil society members. A report such as this is necessarily limited in scope and is not intended to be seen as fully comprehensive.

The Coalition wishes to thank the many organizations and individuals who participated in the collection of information, data and case studies for this report. Again, it is our hope that this and future reports by the Coalition be used across Malaysia and the region to protect and support children's rights. We welcome your feedback and data to strengthen future editions and expand the body of knowledge on children's rights in Malaysia. Finally, we would like to also express our special thanks to UNICEF Malaysia for their support in this initiative.

**"The true measure of a nation is how well it attends to its children — their health, safety, and material security, their education and socialisation, and their sense of being loved, valued, and included in the families and societies into which they are born" - UNICEF, Innocenti Report Card 7, 2007**

## 2. Overview of Key Issues

Children's rights in Malaysia have significantly progressed since Malaysia acceded to the CRC in 1995 and introduced the Child Act in 2001. Many initiatives to realize and uphold the rights of children have been advanced by both government and civil society. Considerable progress has, for example, been achieved in the field of education and primary healthcare for children. Despite this, some key challenges remain for children. The Coalition has identified the following issues as particularly concerning:

- **Marginalized and disadvantaged groups of children**, notably children from indigenous and minority communities; children with disabilities; refugee and asylum-seeking, irregular migrant, stateless, and undocumented children; children from the rural and urban poor; and LGBTIQ children can face significant restrictions on their ability to access education, healthcare, birth registration and/or child protection services. The discrimination faced by these groups of marginalized children in Malaysia is deeply concerning.
- **The violence, neglect, abuse and maltreatment of children.** A significant number of cases of violence against children go unreported every year, resulting in serious harm and death to children that could have otherwise been prevented. Under- and non-reporting of violence stems largely from the fact that abuse of children, especially sexual abuse, continues to be a taboo subject within our society. Gaps in the implementation of protection mechanisms, especially for children from marginalized and disadvantaged groups, remains a cause for concern.
- **Corporal punishment.** This practice is legally permissible under the juvenile justice system and in schools, and is believed to be widely practiced within families in Malaysia. Malaysia has not yet withdrawn its reservation to Article 37 of the CRC regarding torture and cruel or inhuman punishment.
- **Lack of systematic and transparent monitoring and reporting on children's rights.** Information and data on issues that impact children, notably children from disadvantaged and marginalized groups, are severely lacking from both government and civil society sources. There is a general lack of transparency with government data; this is often not made publicly available and/or is usually not disaggregated enough to be useful. Few NGOs seem to systematically document instances of child rights violations.

On a broader level, it is apparent that there needs to be more acceptance of children as **human beings entitled to their full set of rights**, rather than as mere 'objects of concern'. This change in mindset should take place among both policymakers and members of civil society. Although there are notable exceptions, there has yet to be a serious shift from needs-based to rights-based policies and programs for children in Malaysia. Approaches towards children are generally paternalistic and their views are generally not sought or given due weight in decisions that affect them.

### 3. National Framework for Child Rights in Malaysia

The Malaysian government has withdrawn some of its initial reservations to the CRC. In 2010, it 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 2011, 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.

In 2009, the government introduced and modeled the National Child Policy/National Policy for Children and its Plan of Action on the General Principles of the CRC (see **General Principles** below). In that same year, the National Child Protection Policy and the National Plan of Action for Child Protection were also introduced, specifically focusing on increasing awareness and commitment to child protection. Both the National Plans of Action take a preventive tone, focusing on increasing programs for high-risk communities as well as promoting smart partnerships between all levels of society to increase awareness on protection of children's rights.

Although these measures are commendable, there are still gaps to be filled. Despite lifting the reservation to Article 1, **inconsistencies in the definition of the child under national laws remain**, with multiple, contradictory definitions of the child under both civil and Syariah law. Little has also been done to realize the practical intent of Articles 13 and 15 of the CRC, and the policies and realities on the ground have remained unchanged (see **Freedom of Expression and Freedom of Peaceful Assembly** below). The government has also **maintained its reservations to 5 core Articles of the CRC**, being 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).

Some aspects of **national law continue to remain incompatible with the CRC**, including Articles to which the Malaysian government has not made any reservations. A notable example is the lack of legislative or administrative protections for refugee and asylum-seeking children. In 2009 the government stated its intention to review and amend areas of national law incompatible with the CRC.<sup>1</sup> However, as of 2012, these amendments have not been put forward.

**Implementation, self-monitoring and evaluation**, and follow-up mechanisms for the National Plans of Action need to be strengthened. Very few NGOs consulted by the Coalition during the two year research period had even heard of the National Plans of Action, suggesting that much more work needs to be done to improve **communication and collaboration** between government agencies and civil society organizations working on children's issues. Indeed, cross-sectoral coordination and communication between government agencies also need to be strengthened. JKM, under the purview of MWFCDC is charged with coordinating agencies working on the development, protection and welfare of children. Although coordination between relevant government agencies is mandated by sections 3 and 7 of the Child Act, coordination between bodies and institutions remains poor, due to a lack of formalized coordination processes, clearly defined mandated roles and responsibilities, and accountability among agencies.<sup>2</sup>

There is also a general lack of **systematic and transparent monitoring and reporting on children's rights** in Malaysia. There is a wide-ranging lack of transparency regarding data collected by the government, which makes it difficult to assess accurately and completely the state of children's rights. Data is not often disaggregated enough to be useful; methodologies differ so that studies cannot be compared; and data related to areas considered sensitive, such as child sexual abuse, are often not made publicly available and/or are classified under the Official Secrets Act 1972. The Coalition has also observed that the majority of NGOs working on child rights issues do not systematically monitor the status of children within the communities or issue areas they work with, and documentation of child rights violations is

generally lacking. Both government and NGOs must also do more to monitor and evaluate the effectiveness of programs that benefit children.

Both governmental and non-governmental policy and programmatic efforts in Malaysia are still very much **needs-based**. This may stem in part from a general lack of awareness of the CRC; in its research, the Coalition found that many professional groups working with children possessed little more than rudimentary knowledge of the CRC and its provisions. If groups working with children do not understand the implications of the CRC and its rights-based focus, it is less likely that the rights set out in the CRC will be realized for many children. There is an urgent need to address this gap, and to ensure that service delivery and advocacy efforts center on ensuring that children can **access and assert their rights**.

## 4. General Principles

The General Principles are four foundational rights that are instrumental for the effective implementation of all rights contained in the CRC. They should be kept in mind at all times

- **Article 2: Non-discrimination** (all children should enjoy their rights without discrimination of any kind, irrespective of sex, race, language, religion, disability, nationality, ethnic or social origin, etc.)
- **Article 3: The best interests of the individual child** should be a primary consideration in all decisions and actions that affect the child (rather than the convenience or best interests of adults)
- **Article 6: The right to life, survival and development**
- **Article 12: Respect for the views of the child** - the right of children to express and have their views heard, as well as to participate in decisions and activities that affect their lives, depending on age and level of maturity

### A. Non-Discrimination

The non-discrimination principle in the CRC requires that all the rights guaranteed by the CRC should be recognized for ALL children within the jurisdiction of a state.

Although there have been numerous campaigns promoting national unity, several groups of marginalized and disadvantaged children continue to experience regular, ongoing discrimination. The types and forms of discrimination experienced by these groups of children are summarized below and discussed in further detail throughout this report.

- **Orang Asal children** face systematic and multiple forms of discrimination. State appropriation of their customary lands and forced resettlement has undermined their constitutionally-guaranteed land rights and cultural identity.
- The Federal Constitution does not prohibit discrimination on the basis of physical or mental disability, and **children with disabilities** continue to face difficulties in accessing education due to a lack of facilities, programs, and trained personnel, as well as discriminatory attitudes that regard education as unnecessary or impractical for such children.

- Although the Federal Constitution prohibits discrimination on the grounds of gender, this has been construed narrowly **to exclude discrimination on the basis of SOGI**. The government has stated on several occasions that Article 8(2) of the Federal Constitution does not protect **LGBTIQ persons** from discrimination.<sup>3</sup> LGBTIQ children in Malaysian schools have been subject to discrimination and corporal punishment on the basis of their SOGI.
- **Refugee, asylum-seeking, stateless, and irregular migrant children** face multiple forms of discrimination that stem largely from their uncertain or lack of legal status in Malaysia. They have very limited access to health care and education, and can be vulnerable to abuse, exploitation and other violations of their human rights.
- **Children living with HIV/AIDS** also face difficulties in accessing education and effective care and support services that meet their specific needs. This stems in large part from the social stigma attached to HIV/AIDS.
- **Children from the urban and rural poor** continue to face discrimination and exclusion due to their socio-economic status. For example, many of these children live in deplorable conditions and face difficulty in obtaining identity documents, therefore significantly restricting their access to education, health care, and protection systems.
- Discrimination against the **girl child** also remains an issue, with child marriage disproportionately affecting girls; the minimum legal age for marriage is set lower for girls than for boys.<sup>4</sup>
- Discrimination against **Muslim children born out of wedlock** remains a significant problem. Children born to Muslim parents within six months of their parents' marriage are deemed to have been conceived out of wedlock. For such children, the NRD inserts "*bin/binti Abdullah*" in place of the father's name; these actions can have far-reaching consequences as children are in effect publicly labeled as "illegitimate" by virtue of their surnames. The child's future and his/her emotional and physical well-being are negatively impacted not just by the social stigma of "illegitimacy" but also by the loss of inheritance, maintenance and guardianship rights to his/her father under Syariah laws.

## B. Best Interests of the Child

Article 3(1) of the CRC establishes that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private bodies. Any interpretation of best interests must be consistent with the spirit of the entire CRC, particularly the General Principles of the CRC, and the emphasis on the child as a rights-bearing individual with his or her own views. States cannot interpret best interests in an overly culturally relativist way and cannot use their own interpretation of "best interests" to deny rights guaranteed to children by the CRC.

The principle that primary consideration should be given to the best interests of the child is not consistently applied and integrated into legislation, government policies and programs, and administrative and judicial decisions. Although the Child Act contains provisions requiring that the best interests of the child be a paramount consideration, there is limited guidance in the Act or in the National Child Protection Policy 2009 on the principles and criteria to be applied when assessing what is in a child's best interests.

Generally speaking, there appears to be little emphasis on systematically considering how children's rights and interests are or will be affected by decisions and actions taken by both public and private bodies. There is little evidence that state authorities take the best interests of the child into consideration in decisions involving refugee, asylum-seeking, irregular migrant, undocumented or stateless children.

## C. Right to Life, Survival and Development

Although there have been no executions of children in conflict with the law since 1990, laws permitting the **death penalty** to be imposed on children remain in force as the government has yet to amend the Essential (Security Cases) Regulations of 1975. There is also no maximum term of imprisonment for child offenders, and children can be subject to **life imprisonment/indefinite imprisonment** at the pleasure of the Yang di-Pertuan Agong, the Ruler or the Yang di-Pertua Negeri, depending on where the offence was committed.<sup>5</sup>

**Road traffic deaths and injuries among children** remain the leading cause of admission of children into government hospitals, due in large part to poor road safety practices.<sup>6</sup> From 2002 to 2008, an average of 830 children died each year due to road traffic accidents, with the number of deaths increasing each year.<sup>7</sup> **Deaths resulting from drowning** also remain a cause for concern, with between 250-300 child deaths reported per year from 2000 to 2007 as a result of drowning, and an average of 200 children having drowned but survived each year.<sup>8</sup>

Other threats to the right of children to life, survival and development include the susceptibility of marginalized and disadvantaged groups of children (including children living in poverty, children in rural and remote areas, indigenous children, and children from refugee, asylum-seeking, irregular migrant and stateless communities) to diseases such as **tuberculosis and malaria**, which have in turn contributed to **higher child and infant mortality rates** among their respective communities. Malnutrition among these groups of children has also been a contributing factor. For more information, see **Health** below.

**Early marriage**, an issue that disproportionately impacts the girl child, also threatens the rights of both the child-mother and her child to life, survival and development. Although data on the impact of early motherhood on girls in Malaysia is not publicly available, it is recognized that motherhood at a very young age can result in complications during pregnancy and delivery, resulting in a higher risk of maternal death. Children of young mothers also are at risk of higher levels of morbidity and mortality.

### DATA ON CHILD MARRIAGE

Publicly available data on child marriage in Malaysia is limited. In 2009, 32 girls under 10 years of age undertook the pre-marital HIV test. No boys in that age group were tested. In the 10-14 year old age group, 2 boys and 445 girls were tested. In the 15-19 year old group, 1,911 boys and 6,815 girls were tested. All Malaysian Muslims intending to marry are required to take a pre-marital HIV test; although not firm evidence, it is nevertheless an indication of the prevalence of Muslim child marriages.

*Source: UNGASS Country Progress Report Malaysia, 2010*

The emerging issue of **baby abandonment** (discussed further in **family support** below), is another area with severe repercussions on the right of the child to life, survival and development. Low contraceptive use, limited access to sexual and reproductive health education and the fact that sex outside marriage is illegal under Syariah law are all factors that have contributed to parents, especially teens, abandoning their babies.<sup>9</sup> In the first half of 2012 alone, 31 abandoned babies were discovered, of whom 10 survived.<sup>10</sup> It is believed that these statistics represent only a fraction of the problem, as not all abandoned babies are found. Once abandoned, babies are at heightened risk of **statelessness** (see **Stateless Children** below).

## D. Views of the Child

In many cases, only children themselves are in a position to indicate whether their rights are being fully recognized and realized.

It is still not widely accepted in Malaysia that children have the right to express their opinions in issues that affect them, and that they should be able to exercise this right. There is a noticeable lack of statutory provisions, including in the Child Act, mandating child participation in decision-making. Whether or not the views of children are taken into consideration by the courts is highly dependent on the individual judge's discretion.

Although the National Plan of Action for Children 2009 contains provisions for the increased participation of children, little has been done to formally encourage child participation in practice. This may stem in large part from the perception of children not as individual rights-bearers, but as 'objects of concern' (see **Overview of Key Issues** and **National Framework for Child Rights** in Malaysia above).

## 5. Civil Rights and Freedoms

### A. Birth Registration

Significant progress has been made in improving access to birth registration for children in Malaysia. However children, particularly those from the **indigenous and minority, refugee and asylum-seeking, irregular migrant, and the rural and urban poor communities**, continue to face difficulties in obtaining a birth certificate. This can have wide-ranging repercussions: without a birth certificate, children can be denied access to education, healthcare, and other basic social services. For Malaysian children, a lack of a birth certificate can also impact on their ability to apply for a MyKad when they reach 12 years of age.

Malaysia does not have a free-at-all-stages birth registration system, and in addition to cost, families have reported difficulties in navigating bureaucratic and overly-rigid requirements for registration. This is particularly in the case of **'late' birth registrations**, that is, registrations conducted after 42 days from birth. In such cases, those unable to meet the evidentiary requirements imposed by the NRD can face difficulties and significant delays in their applications for a birth certificate; this is exacerbated by the fact that the criteria and procedures for late birth registration can vary between different NRD offices. Children whose parents are undocumented, or whose parents have died or cannot be traced have also reported significant difficulties in providing the supporting documentation required by the NRD (see **Stateless Children** below for further information).

Distance and cost of travel to the NRD office, a lack of awareness of the importance of procedures for birth registration, and non-registration of the parent's marriage are some of the key factors identified as reasons for late or non-registration of births. These are problems that have especially affected **children from the rural poor and indigenous communities in remote locations, particularly in Sabah and Sarawak**. Indigenous community representatives and NGOs in Sabah and Sarawak have indicated that mobile registration is available, but coverage is limited and the process for getting a birth certificate in the case of late birth registrations is extremely slow. Indigenous communities in Sabah and Sarawak have also reported that officers from the NRD have sometimes refused to recognize marriages registered with the native courts in Sabah and Sarawak; this has resulted in children not being issued birth certificates on a timely basis (or at all), or the name of the father being omitted from the birth certificate.

**Refugee and asylum-seeking parents in Peninsular Malaysia** can in principle apply for a birth certificate for their babies, but have reported difficulties when NRD officers insist on the parents producing a UNHCR refugee card before issuing a birth certificate (something which asylum seekers are unable to produce). Furthermore, the **fear of arrest and detention** for being irregular **as well as restrictions on the ability of some migrant workers to marry** has meant that some refugee and migrant mothers do not even apply for birth certificates for their children. They may also choose to give birth at home due to such security concerns or the inability to pay the delivery fees charged by hospitals; in both of these cases, the child's ability to access birth registration can be significantly compromised as the NRD usually requires a birth confirmation form to be produced before issuing a birth certificate (even where the parents are able to produce a witness to the birth). The Coalition has also received reports from members of irregular migrant communities of hospitals withholding birth confirmation forms where delivery fees have not been paid in full.

## **B. Freedom of Thought, Conscience and Religion; Freedom of Expression and Freedom of Peaceful Assembly**

Although Article 11(1) of the Federal Constitution provides that “every person has the right to profess and practice his religion”, this right applies only to adults: according to the Federal Constitution, a person under the age of 18 needs explicit permission from his/her guardian before converting to another faith.

Some indigenous communities have reported “extreme pressure” to convert to Islam, in clear violation of Article 12 of the **UN Declaration on the Rights of Indigenous Peoples**. Their children have been subject to what they perceive as an unwritten ‘Islamization policy’ and an attempt to assimilate them within the dominant Malay ethnic group. For example, representatives from indigenous communities have reported that when applying for MyKads, the religion of children in their communities has sometimes been automatically listed as Islam by virtue of the fact that they have the patronym ‘bin’ or ‘binti’ in their names, even if they are not actually Muslim.<sup>11</sup> Children have also been under pressure to adopt behavior such as singing of the ‘doa’ (Islamic prayer) before having their meals in school. For more information on the challenges faced by indigenous children, see **indigenous children** below.

Malaysia removed its reservations to CRC Articles 13 and 15 regarding freedom of expression and freedom of peaceful assembly, but the effects have yet to be felt. Instead, laws, policies and the actions of law enforcement personnel continue to restrict the ability of children to exercise these rights. The **Peaceful Assembly Act 2012** is one such recent example: pursuant to section 4 of the Act, persons below the age of 21 are prohibited from organizing peaceful assemblies, and children (defined in the Act as persons below the age of 15) are prohibited from participating in peaceful assemblies with certain exemptions. Children found in violation of these provisions can be fined up to RM 10,000.

## **6. Family Support and Alternative Care**

**Family Support:** When families are unable to provide sufficient care and protection for their children, they should be supported by appropriate assistance that helps them through difficult times, including counseling support that is non-discriminatory and non-judgmental. Although Malaysia has made significant economic gains, and the government is working to reduce income disparity, the need for such assistance is still great, especially among marginalized communities and single parent homes. JKM manages various small programs, mostly cash transfers, awarded through basic means testing based on families’ registration and home visits by social workers. Non-cash assistance, such as parental education and counseling, are available, though limited and not widely known. Public awareness campaigns

specifically on positive parenting practices have been carried out but the coverage and effectiveness of these campaigns need to be formally assessed. A related concern is **baby abandonment**, an issue that has received increased media attention in the past few years. Numerous factors can lead to parents abandoning their babies, including teen parents who are not ready for parenthood and Muslim women who have children born outside wedlock, for which the woman will receive corporal punishment as it is illegal under Syariah law. A range of solutions have been proposed, from harsher penalties to new teen activity centers to an anonymous drop-off site for babies to be left safely; however, no data is available to show the effectiveness of any approach, and no overarching policy decision has been made.

**Alternative and Institutional Care:** Parents may put their children into care for many reasons, including financial, family conflict, and disciplinary problems. The alternative care system is a patchwork of government and private facilities. Government facilities include homes for: abused, abandoned or poor children; children under provisional probation by the court; children who commit crimes but are not sentenced to jail; teenage girls accused of “vice” activities; and children with disabilities. Private facilities mostly care for abused, neglected, or abandoned children, orphans, and for children with disabilities, and many are faith-based. No review has been done to assess the **effectiveness and safety** of these alternative care homes, including state-run institutions. Registration and, thus, regulation of private homes is uneven, leaving children at risk in potentially unsafe facilities.

Children regarded as having behavioral problems are considered to be **‘children beyond control’** and can either be sentenced by the court to an Approved School or Probation Hostel, or their parents can obtain a court ruling for placement in such institutions. These provisions are reportedly most commonly used for children committing status offences such as: running away from home; engaging in sexual behavior; engaging in substance abuse; being repeatedly disobedient to parents; and/or involvement in motorbike racing (*Mat Rempit*). This designation also is used by parents of pregnant, unmarried girls as a punishment; girls, more than boys, are targeted under the ‘children beyond control’ provisions due to the perceived need to control their sexuality and behavior. Although not classified as offenders, these children are subject to the same treatment as children who commit crimes.

There are other gaps and inconsistencies in the system of alternative care that should be urgently addressed. Due to **insufficient numbers of Child Protectors**, their caseloads have been too high to allow for effective case management and proper review of a child’s placement; this has sometimes resulted in children being returned to their families, where abuse may still continue.<sup>12</sup> At present, many private homes still do not have and are not required to have a **Child Protection Policy** in place before they are granted a license to operate. In addition, some government-run homes are not consistently preparing children to transition out of care, when they reach the age of 18 and need to earn a living (also see below on **Stateless Children**). While the Child Act states that institutional care is not to be used as the option of first resort, there are too few services, such as counseling, to help families at risk keep their children at home, so children are put into care.

**Adoption:** The national adoption laws are not uniform: non-Muslims have two legal options, and Muslim adoptions follow Syariah law. In addition, many people choose to adopt outside the parameters of the law. Malaysian law recognizes two methods of legal adoption: adoption under the **Registration of Adoption Act 1952** (the RAA) which applies to 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. Both the AA and RAA are only applicable in Peninsular Malaysia.<sup>13</sup> Children adopted under the AA assume all the rights of biological children of the adoptive parents. However, children adopted under the RAA cannot assume the name or inherit the property of the adoptive parents, although children do get identity documents (including passports) through the adoption certificate. The RAA is also silent or does not properly address other areas (such as maintenance, gifts, custody and mixed-gender socializing) within the adoptive parent-child relationship, and therefore does not adequately provide for the rights of children adopted through this method. While there is no data on the number of adoptions that go through informal and illegal channels, it is believed to be far more than the number of legal adoptions. Many social workers believe this is due to a lack of awareness of proper adoption procedures by

prospective parents and the perception that the formal process is unduly slow. Indeed, there is a two-year waiting period under the RAA for the initial adoption application to be approved; this is considered by many social workers and parents to be too lengthy. As a result, parents may turn to less-credible sources that connect prospective parents with baby-selling rings that exchange money for infants.

## 7. Violence, Abuse, Neglect, Maltreatment and Exploitation

**Violence, Abuse, Neglect and Maltreatment:** The number of reported cases of child abuse in the country has been steadily increasing over the past three years according to JKM (though statistics from RMP show a decline in cases from 2010 to 2011).

Number of Reported Child Abuse Cases

	2009	2010	2011
JKM*	2,789	3,257	3,428
RMP**	3,986	4,039	3,678

\* Cases include physical, sexual, emotional and mental abuse

\*\* Cases include physical abuse, rape, sodomy, and molestation

Source: Hashim, N.H.M., (Deputy DG, JKM), & ASP Ong (Women & Child Investigations Department, Royal Malaysian Police, Bukit Aman), *Situational Analysis of Violence Against Children in Malaysia, 3rd National Violence Against Children Conference, 9-10 June 2012*

Despite the conflicting numbers between the agencies (possibly due in part to the way in which cases are classified), it is estimated that many cases of abuse continue to remain **unreported**.<sup>14</sup> Child abuse, especially sexual abuse, is still a **taboo subject** within our society. A reluctance to report abuse cases can be due to several factors, including stigma/shame and the culture of silence within communities. Although there seems to be increased awareness and media attention about child abuse, this low rate of reporting nevertheless seem to indicate apathy from civil society, as too few adults intervene when children are abused, resulting in serious harm and even death.

### KEY FACTS

**According to JKM, in 2011, parents made up 44.3% of child abusers in Malaysia, with mothers more likely to be abusers than fathers.**

Source Hashim, N.H.M., (Deputy DG, JKM), *Situational Analysis of Violence Against Children in Malaysia, 3rd National Violence Against Children Conference, 9-10 June 2012*

Legislative and policy frameworks have been initiated to address the increasing number of cases of abuse, including the Child Act, the National Policy and Plan of Action for Children and the National Policy and Plan of Action for Child Protection. Each of these provide important strategic direction for implementing mechanisms within the child protection system to protect and safeguard children from abuse. Furthermore, interagency collaborations between the SCAN Teams within the hospitals, the police and Child Protectors under JKM help to make reporting an abuse an easier and less traumatic experience for a child. As outlined above however (see **National Framework for Child Rights in Malaysia**), a comprehensive evaluation of the strategies has not been done and gaps in the system are still apparent. The implementation of child protection policies and services is not evenly applied for: children from the rural and urban poor communities; children from remote areas; children with disabilities; and

children who have been trafficked. These groups of children continually face difficulties in accessing the full reporting and investigative processes. Furthermore, certain groups of children continue to be omitted from the prevention and response systems due to their lack of legal status, for example, refugee, asylum-seeking, irregular migrant and stateless children. Other challenges faced by child survivors of abuse include: repeated questioning on the same event from multiple government agencies; lack of acknowledgement and recognition of non-physical signs of abuse; and children having to face their perpetrators during testimony. Many child survivors and their families lack support services as Child Protectors have found it difficult to provide continued follow-up services due to their overwhelming caseloads and limited number of personnel.

## Preventive Strategies within the child protection system:

### Preventive strategies in The National Plan of Action for Child Protection 2009:

1. Establish an early warning mechanism and strengthen child protection mechanisms;
2. Provide children with basic knowledge to protect themselves; and
3. Develop a standardized training module on child protection and screening system for persons who work directly with children

As part of the **early warning mechanism**, the **NUR Alert system** is to be activated when a child under age 12 is in immediate danger. However, there are no standard operating procedures for law enforcement to use the system, and it has only been activated for five missing-child cases.<sup>15</sup>

### KEY FACTS

**The Nur Alert System is not used when a child above 12 goes missing. There have been 1,800 children between 12-18 years of age who have been reported missing since 2010.**<sup>16</sup>

Various governmental and non-governmental agencies have undertaken initiatives to provide children with **basic knowledge about abuse, neglect, maltreatment and exploitation** so children are able to identify potentially dangerous situations. However, these **personal safety programs for children** often exclude the most at-risk children such as children of migrant workers, refugee and asylum-seeking children, stateless children, and undocumented children. The third preventive strategy to develop a **standardized training module on child protection** consists primarily of training on the formulation of a Child Protection Policy for government and non-government alternative care homes. However, as of February 2012, only 77 child-related NGOs in the country had been trained.<sup>17</sup> Further, NGO service providers consulted during this research have related that police officers lack training on how to identify symptoms of abuse, neglect or maltreatment and how to determine whether to remove a child from an abusive home.<sup>18</sup> At present there are no standardized screening systems for persons who work directly with children.

The **24-hour helpline, Talian Nur 15999**, was set up in 2007 to address complaints of abuse, neglect, domestic violence, welfare assistance, and baby abandonment. In 2010, a private non-profit, public safety project, **Childline Malaysia**, was initiated to handle calls specifically from children in need of information, care and protection. Although Talian Nur and Childline share the same 15999 number, Childline operators only attend to calls from children whilst Talian Nur operators attend to calls from adults. Further, para-counselors at Childline do not handle cases directly but refer calls to relevant Child Protectors and Talian Nur officers. Childline received 3,128 calls from children in 2011,

including on issues pertaining to mental health, abuse and violence. According to the MWFC, since the line was set up in 2007, Talian Nur has received an average of 100 calls per month from adults.<sup>19</sup> The MWFC has also indicated that 480 cases of child abuse in 2010 and 404 cases of child abuse between January and April 2011 were reported to Talian Nur by adults.<sup>20</sup> The setting up of the helpline has been a positive step forward. However, concerns have been raised that operators are not equipped to handle a wider range of sensitive issues such as issues faced by LGBTIQ children and mental health concerns. Additionally, the intervention and follow up model of the system needs to be improved by increasing manpower to investigate suspected cases of abuse.<sup>21</sup> There also appears to be a general lack of awareness about the 15999 line for communities in rural areas and in East Malaysia.

**Corporal punishment:** The caning of male children is a lawful penal sanction in the criminal justice system, and continues to be applied to boys in conflict with the law.

### KEY FACTS

Between 2002 and 2012, a total of 31 sentences of whipping were passed and carried out on male children pursuant to the Child Act and the Criminal Procedure Code 2006 (Act 594); in the same period, 19 sentences of whipping were passed and carried out on children under Syariah law

Source: Global Initiative to End All Corporal Punishment of Children, Malaysia Country Report, August 2012

Caning and other forms of corporal punishment are also used as a lawful disciplinary measure in penal institutions, as well as schools and alternative care settings. Corporal punishment inflicted in the family home also remains legal and is believed to be widespread, although no data is available.

In schools, corporal punishment (caning) can be applied only to male students in accordance with the conditions stated in the Education (School Discipline) Regulations 1959. These provide, *inter alia*, that corporal punishment can only be administered by the principal or a registered teacher authorized by the principal. Additionally, caning can only be carried out for serious or repeat offences, student's parents must be informed, and the caning must be conducted in a private, confined area. Non-compliance with the Regulations is reported to be common, specifically in relation to the forms of corporal punishment inflicted upon children and the persons that administer such punishment.

### KEY FACTS

In research conducted in 2011 in 9 primary and 10 secondary schools in 6 Malaysian states, students reported being slapped in the face, pinched, hit on the back of the head, having their hair, eyebrows, ears, and sideburns pulled, verbally abused, and being forced to do repetitive physical activity, such as squats while crossing their arms and holding their ear-lobes.<sup>22</sup>

Corporal punishment has also been used as a form of punishment for homosexuality, or perceived homosexuality. (See **LGBTIQ children** below)

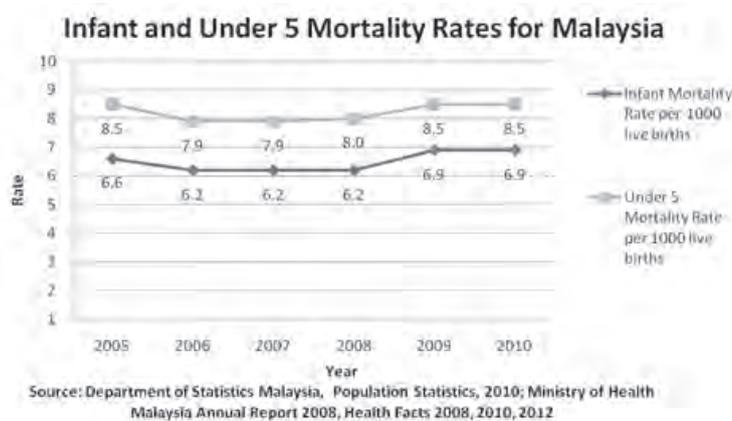
**Child Trafficking and Exploitation:** While it is known that Malaysia is a destination, transit and to a lesser extent, source country for child trafficking, there is a need for greater information on the nature and magnitude of child trafficking in Malaysia. Disaggregated data on the number of children trafficked into 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.<sup>23</sup> 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.

Malaysia is party to the 2000 UN Trafficking in Persons Protocol, albeit with reservations, and has passed the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIP Act). The ATIP Act provides penalties for trafficking and stipulates measures for the protection of survivors. However, this Act focuses on the punishment of perpetrators and does little to address the human rights of survivors. There are for example, no legislative provisions to address the special protection needs of child survivors of trafficking, and no requirement that they be provided with access to legal representation or advice. Within the three shelters designated for women and children, child survivors of trafficking are given extremely limited freedom of movement and access to psychological assistance. In an exception to normal protocol, Malaysia has been placed on the US State Department, Trafficking in Persons Report, Tier 2 Watch List for a third year.<sup>24</sup>

## 8. Health

**Basic Health and Welfare:** Health services for children have greatly improved, especially for children within an urban setting. There has been significant progress in the development of primary healthcare centers in the country over the last 10 years, including the inception of Health Clinics, the Flying Doctor Service Program and Mobile Clinics for remote and rural communities, Alternative Birthing Centers, and 1Malaysia Clinics. However, gaps still exist in the form of **access to care in remote areas** due to lack



of transportation and distance, with many communities having to travel at least three hours along dangerous terrains or logging roads to get to the nearest clinic.<sup>25</sup> Mobile health services to remote locations are irregular as much depends on weather conditions and whether roads are passable. Although the **cost for outpatient health care** is minimal (RM1.00), gaps still exist as these charges only apply to Malaysians and not children of migrant workers, undocumented, stateless or

refugee and asylum-seeking children. Further, children below the ages of 5 (non-school going children), who receive care as ambulatory patients (day care) and in-patients have to pay higher rates to access health services. There are also gaps in **overall quality of services**, especially for children in rural areas and marginalized communities. Children from these communities continue to be underserved and face health concerns including malnutrition, anemia, vitamin A deficiency, malaria, tuberculosis, cholera and typhoid; this has in turn resulted in high infant and toddler mortality rates. Although **maternal health care** for rural and remote communities has improved, more needs to be done as there are still many critical but easily treatable health issues that go undiagnosed, such as jaundice in babies.

## KEY FACTS

**The under-5 mortality rate increased from a rate of 8.0 per 1,000 live births (3,887 children) in 2008 to a rate of 8.5 per 1,000 live births (4,222 children) in 2010.**

*Source: Ministry of Health Malaysia, Health Facts 2012*

**Children infected and affected by HIV/AIDS:** For children with HIV/AIDS, the **lack of effective care and support services** coupled with the general **stigma and discrimination** against the disease has placed them in a very vulnerable position. It is estimated that there are 6,000 - 14,000 children affected in some way by HIV/AIDS (infected, orphaned, abandoned), and there are very few solutions for them, either via government or non-governmental initiatives.<sup>26</sup> Services to meet the needs of children living with HIV/AIDS are almost non-existent. There are only three homes in the country (in Kota Bharu, Penang and Kuala Lumpur) that provide care specifically for children orphaned by HIV/AIDS. As a result, many children are therefore placed in homes that are not equipped to address the needs of a child infected and affected by HIV/AIDS. Child sensitive counseling is available in some government hospitals but there are no standard operating procedures for schools on how to address interruptions to a child's studies as a result of receiving treatment.<sup>27</sup> Children infected and affected by HIV/AIDS continue to face discrimination as a result of the social stigma attached to the disease and can be ostracized by their peers, other family members and civil society in general. This has impacted on their ability to access health care, education, and other social and basic services. More efforts need to be undertaken to confront the social stigma and to increase care and services for children living with and affected by HIV/AIDS.

**Mental Health:** There is an **overall lack of attention** given to mental health issues and psychosocial support for children in the country despite increasing prevalence rates. This is evident by the limited number of psychiatrists (0.83:100,000 people), psychologists (0.29:100,000 people)<sup>28</sup> and registered counselors (as of 2009 there were 1,865 registered counselors for a population of 27 million people) in the country.<sup>29</sup> The issue is further compounded by the **stigma attached to mental health issues** and the lack of monitoring and evaluation of the effectiveness of available psychosocial support, counseling and psychiatric services. According to Childline Malaysia, the highest number of calls to the 15999 line from children (1,828 calls) in 2011 related to mental health issues including: calls related to feelings of loneliness; fear and anxiety; depression; lack of confidence; issues pertaining to physical appearance; and some calls on suicide.<sup>30</sup> In 2011, the MOH together with the MOE commissioned a pilot mental health study with 6,450 students from six secondary schools in the country. The study revealed that, 17.1% of students had symptoms suggestive of severe anxiety disorders; 5.2% had severe depressive symptoms and 4.8% were experiencing severe stress.<sup>31</sup> These findings indicate that more needs to be done to look into the mental health needs of children and to reduce the stigma attached to mental health in Malaysia.

**Breastfeeding** is of significant benefit to infants, but **exclusive breastfeeding rates** remain low in Malaysia. Data from the MOH shows that the prevalence of exclusive breastfeeding for up to 6 months was 14.5% in Malaysia in 2006,<sup>32</sup> compared to the 38% global average for 2000 – 2007.<sup>33</sup> Malaysia's low rates are due in part to unethical promotional practices by commercial infant formula manufacturers and also to a general lack of breastfeeding support by employers.

**Adolescents and Reproductive Health:** Every health facility should have adolescent-friendly health services that respect the privacy and needs of this specific group of children. The **National Adolescent Plan of Action (2005)** was formulated to coordinate the efforts of all relevant agencies that provide reproductive health and other services to address risk behaviors among adolescents, as well as to make health services more youth-friendly. Commendably, the Plan has clearly defined strategies, realistic timeframes and indicators for measuring implementation of services and programs. However, there has been no comprehensive national study or evaluation of the Plan since its formulation. Adolescent **counseling services** are provided for by LPPKN via the Kafe@Teen initiative which although a positive start, needs to reach out to more teens, especially in rural areas.

### KEY FACTS

**Since 2007, about 9,440 adolescents have utilized the reproductive health and counseling services at six Kafe@Teen centers**

*Source: Singh, H., (Deputy Secretary General (Strategic), Ministry of Women, Family and Community Development), The 45th Session of the Commission on Population and Development General Debate on National Experience in Population Matters: Adolescents And Youth, 24 April 2012*

**In 2007, there was a total population of approximately 5,412,600 adolescents ages 10 -19**

*Source: World Health Organization, Health of Adolescents in Malaysia (Undated)*

Adolescents continue to face difficulty in obtaining reliable information on **reproductive and sexual health**, as much of this information, especially concerning sexuality and non-heteronormative issues, has been suppressed.<sup>34</sup> Attempts to introduce sexual and reproductive health in the national education curricula have been met with strong resistance, as there is a perception that reproductive health education would only encourage adolescents to have premarital sex. Such attitudes toward education and sexual behavior amongst adolescents have limited effect in addressing issues such as rising levels of HIV/AIDs, sexually transmitted diseases, teenage pregnancies, and abandonment of newborn babies.

## 9. Education

### KEY FACTS

- **Malaysia has attained almost universal primary education and is on its way to achieving universal secondary education. And yet it is estimated that some 120,000 Malaysian children are still not attending school and do not have access to primary education**

*Source: United Nations Country Team Malaysia, Malaysia: the Millennium Development Goals at 2010, April 2011*

- **In a 2009 study, almost 44,000 school-age children were identified who had never attended school. The majority of these children were refugee and asylum-seeking children, children of irregular migrants and foreign workers. However, more than 5,000 were Malaysian citizens, mostly Orang Asli and Penan children as well as orphans and children living in economic hardship**

*Source: Ministry of Education, Malaysia, Study on Children without Official Identification Documents in Malaysia, Educational Planning and Research Division, Kuala Lumpur, 2009*

**Access to Quality Education:** Despite Malaysia's successes in achieving almost universal primary education and the significant progress made towards achieving universal secondary education, significant challenges remain for groups of children from marginalized and disadvantaged communities.

Many children from the **refugee, asylum-seeking, stateless and irregular migrant** communities do not have access to formal education, as government schools do not generally accept non-Malaysian or undocumented children. Children who cannot enroll in government schools and whose parents are unable to afford the cost of private schools must rely on education provided through informal learning centers. Such learning centers are generally poorly financed and under-resourced, and only provide a very basic education to the children.

The Malaysian government announced in 2009 that Malaysian **children without birth certificates** can attend government-run schools, if they can obtain confirmation from JKM or their village headmen that they were born in Malaysia.<sup>35</sup> However, awareness of this policy among parents and teachers is believed to be low, and no corresponding exemption has been granted for children wishing to sit for official examinations.

Marginalized and disadvantaged groups of children who cannot access formal education or official exams are often at risk of entering into the informal workforce at a young age. Once there, their lack of documentation and legal status means that they are without any recourse in the event of unfair treatment, abuse, violence or injury in the workplace.

**Children with disabilities, children living in poverty and indigenous children** can also face significant hurdles in accessing education, as further discussed below.

**Early Childhood Care and Education:** Preschool education has expanded rapidly in Malaysia; however, gaps remain notably in relation to **monitoring and evaluation of ECCE providers**, and in access to preschool education for marginalized and disadvantaged children. ECCE includes facilities run by both government and private entities, with some open to all children and others focused on a particular ethnic or religious community. In such a varied system, quality standards require vigilance. For example, although preschool teachers in MOE schools are required to hold a degree in Early Childhood Education,

there is no such requirement for teachers under other government ministries or in the private sector; instead they attend short courses and are given on-the-job training. Many private schools and centers are **unregistered**, so quality standards are not monitored. The lack of regulation and monitoring of kindergartens and childcare centers can put children at risk, as demonstrated by the reported deaths of 14 infants in childcare centers in the first five months of 2012.<sup>36</sup> Finally, access to preschool education is limited for children from **marginalized and disadvantaged communities**, such as Malaysian Indian children from lower income households and indigenous children living in remote areas. This is due to factors such as poverty and insufficient access to public preschools in their vicinities.

**Dropout Rates:** Although there has been a nationwide decline in the average dropout rate from government-run primary schools, demographic variations continue to exist. Dropout rates in the transition from primary to secondary school have remained a challenge, impacting some 17,000 children.<sup>37</sup> **Dropout rates are higher for boys**, with school completion rates for girls remaining higher at both primary and secondary levels.<sup>38</sup> Although a comprehensive study has yet to be conducted on the reasons why more boys drop out, interviews with parents, teachers and school principals indicate that some boys struggle with the mainstream academic curriculum and could benefit from vocational training or applied coursework instead of regular school. However, vocational training in Malaysia remains weak and fragmented, as well as stigmatized compared to traditional academic education. Further, boys from poor families are more likely to drop out of school to start work and help support their families. In Sabah and Sarawak, NGOs have observed that higher dropout rates for both boys and girls can be attributable to limited transport to access schools; the need to help on the family farm or other forms of employment; caring for younger siblings; early marriage; and a lack of family support for attending school.

## 10. Children with Disabilities

The legal and policy framework regarding children with disabilities is relatively strong: the CRPD came into effect in Malaysia in 2010, and Malaysia has adopted the National Policy for Persons with Disabilities 2007, the National Plan of Action for Persons with Disabilities 2008 to 2012, and the PWD Act. However, there are gaps in the framework which are detrimental to children with disabilities. Malaysia entered formal reservations to the CRPD and made a declaration limiting the government's legal application of the principles of non-discrimination and equality. And although the PWD Act provides for many rights, there is no penalty or provision for redress against those who discriminate against persons with disabilities. There is also an express prohibition in the PWD Act on legal action against the Malaysian government for violating the rights of persons with disabilities. For this reason, critics have called the PWD Act a "toothless tiger".<sup>39</sup> Another significant challenge is the lack of comprehensive statistical data on children with disabilities. According to JKM, a total of 359, 203 persons with disabilities (categorized into persons with visual, hearing, speech, physical, learning, mental, and multiple/other disabilities) were registered with the department in 2011.<sup>40</sup> The accuracy of this figure is, however, questionable, given that this would represent just over 1% of the population. Furthermore, this figure is not disaggregated by age, so there is no way to know how many children in total are affected, much less whether their needs are met by available services.

Children with disabilities lack sufficient **access to education and health services**. The MOE provides education for children who meet basic standards of self-care and ability to learn, and such children attend either special education schools (schools catering exclusively for students with disabilities), special education classes within mainstream schools, or inclusive classes within mainstream schools. Children who do not meet the criteria for these MOE programs are sent to JKM administered Community Based Rehabilitation (CBR) programs.

In October 2012, there were twenty-eight special education primary schools, two special education secondary schools, and two special education vocational secondary schools in Malaysia.<sup>41</sup> It is unlikely

that there are enough special education schools to meet the needs of the population with disabilities, particularly at the secondary school level, since all these schools are located in urban areas. Furthermore, the criteria for assessing eligibility for entrance into special education classes is unclear as there are no MOE prescribed rules or policies on whether a child should remain in or be segregated from mainstream learning; instead, the decision rests entirely with the school's administration, following advice from the school's special education teachers and the willingness of mainstream teachers to include children with special needs in their classes.<sup>42</sup>

Another key challenge for children with disabilities relates to the principle of **inclusive education**. Part of the difficulty lies in the lack of a formal support system for teachers and school administrators to implement inclusive education; large class sizes, together with the absence of cohesive policies on inclusive education, as well as lack of multi-agency collaboration, resources and specialized services for children with disabilities has meant that the approach is still one of integration rather than inclusiveness.<sup>43</sup>

## INCLUSIVE EDUCATION

**Children with special needs must have access to inclusive schools. Regular schools with an inclusive ethos are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all**

*- The Salamanca Statement on Principles, Policy and Practice in Special Needs Education and a Framework for Action 1994*

**Nearly two decades after signing the 1994 Salamanca Statement Framework for Action on Special Needs Education, much still remains to be done to implement inclusive education for children with special needs in Malaysia, particularly children with learning disabilities. In 2012, it was reported that the majority (89%) of special needs students currently enrolled in MOE schools are placed in special education classes, while only 6% were in inclusive education programs**

*Source: Preliminary Report: Malaysian Education Blueprint, 2013-2025, September 2012*

Significant gaps exist in the **public healthcare system** for children with disabilities, largely because there are few skilled healthcare providers able to work with children with disabilities and few suitable screening tools to detect disabilities at an early stage.<sup>44</sup> Parents also have difficulty transporting children with disabilities for care, particularly in rural areas, and care is only free for Malaysian citizens who have access to government facilities. CBR centers are said to be a "one stop service center" for persons with disabilities, providing a range of services, but in reality the services are limited and have been described by many disability-rights NGOs as little more than day care centers. In a survey carried out with teachers and service providers for children with disabilities, only 3 out of 22 respondents stated that CBR's in their area provided early intervention services.<sup>45</sup>

## 11. Refugee, Asylum-seeking and Irregular Migrant Children

As at end October 2012, there were approximately 99,970 refugees and asylum-seekers registered with the UNHCR in **Peninsular Malaysia**; of these, **approximately 21,890 are children under 18**.<sup>46</sup> An

unknown number of persons of concern to UNCHR remain unregistered, but are believed to number in the tens of thousands. In **East Malaysia**, the government reported that in 2009 a total of 81,000 IMM13 permits were issued to refugees from the Southern Philippines and Indonesia, including to their children above 13 years of age.<sup>47</sup> The numbers of **irregular migrant children** in Malaysia are unknown; although 62,156 children were registered in Peninsular Malaysia under the biometric registration stage of the '6P' program,<sup>48</sup> it is likely that the actual numbers of irregular migrant children are higher as this figure only encompassed persons who voluntarily registered. Although a similar biometric exercise was conducted in Sabah under the '5P' program, it is unclear how many children were registered as this data was not made publicly available.

Due to the limited number of resettlement places available globally, a large population of recognized refugees lives in a chronic state in Malaysia, without access to rights, services and protection. The Malaysian government has not signed the **1951 Convention Relating to the Status of Refugees or its 1967 Protocol**, and while there have been some very minor improvements for refugees and asylum-seekers recently, these advances have not been codified into laws or written policies that could provide a framework to protect the rights of refugees and asylum-seekers. Instead, refugee and asylum-seeking children, as with irregular migrant children, are deemed "illegal immigrants" under Malaysia's Immigration Act 1959/1963 and are **vulnerable to arrest, prosecution, and detention**.

Although IMM13 passes permit refugees in Sabah to remain in the country and to work in specified industries, permits must be renewed on an annual basis and there is no discussion of long term durable solutions for this population. Due to the high cost of renewing IMM13 permits, some families have been unable to renew their permits and their legal status has therefore become irregular.

Refugee, asylum-seeking and irregular migrant children grow up in Malaysia with **minimal safety or stability** and are at risk of arrest and detention by immigration authorities. Once detained in one of Malaysia's immigration depots, it can take, at the very least, three months for a refugee or asylum-seeking child to be released. It is unclear what happens to migrant children once they are arrested. Conditions in immigration depots are generally appalling: children are detained with adults and there are no provisions for the protection of children, including unaccompanied children. Similarly, pregnant women and babies are not afforded special care in detention centers. Interviews with formerly detained refugee children reveal that they were held with adults and provided with insufficient water and food.

### CASE STUDY

Ahmad (not his real name), a 14 year old refugee boy, fled to Malaysia to avoid being forcibly recruited by the Burmese military. Shortly after his arrival in late 2011, when he was just 13, Ahmad was arrested during an immigration raid in the Klang Valley. At the time of his arrest and throughout his detention, Ahmad was without the presence and protection of his parents or any adult guardian. Although he was brought to court after his arrest, he was not provided with access to an interpreter or a lawyer, and could not understand what was going on.

Despite telling the authorities that he was only 13 year old, he was not given any special protection. Instead, upon arriving at the detention center, Ahmad was subjected to caning on the soles of his feet. The pain was so intense that he screamed and cried, and could not walk for a day. Ahmad was also kept in the same crowded cell with adult men. While in detention, he was not given enough food or water and felt very sad and afraid. Ahmad spent almost 6 months in immigration detention before he was finally released. Ahmad's uncle says that since his release, there is a noticeable change in Ahmad's behavior. He is quieter and more withdrawn.

*Case study provided by the Malaysian Child Resource Institute*

As discussed in **access to quality education** above, refugee, asylum-seeking and migrant children have no access to formal education and must attend under-resourced informal learning centers. Access to healthcare is equally problematic: although recognized refugees benefit from a 50% discount on

foreigner fees at government hospitals, the cost of healthcare can still be prohibitively high. This is even more so for asylum-seeking and irregular migrant children who must pay full foreigner rates. The fear of arrest, detention and harassment by the authorities also serves as a significant obstacle to accessing healthcare. The mental health needs of refugee and asylum-seeking children are largely unaddressed due to a lack of mental health professionals to serve this population.

## 12. Stateless Children

There are **no accurate or reliable figures** on the number of stateless persons in Malaysia, much less the number of stateless children. Although Article 14(1)(b) Part II(1)(e) Second Schedule of the Federal Constitution has been cited as model legislation to prevent statelessness, the protections offered by this Article have not been extended to many children who are stateless or at risk of statelessness in Malaysia. While this Article provides that a child who is born in Malaysia is, by operation of law, a Malaysian citizen if he or she “is not born a citizen of any country,” groups of marginalized children, such as children abandoned in JKM homes without any identity documentation, continue to be issued with birth certificates that state the child’s citizenship status to be “bukan warganegara” (non-citizen), even though they are not born a citizen of any other country. **Children born out of wedlock** are given the citizenship status of their mothers, so children born to, for example, an unmarried Malaysian father and non-Malaysian mother are not considered citizens. This can place a child at heightened risk of statelessness where the mother is herself stateless, or has abandoned the child without any identity documentation and is untraceable.

Although they are wards of the state, **abandoned children placed in government-run welfare homes** can also be at heightened risk of statelessness. In some cases, children in JKM homes do not possess birth certificates, or any form of identity document to confirm their citizenship status. There are cases of children being issued with birth certificates that stipulate their citizenship status as “bukan warganegara” (non-citizen). At age 12, they will then have to apply for the green MyKas identity cards, issued to temporary residents and “persons of undetermined citizenship”. The NRD does not appear to have instituted any form of citizenship determination procedures to resolve the citizenship status of these children. Instead, upon turning 18, many residents of JKM homes are released with undetermined citizenship; former residents who are unable to renew their green MyKas identity cards or to obtain Malaysian citizenship due to difficulties in navigating bureaucratic procedures and meeting the NRD’s evidentiary requirements, as well as financial constraints, can become undocumented and therefore “illegal immigrants” under Malaysia’s immigration laws.<sup>49</sup>

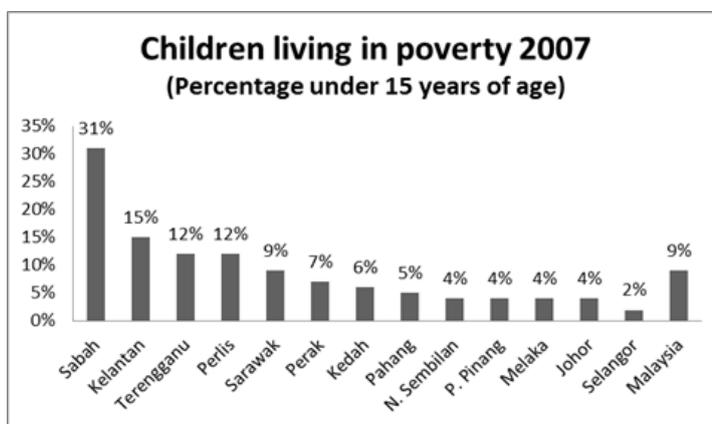
An unknown number of **children of Indian descent** are at risk of statelessness in Malaysia due to their lack of a birth certificate or identity documentation. Reasons for not possessing such documentation include a lack of knowledge of the importance of legal documents; administrative or procedural problems in obtaining such documents; financial difficulties; non-registration of the parents’ marriage; the child being born out of wedlock; no proof of birth; and the abandonment of the child without identification documents.<sup>50</sup>

Children born to **foreign parents/migrant workers** also are at heightened risk of statelessness when their births are not registered at a consulate, and they are unable to trace their family’s country of origin (for example, where their parents are themselves stateless or where their parents have been deported back to their countries of origin leaving the children behind). This is a particularly acute problem for a large number of **children of Indonesian and Filipino descent in Sabah**, many of whom were born in Malaysia and who have never known their countries of origin. For Filipino children in Sabah, registering the birth of children can be practically impossible as the Philippine government does not have a permanent consular presence in Sabah. The Philippine Embassy does provide mobile consular missions at least once a month to different parts of Sabah, but representatives from migrant communities have indicated that awareness of the services offered is low among their communities. For migrants of

Indonesian descent in Sabah, there is an Indonesian consulate in Kota Kinabalu and Tawau that has been assisting in processing identity documents for persons of Indonesian parentage; however the cost of travelling to the consulate can be prohibitively expensive for some parents. Finally, other groups of children known to be stateless in Malaysia are **Rohingya and Palestinian refugee children** who have not been able to obtain citizenship elsewhere, many of whom have lived for years in protracted exile. Children from the **Bajau Laut**, sea-dwelling ethnic group who reside predominantly around the east coast of Sabah are also at heightened risk of statelessness.

As with refugee, asylum-seeking and irregular migrant children, stateless children and children who are at risk of statelessness generally have no access to formal education and face significant barriers in accessing healthcare. Their status renders them vulnerable to abuse, exploitation and marginalization from mainstream society.

## 13. Children Living in Poverty



(Source: United Nations Country Team Malaysia and Economic Planning Unit, Prime Minister's Department Malaysia, Malaysia: The Millennium Development Goals at 2010. NOTE: refers to children under 15 years of age and includes non-citizens)

Although the incidence and number of children living in poverty in Malaysia has declined over the past two decades, child poverty nevertheless remains a significant concern. As of 2007, 8.1% of children under 5 (178,400 children); 9.4% of children under 15 (724,900 children) and 10% of children under 18 (820,000 children) were living in poverty.<sup>51</sup> From the proportion of children under 15 living in poverty, 285,700 were from the urban areas and 439,200 from rural areas.<sup>52</sup> The highest number of children living in poverty is from the state of Sabah. Children living in poverty are more likely to be living away from school and health services, and more likely to **live in**

**housing that lacks clean water, electricity, proper sanitation and waste disposal.**

Children living in poverty are also more likely to either **not attend school, or to drop out of school.** Reasons for this include: the inability of parents or guardians to pay school enrolment fees and/or ancillary costs such as transportation fees, school uniforms and other school supplies; distance of schools from their houses; and a lack of interest in, or awareness of the importance of education.<sup>53</sup>

Although **basic healthcare services** are relatively affordable for Malaysians in rural communities (only RM1.00 for basic services), the quality and limited services provided by these community clinics is a cause for concern. For example, there have been reports that some community clinics do not even have electricity or a clean water supply.<sup>54</sup> Further, many children living in poverty die from malnutrition, and other preventable health issues such as malaria and cholera due in large part to a lack of awareness of the importance of early treatment and problems in accessing these health services due to high transportation costs and distances to community clinics. Although the MOH has taken great efforts to educate parents (especially pregnant mothers) on the importance of child and maternal healthcare, more needs to be done.

Children living in poverty may also **face difficulties in registering their births.** Further, as a result of their socio-economic status and in some cases, their undocumented status, many children living in poverty continue to **face difficulties in accessing protective services** and are therefore more vulnerable to abuse, neglect and exploitation. While Children Activity Centers (PAKK) have been set up under the Child Act for children from communities facing economic hardship and who suffer from

parental neglect, these centers are limited, underfunded and with staff or volunteers that are not specifically trained to identify symptoms of abuse and neglect.<sup>55</sup>

## 14. Indigenous Children

The Orang Asal of Malaysia represent more than 80 ethno-linguistic groups, with each group having its own culture, language, and traditional lands. There are approximately 4 million indigenous people in the country and they are amongst the poorest populations in Malaysia. Orang Asal children **face difficulties in accessing quality education**. Low enrolment, poor academic performance and high dropout rates are key issues impacting this group of children. Reasons for this include a lack of schools near settlements; non-delivery or delays in disbursement of educational subsidies; non-delivery of textbooks and/or uniforms; lack of space and poor conditions in hostels; inadequate transportation and roads from homes to school; poor infrastructure in schools such as a lack of clean water, exposing the school community to leptospirosis and water-borne diseases; and a lack of reliable electricity.<sup>56</sup>

As discussed in **freedom of thought, conscience and religion** above, concerns also exist over the ability of indigenous children to enjoy their rights to freedom of religion. Indigenous children in Malaysia also continue to **face difficulties in accessing primary and preventive health care services** due to poor roads, lack of transportation, and distances from villages to healthcare facilities. This lack of access has impacted negatively on child and maternal health resulting in increasing rates of infant and child mortality due to treatable health conditions such as malaria, malnutrition, anemia, and birthing complications. Although national **infant mortality rates** have declined since 2009, they remain alarmingly high among Orang Asli children in Peninsular Malaysia (at a rate of 51.7 per 1,000 births).<sup>57</sup>

### KEY FACTS

**Orang Asli children are 5 times more likely to die in the first month of life than any other Malaysian child**

*Source: Amar Singh-HSS., Pediatrician, Ipoh Hospital*

Despite Malaysia being a developing nation, **many Orang Asal children continue to die from malnutrition**. In a 2008 study of Orang Asli primary schoolchildren in the state of Pahang, it was found that 150 (out of 167) children ages 7 - 10 and 66 (out of 74) children ages 10 - 12 were either mildly or significantly underweight respectively, and a further 70 (out of 74) children above age 10 had mild to significant stunting.<sup>58</sup> A study of Orang Asli children admitted to the Pediatric Department at Ipoh Hospital from January - December 2007 (123 children) and January- June 2008 (64 children) revealed that malnutrition rates among these children had risen from 30.8% (in 2007) to 53% (mid 2008).<sup>59</sup>

Many children from indigenous communities also **continue to live in poor conditions**. As of 2010 approximately 130,576 Orang Asli households in Peninsular Malaysia were living below the poverty line and approximately 45,963 of these households were living in hardcore poverty.<sup>60</sup> Many indigenous children do not have access to clean water, which increases incidences of communicable diseases such as cholera and typhoid and the loss of land has resulted in a loss of food source (including protein).

## Perspectives from Orang Asli Communities

“The housing we are given is like a house for chickens. We have no electricity or clean water”

“The Orang Asli people’s stomachs are full... full of dust that we inhale from the continuous logging”

*Interviews with Orang Asli communities from Peninsular Malaysia, June 2012*

## 15. Street Children

Very little is known about the **numbers, demographic profile and protection needs** of street children in Malaysia. Although a large number of street children are believed to reside in Kuala Lumpur and Sabah in particular, the Coalition is not aware of government or civil society-led programs that seek to understand and address the root causes of children ending up on the streets. There is no comprehensive national strategy in place to address the situation of street children and efforts to provide street children with the necessary protection, healthcare services, education and other social services are extremely limited. Part of the problem lies in **negative public attitudes** towards street children; in Sabah in particular, the presence of non-Malaysians in the state is a highly politicized and contentious issue. Migrants, including street children who are stateless or at risk of statelessness, have long been targeted and blamed for being the cause of social problems in the state. Such negative attitudes have made it increasingly difficult to address the situation of street children in the state.

A large number of street children are believed to **lack identity documents**, including birth certificates. This has in turn significantly compromised their access to health services and education, and renders them vulnerable to exploitation and abuse. There are also reports of street children being arrested and detained due to their undocumented or irregular status. It is unclear how long these children are detained and whether any of them are deported.

## 16. LGBTIQ Children

Rhetoric on, and the treatment of LGBTIQ persons has grown increasingly problematic in recent months with international calls to protect and promote the rights of LGBTIQ people largely ignored. State-initiated and sanctioned programs to ‘expose’ and punish LGBTIQ children in Malaysia have created an education environment where the inherent dignity of the child is not respected, and discrimination on the basis of SOGI is in fact encouraged. In government-run schools, where heteronormativity is institutionalized and reinforced, troubling reports have emerged of school teachers being instructed to identify gender nonconforming children for forced rehabilitation and other punitive measures. Parents have also been encouraged to send their gender nonconforming children for “corrective counseling”.

### KEY FACTS

In April 2011, 66 Muslim boys were singled out by their school teachers for displaying effeminate mannerisms in Terengganu and sent to a corrective boot camp. When questioned, the Head of the Education Department stated that the boot camp was “directed to increase the self-esteem amongst these boys who are obviously facing self-identity crisis”.<sup>61</sup>

In government-run schools, **corporal punishment** can be used as a form of punishment for homosexuality or perceived homosexuality; 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.<sup>62</sup> Anti-LGBTIQ programs and parenting seminars have also been run in schools that encourage intolerance and bullying among schoolchildren.

Discrimination against LGBTIQ persons has meant that children from transgender communities have been reluctant to seek **health services** from government hospitals due to the discrimination they face. Finally, LGBTIQ children also face difficulties in accessing **child protection services** and are particularly vulnerable as they are already stigmatized, ostracized, made to feel guilty for who they are and isolated from potential help and protection from abuse and exploitation. There is also a greater tendency to look past or silently condone abuses towards gender non-conforming and gender variant children, who are more effeminate (for boys) or more masculine (for girls), compared to other children.

### CASE STUDY

M was expelled from her secondary school when she was 16. This happened after her school's administration discovered that she was having a relationship with a fellow female school mate. M was suspended from her school hostel where she was living at the time, and was told by her teacher: "you have a disease. I do not want you to stay in the hostel because you will spread this disease to other people". M was also instructed by the headmistress to see a psychiatrist. As a result of the school administration's actions, M was not permitted to sit for her form 5 exams at that school.

*Case study provided by Thilaga Sulathireh, as part of research conducted by Knowledge and Rights with Young People through Safer Spaces (KRYSS)*

## 17. Children in Conflict with the Law

Important protections designed to safeguard the rights of children in the criminal justice system have been introduced. However there are key gaps that still need to be addressed. Under the Penal Code, the **minimum age of criminal responsibility remains at 10 years of age**, contradicting recommendations from the UN Committee on the Rights of the Child. There also remain discrepancies between the Penal Code and Syariah laws on the minimum age of criminal responsibility. The Child Act, which governs most aspects of the child justice system, contains inconsistencies and gaps regarding protection for children including for example, lesser protections being afforded to children who: (i) turn 18 while proceedings are ongoing; (ii) are only charged for an offence after they turn 18, even though the offence was committed when they were still a child; (iii) are charged under security laws or for very serious crimes (offences punishable by death); or (iv) are charged with crimes in conjunction with adults. Although the Child Act provides that child offenders must be arrested, detained and tried in accordance with the Act, the Act itself does not clearly explain what procedures should be involved. Children are very much at the mercy of the arresting officer and court personnel involved with their case. Key issues noted at the **arrest, investigation and bail stage** include: the failure by police to inform the child's parents or guardians of the arrest; the lack of access to legal representation; the fact that JKM probation officers are usually not involved until the child is brought to court; and the use of force by police officers during arrest and questioning.<sup>63</sup>

Children can be held in **remand or pre-trial detention** for long periods of time and may not be segregated from adult offenders. Reasons for long remand periods for children include: parent's inability or unwillingness to pay bail; delays by the police in completing their investigations; infrequent sittings of the Courts for Children; and postponement of court hearings. While on remand, children face restrictions on their freedom of movement and have significantly less access to education than children serving sentences of imprisonment. Children on remand are often not separated from convicted children.

Although significant progress has been achieved in establishing **separated court proceedings for children**, some gaps remain. The Court for Children is presided over by a Magistrate who is often a recently graduated, relatively young and inexperienced lawyer. It is not compulsory for Magistrates, court clerks and public prosecutors appointed by the Court for Children to undergo specialized training on children in conflict with the law and juvenile justice. Proceedings in the Court for Children are not always conducted in an atmosphere that allows the child to fully participate and express him/herself freely.

The juvenile justice system in Malaysia remains very much focused on **formal police and court-based interventions and institution-based rehabilitation**. Malaysia currently does not have any legislative or policy directive to encourage **restorative justice programs**, including diversion, for children. Sentences of detention are commonly given, rather than being a last resort for a child in conflict with the law. While prison sentences are used quite sparingly against children, sentencing to Probation Hostels and Approved Schools is imposed much more frequently, with children sent away for three years even for very minor crimes. This is clearly not in accordance with the **principle of proportionality** set out in Article 5 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') and Article 40 of the CRC. Such fixed sentences are not only disproportionate to the offences, but are also harsher than the sanctions that adults would have received for the same crime. Decisions to detain children in institutions seem to be made not on the last resort principle, but instead on the capacity and willingness of parents to care for the child and to sign a bond, and the child's living environment. As a result, children are detained for minor, non-violent crimes. In July 2011, the MWFCD announced that the Child Act would be amended to allow children convicted of minor offences to perform community service rather than be imprisoned or detained, which is a positive move; however this has not happened as of November 2012.

While in detention, children do not benefit from an **individualized approach to treatment or rehabilitation**; instead, the approach to rehabilitation is, for the most part, centered on discipline and religious instruction. Although the Integrity Schools (also known as 'Sekolah Integriti') represents a significant step forward by the Prisons Department to provide children in detention with **access to education**, this is not available for girls detained in Prisons Department facilities. Further, education for children detained in JKM-run facilities is far less structured and limited in availability and quality. Finally, **integration support** for children once released from detention needs to be strengthened. Current systems seem to focus more on monitoring and surveillance of former child detainees than the provision of holistic reintegration support.

## 18. Key Recommendations

### A. Key Recommendations to the Malaysian Government

#### National Framework and General Principles

1. Withdraw all remaining reservations to the CRC and insert provisions into all enabling domestic legislation to fully incorporate the provisions of the CRC into Malaysian laws. Reform domestic legislation and policies to ensure their full compatibility with the principles and provisions of the CRC.
2. Fully uphold the principle of non-discrimination, and ensure that this is extended to all children within the jurisdiction of Malaysia, including in particular, groups of marginalized and disadvantaged children.
3. Consistently apply and integrate the principle of the 'best interests of the child' in the implementation of legislation, government policies and programs, and in administrative and judicial decisions that have an impact on children, regardless of their nationality and immigration status in Malaysia.
4. Set the minimum age to marry at 18 years for both girls and boys, with no exceptions.
5. Repeal/amend all legal provisions on capital punishment and life imprisonment for children.
6. Ensure that the views of the child are systematically heard and taken into consideration in all judicial, administrative, and other decisions affecting them. Include specific amendments to the Child Act to this effect.
7. Establish transparent systems for the monitoring and continuous review of the status of children's rights in the country. Submit periodic reports to parliament and to the public on the status of implementation of the National Plans of Action.
8. Develop a children's budget to properly identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly.
9. Ratify or accede to the following international instruments and insert provisions into all enabling domestic legislation to fully incorporate their provisions into Malaysian laws:
  - The 1951 Convention on the Status of Refugees and its 1967 Protocol
  - The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness
  - The 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
  - The 1965 International Convention on the Elimination of all Forms of Racial Discrimination
  - The 1993 Hague Convention on the Protection of Children and Co-Operation in Respect of Inter-Country Adoption
  - At least the core basic human rights instruments, being the 1966 International Convention on Civil and Political Rights and the 1966 International Covenant on Economic, Social, and Cultural Rights

## **Birth Registration and Statelessness**

10. Implement a free-of-charge birth registration system at all stages that covers all territories in Malaysia, including through the use of mobile birth registration centers. All children, regardless of legal status must be able to access birth registration. Unduly onerous administrative and legal requirements that can result in statelessness should be removed.
11. Fully implement Article 14(1)(b) Part II(1)(e) Second Schedule of the Federal Constitution to prevent children from becoming stateless.
12. Enable Malaysian parent(s) to confer citizenship on their children, irrespective of their marital status.

## **Freedom of Expression and Freedom of Peaceful Assembly**

13. Equally extend the right to freedom of expression and freedom of peaceful assembly to all children irrespective of race, religion, and sexual orientation and gender identity, within schools and outside of schools, and remove all bureaucratic impediments to the full enjoyment of these rights.

## **Family Support and Alternative Care**

14. Develop a more structured and standardized approach to positive parenting skills education that involves all communities regardless of their legal status and socio-economic backgrounds and promote action-oriented measures that reinforce the importance of family-based care, by providing the necessary psychosocial support and financial assistance where necessary. Engage with NGOs that are currently working with marginalized and remote communities to ensure that the positive parenting skills education reaches all sections of society.
15. Create an independent body to carry out periodic monitoring and evaluation of private and state-run alternative care institutions to ensure institutions meet minimum standards of care. Make it mandatory for all alternative care institutions to have a Child Protection Policy that is in place and implemented before they are granted a license to operate. Provide training on implementing a Child Protection Policy for organizations that have not received the training.
16. Review and amend current adoption laws, particularly with regard to strengthening the review process for potential adoptive parents and standardizing the process generally. Consideration should also be given to shortening the two year waiting period for Muslim adoptions.

## **Violence, Abuse, Neglect, Maltreatment, and Exploitation**

17. Develop interagency protocols for 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.
18. Provide all children, regardless of legal status, ethnicity, socio-economic background, physical and/or mental ability, and nationality with equal and non-discriminatory access to the national child protection systems. Train all child protection enforcement agencies to achieve the same.
19. Outlaw judicial corporal punishment (whipping) of child offenders including those under Syariah laws, and prohibit by law all forms of corporal punishment in the school and the home.
20. Conduct a comprehensive study to assess the nature and magnitude of trafficking in children within Malaysia and across its borders. Create specific anti-trafficking measures for child survivors of trafficking which serve their best interests. These measures should include psychological, rehabilitation and reintegration support. Conduct proper age verification procedures to ensure that child survivors of trafficking are properly identified.

## **Health**

21. Comply with Article 24 of the CRC and ensure that no child is deprived of his or her right to healthcare. Provide free and equitable access to primary and preventive public health services, including inpatient and ambulatory care, for ALL children living in Malaysia, regardless of their legal status.
22. Conduct a comprehensive study to identify the mental health needs of children in Malaysia. Increase efforts to train more mental health professionals and ensure access to care and counseling for children is improved by having more Teen centers in rural communities and by increasing publicity of counseling services at these centers.
23. Incorporate non-judgmental sexual and reproductive health into the school curriculum as a formal module as well as in teacher training institutions. Sexual and reproductive health education must also incorporate not just general health and biology, but also healthy relationships, sexuality and safer sexual practices, including for non-heterosexual children, without further stigmatizing or discriminating against them.

## **Education**

24. Guarantee the principle of cost-free education, irrespective of citizenship and immigration status, at least in the case of primary education, with gradual extension to the secondary level. Until such time as universal access to education without discrimination on the basis of citizenship and immigration status is realized, formally recognize and legitimize NGO and community-based learning centers and permit the children attending these centers to sit for official examinations.
25. Place governance of preschools and childcare centers under the mandate of a single government ministry or body, and standardize procedures for registration and qualification of ECCE centers and conduct regular inspections for ECCE centers. Require that all preschool teachers hold at least a Diploma in Early Childhood Education, and provide them with the necessary training and resources, including educational subsidies, to achieve this.
26. Ensure that schools provide a safe and nurturing environment for all children, regardless of their sexual orientation and gender identity.

## **Children with Disabilities**

27. Ensure that all children with disabilities are able to access free education and that as far as possible they are effectively integrated into mainstream schools and classes. Provide funding to enable children with disabilities to gain access to mainstream schools by upgrading physical accessibility and providing support for teachers, therapists and other staff, and by training teaching staff in disability awareness and the basic fundamentals of special needs education and developing alternative methods of teaching and assessment.
28. Set up one stop centers in every district with skilled healthcare professionals to provide healthcare for children with disabilities. Provide early screening and detection for children with disabilities at an early age, and ensure that children diagnosed as having disabilities are given access to free early intervention and rehabilitation programs.

## **Refugee, Asylum-seeking and Irregular Migrant Children**

29. Immigration detention is never in the best interests of the child. Where immigration detention is absolutely necessary, ensure that it is used only as a last resort and for the shortest appropriate period of time.

30. Conduct a comprehensive study of regular and irregular migrant children living in Malaysia to determine their numbers, demographic profile, and what their protection needs are, including the prevalence and magnitude of child labor and child exploitation.

### **Children Living in Poverty**

31. Take concrete measures to assist children and their families living in poverty, including: raising awareness among parents about the importance of education and eliminating fees and ancillary costs for attending school; increasing the number of community clinics and mobile clinics to ensure easier access to primary healthcare; providing education to parents on child health and child nutrition; and improving the services provided at the Children's Activity Centers by increasing funding and providing trained staff to identify cases of neglect and abuse.

### **Indigenous Children**

32. Ensure indigenous parents are able to give their children a name of their own choosing, and that the right of the child to preserve his or her own identity is respected.
33. Continue to raise awareness of the UN Declaration on the Rights of Indigenous Peoples among the general public as well as the judiciary and government officials. Develop and conduct public awareness campaigns to combat negative attitudes and misperceptions about indigenous peoples with the participation of indigenous communities and children.

### **Street Children**

34. Conduct a comprehensive, nationwide study that looks into the magnitude of the situation of street children in the country including the following: precise number of street children in Peninsular and East Malaysia; common factors resulting in children becoming street children; specific challenges faced by street children such as access to adequate documentation, social, health and educational services; and risks faced by street children such as economic and sexual exploitation, abuse and unlawful arrest and detention.

### **Children in Conflict with the Law**

36. Urgently raise the minimum age of criminal responsibility to at least 12 years of age and ensure that this minimum age is universally applied throughout Malaysia's criminal law systems. Extend the scope of juvenile justice protections to all children under the age of 18 at the time the offence was committed.
37. Amend the Child Act to include detailed provisions to protect the rights of the child during arrest, investigation and police custody. Such provisions should include at least the following protections: (a) a requirement that a parent, guardian, lawyer, probation officer or other support person be present whenever a child is questioned by the police (b) restrictions on the length of time a child can be held in police custody.
38. Introduce diversionary programs and specify in legislation and/or policies the types of offences for which diversion may be used and the criteria and procedures for decision-making.
39. Introduce and implement strict time limits for completing children's cases, particularly for children on remand.
40. Ensure that detention is used only as a measure of last resort and for the shortest appropriate period of time, and that sentencing is in accordance with the principle of proportionality.

## **B. Key Recommendations to the Private Business Sector**

1. Respect the principles and provisions of the CRC and take these into account in business activities and business relationships. When conceptualizing, implementing, and evaluating programs, have particular regard for the four General Principles of the CRC concerning non-discrimination, the best interests of the child, the right to life, survival and development, and the right of the child to express his or her views freely and to have those views be given due weight in accordance with the age and maturity of the child.
2. A Social Impact Assessment (SIA) should be carried out whenever possible to assess the true impact of a company's business operations on affected communities, with mitigating steps taken to lessen and eliminate any negative impact.
3. For organizations providing services to children and their communities, enhance transparency by, *inter alia*, engaging in a continuing process of dialogue and consultation with the children and their communities, and by including them in decision-making processes and, where appropriate, in service provision itself. This is especially so for marginalized and disadvantaged communities, including those in remote areas. This is necessary in order to ensure that services are provided in a manner that is culturally appropriate and in which availability, accessibility and quality are guaranteed for all groups of children.
4. In working on children's rights issues, move beyond a corporate social responsibility and philanthropic approach towards a rights-based approach. Work progressively towards incorporating the 10 Principles on Children's Rights and Business, launched by the UN Global Compact, UNICEF and Save the Children that set the standard for child-friendly businesses everywhere and guide companies on a full range of actions to respect and support children's rights in the workplace, marketplace (including the entire supply chain management) and community.

## **C. Key Recommendations to NGOs**

1. Uphold the principles and provisions of the CRC, having particular regard for the four General Principles of the CRC concerning non-discrimination, the best interests of the child, the right to life, survival and development, and the right of the child to express his or her views freely and to have those views be given due weight in accordance with the age and maturity of the child.
2. In service provision and advocacy initiatives, ensure that children are actively and systematically consulted in all matters that impact them in order to ensure that services and initiatives are in compliance with the CRC, and that decisions made address the needs of children in a manner that is culturally appropriate, and in which availability, accessibility and quality of services are guaranteed for all groups of children.
3. Establish internal case management and documentation systems to effectively monitor and document the rights of children in the communities you work with, including any violations of children's rights.
4. Work together with governmental and international non-governmental agencies to take concrete action to increase the awareness and understanding of child abuse among members of civil society and to change cultural attitudes by reducing the stigma and shame attached to reporting cases of abuse. These concrete actions should include amongst other things, programs to raise basic knowledge about abuse, neglect, maltreatment and exploitation specifically targeted at children – including marginalized groups of children- to ensure they are able to identify potentially dangerous situations. Widely disseminate information on the procedures for reporting, investigating and prosecuting cases of abuse to parents, teachers and other members of civil society.

5. Consider including the following groups of children that have little to no access to care and services in your area of work: street children, children living with and affected by HIV/AIDS, irregular migrant children, and urban and rural poor children. Increase knowledge and understanding about these groups of children.

## **D. Key Recommendations to the Malaysian Public**

1. Work on removing all stigma and/or discriminatory attitudes and practices you may have against the following groups of children: refugee and asylum-seeking children, LGBTIQ children, irregular migrant children, undocumented children, children with mental health issues and children infected or affected by HIV/AIDS – by engaging and communicating with these children, and by volunteering at NGOs that work with these children. Remember that they are first and foremost children.
2. In view of the long-term and damaging effects that corporal punishment may have on children, cease the use of corporal punishment of children in your home and instead, learn about and apply more positive discipline methods.
3. Report any case of suspected abuse and neglect of children that comes to your attention by calling 15999 or by informing enforcement agencies. Review your own personal belief systems about reporting cases of abuse and ensure that the safety and best interest of the child is always upheld. Work on removing all stigma and shame attached to child abuse in your communities.
4. As parents and teachers, ensure that children and students have access to correct information on sexual and reproductive health and address issues such as rising levels of HIV/AIDS, sexually transmitted diseases, teenage pregnancies, and abandonment of newborn babies.

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