



1. Children's rights in Malaysia have progressed since Malaysia acceded to the Convention on the Rights of the Child (CRC) in 1995 and introduced the Child Act in 2001. 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 education and primary healthcare for children. However, key challenges remain, particularly for marginalized and disadvantaged groups of children. This report reviews children's rights through the lens of the CRC.

## 2. National Framework for Children's Rights

- 2.1. The Malaysian government has withdrawn some of its initial reservations to the CRC, introduced the National Child Policy and National Child Protection Policy, and modelled its Plan of Action on the General Principles of the CRC. In 2010, it lifted reservations to CRC 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 two of three Optional Protocols to the CRC, on the sale of children, child prostitution and child pornography, and on children in armed conflict.
- 2.2. 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 Sharia law. Little has 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. The government has also **maintained its reservations to 5 core Articles of the CRC**: 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).
- 2.3. Some aspects of **national law 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, these amendments have not been put forward. Furthermore, the parallel systems of Sharia law applicable for Muslims and civil law cause several inconsistencies in practice.
- 2.4. **Implementation, self-monitoring, evaluation, and follow-up** mechanisms for the National Plans of Action for child protection<sup>2</sup> need to be strengthened. Although coordination between relevant government agencies is mandated by sections 3 and 7 of the Child Act 2001, coordination remains poor, due to a lack of formalized coordination processes, clearly defined mandated roles and responsibilities, and accountability among agencies.<sup>3</sup> There is also a general failure 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.

<sup>1</sup> Malaysian Government, National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1, para 21, 19 November 2008, A/HRC/WG.6/4/MYS/1/Rev.1

<sup>2</sup> Such as the Second National Plan of Action for Children 2009 and the National Plan of Action for Child Protection.

<sup>3</sup> Workshop on Inter-agency Collaboration for Child Protection facilitated by Mrs Lai Poh Guat, 3rd National Violence Against Children Conference, 9-10 June 2012

### 3. General Principles: Four Foundational Rights

3.1. **Non-Discrimination** Although there have been numerous campaigns promoting national unity, several groups of marginalized and disadvantaged children continue to experience regular, on-going discrimination.

- **Indigenous children** face systematic and multiple forms of discrimination.
- Discrimination against **girls** remains an issue, with child marriage disproportionately affecting girls, both in higher incidences of child marriage and a lower minimum legal age for girls than for boys.
- 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.
- The government has stated on several occasions that Article 8(2) of the Federal Constitution does not protect **LGBTIQ persons** from discrimination and that homosexuality is an illness.<sup>4</sup>
- **Refugee, asylum-seeking, stateless, and irregular migrant children** face multiple forms of discrimination that stem largely from their uncertain legal status in Malaysia.
- **Children living with HIV/AIDS** face stigmatisation, difficulties in accessing education, and effective care and support services that meet their needs.
- **Children from the urban and rural poor** continue to face discrimination and exclusion due to their socio-economic status.
- Discrimination against **Muslim children born out of wedlock** remains a significant problem.

3.2. **Best Interests of the Child** The principle that priority be given to the best interests of the child is not consistently applied and integrated into legislation, government policies and programs, or 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 how to assess what is in a child's best interests. Overall, there is little emphasis on considering how children's rights and interests will be affected by decisions and actions taken by both public and private bodies.

3.3. **Right to Life, Survival and Development** Although there have been no executions of children 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 or indefinite imprisonment** at the pleasure of the Supreme Head of State.<sup>5</sup> Other threats to life, survival and development include the susceptibility of marginalized and disadvantaged groups of children (including children in poverty, children in 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.

3.4. **Views of the Child** It is still not widely accepted in Malaysia that children have the right to express their opinions in issues that affect them, or that they should be able to exercise this right. Few statutory provisions mandate child participation in decision-making. Although the National Plan of Action for Child Protection contains provisions for the increased participation of children, little has been done formally to encourage child participation. This may stem from the perception of children not as individual rights-bearers, but as 'objects of concern.'

<sup>4</sup>See for example, Teoh E.S., *LGBT 'Not Protected by Federal Constitution'*, Free Malaysia Today, 19 June 2012.

<sup>5</sup>Section 97(2) and (3) of the Child Act 2001.

#### 4. Civil Rights and Freedoms

4.1. **Birth Registration** 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 obtaining birth registration. This can have wide-ranging impact: without a birth certificate, children can be denied access to education, healthcare, and other basic services. Malaysia does not have a free-at-all-stages birth registration system, and in addition to the cost, families have reported difficulties with both the registration bureaucracy and overly-rigid requirements. This is particularly in the case of **'late' birth registrations**, conducted after 42 days from birth. In such cases, those unable to meet the evidentiary requirements imposed by the National Registration Department (NRD) can face difficulties and significant delays in their applications; 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, have died, or cannot be traced also have significant difficulties providing the documentation required. The **fear of arrest and detention**, and the restrictions on the ability of some migrant workers to marry, has meant that many refugees, asylum-seeking and irregular migrants do not apply for birth certificates for their children.

4.2. **Freedom of Thought, Conscience and Religion; Freedom of Expression and Freedom of Peaceful Assembly** Although the Federal Constitution provides that 'every person has the right to profess and practice his religion,' this right applies only to adults: under the Federal Constitution, a person below age 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 and Article 18 of the Universal Declaration of Human Rights. Indigenous 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. Malaysia removed its reservations to CRC Articles 13 and 15 regarding freedom of expression and freedom of peaceful assembly; however, laws, policies and the actions of law enforcement personnel continue to restrict the ability of children to exercise these rights. For example, the Peaceful Assembly Act 2012 states that persons below age 21 are prohibited from organizing peaceful assemblies and children (defined in the Act as persons below age 15) are prohibited from participating in peaceful assemblies with certain exemptions.

#### 5. Family Support and Alternative Care

5.1. Although the incidence and number of children living in poverty in Malaysia has declined over the past two decades, child poverty remains a significant concern. Children in poverty are more likely to be living far from school and health services, and more likely to **live in housing that lacks clean water, electricity, proper sanitation and waste disposal**. As a result of their socio-economic status and in some cases, their undocumented status, many children living in poverty **face difficulties in accessing protective services** and are therefore more vulnerable to abuse, neglect and exploitation. Some cash transfers are available for low-income families, as are counselling and parenting programs. However, many people are not aware this assistance exists, nor are the programs monitored for reach or effectiveness.

5.2. Children from families under stress, such as financial problems or family conflict, often go into alternative care. The alternative care system is a patchwork of government and private facilities. Government facilities include homes for: abused, abandoned or poor children; children under 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 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 the state-run institutions. Registration and, thus, regulation of private homes is uneven, leaving children at risk in potentially unsafe facilities. In addition, there are insufficient numbers of Child Protectors, so their caseloads are too high for effective case management and proper review of a child's placement; this increases the risk that children are returned to abusive families.<sup>6</sup>

5.3. Parents under stress also **abandon or give up their babies for illegal adoption**. Abandonment has received increased media attention in the past few years, and many solutions have been proposed, from harsher penalties to new teen activity centres to an anonymous, safe drop-off site; however, no data is available to show the effectiveness of any approach, and no overarching policy decision has been made. The national adoption laws are not uniform and thus confusing: non-Muslims have two legal options, and Muslim adoptions follow Sharia law. Children adopted under Sharia law cannot assume the name or inherit the property of the adoptive parents (although children do get identity documents through the adoption certificate), which does not adequately provide for the rights of children adopted under this law. 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. As a result, parents may turn to less-credible sources that connect prospective parents with baby-selling rings that exchange money for infants.

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

6.1. The number of **reported cases of child abuse** in the country has been **steadily increasing** over the past three years according to the Department of Social Welfare (though police statistics show a decline from 2010 to 2011). Despite the conflicting numbers (possibly due to the way cases are classified), it is estimated that many cases of abuse continue to remain **unreported**.<sup>7</sup> Child abuse, especially sexual abuse, is still a taboo subject in Malaysia. A reluctance to report abuse can be due to several factors, including stigma, shame and a culture of silence within communities. Although awareness and media attention about child abuse appears to be rising, the low rate of reporting seems to indicate apathy from government and civil society, as too few adults intervene when children are abused, resulting in serious harm and even death. Legislative and policy frameworks have been initiated to address the problem of abuse, but a comprehensive evaluation of the strategies has not been done, and there are still gaps in the child protection system. 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**. Further, certain groups of children are excluded from the national prevention and response systems due to their lack of legal status, for example, **refugee, asylum-seeking, irregular migrant and stateless children**.

6.2. 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 find it difficult to provide continued follow-up services due to their overwhelming caseloads and the limited number of personnel. Moreover, many cases remain unpunished due to the lack of evidence,

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<sup>6</sup>NGO Focus Group Discussions on the National Plan of Action for Children and National Plan of Action for Child Protection, Kuala Lumpur and Penang, April-June 2012

<sup>7</sup>*Many Child Abuse Cases go Unreported*, The News Straits Times, July 2012.

because in certain circumstances the Evidence Act 1950 requires further material evidence in addition to the child's testimony. 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.

6.3. **Corporal punishment** Caning male children is a lawful penal sanction in the criminal justice system and continues to be applied to boys in conflict with the law. 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 remains legal and is believed to be widespread, although no data is available. Corporal punishment has also been used as a form of punishment for homosexuality, or perceived homosexuality. In research conducted in nine primary and ten secondary schools in 2011, students reported being slapped in the face, pinched, hit on the back of 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 earlobes.<sup>8</sup>

6.4. **Child Trafficking and Exploitation** Malaysia is a destination, transit and to a lesser extent, source country for child trafficking, and more information is needed on the nature and magnitude of the problem. Disaggregated data on the number of children trafficked across and within Malaysian borders 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; of these, 122 were children.<sup>9</sup> The actual number of trafficked children in Malaysia likely is much higher, given the clandestine nature of human trafficking. It is also likely that many child trafficking cases are undetected and/or not properly investigated, given the lack of specialized training on recognizing indicators of child-trafficking and on child-sensitive techniques for interviewing and protecting child survivors. 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 some measures to protect survivors. However, the Act focuses more on the punishment of perpetrators with little concern for the human rights of survivors. For example, **no legislative provisions address the special protection needs of child survivors** of trafficking or provide them with access to legal representation or advice.

## 7. Health

7.1. **Basic Health and Welfare** Health services for children have greatly improved, especially for children in urban areas. However, gaps still exist in **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 terrain or logging roads to reach the nearest clinic.<sup>10</sup> There are also gaps in **overall quality of services**, especially for children in rural areas and marginalized communities who face health concerns such as malnutrition, anaemia, vitamin A deficiency, malaria, tuberculosis, cholera and typhoid; this has in turn resulted in **high infant and toddler mortality rates**.

7.2. **Children and HIV/AIDS** For children with HIV/AIDS, the **lack of effective care and support services**, coupled with general **stigma and discrimination** 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 resources for them, either

<sup>8</sup>Qualitative Research on the Prevalence and Impact of Corporal Punishment in Primary and Secondary National and National-Type Schools, Draft as of August 2010, from UNICEF project research program on corporal punishment, supported by HELP University College.

<sup>9</sup>977 Victims Of Human Trafficking Rescued From 2008 Till Now, New Straits Times, 29 March 2012.

<sup>10</sup>SUHAKAM, *Report on Penan in UluBelaga: Right to Land and Socio-Economic Development*, 2007.

Child Rights Coalition Malaysia  
Report for the Universal Periodic Review

via government or non-governmental initiatives.<sup>11</sup> Services for children living with HIV/AIDS are almost non-existent. Only three homes in the country provide care specifically for children orphaned by HIV/AIDS. As a result, many children are placed in homes that are not able to address the needs of a child infected with and affected by HIV/AIDS. Child-sensitive counselling is available in some government hospitals, but there are no standard operating procedures for schools or other facilities that may deal with these children.

7.3. **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 mental health professionals in the country<sup>12</sup> and compounded by the **stigma attached to mental health issues** and the lack of monitoring and evaluation of the effectiveness of available 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>13</sup>

7.4. **Adolescents and Reproductive Health** The National Adolescent Plan of Action (2005) was formulated to coordinate the efforts of all agencies that provide reproductive health and other services to address risk behaviours among adolescents, as well as 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. Adolescents continue to face difficulty in obtaining reliable information on **reproductive and sexual health**, as much of this information, especially concerning sexuality and gender-identity issues, has been suppressed.<sup>14</sup> Attempts to introduce sexual and reproductive health in the national education curricula have met with strong resistance, as there is a perception that reproductive health education will encourage adolescents to have premarital sex. Such have had limited effect in slowing the increases in HIV/AIDS, sexually transmitted diseases, teenage pregnancies, and abandonment of babies.

## 8. Education

8.1. **Access to Quality Education** Despite achieving almost universal primary education and substantial progress towards universal secondary education, significant challenges remain for children from marginalized and disadvantaged communities. Many children from **refugee, asylum-seeking, stateless and irregular migrant** communities lack access to formal education, as government schools do not generally accept non-Malaysian or undocumented children. The government announced in 2009 that Malaysian **children without birth certificates** can attend government-run schools, if they can obtain confirmation from the Department of Social Welfare or their village headmen that they were born in Malaysia. However, awareness of this policy is believed to be low, and no corresponding exemption has been granted for children to sit for official examinations. Marginalized and disadvantaged children who cannot access formal education or 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 recourse in the event of unfair treatment, abuse, violence or injury in the workplace. **Dropout rates** in the transition from primary to secondary school have

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<sup>11</sup>Malaysian AIDS Council, *Annual 2011 Report*, May 2011.

<sup>12</sup>*A Crying Need for Counsellors*, The News Straits Times, 4 November 2009.

<sup>13</sup>Childline Malaysia, *Child Helpline International Data Questionnaire*, February 2012.

<sup>14</sup>COMANGO, *Statement Prepared for the 4th Session of UPR*, February 2009, p.7.

remained a challenge, impacting some 17,000 children.<sup>15</sup> Dropout rates are higher for boys, with school completion rates for girls remaining higher at both primary and secondary levels.<sup>16</sup>

8.2. **Early Childhood Care and Education** Preschool education has expanded rapidly in Malaysia; however, gaps remain in relation to **monitoring and evaluation** of providers, and in access to preschool education for marginalized and disadvantaged children. The system 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. With such variety, quality standards are uneven. Many private schools and centres are **unregistered**, so standards are not monitored. The lack of regulation and monitoring of kindergartens and childcare centres can put children at risk, as demonstrated by the reported deaths of 14 infants in childcare centres in the first five months of 2012.<sup>17</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.

## 9. Children with Disabilities

9.1. **Legal and Policy Framework** The framework regarding children with disabilities is relatively strong, but there are gaps that disadvantage children with disabilities. Malaysia entered formal reservations to the Convention on the Rights of Persons with Disabilities and made a declaration limiting the government's legal application of the principles of non-discrimination and equality. In addition, although the Persons with Disabilities Act provides for many rights, there is no penalty or provision for redress against those who discriminate against persons with disabilities. The Act even includes an express prohibition on legal action against the Malaysian government for violating the rights of persons with disabilities. Another significant challenge is the lack of comprehensive statistical data on children with disabilities that would strengthen policies and service provision.

9.2. **Access to Education and Health Services** The Ministry of Education provides education for children who meet basic standards of self-care and ability to learn, and children who do not meet these criteria can attend community-based rehabilitation programs. While little data is available, it is unlikely that there are enough special education schools to meet the needs, particularly at the secondary school level. Furthermore, the criteria for entrance into special education is unclear, as there are no rules or policies on whether a child should be in mainstream learning; the decision rests entirely with the school's administration. Although there is a screening tool to identify and refer children with special needs, school authorities tend to place students with learning difficulties under special education to avoid any impact on the school's overall academic performance in public examinations.<sup>18</sup> Therefore, there is a concern that the screening tool may be used to send even children who are able to be in mainstream classes to special classes. 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 screening tools to detect disabilities at an early stage, which is crucial for the child to receive intervention as early as possible.<sup>19</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.

<sup>15</sup>United Nations Country Team, Malaysia, *Malaysia: The Millennium Development Goals at 2010*, April 2011. It is noted that the UN Country Team has emphasized that dropout rates should be seen as "indicative only, due to the movement of students between schools, between systems across states and between rural and urban areas (p. 36)"

<sup>16</sup>United Nations Country Team, Malaysia, *Malaysia: The Millennium Development Goals at 2010*, April 2011.

<sup>17</sup>Palani, T. *Painful, Costly Lesson for Working Mother*, Free Malaysia Today, 3 July 2012.

<sup>18</sup>Bar Council of Malaysia, "Roundtable Discussion on 'Persons with Disabilities Act 2008 – Right to Education: Report Summary', 7 September 2009

<sup>19</sup>Malaysian Care, *Survey on Equal Access to Education for Children with Special Needs and Early Detection and Intervention* (unpublished), 2012.

10. **Refugee, Asylum-seeking and Irregular Migrant Children** In January 2013, there were approximately 101,300 refugees and asylum-seekers registered with the UNHCR in **Peninsular Malaysia**; of these, **approximately 21,930 are children under 18**; an unknown number of persons of concern to UNCHR remain unregistered, but are believed to number in the tens of thousands and there are some 49,000 unregistered asylum-seekers in the country.<sup>20</sup> Refugee, asylum-seeking and irregular migrant children grow up in Malaysia with **minimal safety or stability**, subject to arrest and detention by immigration authorities who treat them as illegal immigrants. Once detained in an immigration depot, it can often take several 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, provided with insufficient water and food, and there are extremely limited provisions for the protection of children, including unaccompanied children. There are no Standard Operating Procedures in place for unaccompanied and separated children. Refugee, asylum-seeking and irregular migrant children have no access to formal education and must attend under-resourced informal learning centres. The fear of arrest, detention and harassment by the authorities coupled with prohibitively high costs are significant obstacles to accessing healthcare.
11. **Stateless Children** There are **no accurate or reliable figures** on the number of stateless persons in Malaysia, much less the number of stateless children. While Article 14(1) (b) Part II (1) (e) of the Federal Constitution provides that a child 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 continue to be issued birth certificates that state the child's citizenship status as non-citizen, even though they are not born a citizen of any other country. **Abandoned children placed in government-run welfare homes** are at heightened risk of statelessness, as they do not possess birth certificates or any form of identity document to confirm their citizenship status. The National Registration Department has not instituted any form of citizenship determination procedures to resolve the citizenship status of these children, although they are wards of the state. Upon turning 18, many are released with undetermined citizenship; and those who are unable to navigate the bureaucratic procedures and meet the evidentiary requirements, and are facing financial constraints, can become undocumented and therefore "illegal" under Malaysia's immigration laws. **Children born out of wedlock** are given the citizenship status of their mothers, so children born to an unmarried Malaysian father and non-Malaysian mother are not considered citizens. This can place a child at heightened risk of statelessness if the mother is stateless, or has abandoned the child without any documentation and is untraceable. 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 documentation include a lack of knowledge of the importance of legal documents; procedural problems in obtaining documents; financial difficulties; non-registration of the parents' marriage; and no proof of birth.<sup>21</sup> Children born to **foreign parents/migrant workers** also are at risk of statelessness when their births are not registered at a consulate and they are unable to trace their family's country of origin. Stateless children and children who are at risk of statelessness generally lack access to formal education and face significant barriers in accessing healthcare. Their status renders them vulnerable to abuse, exploitation and marginalization.
12. **Indigenous Children** There are approximately 4 million indigenous people in the country, and they are among the poorest populations in Malaysia. Indigenous children **face difficulties in accessing**

<sup>20</sup> UNHCR Malaysia, *Figures at a Glance*. Retrieved from: [http://www.unhcr.org.my/About\\_Us-@-Figures\\_At\\_A\\_Glance.aspx](http://www.unhcr.org.my/About_Us-@-Figures_At_A_Glance.aspx)

<sup>21</sup> Ramalo, N., *Stateless- Undocumented Indians, SUHAKAM: After 10 Years: A Review of Human Rights in Malaysia*. 2011, p. 60



**quality education** due to 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; and poor infrastructure in schools. **Access to primary and preventive health care service** is limited by 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 from treatable health conditions such as malaria, malnutrition, anaemia, and birthing complications.

13. **Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Children (LGBTIQ)** Rhetoric and treatment of LGBTIQ persons has grown increasingly hostile, 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, who are considered ill, have created an education environment where the inherent dignity of the child is not respected, and discrimination on the basis of sexual orientation and gender identity is encouraged. In government-run schools, **corporal punishment** can be used to punish homosexuality or perceived homosexuality; being homosexual or 'gender confused' is deemed a 'serious offence', and students may be whipped.
14. **Children in Conflict with the Law** 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 Sharia laws on the minimum age of criminal responsibility. Children are 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 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>22</sup> Children can be held in **remand or pre-trial detention** for long periods of time and may not be segregated from adult offenders. 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. While prison sentences are used rarely 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. 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.

## 15. Recommendations

- 15.1. Repeal/amend all legal provisions on capital punishment and life imprisonment for children.
- 15.2. Lift remaining reservations to the CRC and sign the third Optional Protocol on a Communications Procedure.
- 15.3. 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.

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<sup>22</sup> Ahmad, N and Kiprawi, H. *A Critical Study on the Pre-trial Process in the Juvenile Justice System in Malaysia Under the Child Act 2001*, Jawatan Ankuasa Pembaharuan Undang-Undang Malaysia, Jabatan Perdana Menteri and Research Management Institute (RMI), Universiti Teknologi Mara. January 2012

Child Rights Coalition Malaysia  
Report for the Universal Periodic Review

- 15.4. Implement a free-at-all-stages birth registration system that covers all territories in Malaysia, including through the use of mobile birth registration centres. All children, regardless of legal status must be able to access birth registration.
- 15.5. Fully implement Article 14(1)(b) Part II(1)(e) Second Schedule of the Federal Constitution to prevent children from becoming stateless. Unduly onerous administrative and legal requirements that can result in statelessness should be removed.
- 15.6. 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.
- 15.7. 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.
- 15.8. Outlaw judicial corporal punishment (whipping) of child offenders including those under Sharia laws, and prohibit by law all forms of corporal punishment in the school and the home.
- 15.9. 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.
- 15.10. 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 universal access to education is realized, formally recognize and legitimize NGO and community-based learning centres, and permit children attending these centres to sit for official examinations.
- 15.11. Prohibit by law the detention of children for immigration purposes and legislate and develop policies and practices designed to avoid the detention of children. While such legislation and policies are being developed, conditions in immigration detention should be improved to meet, at least, the minimum standards of detention as set out in human rights law.
- 15.12. 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.

**Report Prepared by Child Rights Coalition (CRC) Malaysia**

**Members of CRC Malaysia:** Childline Malaysia, Malaysian Care, Malaysian Child Resource Institute, National Early Childhood Intervention Council, Protect and Save the Children, Voice of the Children, Yayasan Chow Kit

This report summarises data collected over two years and multiple consultations with organisations and individuals working across Malaysia on behalf of children. CRC Malaysia expresses heartfelt thanks to the many children's and women's organisations who contributed time, data and other information to this report.

**Report Endorsed by:** Women's Centre for Change, Penang