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on behalf of

CHILD PROTECTION – Briefing Paper for UPR – Malaysia

The term “Child protection” in a broader sense covers a whole range of protection issues starting from neglect, abuse (all forms inclusive physical, emotional, sexual and psychological) and exploitation, which includes issues such as identity (birth registration) child trafficking, child marriage etc.

Child Protection is also one of the four major Rights under the Convention of Rights of the Child (UNCRC). Malaysian government has signed and ratified the convention in 1995 and has gone further by ratifying the two optional protocols under the convention in 2012. Hence, the government has shown keen interest in protecting the rights of the children in the country. Still many issues of rights of violation of the children are seen at large. It is strongly believed that strong legislations alone cannot protect children.

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. At present, many private homes still do not 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. **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.**

There are gaps in the implementation of protection mechanisms, especially for children from marginalized and disadvantaged groups.

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. Non-reporting of violence stems largely from the fact that abuse of children, especially sexual abuse, continues to be a taboo subject within Malaysian society. 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.

In the reported cases, it is observed that there are many **gaps in coordination** within the existing mechanisms such as Police, Health and social welfare due to which the child victims and their families go through legal tangles and in the process they were traumatized and re-victimized.

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In the recent past, there were also reports in the media on the verdict by the lower courts within Malaysia which were against the **Best Interests of the Child victim & children at large and sending out wrong signals to the general public.**

Lack of due consideration for children's rights in criminal and civil proceedings is a major cause for concern. Violations of their rights in the corridors of justice, be it in criminal or civil proceedings, happen because there is a lack of access to legal aid. Juvenile offending is dealt with harshly and detention is a first resort rather than a last resort measure, mainly because there are few alternative measures for detention. For child victims this system of operation causes further trauma and re-victimization. The system seriously lacks protective and alternative measures for **undocumented/stateless children who languish in detention** centres for indefinite periods of time.

Reforms should be made in Legislative, Administrative and Judicial arenas, with a well- integrated systemic approach across all institutions responsible for child protection and safeguarding their rights. Strong measures should also be implemented in ending impunity for anyone violating children's rights.

Caning and other forms of corporal punishment are also used as a **lawful disciplinary measure in penal institutions, schools and alternative care settings.** Corporal punishment inflicted in the family home also remains legal and is believed to be widespread. The lack of registration and by extension, regulation and monitoring of children's homes, puts children at risk, as substantiated by the cases of **abuse in children's homes.** Malaysia is a destination, transit and source country for **child trafficking.** The lack of proper age verification procedures for child survivors of trafficking means that children are deprived of the rights and special protection measures.

Protection of Children under Institutional care

- The issue of protection of children from various forms of abuses within the institutional care services especially long term care remains a concern. There are homes in Malaysia which are functioning without registration and the number of such Homes is every growing. The protection of the children living under such centers remains unaddressed. The data on the children living under such care centers remains wide open. Compulsory registration of such centers would indirectly mean enhanced monitoring of the quality of services for children by the government agencies and would also put in place the Minimum standards. Make public interagency protocols for coordination between Child Protectors, police,

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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.

RECOMMENDATIONS:

- 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.
- Lift the reservation to Article 2, 14 & 37 of CRC to ensure protection of all children irrespective of their background (ethnicity, religion, status etc.) from torture, degrading treatment and punishments
- Enact and enforce national legislation that rises the age of marriage to 18 for all, regardless of religion and with no exception.
- Ensure compulsory registration for all institutional care services for children to ensure compliance and service standards.
- Establish and ensure regular monitoring system for institutional care services for children and to safeguard their Rights to Protection.
- Enhance the capacities of Counsellors, law enforcement agencies, Child care providers for effective execution of Child Protection Policy as well as dealing with children, interviewing children.