

# **STATUS REPORT ON CHILD RIGHTS IN MALAYSIA 2019**



## CHILD RIGHTS COALITION MALAYSIA (2019–2020)

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NGOhub  
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Persatuan Pengasuh Berdaftar Malaysia (PPBM)  
Persatuan Sahabat Wanita Selangor (PSWS)  
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Petaling Jaya Child Council  
Pink Triangle Foundation (PT Foundation)  
Protect and Save The Children (PSC)  
SPICES Early Intervention Centre  
Soroptimist Puberty Organising Toolkit (SPOT)  
Sabah Human Rights Centre (SHRC)  
Sarawak Women for Women Society (SWWS)  
Toy Libraries Malaysia  
Vanguards4Change (V4C)  
Voice of the Children (VOC)  
Women's Aid Organisation (WAO)  
Women's Centre for Change (WCC)  
World Vision Malaysia (WVM)  
Yayasan Chow Kit (YCK)  
Yayasan Generasi Gemilang (GG)

Child Rights Coalition Malaysia (CRCM) is an affiliation of various Malaysian NGOs that advocate for the rights of children in Malaysia. Our vision is that all children in Malaysia are ensured and guaranteed of their full rights, particularly the four General Principles of the Child Rights Convention concerning non-discrimination; the best interests of the child; the right to life, survival and development; and respect for the views of the child. CRCM's mission is to support the implementation of the UN Committee on the Rights of the Child 1989 and to promote children's rights in Malaysia. The UN Committee on the Rights of the Child Status Report is one of the many annual initiatives carried out by CRCM.

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Perpustakaan Negara Malaysia / Cataloguing-in-Publication Data

Status Report on Child Rights in Malaysia 2019

ISBN: 978-967-11788-3-6

Printed by: Protect and Save the Children Association of Selangor & Kuala Lumpur

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# Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CSO	Civil society organisation
DPP	Deputy Public Prosecutor
FGM	Female genital mutilation
FSSG	Foreign Spouses Support Group
JKM	Department of Social Welfare (Jabatan Kebajikan Malaysia)
LGBTIQ	Lesbian, gay, bisexual, transgender, intersex, queer
MOE	Ministry of Education
MOH	Ministry of Health
NPA	National Plan of Action
NCWO	National Council of Women's Organisations Malaysia
NGO	Non-governmental organisation
NRD	National Registration Department
NUR	National Urgent Response (Alert)
OECD	Organisation for Economic Co-operation and Development
PDK	Community-based Rehabilitation Programme (Program Pemulihan Dalam Komuniti)
PLUSOS	People Like Us Support Ourselves
PSC	Protect and Save the Children
PWD	Persons with disabilities
SDG	Sustainable Development Goals
SIS	Sisters in Islam
SOACA	Sexual Offences Against Children Act 2017
SOP	Standard operating procedure
SUHAKAM	Human Rights Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia)
SWWS	Sarawak Women for Women Society
UN	United Nations
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
WAO	Women's Aid Organisation
WHO	World Health Organization



# Executive Summary

This Status Report contains in-depth information related to the implementation of Malaysia's commitments under the Convention on the Rights of the Child (CRC).

The information for this report was obtained from official statistics, academic studies, media reports, and NGO case studies, among other sources.

This Status Report is being submitted in the absence of a State Report, and thus has been done in lieu of an alternative report. Although many efforts have been made by the government of Malaysia to improve the overall situation for children in the country since its accession to the CRC in 1995, much remains to be done to ensure the rights of every child in the country are upheld. Since 1995, Malaysia has submitted only one report to the CRC Committee, in 2006, subsequent to which the CRC Committee issued its Concluding Observations to the government. Malaysia's second report was due to the CRC Committee in 2012 but has not been submitted to date.

In December 2019, in response to the Child Rights Coalition Malaysia's launch of its 2018

Status Report on Child Rights in Malaysia, the government committed to submit its overdue second State Report to the CRC Committee in 2020. However, as at the time of drafting this report, no State Report has been submitted.

The Introduction to this report provides a broad picture of the overall social and political context in Malaysia, whilst the Special Insert on Children and the COVID-19 Pandemic highlights the unique challenges that have arisen in the context of the COVID-19 disease, which was announced as a pandemic by the World Health Organization on 11 March 2020, and its implications for child rights. The subsequent chapters of the report are organised based on the nine clusters into which the CRC Committee has grouped the articles of the convention, and discuss Malaysia's implementation of the convention.

The information and concrete policy recommendations made in this report should be used for the purpose of raising awareness and lobbying policymakers to adopt appropriate legislation to address the violations and current gaps in the upholding of children's human rights in Malaysia.





# Introduction

Malaysia is a multi-ethnic and multi-lingual country in Southeast Asia. The country consists of two non-contiguous regions: Peninsular or West Malaysia (on the Malay Peninsula) and East Malaysia (comprised of two states—Sabah and Sarawak—on the island of Borneo, and the island of Labuan, a federal territory). Malaysia consists of 13 states and 3 federal territories. The Federal Territory of Kuala Lumpur serves as the capital of Malaysia, enclaved within the state of Selangor, and is the heart of the Klang Valley. The Federal Territory of Putrajaya serves as the administrative capital of the country.

## Demographic information

Malaysia's population as of 2019 was 32.6 million, comprising 29.4 million citizens (90.2%) and 3.2 million non-citizens (9.8%) (Department of Statistics Malaysia (2019)). The age breakdown was 23.3% in the 0–14 years old group, 70% in the 15–64 years old group, and 6.7%, 65 years and over. The sex ratio was 107 males to 100 females, from a population of 16.8 million males and 15.8 million females. There were 69.3% Bumiputera (comprising Malays and Orang Asal, or persons from the indigenous groups of Sabah and Sarawak), 22.8% Chinese, 6.9% Indians and 1% others. The rural population was 23% (The World Bank (2019)).

## Economic information

Malaysia is considered an emerging economy and is not a part of the Organisation for Economic Co-operation and Development (OECD). As of 2019, Malaysia's Gross Domestic Product (GDP) per capita was US\$11,414.80 (The World Bank (2019)). The official poverty rate of the country is 0.4%, indicating that around 25,000 households are living in poverty. However, the previous Special Rapporteur on extreme poverty and

human rights, during a visit to the country, questioned the validity of this rate and cited a submission by UNICEF suggesting that a relative poverty measure, similar to that used by most OECD countries, would result in a poverty rate of around 16% (UN Office of the High Commissioner for Human Rights (2019)). Additionally, according to the same submission by UNICEF, the child poverty rate in Malaysia is three times the national poverty rate. Communities particularly impacted by poverty include both urban and rural communities, as well as migrant and refugee communities who lack access to basic services.

## Political information

Malaysia is a parliamentary democracy with a federal constitutional monarchy. The Yang di-Pertuan Agong is the head of state as well as the leader of the Islamic faith in Malaysia. Legislative power is held by the federal and state legislatures, whilst executive power is held by the Cabinet, led by the Prime Minister.

Malaysia's Fourteenth General Election, held on 9 May 2018, was unprecedented in bringing about a change in the status quo and seeing for the first time, an opposition coalition, Pakatan Harapan, elected to power.

Some progress was made with regard to the status of children's rights in Malaysia under the Pakatan Harapan government. This included actions towards the enactment of a Social Workers Profession Act (initiated under the previous government), which had bipartisan support, but was not tabled in Parliament in December 2019 as initially slated (CSO Platform for Reform (2020)). The government also moved quickly to revamp the Child Protection System and implemented several proposals, including a sexual offenders registry which was created as part of the

implementation of the Sexual Offences Against Children Act 2017 (CSO Platform for Reform (2020)). Additionally, the Children's Commissioner was established under the Pakatan Harapan government.

However, on 24 February 2020, following political manoeuvres that led to the resignation of the Prime Minister, Tun Dr Mahathir Mohamad, the governing Pakatan Harapan coalition collapsed. On 1 March, Tan Sri Dato' Muhyiddin Yassin was sworn in as the country's new Prime Minister. A new government under Perikatan Nasional was formed with several parties, including the United Malays National Organisation (UMNO), the dominant party of the former ruling coalition that lost in the 2018 General Election (Y. N. Lee (2020)).

### Malaysia, the CRC & child rights

When Malaysia acceded to the CRC in 1995, it had 12 reservations to the convention. Malaysia has since withdrawn 7 of them, but still retains 5 reservations to the following provisions of the CRC: Articles 2, 7, 14, 28 paragraph 1(a), and 37, stating on 19 July 2010 that "the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia (United Nations (2020))."

Malaysia ratified two of the three Optional Protocols to the CRC in 2012: the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography (UN Office of the High Commissioner for Human Rights (2020)). It has yet to ratify the Optional Protocol on a communications procedure, which came into force in 2014, and would allow individuals or groups to bring complaints before the CRC Committee.

Malaysia has taken some significant measures since its accession to the CRC to implement its obligations under the convention and ensure that the rights stated in it are recognised in domestic law. Malaysia enacted

the Child Act in 2001 to fulfil its commitment to the CRC, and in theory the Child Act provides every child in Malaysia protection and assistance in any circumstance, regardless of any distinction such as race, colour, sex, religion, social origin or physical, mental, or emotional disabilities (Women's Aid Organisation (2019)). Furthermore, the Child Act is based on the four core principles of the CRC, which are non-discrimination, the best interests of the child, the right to be heard, and the right to life, survival and development. However, the full implementation and operationalisation of the laws in place to uphold child rights have not been achieved. For example, although the Preamble to the Child Act states that "every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind (Child Act 2001 p13)," in the experience of NGOs, in practice, the Child Act is read as being subordinate to other Acts.

Among the critical issues children in Malaysia continue to face today are:

- **Child marriage**, which is still practised widely and permitted under the Malaysian legal system. Although minimum ages are specified for boys and girls, there are wide exceptions to these rules, with no absolute minimum age specified in cases of exceptions. The result is that, in practice, there is no actual minimum age.
- Violation of the rights to life, health, education, and more, of **refugee, asylum-seeking and stateless** children as a result of Malaysia's lack of a comprehensive legal framework, refusal to recognise these individuals, and continued practice of using detention centres, including for children.
- Significant gaps in the **child protection framework**. Although several laws are in place to protect children from violence, including the

Child Act, the Domestic Violence Act 1994, and the Sexual Offences Against Children Act, there is still a lack of comprehensive implementation of these laws and a lack of awareness around these laws and child rights generally. Overall, Malaysian society fails to give precedence to the voice of the child, and the best interests of the child are often neglected by the protection and justice system.

### **Acknowledgements**

This report was coordinated by Protect and Save the Children with the support of Yayasan Hasanah. At its heart, it was truly a combined effort of the civil society organisations, comprising the Child Rights Coalition Malaysia (CRCM) and other NGOs and individuals representing diverse communities of children. These groups not only contributed their time, knowledge and expertise, but continue to work tirelessly for the rights of children in Malaysia.

We would like to thank all the individuals who contributed to this report, and in particular,

Gill Raja (Sarawak Women for Women Society) for her dedication and commitment in providing information and feedback. Additionally, we would like to thank Angeline Yap (Protect and Save the Children) for her coordination of the report, Zoe Siw (Protect and Save the Children) for her support in the coordination, Chuah Siew Eng for her editorial contributions, Fahmi Reza for the infographics, Chew Woon Sean for the design and layout of the report, and Tashia Peterson for proofreading it.

A special thank you to Branden and the other children who contributed artworks expressing their hopes for their future in Malaysia.

We hope you find this report a helpful resource for understanding the state of children's rights in Malaysia today.

Natasha Dandavati and Azira Aziz

Co-writers of the 2019 Status Report on Child Rights in Malaysia.

30 October 2020



# Cluster 1— General measures of implementation

Articles 4, 41, 42, 44(6)

## **RESERVATIONS TO THE CRC & ACCESSION TO OPTIONAL PROTOCOLS**

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Malaysia has withdrawn 7 of its original 12 reservations to the CRC at the time of its accession in 1995, but still retains five reservations to the following provisions of the convention: Articles 2, 7, 14, 28 paragraph 1 (a), and 37, stating that “the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia (United Nations (2020)).”

Under Article 19 of the Vienna Convention on the Law of Treaties, which regulates treaties between countries and is reflected in Article 51 of the CRC, a reservation to a treaty must be compatible with the object and purpose of the treaty, and should not negatively affect the compliance of a country with its obligations under the treaty (United Nations). Malaysia’s general statement that the articles to which it has retained reservations will only be applicable if they conform to domestic law is incompatible with the object and purpose of the CRC, since it should actively be working to bring domestic laws in compliance with the CRC. Thus, Malaysia should immediately withdraw its remaining reservations to the CRC.

Malaysia ratified two of the three Optional Protocols to the CRC in 2012, on the involvement of children in armed conflict and

on the sale of children, child prostitution and child pornography; it has yet to ratify the Optional Protocol on a communications procedure, which came into force in 2014, and which would allow individuals or groups to bring complaints before the CRC Committee (UN Office of the High Commissioner for Human Rights (2020)). In addition to withdrawing its remaining reservations, Malaysia should take steps to immediately accede to this third Optional Protocol to the CRC.

## **LEGISLATIVE FRAMEWORK FOR IMPLEMENTATION OF THE CRC**

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Malaysia has taken some significant measures since its accession to the CRC in 1995 to implement its obligations under the convention, and ensure that the rights in the convention are recognised in domestic law. The legislative framework around the implementation of the CRC in Malaysia consists of laws such as the Child Act 2001, the Sexual Offences Against Children Act 2017 (SOACA), the Domestic Violence Act 1994, the Education Act 1996, and the Evidence of Child Witness Act 2007, as well as other laws that encompass children within their scope, and also work to uphold child rights, namely the Penal Code, the Criminal Procedure Code, the Legal Aid Act 1971, the Guardianship of Infants Act 1961, and the

Law Reform (Marriage and Divorce) Act 1976 (Women's Aid Organisation (2019)).<sup>1</sup>

Malaysia enacted the Child Act in 2001 to fulfil its commitment to the CRC, and in theory the Child Act provides that every child in Malaysia is entitled to protection and assistance in any circumstance without regard to distinction of any kind, such as race, colour, sex, religion, social origin or physical, mental, or emotional disabilities (Women's Aid Organisation (2019)). Furthermore, the Child Act is based on the four core principles of the CRC, which are non-discrimination, the best interests of the child, the right to be heard, and the right to life, survival and development.

However, despite Malaysia's fairly robust legal framework, the full implementation and operationalisation of the laws in place to uphold child rights have not been achieved. For example, although the Preamble to the Child Act states that "every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind (Child Act 2001 p13)," in the experience of NGOs, in practice, the Child Act is read as being subordinate to other Acts, including the Immigration Act 1959/63, which treats persons under the age of 12 years as children, compared with the Child Act's definition of a child as a person under 18 years old (Immigration (Administration and Management of Immigration Depots) Regulations 2003, Regulation 11). Thus, the protections in the Child Act are often not extended to groups of children with irregular status, and these groups of children are not given the same access to the child protection mechanisms, education and basic healthcare services as other children with valid legal statuses in the country. Additionally, specific provisions of some laws are not always adhered to; for instance, under the Domestic Violence Act, although protection orders may be issued individually for the child, this is not typically done, and in some cases, children

who have experienced domestic violence are even left out of the protection orders issued for their mothers (Women's Aid Organisation (2019)).

In addition to gaps in implementation, glaring gaps in the law itself still exist. For example, Malaysia still lacks a comprehensive framework around refugees and asylum seekers, so children from these groups are often altogether left out of the protections of existing laws (UN Committee on the Elimination of Discrimination Against Women (2018)). Additionally, child marriage is still permitted under civil, native and *Syariah* laws, with there being no stated minimum age of marriage for Muslim boys and girls when given permission by the *Syariah* court (Human Rights Watch (2019) p370). Another such gap is the lack of any prohibition in the law against female genital mutilation (FGM), although the CEDAW Committee in its 2018 Concluding Observations to Malaysia recommended that such legislation be enacted (UN Committee on the Elimination of Discrimination Against Women (2018) Paragraph 22). Safeguards in the law over the rights of children with disabilities are also limited, with the Federal Constitution making no reference to the rights of children or adults with disabilities, and even the Persons with Disabilities Act 2008 making no specific provisions to uphold the rights of children with disabilities beyond their rights to education and recreation (UNICEF (2019)).

Finally, among the inadequacies of the current legal framework in implementing the CRC are the inconsistencies that result from Malaysia's legal system consisting of civil, *Syariah* and native laws. In its 2006 Concluding Observations to Malaysia, the CRC Committee recommended that Malaysia:

...conduct an international comparative study on the implications of the dual legal system<sup>2</sup> of civil law and *Syariah* law and, based on the results of this assessment, take necessary measures to reform this dual system with a

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<sup>1</sup> All Acts referenced include the original Act as well as all subsequent amendments.

<sup>2</sup> Although Malaysia's 'dual' legal system is often referred to, it is actually a 'triple' legal system, consisting of civil, *Syariah*, and native laws.

view to removing inconsistencies between the two legal systems in order to create a more harmonious legal framework that could provide consistent solutions, for example, to family-law disputes between Muslims and non-Muslims (UN Committee on the Rights of the Child Paragraph 16).

In the same Concluding Observations, the CRC Committee also recommended that Malaysia undertake "...a comprehensive review of the national legal framework with a view to ensuring its full compatibility with the principles and provisions of the Convention," and that Malaysia "...take all necessary measures to expedite the process of necessary law reforms." In 2008, the government stated its intention to review and amend areas of national law incompatible with the CRC (Malaysia (2008)); however, this has not yet been done.

## **ADMINISTRATIVE FRAMEWORK FOR IMPLEMENTATION OF THE CRC**

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Among the administrative and oversight mechanisms Malaysia has towards the upholding of child rights and the implementation of its obligations under the CRC are the National Action Plan for Children 2020—modelled on the principles of the CRC—National Child Policy and National Child Protection Policy (Child Rights Coalition Malaysia (2013)). However, such mechanisms must be monitored and evaluated independently and regularly, and should allow for civil society input in order to ensure they are working to uphold the rights of all children. The Child Act also established the National Council for Children, intended to be a multi-stakeholder body with supporting mechanisms to advise the government on all issues related to the care, protection, rehabilitation, development and participation of children. The Council was tasked to meet at least twice a year; however, it is unclear whether the Council has continued to meet or carry out its mandate under the Child Act (Women's Aid Organisation (2019)). Under the Department of Social Welfare (JKM) a children's division was established in 2005 to address issues and challenges of children,

whilst the Sexual, Women and Child Investigations Division (D11) of the Royal Malaysia Police is tasked with dealing with cases of child abuse, in addition to sexual crimes and domestic violence (Murad (2020)).

Of particular note is the establishment of the Children's Commissioner under the Human Rights Commission of Malaysia (SUHAKAM)—Malaysia's national human rights institution—in August 2019 (Human Rights Commission of Malaysia (2019)). According to the then Minister of Women, Family, and Community Development, Datuk Seri Dr Wan Azizah Wan Ismail, the Children's Commissioner was appointed to provide oversight on the handling of issues related to children by the government, NGOs, and other local and international organisations (Free Malaysia Today (2019)). Initially, the idea of a Children's Commission was floated by the government, which would have had the ability to take on a wider scope of issues. At the time, children's rights groups had proposed that children and young persons be at the centre of the decision-making process, with built-in child impact assessments; that there was independence in reporting directly to Parliament and the public, including in child-friendly language for the most important stakeholder, all children in Malaysia; that there was accountability in terms of duties and responsibilities that are clearly mandated for in legislation; that the Commission monitor all inter-ministerial functions and stakeholders listed in the Child Act 2001, specifically the mandate of the National Council for Children (Child Act 2001 Sections 2–6) made up of the Minister, the Attorney General, the Inspector General of Police etc.; and that the monitoring include the implementation of the CRC over the private sphere and private bodies.

Whilst the appointment of a Children's Commissioner is indeed a positive measure, the office is still very limited by the lack of a dedicated budget, with the initial budget allocation for the Children's Commissioner being only RM500,000, despite the cost of doing consultations with children being substantial as they have to provide for

transport for their guardians as well, and travel to remote areas to see firsthand the situation for indigenous children. In order to truly function as an ombudsperson for children in Malaysia, the Children's Commissioner must be provided with the necessary resources, including staff, to carry out her mandate.

## **PUBLICITY OF CRC REPORTS & PRINCIPLES**

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Although many efforts have been made by the government of Malaysia to improve the overall situation for children in the country since accession to the CRC in 1995, much remains to be done to ensure the rights of every child in the country are upheld. Since its ratification of the CRC in 1995, Malaysia has only submitted one report to the CRC Committee, in 2006 (Women's Aid

Organisation (2019)). Malaysia's second report was due in 2012 but has not been submitted to date.

In December 2019, in response to the Child Rights Coalition Malaysia's launch of its "2018 Status Report on Child Rights in Malaysia," the government committed to submit its overdue second State Report to the CRC Committee in 2020 (The Sun Daily (2019)). However, as at the time of drafting this report, no State Report has been submitted.

Without the government's participation in regular reporting to and reviewing by the CRC Committee, Malaysia's commitment to truly upholding the convention and spreading awareness of its principles and provisions remains lacking, and there have been no significant efforts made in this regard.

## **RECOMMENDATIONS TO THE GOVERNMENT**

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1. Take steps to immediately withdraw its remaining five reservations to the CRC: Articles 2, 7, 14, 28 paragraph 1(a), and 37.
2. Submit the State Report to the CRC Committee, and commit to regular reporting to the Committee in accordance with its obligations under the convention.
3. Take steps to ratify the third Optional Protocol to the CRC on a communications procedure.
4. Take measures to clarify the supremacy of the Child Act in all matters relating to children.
5. Make a separate allocation in the annual Federal Budget for the office of the Children's Commissioner.
6. Undertake a comprehensive review of the national legal framework—including civil, *Syariah*, and native laws—to ensure compatibility with the principles and provisions of the CRC, and amend areas of national law incompatible with the CRC, in accordance with the CRC Committee's 2006 Concluding Observations.
7. Undertake a public awareness campaign around the CRC, its provisions and principles, through materials accessible to children and adults in multiple languages. This should extend to all marginalised communities, including refugees.



# Cluster 2— Definition of the child

## Article I

### CONFLICTING DEFINITIONS OF THE CHILD

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The Child Act 2001 defines a child as any person under the age of 18 years (Child Act 2001). However, although Malaysia has lifted its reservations to Article 1 of the CRC, inconsistencies in the definition of the child under national law remain, and the definition of the child in the Child Act is not taken to be supreme over other laws.

One concerning example of this is the Immigration Act 1959/63, which treats children similarly to adults. Those who are below 18 years of age can be arrested, detained and deported, and receive whipping and imprisonment sentences like an adult, although the provision that allowed the Children's Court to hand down whipping as a sentence was deleted in the 2017 amendment to the Child Act. The standard operating procedures (SOPs) of the Immigration Department of Malaysia refer to a child as being a person under the age of 12 years (Immigration (Administration and Management of Immigration Depots) Regulations 2003, Regulation 11). These inconsistencies result in any child who is

under the purview of the Immigration Act and above 12 years being treated as an adult, and also, in potentially incorrect data being captured on the number of children in immigration detention centres.

The existence of different definitions of the child in other laws too, such as the Children and Young Persons (Employment) Act 1966, which defines a child as any person not having yet completed his fifteenth year, may lead to inconsistent applications of the Child Act and potentially to violations of the rights of the child based on certain factors or circumstances.

The lack of a standard and supreme definition of the child—as the definition in the Child Act should constitute—also leads to conflicts in other laws and, subsequently, to violations of child rights, such as in the instance of child marriage, which conflicting laws allow below the age of 18, with no minimum age articulated for children (or their parents) who receive approval either in *Syariah* or native customary courts (Islamic Family Law (Federal Territories) Act Section 8) (UNICEF (2018)).

### RECOMMENDATIONS TO THE GOVERNMENT

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1. Undertake a review of the national legal framework and amend the definition of the child in all laws to make them consistent with the Child Act.

2. Issue a clarifying mandate that the definition of the child in the Child Act is to be supreme, and that this definition must be applied in any matter regarding a child, regardless of immigration status or any other factor.

# Cluster 3— General principles

Articles 2, 3, 6, 12

## DISCRIMINATION AGAINST CHILDREN ON THE BASIS OF STATUS

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Malaysia continues to maintain a reservation to Article 2 of the CRC, on non-discrimination, resulting in children with irregular status, such as refugees, asylum seekers, stateless, migrants and other undocumented children, being excluded from essential services and protection mechanisms.

As pointed out in Cluster 1, although the Preamble to the Child Act 2001 states that “every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind,” the true application of the Child Act is often not extended to groups of children with irregular status under the Immigration Act 1959/63, which treats persons under the age of only 12 years as children. As a result, children between the ages of 12 and 18 are not given access to the child protection mechanisms, education and basic healthcare services as other children with valid legal statuses in the country. For example, in Sabah, one in six children are not attending pre-primary school, and most out-of-school children are non-citizens (Ministry of Education and UNICEF (2019)).

Discrimination against children from other at-risk categories or vulnerable communities in Malaysia also remains prevalent. Discrimination against disabled children goes unchecked, with few available protections for the rights of children with disabilities in the legal framework (UNICEF (2019)). The Federal Constitution fails to protect persons

with disabilities, whilst the Persons with Disabilities Act 2008 fails to specifically refer to the rights of children with disabilities and also lacks any legal enforcement mechanism.

Discrimination is also prevalent against children from vulnerable communities including indigenous, rural and urban poor communities in terms of their basic rights. This discrimination manifests in different ways, from varying degrees of access to education and nutrition. For example, a study of children living in low-cost flats in Kuala Lumpur found that 22% of children below the age of five are stunted, whilst 15% are underweight, and 23% are either overweight or obese (UNICEF (2018)). For this same group of children, only 1 in 2 aged from 5 to 6 years old are in school.

Ultimately, Malaysia must take measures to ensure that children are not discriminated against with regard to any of their rights on any basis—be it disability, immigration status, race, or socio-economic status.

## BEST INTERESTS OF THE CHILD

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Article 3 of the CRC requires that the best interests of the child are paramount in all actions concerning children, and this is also reflected in the text of the Child Act. However, there is limited guidance in the Act on the application of the principle and the criteria to be applied when assessing best interests, and there are many areas across the legal and policy framework—both in substance and practice—where the best interests of the child are not consistently

applied. Furthermore, information from the UN High Commissioner for Refugees (UNHCR) case managers indicate that some state child protectors do not understand the best interests principle nor adhere to it, and deny refugee and asylum-seeking children access to child protection systems and services.

For example, there is limited to no consideration of the best interests principle when making decisions related to administrative and judicial matters, leading to undocumented children being arrested for immigration offences. Based on NGO experience, judicial proceedings against a child charged for immigration-related offences are often brought to the Magistrates or Immigration Courts instead of being taken to the Court for Children, where best interest assessments and age verification can be made.

Additionally, there are numerous examples of the best interests principle not being applied, such as in the context of domestic violence responses. Although the principle should be applied at every stage of the domestic violence situation, from the detection and reporting of potential harm to the child by teachers or medical personnel, to the taking of the child's statement by the police in a friendly and non-intimidating environment, and the granting of an interim protection order by the magistrate, to the evaluation of a judge as to which parent should retain custody of the child, this is not the case (Women's Aid Organisation (2019)).

Based on the experience of service providers, the application of the best interests principle is lacking in all child protection responses relating to refugee children, from identification, to taking down reports, to managing disclosures safely, to adopting a child-friendly and child-centred approach, to responding to risks and referring to protection and support services. UNHCR has received reports of staff at emergency departments of hospitals breaching confidentiality, as well as of instances where refugee children suspected to have been abused and neglected were denied medical treatment and other support

services, and were forced to lodge police reports in order to access medical, mental health and welfare services.

These examples are indicative of a more widespread failure to consistently and uniformly apply the best interests of the child to any context.

## **VIOLATIONS OF THE CHILD'S RIGHT TO LIFE, SURVIVAL & DEVELOPMENT**

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Malaysia's reservations to the CRC—including to Article 2 on non-discrimination and Article 7 on birth registration—hinder the complete realisation of child rights under the convention, and in some cases actually lead to outright violations of children's rights to life, survival and development.

In addition to extreme violations of the rights of refugee children—such as pushing boats of asylum-seekers back or detaining them, which result from a lack of legal framework around refugees and asylum seekers—as well as discrimination against individuals who are refugees, migrants, undocumented and stateless, violations of children's right to life, survival and development also stem from discrimination against children from certain communities or of certain statuses. Children with disabilities “are likely to experience a range of barriers [to education—part of their right to development] depending on factors such as degree and type of impairment, age, location, gender and ethnicity, for example (UNICEF (2019)).”

Children living in poverty also experience violations of their right to life, survival and development. As discussed in Cluster 7, poverty impacts children in both urban and rural areas in different ways ranging from malnutrition to obesity, and results in hindered access to healthcare, education, and other basic rights.

Other examples of contexts where the child's right to life, survival and development are adversely impacted include child marriage and domestic violence. According to UNICEF:

Child marriage often compromises a girl's development by resulting in early pregnancy and social isolation, interrupting her schooling and limiting her opportunities for career and vocational advancement. Although the impact on child grooms has not been extensively studied, marriage may similarly place boys in an adult role for which they are unprepared, and may place economic pressures on them and curtail their opportunities for further education or career advancement (UNICEF (2020)).

Similarly, the violation of a child's right to life, survival, and development are at the core of domestic violence. In the extreme, domestic violence can threaten a child's very life and survival, whilst even less extreme forms can impact a child's development; a lack of uniformity around procedures to transfer a child's school can cause disruptions to their education, and a lack of services such as counselling can harm their emotional development in the aftermath of domestic violence (Women's Aid Organisation (2019)).

## **LACK OF MECHANISMS FOR CHILD PARTICIPATION**

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Article 12 of the CRC provides that the State shall give all children who have the ability to form his or her own views the right to express such views, including the right to be heard in any judicial or administrative proceeding affecting the child. Largely, such mechanisms for consistent child participation are lacking.

Even child-specific legislation in Malaysia, such as the Child Act, does not make child participation mandatory. One law that does explicitly integrate the views of the child is the

Law Reform (Marriage and Divorce) Act 1976, which provides that in cases where custody of the child is to be decided, the court "shall have regard to the wishes of a child, where he or she is of an age to express an independent opinion (Law Reform (Marriage and Divorce) Act 1976)." Such explicit integration of the views of the child is largely missing from other laws.

In terms of the integration of children's views into policymaking, this too is largely lacking. The Child Act does establish a National Council for Children, among whose functions include promoting the participation of children in the decision-making process of matters affecting them as well as advising the government on the participation of children at national, regional and international levels; however, it is unclear whether the Council has continued to meet or carry out its mandate under the Child Act (Women's Aid Organisation (2019)). Although Malaysia has a Youth Parliament, which allows for the political participation of youth between the ages of 18 and 30, and is made up of representatives from all over the country, Malaysia lacks a Child Parliament or other similar mechanism to allow for child participation in policymaking.

One positive measure taken towards encouraging meaningful child participation is the appointment of the Children's Commissioner. With the support of the Children Unit of the Department of Social Welfare (JKM), the Children's Commissioner held a consultation in February 2019 with 35 children from the ages of 8 to 17 years old.

## **RECOMMENDATIONS TO THE GOVERNMENT**

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1. Incorporate child participation as a mandatory component of child-specific legislation, including in the Child Act.
2. Conduct regular trainings for all individuals involved in child protection and justice—child protectors, welfare staff, healthcare personnel, magistrates, judges and Deputy Public Prosecutors (DPPs), school and learning centre staff, NGOs conducting child protection case management and running alternative care arrangements for children—to ensure the best

interests of the child are upheld at every stage of the process from reporting to trial. Such training must encompass the means for a best interests determination addressing four factors: safety, views of the child, survival and developmental needs, and the relationship between caregivers/parents and persons closest to the child, and could be conducted by the Malaysian Association of Social Workers in collaboration with relevant NGOs.

3. Ensure ongoing and adequate funding for the National Council for Children as a national mechanism to facilitate child participation in policymaking.
4. Ensure ongoing and adequate funding of the Children's Commissioner to help facilitate children's participation across the country.
5. Establish a Child Parliament similar to Malaysia's Youth Parliament to institutionalise child participation in policymaking, and include participation of all children from marginalised communities, including refugee, asylum-seeking and stateless children.

# Cluster 4— Civil rights & freedoms

Articles 7, 8, 13–17, 31(a)

## LEGISLATIVE FRAMEWORK TO SAFEGUARD CIVIL RIGHTS

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Children have the same fundamental freedoms that adults have on the basis of their being human, and “all human beings are born free and equal in dignity and rights,” declares the Universal Declaration of Human Rights (UDHR). Among these rights are the rights to freedom of expression, peaceful assembly and association, religion and movement. As a UN member state, Malaysia has accepted the UDHR and is thus duty-bound to protect these rights. In essence, the Federal Constitution protects fundamental liberties in Malaysia.

Children also have special rights because of their vulnerability in terms of physical and mental maturity, hence the UDHR also states that childhood is “entitled to special care and assistance (United Nations General Assembly (1948)).” This special care and assistance are embodied in international law in the CRC and its Optional Protocols on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography. As explained in the Introduction to this report, Malaysia has acceded to the CRC, though with reservations, and ratified two out of the three Optional Protocols.

Article 13 of the CRC spells out a child’s right to freedom of expression but also provides for limitations that must be “provided by law and are necessary,” to protect public safety, order, health or morals, or the fundamental rights

and freedoms of others (Mohd Sani and Abdul Hamed Shah (2010)). Article 14 obliges the State to respect the right of the child to freedom of religion, as well as the rights and duties of the parents or legal guardians, to help them realise this right. Article 15 obliges the State to recognise a child’s right to the freedoms of association and peaceful assembly (Mohd Sani and Abdul Hamed Shah).

The realisation of the civil rights and fundamental freedoms of children in Malaysia is, however, hampered by the conflicting definitions of the child under various laws in Malaysia, as stated in Cluster 2 of this report. The irresolute definition has an impact on the children, not only in terms of full enjoyment of the rights provided to them in law but also potential harm from penalties in law.

The situation is made more complicated by the ‘dual’ legal system in Malaysia: the civil court and the *Syariah* court (see Cluster 1 footnote regarding the supposed ‘dual’ legal system). This court structure was created following Malaysia’s independence to ensure that there would be a federal secular legal system in the form of the civil courts, as well as a religious court to cater for Muslims, whereby Islamic personal and family law can be applied. Many issues related to children in the justice system are caught between these two systems.

## FREEDOM OF EXPRESSION

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Freedom of expression includes the freedoms of speech, association, assembly and petition, among others. In Malaysia, the right to

freedom of expression is provided in Article 10 of the Federal Constitution, which states in clause (1) (a) that “every citizen has the right to freedom of speech and expression” (Mohd Sani and Abdul Hamed Shah (2010)).

However, it is not absolute but subject to several restrictions as set out in clauses (2), (3) and (4) of the same Article.

Clause (2) allows Parliament to impose by law restrictions deemed “necessary or expedient” in the interest of national security, public order or morality, and to protect the privileges of legislative bodies. Clause (4) allows Parliament to pass laws prohibiting the questioning of the provisions of Articles 152, 153 and 181, on the national language, the special position of the *Bumiputera* and legitimate interests of other communities, and the Rulers’ sovereignty, respectively.

Freedom of expression in Malaysia is also limited by hate speech legislation—Section 504 of the Penal Code (intentional insult to provoke a breach of the peace) and Section 506 (criminal intimidation). However, Section 82 states that a child under 10 years of age is not liable to commit any offences in the Penal Code, whilst Section 83 exempts a child above 10 years of age and under 12, “who has not attained sufficient maturity of understanding” to judge their conduct. Hence, children from the age of 10 may be subjected to the Penal Code.

For hate speech via social media, Section 211 of the Communications and Multimedia Act 1998 (dealing with offensive content), may apply (Buang (2019)). The Act does not mention any age limitations as exemptions.

A child’s right to freedoms of association and peaceful assembly in Malaysia is limited by clause (3), Article 10 of the Federal Constitution, which states that Parliament may also enact legislation that restricts on the right to form associations relating to labour or education. One such parliamentary law is the Peaceful Assembly Act 2012, which prohibits persons below the age of 21 from organising

peaceful assemblies and children (defined in the Act as persons below 15 years old) from participating in them, with certain exemptions.

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## FREEDOM OF RELIGION & BELIEF

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Freedom of religion and belief is covered under Article 11 of the Federal Constitution, which states that “every person has the right to profess and practise his religion.” However, this right applies only to adults; a person below the age of 18 years would need explicit permission from their guardian before converting to another faith. A citizen reserves the right to profess, practise and—subject to Article 11(4)—propagate their religion. One is assumed to be allowed to relinquish or change a religious belief (albeit with limitations for Muslims under specific religious laws), and even to not be religious. Article 11 is further supported by other constitutional provisions.

Indigenous children are perceived to be subjected to an unwritten ‘Islamisation policy’ and assimilation attempts into the Malay-Muslim ethnoreligious group. As in previous years, there are reports by indigenous communities of extreme pressure to convert to Islam, in clear violation of Article 12 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which Malaysia adopted in 2007, and Article 18 of the UDHR (United Nations General Assembly).

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## ‘DUAL’ LEGAL SYSTEM<sup>3</sup>

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Child custody is one of the issues relating to children that becomes problematic because of Malaysia’s oft-cited ‘dual’ legal system of civil and *Syariah* courts. Child custody is covered under two laws—one for non-Muslims and another for Muslims. Non-Muslims are governed by the Law Reform (Marriage and Divorce) Act 1976; Muslims are bound by the Islamic Family Law Enactments (of the respective states) and the Islamic Family Law (Federal Territories) Act 1984. The civil court operates on the former, whilst the *Syariah* court operates on the latter.

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<sup>3</sup> As explained in Cluster 1’s second footnote.



Problems arise when one of the spouses in a marriage converts to Islam (Tew (2011)), because conversion is recognised as one of the grounds for marital dissolution by both civil and *Syariah* laws. Also, when one of the parties is a Muslim, both judicial systems have jurisdiction on the matter (C. Wong (2020)), thus resulting in a power overlap (Tew (2011)).

Section 82 of the Islamic Family Law (Federal Territories) Act (Mohd Sani and Abdul Hamed Shah (2010)) states that the first qualification necessary for a custodian is that they must be Muslim. Several problems tend to arise from this. It has been argued that Malaysia's 'dual' legal system enables a spouse, who previously had a civil marriage, to convert to Islam and use the *Syariah* court as a means to claim custody of their children. A male spouse doing so would also evade the financial responsibilities imposed on him as the husband under civil law (Tew (2011)).

On 29 January 2018, in the case of *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak* (Director of the Perak Islamic Religious Department) & *Ors and other appeals* [2018] 1 MLJ 545, the Federal Court, Malaysia's apex court, held that where one party to a civil (non-Muslim) marriage had converted to Islam, the civil courts continue to have jurisdiction to deal with the dissolution of that civil marriage and ancillary matters (Nazlina and Ghazali (2018)). This landmark decision resolved the confusion pertaining to the overlapping jurisdictions of the two legal systems. The verdict retracted from past judicial trends, which had taken the position that matters touching Islamic law and practice are within the jurisdiction of the *Syariah* courts to the exclusion of the civil courts. The Federal Court, in nullifying the unilateral conversion to Islam of the children of the marriage by the father who had converted, also held that the consent of both parents must be obtained before the children could be converted. Despite this landmark decision, Selangor Menteri Besar Dato' Seri Amirudin bin Shari had attempted to table a Bill in the

state legislative assembly to restore unilateral conversion of children (I. N. Ibrahim (2019)).

In determining custody of a child, both Islamic and civil laws place paramount consideration to the interest or welfare of the child. Except on the matter of the child's religion, both legal systems have similar factors for consideration. For instance, both consider the age and gender of the child, the wishes of the child, the ability of the parents to bring up the child, and the conduct of the parties.

The civil law, however, specifies that the child must be old enough to choose which parent they want to follow, as per Section 88(2)(b) of the Law Reform (Marriage and Divorce) Act. There is no fixed age because it is paramount that the child can decide independently, i.e. without being influenced by any outside party such as a family member. The case of *Yong May Inn v Sia Kuan Seng* [1971] 1 MLJ 28 is illustrative of how such influence can backfire on the parent whom the child had chosen. In this case, although the three girls involved had chosen their father, the judge decided in favour of their mother because he thought that the paternal family members had influenced the children by teaching them to hate their mother (C. Wong).

## REFUGEES & STATELESS PERSONS

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Problems also arise when refugees and stateless persons are involved. Refugees who marry in Malaysia do not have access to register their marriage, hence in the event of separation or divorce, they do not have legal recourse to resolve custody. This hampers or delays a comprehensive solution for the refugees, as the decision to separate a child from their parents is dependent on the competence of State.

UNHCR does not have the legal competence to determine custody. Its best interests determination (BID) panel would determine which parent the child should stay with based on the best interests principle. Article 9 of the CRC states that the child "shall not be separated from his or her parents against their

will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child,” such as in the case of abuse or neglect of the child by the parents (UNHCR). For mixed marriages between refugees and Malaysians, there is no legal manner to register their marriage formally.

Children from these marriages are at risk of statelessness. It can occur when a refugee parent goes missing or gets deported or divorced, and the child remains with the Malaysian father who cannot transfer his citizenship to the child because the marriage is not recognised legally. This also complicates resolution of custody issues.

## REVIEW OF CONVERSIONS

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In Sarawak, the authorities have been allegedly slow to review conversions when it involves separation of a couple. If the couple have a child, and if one parent (usually the mother) applies to return to their original faith, this would hamper the process of registration for the child. Currently, the authorities have to decide on the mother’s faith before the child’s application for registration can be considered. Although intermarriage is common in Sarawak, marriages between Muslims and non-Muslims are not recognised by law due to the overlapping legal systems. The National Registration Department (NRD) has been known to refuse to register a child born in a Muslim–non-Muslim marriage when the father is the non-Muslim.

## CITIZENSHIP

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Children who are born overseas to Malaysian women married to foreign men are not given automatic right to citizenship. The same goes to stateless children adopted by Malaysians.

Article 14 of the Federal Constitution states that a person is a citizen by operation of law

provided that one of their parents at the time of birth is a Malaysian or a permanent resident, or they were born in Malaysia and not born a citizen of any country. However, the same Article and its related Second Schedule also limit the right of Malaysian mothers to confer their citizenship by operation of law on their children born overseas. Instead, Malaysian mothers are subjected to the processes outlined under Article 15(2)<sup>4</sup> to register for citizenship (National Registration Department of Malaysia)—a process that has been found to be fraught with delays, repeated rejections and no guarantee of securing citizenship (Foreign Spouses Support Group).

The NRD’s practice of arbitrarily determining the nationality of individuals by registering them as “non-citizen” (*bukan warganegara*) or “undetermined” (*belum ditentukan*) on their birth certificate has resulted in many stateless individuals in Malaysia. Examples of those who would be stateless are foundlings who were abandoned by their birth parents, children whose biological mother is a foreigner, children who were born before the registration of the parents’ marriage, and individuals who inherit the status of statelessness from their stateless parents.

Unsuccessful applications by Malaysian women who bear children overseas after marrying foreign citizens lead to children potentially being rendered stateless or without Malaysian citizenship when the foreign father has no access to citizenship. This limits their access to education, healthcare and legal recourse.

There is anecdotal evidence of many Malaysian mothers who have had to return to Malaysia to apply for citizenship for their children at Putrajaya. The application process takes two years or longer, and usually if rejected it is not accompanied with a reason. Mothers who have been dealt such rejection have children who are now 4 to 8 years old,

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<sup>4</sup> Article 15(2) of the Federal Constitution requires application for citizenship to be made by the person before 21 years of age.

### Case study (Paulsen (2019))

Roisah Abdullah was born in Klang to a Malaysian father and non-Malaysian mother. She has lived her whole life in this country, but her application for citizenship was denied on the basis that her parents were not married when she was born. Her first application was formally refused after a five-year wait, giving her only months to make another application before her twenty-first birthday.

But Roisah was luckier than most stateless individuals, as she benefitted from an unofficial guardian who assisted her schooling as a “foreign student.” Later, the then and current Housing and Local Government Minister Zuraida Kamaruddin became her legal guardian to allow her to make a fresh application before her twenty-first birthday. She was finally granted citizenship, having spent her whole life without a MyKad and unable to access basic public services.

and experience challenges to admit their children into kindergartens and national schools.

This in turn would create difficulties for the children’s application for naturalised citizenship after the age of 21 (as stipulated by Article 19 of the Federal Constitution), as restricted access to the national education system may result in an inability to fulfil the requirement of Clause (1)(c): “that he has an adequate knowledge of the Malay language.”

Therefore, the Government of Malaysia has the obligation to respect, protect and fulfil women’s and children’s rights to non-discrimination and the enjoyment of equality.

Numerous cases over the years have shown that many children are still discriminated against by the system which places an impossibly high burden of proof upon them—i.e. to prove that they do not belong to any other country in the world before they can claim Malaysian citizenship.

“I am Malaysian with a foreign husband. My daughter was born overseas, in Zambia. There was no Malaysian embassy there. I could only apply when we came back here. We came back when our daughter was five months old, and we applied at the National Registration Department in April 2014, submitted documents and all. Recently, two to three months back, I received a letter from the Home Ministry rejecting my daughter’s application without stating a reason. I called

the Ministry, and they said they couldn’t expose the reason why, and told me to re-apply again and wait for another two years.

My daughter is now using a Zambian passport, since the father is a Zambian and she was born in Zambia. And her visa is under ‘*anak warganegara*’.”

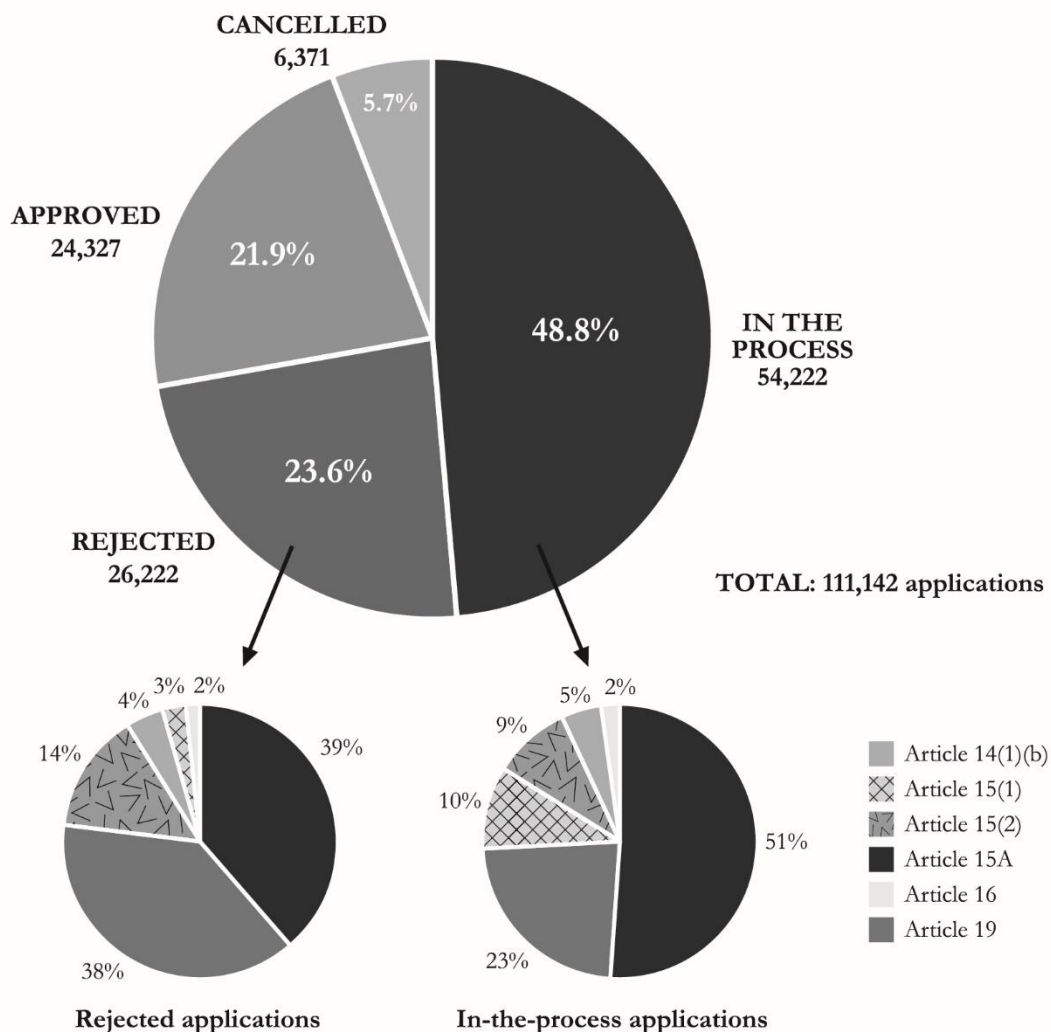
As illuminated above, there are considerable obstacles to children’s acquiring citizenship, specifically:

- Being born overseas to a Malaysian woman, for which the Federal Constitution does not have a provision for citizenship (Bernama).
- Being born to a foreign woman and a Malaysian man out of a legally recognised marriage.
- Being adopted by a Malaysian parent, as well as foundling and abandoned children.

Arguably, these legal inconsistencies have rendered stateless thousands of Malaysian children who have fallen through these gaps, in alarming numbers. According to the NGO Foreign Spouses Support Group (FSSG), to a question raised in Parliament in August 2018, the NRD said there were 90,681 citizenship applications in the past five years, of which 45,849 were below the age of 21 years old. However, the number of applications approved was not given, a worrying detail, especially when the previous Home Minister, Datuk Seri Dr Ahmad Zahid Hamidi, in a written parliamentary reply stated that between the years 2012 and 2017, there were 15,394 children born in Malaysia who were denied citizenship despite being born to Malaysian fathers.

The Parliament Hansard dated 18 July 2019 recorded that the Ministry of Home Affairs had a total of 54,222 citizenship applications that were still under process and yet to be cleared (Parliament of Malaysia (2019)). Participants of a survey conducted by FSSG on procedural inconsistencies reported being told that a potential reason for delay in the

Chart 4.1 Citizenship applications (2013-2018)



Source: Department of Statistics Malaysia (2019)

processing of the applications is backlog in applications.

It is clear then, that the legal processes are not entirely in line with those outlined in the Federal Constitution, and that there is highly concentrated power in the hands of the NRD, which wields decision-making power in citizenship registration processes.

Procedural change had seemed likely when, in response to a parliamentary question on 9 October 2019, the then Home Affairs Minister, Tan Sri Muhyiddin Yassin, announced plans to improve the standard operating procedure (SOP) (Bernama (2019)) of the citizenship application process via Article 15(2). However, the Minister then went on to announce improvements under

Article 15A (which cater for persons below age 21 in special circumstances), with no updates on Article 15(2) till today. In any case, these administrative processes are ineffective, as they tend to be abandoned with the passing of time.

For example, the Sarawak State Government had set up a task force to assist in the verification of applications before forwarding them to the Federal Government in an effort to speed up the process given the logistical problems facing a dispersed population with poor infrastructure to obtain documentation and the need to understand local native laws (Bong, 23 kids can now proudly say 'We are Malaysians' (2019)). This however was terminated by the Federal Government in July 2019 despite the task force's having helped

clear some of the backlog. New channels were promised but much to the concern of civil society trying to assist children without documentation, these have not materialised (Louis (2020)). The decisions taken seemed to be more for political reasons than for meeting the best interests of these vulnerable children.

Over a period of five years, between 2013 and 2018, the NRD received 111,142 citizenship applications, according to data from the Department of Statistics. A total of 54,222 (48.8%) were being processed, 26,222 (23.6%) were rejected, 24,327 (21.9%) approved, and 6,371 (5.7%) cancelled (see Chart 4.1).

The bulk of applications that were being processed, at 27,835 (51%), was under Article 15A, which is catered for those below the age of 21 under special circumstances.

This was followed by Article 19 (naturalisation), under which there were 12,458 (23%) applications.

A total of 5,265 (10%) were under Article 15(1), which is catered for women whose husbands are Malaysians, and 4,959 (9%) were under Article 15(2), for those below 21 years old whose parent or parents are citizens.

There were 2,558 (5%) applications being processed under Article 14(1)(b), for those born in the country after 1 October 1962 and before 15 September 1963 with at least one parent being a citizen or permanent resident.

A total of 1,147 (2%) applications were being processed under Article 16, for those aged 18 years and above who were born in the country before Independence Day.

The bulk of the rejected ones were under Article 15A, at 10,149 (39%), and Article 19, at 10,059 (38%). This was followed by Article 15(2), at 3,715 (14%); Article 14(1)(b), at 1,140 (4%), Article 15(1), at 730 (3%); and Article 16, at 429 (2%).

The granting of citizenship in Malaysia does not follow a standard procedure, as shown by the case of Kosovo-born football player Liridon Krasniqi, who plays for the Malaysian

football club Johor Darul Ta'zim (JDT), and was naturalised and given a Malaysian citizenship. Many observers criticised the fast-tracked citizenship for the popular sportsman vis-à-vis thousands of other stateless people in Malaysia who are still undocumented (Nortajuddin, Malaysia's stateless children (2020)).

In another situation, a 19-year-old boy born in Malaysia and adopted by a local family should have been entitled to citizenship. However, as there was no information about his biological parents on his birth certificate, the Court of Appeal deemed that he had been unable to prove that he was not a citizen of any other country, and therefore would fall outside the constitutional safety net. This was a tragic decision for the youth, who was penalised for being unable to prove his own statelessness. Before the case was to be heard by the Federal Court, citizenship was granted at the eleventh hour. This put an end to his individual struggle, but such impulsive decision-making does nothing to reform practices or address the systemic problems which have perpetuated statelessness in the country (Paulsen (2019)).

There are many more cases where the interpretation of the law and the bureaucracy of the NRD have devastating consequences for children who should rightfully be considered Malaysian. The Federal Constitution states that a child born in Malaysia with at least one Malaysian parent shall be a citizen by operation of law. Yet, in the case of children who are born out of legal wedlock, this has been interpreted to mean that citizenship can only be passed on to the child if the mother is Malaysian.

Stateless children in Malaysia do not have access to a formal education, as most public schools do not accept foreigners or undocumented children. Even if they somehow managed to attend school, they are not entitled to education perks such as the Textbook Loan Scheme. A tertiary education in Malaysia would also be as difficult for stateless individuals, as they would have to pay

### Case study (Husin (2019))

In 2019, an 11-year-old stateless girl, Siti Masitah Ibrahim, went missing. Her disappearance was reported to the police. According to local media reports, the reason for her statelessness was because her mother is a Cambodian national and has no identification documents or permanent residency card. In Malaysia, when children under 12 years of age are reported missing, the NUR (National Urgent Response) Alert is activated. The NUR Alert was introduced so that every child under the age of 12 receives protection from exploitation, violence and neglect through alerts that are sent out to enforcement, media and broadcasting agencies.

Unfortunately, in the case of Siti Masitah, the NUR Alert never went out. Police chief Superintendent Amran Sidek, from Pekan, Pahang, where the incident happened, told local media that the system was not activated because the girl's parents were foreigners, despite the fact that they have lived in the country since the 1980s. Then Deputy Minister for Women, Family and Community Development Hannah Yeoh later clarified that the NUR Alert System is applicable for all, regardless of their nationality or documentation. Tragically, Siti Masitah's body was found decomposed a few kilometres from her house, a little after a week since she went missing.

foreign student fees, which are generally higher, and would not be entitled to a government loan from the National Higher Education Fund Corporation, better known by its Malay acronym, PTPTN (Perbadanan Tabung Pendidikan Tinggi Nasional).

The United Nations Children's Fund (UNICEF) says that "stateless children, through no fault of their own, inherit circumstances that limit their potential," and added that "they are born, live and, unless they can resolve their situation, die as almost invisible people (Mayberry (2014))."

The government must ensure that the NRD act within the spirit of the Federal Constitution in protecting stateless individuals and communities, and not reinforcing discrimination or placing unrealistic bureaucratic barriers in their way. Importantly, the government must ensure that the best interests of the child are protected when interpreting the Federal Constitution. The NRD needs clear and progressive guidelines so that 'Malaysians' who are rendered stateless by unfortunate circumstances are not deprived of their citizenship. The NRD must relax its

overly strict requirements and provide for alternative, more realistic procedures for applicants to obtain citizenship. This will ensure that statelessness can be addressed in a systematic, fair and transparent manner, and those who were previously deprived of citizenship can finally enjoy the rights to which they are entitled.

## CHILD PARTICIPATION

Children's participation includes the opportunity for children to express their points of view and opinions and thus to influence decisions that may affect their lives. There are different kinds of involvement, contribution, assistance and co-determination, which differ in quality and have to be distinguished from participation that is initiated and controlled by adults. There must be equal decision-making, and children's self-determined and -initiated participation.

The right to be heard manifests itself in several articles of the CRC (Articles 12, 13, 14, 15, 17 and 31). Participation is one of the CRC's guiding principles and most advanced innovation.

Active involvement and contribution are important requirements for successful and sustainable improvements for the benefit of children and the implementation of development programmes. Participation helps children develop new skills and competencies, and improving their self-confidence may strengthen their understanding and implementation of democracy.

### Participation in the policymaking process

According to a UNICEF **Children4Change** month-long poll which involved 1,036 children aged 6 to 17 years old from across Malaysia in November 2017, more than 80% of children pledged to be kind and respectful to one another, regardless of race, gender or disability, as a way to build a better future (Children4Change Poll).

Other results from the Children4Change poll, conducted both online and offline, were:

- 3 out of 4 children want our leaders to provide quality education for every child, including children with disabilities, migrant and refugee children, which remains their primary concern. Almost as many also want leaders to ensure their safety from all forms of violence, including bullying and corporal punishment.
- Besides education and safety, ending racism and discrimination was among the top five priorities shared by almost 70% of children, and over half agreed that solidarity was needed to make the world a better place.
- More than half of the children felt optimistic about their future.

However, a segment of lesbian, gay, bisexual, transgender and queer (LGBTQ) children face multiple fears and challenges in expressing themselves due to the high cost of visibility of their sexual orientation, gender identity and gender expression, compounded by the criminalisation, high levels of social stigma, and policies that promote ‘rehabilitation’ of LGBTIQ persons in Malaysia.

In interviews conducted by the rights group Justice for Sisters with nine bisexual and queer girls, non-binary and gender-fluid persons between 15 and 19 years old, seven persons revealed that they face challenges expressing themselves, especially at home, school and public places. Two others have come out to their family members, but still face challenges from them in the form of constant expressions of hope that the children would ‘change.’ As a result, participation of LGBTIQ children is often limited, if not non-existent.

Especially in the context of LGBTIQ children in Malaysia, a best interests analysis must not be viewed through a religious or cultural lens that justifies silencing, violence, or other harmful actions against the child, and must be consistent with the CRC (UNICEF (2014)).

## CHILD LABOUR

A child is only legally permitted to work if the following criteria have been met:

Section 4 of the Children and Young Persons (Employment) Act 1966 states that a child is not allowed to work for more than 6 out of 7 consecutive days.

Additionally, Section 5(1) of the Act fortifies these restrictions by stating that children may not work:

- Between 8pm and 7am every day.
- For more than 3 hours consecutively without a break of at least 30 minutes.
- For more than 6 hours a day.
- For more than 7 hours if they attend school, 7 hours being the cumulative time spent both in school and at work.
- If they have not had at least 14 consecutive work-free hours of rest since the last work period.

In the event that any of these rules and laws is breached, the penalty that the employer or those acting on their behalf could receive is imprisonment for a maximum term of one year or a maximum fine of RM5,000, if not both.

If the law is broken again—be it just once more or many more times—after the first conviction, the punishment increases in severity. For subsequent offences, those guilty will receive a penalty in the form of imprisonment for a maximum term of three years or a maximum fine of RM10,000, if not both, for each subsequent conviction. Thus far, there are no charges or convictions under this legal provision.

However, the same rights enshrined under the Employment Act 1955 and the Children and Young Persons (Employment) Act 1966 do not apply to refugee and stateless children. Information from UNHCR's case management indicates that refugee and

asylum-seeking children work to survive and support their families in Malaysia and their home countries. They work at car wash set-ups, construction sites, restaurants, and as scrap metal collectors, and are paid meagre wages or not paid at all. Children are also trafficked to Malaysia for begging purposes.

Reports<sup>5</sup> indicate that working refugee children, particularly unaccompanied and separated children, experience all forms of abuse, neglect and exploitation. They experience torture, and are prevented from disclosing and seeking help, as they are either coaxed and threatened by perpetrators and traffickers into believing that they and their families would be harmed or killed. They lack awareness of their rights and information on protection and support services in Malaysia.

## ACCESS TO JUSTICE

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Access to justice is essential for the protection of the rights of children. It is especially

important for protection from discrimination, violence, abuse and exploitation, and for ensuring their best interests in all actions involving or having an impact on them. Children are most vulnerable when they come into contact with the justice system—they would come as victims, witnesses and offenders, or when judicial or administrative intervention is required for their custody or protection (Beqiraj and McNamara (2016)).

Malaysia has followed up on its accession to the CRC with numerous domestic laws and institutions to realise children's access to justice in the country, led by the Child Act. However, there is much ground to cover still, as reflected in a 2016 study by the Child Rights International Network (CRIN). Malaysia received a ranking of No. 130 among 197 countries surveyed on the extent to which the legal system effectively guarantees children's right to access justice, scoring 41.2% (Beqiraj and McNamara (2016)).

## RECOMMENDATIONS TO THE GOVERNMENT

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### 1. Right to identity

- a. Recognise informal marriages for the purpose of registration of children's births, as registration carries serious implications for access to education and healthcare throughout the child's lifetime.
- b. Schools in remote rural areas far away from national registration offices can help children and their families to understand the documentation process and establish systems so that they can coordinate smoothly with the national registration office through the school.
- c. Adhere to the principle of cultural safety for all children, which includes enabling them to sustain what is important to their cultural identity and sense of well-being when engaging with systems outside their own community while respecting rights of others to their own cultural safety.
- d. Ensure that key service providers have cultural competency.

### 2. Rights of the child

- a. The police to act and recover Ms M. Indira Gandhi's child from the father following the landmark ruling by the Federal Court.

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<sup>5</sup> Please also see the country Report of the Special Rapporteur on the sale and sexual exploitation of children, including child

prostitution, child pornography and other child sexual abuse (UN Office of the High Commissioner for Human Rights).



### **3. Child participation**

- a.* Increase the number of platforms or opportunities for young children to participate in policymaking and decision-making processes that affect them. There should also be a separate platform for asylum seekers and stateless children to participate.

### **4. Access to justice**

- a.* Address obstacles related to access to justice for children.

### **5. Right to citizenship**

- a.* Amend the Federal Constitution to eliminate internal inconsistencies that allow discrimination based on gender, despite this being prohibited under Article 8(2).
- b.* Specifically in relation to: Article 14 and the related Schedule of the Federal Constitution, in order to ensure that the children of Malaysian mothers born overseas have the right to citizenship by operation of law on an equal basis as the children of Malaysian fathers.
- c.* Uphold the rights of all Malaysian citizens to confer nationality on their children on an equal basis, regardless of gender, marital status and the child's place of birth. Grant citizenship to children when:
  - either parent is Malaysian.
  - notwithstanding the marital status of the parent.
  - regardless of whether they are born in Malaysia or outside Malaysia.
- d.* With immediate effect, grant citizenship to all children of Malaysian citizens with pending applications, enabling these children to avail themselves of their basic rights.
- e.* Grant citizenship to foundlings and adopted children where at least one adoptive parent is a Malaysian citizen.
- f.* Include gender equal nationality rights in the gender equality legislation.
- g.* Withdraw Malaysia's reservations to Article 9(2) of the Convention on the Elimination of All Forms of Discrimination Against Women and Article 7 of the Convention on the Rights of the Child.

### **6. Processing of citizenship applications**

- a.* Allocate the necessary resources to clear within a specified timeframe the backlog of applications and ensure all new applications are either resolved or given a status report within one year from application.
- b.* Develop collaborative systems with appropriate agencies to provide user-friendly channels for people to understand the process and have convenient access, for instance, restore the task force that was operating in Sarawak and consider for children in remote areas, far away from NRD offices, to work with primary schools so pupils without the necessary documentation are identified early and helped.
- c.* For anyone refused citizenship, the reason(s) must be clearly stated and any appeal procedure explained.



# Cluster 5— Violence against children

Articles 19, 24(3), 28(2), 34, 37(a), 39

## LEGISLATIVE FRAMEWORK FOR ADDRESSING VIOLENCE AGAINST CHILDREN

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The six primary laws that address violence against children within their scope are the Child Act 2001, the Domestic Violence Act 1994, the Sexual Offences Against Children Act 2017 (SOACA), the Anti-Trafficking in Persons Act 2007, the Evidence of Child Witness Act 2007, and the Penal Code.<sup>6</sup> The Criminal Procedure Code and the Evidence of Child Witness Act are also critical components of the child protection framework. Although the legal and policy framework around violence against children is fairly strong, there are still some gaps in the framework—including the lack of complete prohibitions against child marriage and female genital mutilation—and also in the implementation of existing laws. Conviction rates under these laws also remain relatively low.

The Child Act also established the National Council for Children, intended to be a multi-stakeholder body (comprised of representatives from the Prime Minister's Department, the Ministry of Women, Family and Community Development, the Ministry of Health, the Ministry of Home Affairs and the police) with supporting mechanisms to advise the government on all issues related to the care, protection, rehabilitation, development and participation of children. The Council was tasked to meet at least twice a year; however, it

is unclear whether the Council has continued to meet or carry out its mandate under the Child Act (Women's Aid Organisation (2019) p46). Under the Ministry of Women, Family and Community Development's Department of Social Welfare (JKM), a children's division was established in 2005 to address issues and challenges of children, whilst the Sexual, Women and Child Investigations Division (D11) of the Royal Malaysia Police is tasked with dealing with cases of child abuse, in addition to sexual crimes and domestic violence (Murad (2020)).

Supporting the substantive laws related to child protection are the Special Criminal Court on Sexual Crimes Against Children, which was established in 2017, as well as the Court for Children established under the Child Act.

Among the available services in support of child protection are JKM shelters, the *Talian Kasih* hotline run by the Ministry of Women, Family and Community Development, One Stop Crisis Centres at hospital emergency rooms, and shelters and hotlines run by NGOs.

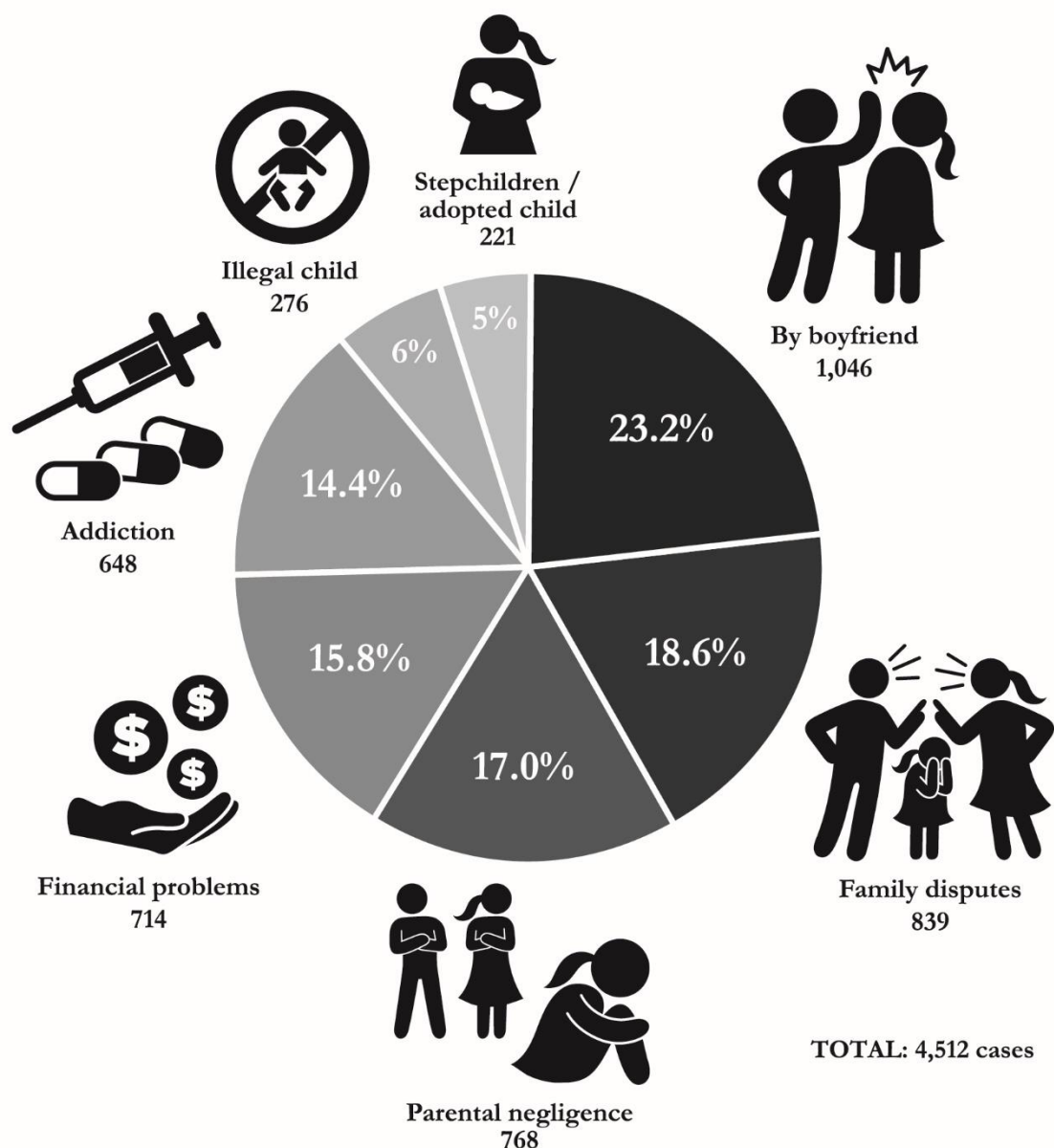
In August 2019, the Children's Commissioner under the Human Rights Commission of Malaysia (SUHAKAM) was established (Human Rights Commission of Malaysia (2019)).

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<sup>6</sup> This refers to the Domestic Violence Act 1994, the Child Act 2001, the Sexual Offences Against

Children Act 2017, the Penal Code, and all amendments of these laws.

Chart 5.1 Causes of child abuse cases in Malaysia (2019)



Source: Royal Malaysia Police (2019)

## DOMESTIC VIOLENCE AGAINST CHILDREN

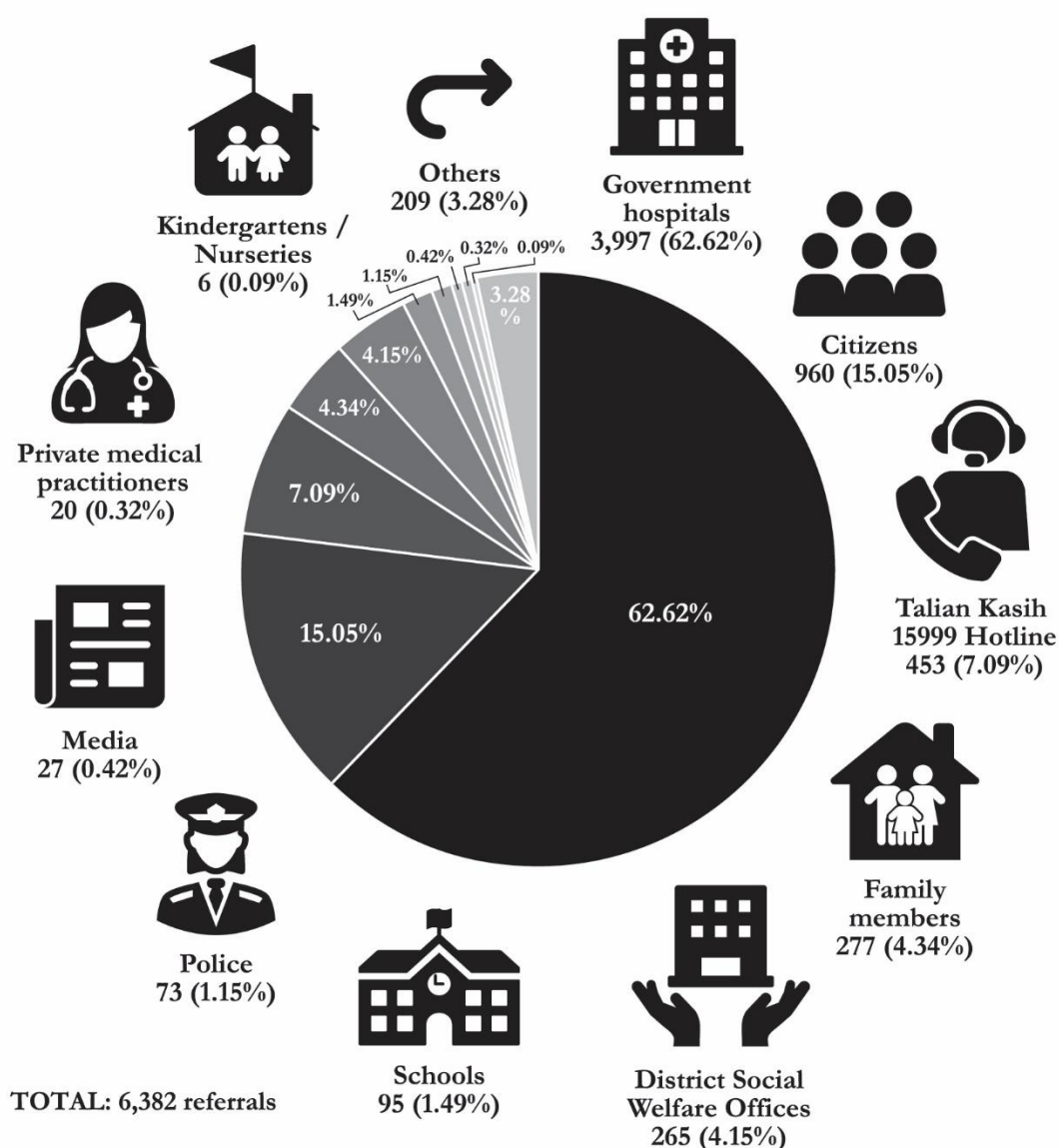
A total of 4,512 child abuse cases was reported in 2019, according to the Royal Malaysian Police. The most common cause was abuse by boyfriend (1,046), followed by family disputes (839), parental negligence (768), financial problems (714), addiction (648), being an illegal child (276) and stepchildren/adopted child of another person (221) (see Chart 5.1). The majority of referrals

came from government hospitals (3,997), followed by citizens (960), *Talian Kasih* Hotline (453), family members (277), district social welfare offices (265), schools (95), police (73), media (27), private medical practitioners (20), kindergartens/nurseries (6) and others (209) (see Chart 5.2).

In 2019, there were 119 children of concern to UNHCR who were reported to have experienced some form of violence, abuse and neglect.<sup>7</sup> It must be noted that child spouses who are survivors of domestic violence are

<sup>7</sup> Information provided by UNHCR upon formal written request.

Chart 5.2 Sources of child abuse case referrals in Malaysia (2019)



Source: Department of Statistics Malaysia (2019)

rarely reported, identified and there are no mechanisms to assist them (UN General Assembly (2019) ).

There remains a lack of adequate data around the prevalence of domestic violence against children nationally, including on children from refugee communities, and statistics between agencies are not integrated. A 2014 study by Universiti Sains Malaysia (Centre for Research on Women and Gender (2014)) found that from among the domestic violence cases analysed for the study,<sup>8</sup> 73% of the women survivors reported that their children had seen

or heard the violence in the household. These statistics show that in a home where domestic violence is prevalent, children are often exposed to the violent behaviour even where they are not abused themselves.

The Domestic Violence Act criminalises multiple forms of violence against children—from physical abuse to sexual abuse and psychological abuse—perpetrated by family members, and allows children experiencing such abuse to access protection, including through protection orders that may be issued individually for the child or issued for the

<sup>8</sup> Nine per cent of the women surveyed.

mother with the child included (Women's Aid Organisation (2019) p44). However, in the experience of NGOs providing services to child survivors of domestic violence, protection orders are not typically issued individually to the child, and in some cases even where the child is entitled to a protection order, they are denied it as a result of their mother's not qualifying to obtain a protection order (Women's Aid Organisation (2019) p129).

One aspect of the child's experience not fully accounted for in the Domestic Violence Act is the trauma to the child when they witness the violence perpetrated by one family member against another, such as by the father against the mother. Arguably, exposing a child to a violent environment already constitutes emotional or psychological abuse. Even so, the Act should make this link clear so that child survivors who witness domestic violence are also explicitly protected (Women's Aid Organisation (2019) p44).

Child-sensitive procedures and facilities are still lacking in the justice system, including when it comes to the investigation of domestic violence against children. Although Child Interview Centres have been established in every state for the police to conduct child interviews in a child-friendly manner (Chow), these facilities remain under-utilised as police SOPs do not require the conducting of child interviews at such centres (Women's Aid Organisation (2019) p59). Interviews at the police station may be intimidating to the child, and as a result, the police may fail in capturing critical evidence that the child may have provided if they had felt comfortable doing so. It can be argued that utilising these facilities is not only in the best interests of the child but also in the best interests of the police investigation. Unfortunately, Child Interview Centres are not currently in every state or district.

Additionally, there is currently a lack of D11 units of the Royal Malaysia Police at the district level. As its Principal Assistant Director, Assistant Commissioner of Police

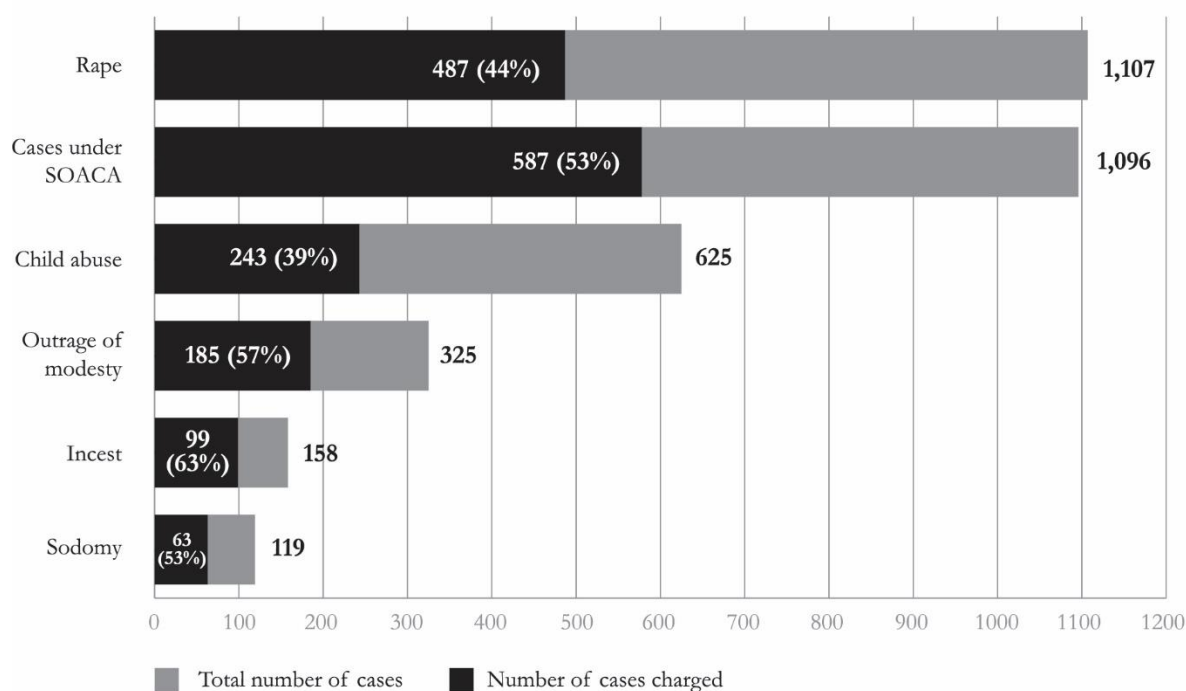
#### **Case study** (provided by Malaysian CARE Miri office)

In Sarawak, a child with special needs was reported to have been neglected. After incurring some injuries, the child was taken to the hospital by an NGO with permission from his guardian, and was placed under the care of the paediatric ward in the hospital (under child protection/One Stop Crisis Centre). The case was known to JKM for years, but other than warnings, there had been little to no action taken, despite multiple reports being made around the well-being of the child. The child was at last put in the custody of JKM. After the child was removed from their home, they stayed in the hospital for three months before being moved to an orphanage in Kuching, pending the court's direction. Three months later, the child was moved to a home for children with disabilities in Terengganu, as there were no facilities or homes in Sarawak serving children with disabilities.

(ACP) Siti Kamsiah Hassan stated, even within D11, "It is imperative that officers in our unit are experienced to deal with D11 cases because when you investigate child or women abuse cases, it involves those who are very vulnerable (Jayamanogaran, Bukit Aman: Even out of curiosity, watching child porn will land you in hot water (2020))." ACP Siti Kamsiah also explained, "You need to have basic knowledge of experience and empathy. If you don't have those, it will be difficult to lead as you are dealing with emotions here... with kids and domestic violence. It's not easy to handle."

Child-friendly facilities are still lacking in courts as well. This includes ensuring that the courtroom has a protective screen or video live-link for the child to provide testimony in a manner that is less intimidating and traumatic, as well as the availability of interpreters. Many courtrooms are still not equipped with this video link facility (Women's Aid Organisation (2019) p140). It is the duty of the Deputy Public Prosecutor (DPP) to ensure that the necessary court facilities are functional or, where the facilities are not available, that some alternative is put in place, such as a screen to block the child from seeing the accused should be trained on the CRC, the Child Act, and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and ensure the child's participation in matters affecting them, whilst

**Chart 5.3 Child sexual abuse cases in Malaysia (2019)**



Source: Royal Malaysia Police (2019)

ultimately ensuring the child's protection (Women's Centre for Change (2017)).

Additionally, despite the existence of the Guidelines for Handling Domestic Violence Cases that lay out the obligations of various first responders to violence, as well as the obligations articulated in the Child Act, there is still a lack of knowledge and clarity on the part of authorities in responding to violence against children, including domestic violence. Children with special needs may also face additional barriers in accessing protection from abuse and neglect. This includes refugee, asylum-seeking and stateless children, as they remain invisible, and due to inconsistent implementation of the law.

## CHILD SEXUAL ABUSE

According to the D11 unit of the Royal Malaysia Police, there were 3,430 cases of child sexual abuse in 2019 (see Chart 5.3). The most common cases were rape (1,107) and cases under the SOACA (1,096), followed by child abuse (625), outrage of modesty (325), incest (158) and sodomy (119). The rates of

cases being charged were dismal, ranging from 39% (child abuse) to 63% (incest).

Malaysia ranked 23 out of 60 countries in the 2019 Out of the Shadows Index on the response to child sexual abuse and exploitation, with a score of 54.517. This overall score measures how a country's environment exacerbates risks of sexual exploitation and abuse for children; how it helps them seek justice; if the government is committed to and capable of addressing sexual violence against children; and assesses the role that civil society and industry are currently playing in addressing the issue. A score of 0 indicates a poor environment, whilst the highest score of 100 is the best. Within Southeast Asia, Malaysia was ranked ahead of Cambodia and Indonesia, but behind the Philippines (ECPAT International (2019) ).

In 2019, there were 260 children of concern to UNHCR who were exposed to sexual and gender-based violence; 3 were subjected to it during the flight to Malaysia, and 10 were exposed to it in their country of origin.<sup>9</sup>

<sup>9</sup> Information provided by UNHCR upon formal written request.

**Case study** (provided by Women's Centre for Change, Penang; name and identifying information have been changed or redacted for the child's protection and privacy)

Nine-year-old Tina was sexually assaulted by her 28-year-old stepfather, Rahmat. He forced Tina to play with his private parts and tried to penetrate her vagina. He had also forced Tina to perform oral sex.

A few days later, Tina disclosed the incident to her school counsellor, Ms K. After discussing with the school headmaster, Ms K informed Tina's mother, Mariam, of the incident. Mariam did not believe Tina's story but still brought Tina to a government hospital. Tina was examined by a doctor at the One Stop Crisis Centre unit of the hospital, who then lodged a police report based on her findings. Tina was immediately put under the care of a child protector and was later transferred to be under temporary care of her maternal grandfather, Tokwan.

Rahmat was arrested and charged for inciting a child to an act of gross indecency and was out on bail for RM20,000. A week after Rahmat was charged, Ms K was threatened by Rahmat's family members and asked to get the doctor to withdraw the doctor's report. Mariam also sent a message to Ms K claiming that Ms K was lying and "*campur tangan*" (interfering) in this issue.

A few weeks later, Tina's biological father lodged a complaint to the child protector stating that Tina had gone on holiday in Langkawi with Rahmat and Mariam. The child protector acted on the complaint, and brought Tina to court to get a court order. The court granted Tokwan full custody of Tina for three years.

During Rahmat's trial, Tina was able to testify in court with the aid of a video live link and other special measures. Rahmat was found guilty. Tina's maternal grandmother was called to read out the Victim Impact Statement (VIS). The court sentenced Rahmat to 21 years' imprisonment and three strokes of whipping.

The perpetrator of sexual abuse against a child may be charged under the Child Act or the SOACA. Where the perpetrator is a family member, they may be charged under the Domestic Violence Act. In some cases, the Penal Code has also been used, but this has led to some undesirable results, such as in the "finger rape" case, where a 60-year-old man who impregnated a minor without penile penetration was eventually acquitted of rape (Malaysiakini (2016)). Unfortunately, there remains a lack of enforcement of the SOACA by the police, and lack of prosecutions brought under SOACA provisions, including physical sexual abuse of a child and child pornography.

In relation to the response to cases of child sexual abuse, there are three sets of relevant implementing guidelines, namely (1) the Guidelines for Handling Domestic Violence Cases under the Domestic Violence Act, (2) the Guidelines for the Hospital Management of Child Abuse and Neglect (which strive to implement components of the Child Act and were published by the Medical Development Division of the Ministry of Health), and (3) the Special Guidelines for Handling Cases on Sexual Offences against Children (the SOAC guidelines) under the SOACA (Women's Aid Organisation (2019) p45–49). However, based on NGO experience, there is still a lack of knowledge and awareness of the standard

operating procedures (SOPs) for child sexual abuse and exploitation cases, and as a result, children are often being re-victimised. As an example, multiple recounting of the child's history is conducted at hospitals and at the police station, despite One Stop Crisis Centre SOPs and SOPs around domestic violence response, with many stakeholders either being ignorant of the fact that there are applicable SOPs or viewing these SOPs as theoretical.

In 2017, the Special Criminal Court on Sexual Crimes Against Children was established as part of the enforcement mechanism of the SOACA, aimed at improving the expediency of hearing cases related to sexual crimes and providing infrastructure to protect the privacy and well-being of child victims and witnesses (Abas (2017)). As of April 2019, a total of 405 convictions had been handed down by the Special Court in Putrajaya and the second Special Court in Kuching, with a total of 841 cases registered from July 2017 to April 2019 (Malaysiakini (2019) ). Although this is a positive measure, every state should have this Special Court, as well as training for judges, judicial officers and DPPs handling child sexual abuse cases. Currently, in the experience of NGOs, there is a lack of specialisation for judges, judicial officers, and DPPs handling child sexual abuse cases, wherein these officers are expected to also handle a variety of other cases. The SOAC



Guidelines for the Special Court also provide that child witnesses will have access to an intermediary who will sit in the child witness room where cross-examination questions etc. are put to the intermediary, who then relays the questions to the child. However, in practice, it is noted that the intermediaries in the Special Court are actually the court interpreters who have no training on communicating with children. There is a lack of optimisation of the features that are available within the Special Court and the SOAC Guidelines, due to a lack of information to stakeholders. There is also a lack of support for child sexual abuse survivors, including a lack of legal support to survivors and their guardians, although the Legal Aid Act 1971 was amended in 2017 to provide for a legal companion for all child victims of criminal offences in order to protect the legal interest of the child and be a comforting presence during court proceedings (Legal Aid Act 1971 Article 29(I)).

During 2018 and 2019, the NGO Sarawak Women for Women Society (SWWS) conducted training for teachers in Sarawak on child sexual abuse and found that teachers were not aware of any reporting procedures from the Ministry of Education (MOE); clarity is needed to enable children to receive appropriate help. From SWWS's first-hand knowledge, in Sarawak, this can mean a long journey; teachers have been known to travel from the interior to one of the main coastal

urban cities/towns to lodge a report. Not all are able to make such a journey. Health clinics are much more dispersed than JKM offices or police stations, so systems must be in place to enable clinics to assist and know how to access services. These clinics are sometimes sparsely staffed and those there may lack experience in handling such cases, so there must be a system linking the clinic to specialists through internet or phone to provide healthcare staff (as well as school teachers and para-counsellors) confidential advice; this could be done by including clinics in the One Stop Crisis Centre network. This same need for a referral system was identified by SWWS in 2011 after conducting their "Empowering Rural Girls" training programme, aimed at combating sexual exploitation following cases of rape of Penan girls by logging workers in the Sarawak jungle (Sarawak Women for Women Society (2017)).

### **Cases of child sexual abuse handled by Protect and Save the Children**

The NGO Protect and Save the Children (PSC) is based in the Klang Valley and specialises in assisting survivors of child sexual abuse. In 2017, PSC managed a total of 84 child-related cases; 54 of them involved child sexual abuse. Out of the 54 cases, 28 were not reported (the process being seen as too complicated and too long), and 20 were reported. In addition, in 11 cases, support was requested for sexualised behaviour.

### **The following information was collected based on an analysis of 17 of the 20 reported child sexual abuse cases:**

#### **Police reporting process**

All 17 clients<sup>10</sup> made a police report. Twelve different police stations were involved in the reporting process. There are significant differences in the duration of the reporting process for each station, the shortest duration being 1 hour, and the longest being 7 hours and 30 minutes, with an average of 3 hours.

Most clients experienced a similar reporting process once they arrived at the police station, which was: 1) Meet desk officer, 2) Fill out a statement form, which was then used by the police as a report and 3) Undergo an interview. However, only five clients were given a private room for the interview, whilst the rest were conducted in an open, public space, and at the front desk. During the interview with the police officer, 13 clients were requested to give full details of the incident. Two clients were asked how the incident was made known to them. One client stated that the police repeatedly asked the same questions towards the child about the incident. One client was

<sup>10</sup> "Client" refers to the adult who represented the child survivor.

	<p>requested only basic information about the incident. From the 17 clients who reported a child sexual abuse case, only one client received follow-ups by the police, twice. The other 16 clients did not receive any follow-up.</p>
<b>Interview process with the child</b>	<p>During the reporting process, 15 out of 17 children were interviewed. One child was interviewed twice. Six children were interviewed at a Child Interview Centre, whilst the other nine were interviewed in a regular police station.</p> <p>PSC helped shorten the length of the reporting process for the six children interviewed at the Child Interview Centres by contacting the centres directly. The duration of the interview varied, with the shortest being 2 hours, and the longest being 7 hours 30 minutes. The average duration was under 3 hours.</p> <p>Only five children were prepared beforehand. They were prepared through meetings with a Psychology Officer (a victim care officer) and an NGO worker. The children were briefed on the questions that would be asked during the interview. Thirteen interviews were conducted inside a private room; two in a public area. Five clients stated that the interviewing police personnel were in uniform; 10 said they wore regular clothing. Five clients stated that their whole experience with the Investigating Officer was pleasant; 10 described it as being unpleasant. Due to the long process, the children of the 10 above-mentioned clients were distressed, tired and hungry.</p>
<b>Identifying the scene of the crime</b>	No child was requested to identify the place of the crime.
<b>Identifying the suspected perpetrator of the crime</b>	No child was requested to identify the suspect of the crime.
<b>Experience at the government hospital</b>	<p>Only nine children were brought to a government hospital after the reporting process. The duration between the reporting process and the hospital check-up differed for each client. Some clients waited for months before their hospital check-up, whilst others waited only a few days. In one case, the client underwent a hospital check-up before the reporting process at the police station; another went through the reporting process and the hospital check-up on the same visit.</p> <p>The hospital process included registration, meeting with a doctor, an examination, admission, a room to wait in, and a meeting with a counsellor. The medical report after the check-up showed negative results for five clients; four clients had results deemed inconclusive. In short, all nine clients who went for a hospital check-up showed either no positive result or an inconclusive result.</p> <p>After the hospital check-up, four children were admitted. Out of the nine children who went for a hospital check-up, only two were given an explanation of the medical procedure by the person in-charge, one was given partial information, whilst the other was given advice (both mother and child).</p>
<b>Counselling sessions</b>	Only two children were offered counselling sessions. One of them declined.
<b>Charging of case by DPP</b>	Only one case was charged by the DPP. However, the parent/guardian only learnt of the case being charged after they contacted the prison as advised by PSC.
<b>Court process</b>	Only one child was requested to go to court. The entire court process took four hours. Before going to court, the child was prepared and briefed by an NGO case worker on the roles of each person in the court room. The child also met the DPP before the court process, and was given a waiting room on court day. During the testimonial, the child was not given a separate room, but instead placed beside the court interpreter. The client said there were delays and postponements from the court twice. There was no neutral adult that was allowed to accompany the child during the testifying process.
<b>Informing family members of the case result</b>	The family members were not informed of the result of the case. The parents only found out after they went to the DPP directly.
<b>Investigation of cases</b>	Out of 17 cases, 1 was deemed "complete;" 8 cases were deemed "no further action;" 8 "ongoing."
<b>Duration of reporting process</b>	<p>One day: Six clients</p> <p>Days/weeks: Five clients</p> <p>Months: Two clients</p> <p>One year: One client</p>

**Case study** (From one of the 17 reported cases of child sexual abuse; name and identifying information have been changed or redacted for the child's protection and privacy)

Ahmad, 15, was sodomised by his uncle. His mother decided to lodge a report at the nearest police station. She was told by PSC that there was no need to bring Ahmad to make the report; however, the police officer in-charge insisted otherwise. Hence, Ahmad was brought to the police station, and they spent two hours making a police report.

One week later, Ahmad was to be brought to the hospital by his father. They did not go to the hospital, but instead went to the nearest police post (*pondok polis*), where they waited an hour for the police in-charge to take them to the hospital. They were brought there with the police report, and waited in a room for three hours. Ahmad met the medical officers, surgeon and counsellor. However, the procedure was not explained to him or his father.

The day after the hospital visit, Ahmad was requested to give his statement at the police station. It was a four-hour process, and the child was not prepared or briefed before the interview. Ahmad's phone was taken away, and no further information or explanation was given. The police officer was in uniform, and he conducted the interview in his office. The process was tiring for Ahmad.

It took eight months of Ahmad's mother following up with the Investigating Officer every month before she found out that a charge had been made against the perpetrator. They were not briefed on the procedure for the charge. A few months later, Ahmad was asked to go to court. He was not prepared or briefed by anyone before the court case. However, the DPP did explain the process to Ahmad and his family before the court started on that day itself. The court date was then postponed twice due to emergency issues from the judge and the DPP.

During the day of the actual commencement of the case, Ahmad was given a waiting room, but was not given a separate room to give his testimonial. He was placed in the court with blinds in between him and the suspected offender. Ahmad was not allowed to have any adult companion with him in the court, since the motion to have one was rejected by the defence lawyer. It was a tiring, stressful and scary five-hour process for Ahmad and his family.

After everything was completed, the family was not informed of the result of the case. Instead, they came to know of it by periodically calling the Investigating Officer. Overall, the family found the reporting process long and tiring. The family just wanted the process to be shortened so that Ahmad could move on.

## Online sexual abuse of children

The D11 unit of the police has expressed concern about the rise in online sexual exploitation of children, and established a special task force in 2018 to combat child pornography (Jayamanogaran, Bukit Aman: Even out of curiosity, watching child porn will land you in hot water (2020)).

Based on NGO experience, although the SOACA is good in substance, the police must be given the necessary resources to investigate and catch online perpetrators. Such resources include not just more trained officers but also the necessary IT equipment including specialised programmes. From January to August 2019, D11 recorded 7,358 cases of child crimes, but only 11 cases of child pornography, although anecdotally child pornography has been thought to be a prevalent issue in Malaysia. Additionally, D11 indicated it faces difficulties with digital evidence that goes viral, as it may be tampered with (Jayamanogaran, Bukit Aman: Even out of curiosity, watching child porn will land you

in hot water (2020)). In practice, it is found that the police are still reluctant to investigate cases of child pornography without a police report being lodged by a purported victim. It has been found that police officers on the ground have not been trained on the wide ambit of the provisions under the SOACA in relation to child pornography, and the implications child pornography has on children.

## Role of Education Department

Schools and teachers are primarily positioned to detect cases of sexual and other violence against children, to report, and to link students to critical support services (Women's Aid Organisation (2019)). Teachers could be facilitated in doing this by being given training on how to teach age-appropriate comprehensive sexuality education; child personal safety, including good and bad touch; as well as on school SOPs on how to deal with sexual exploitation and bullying (while SOPs on

**Case study** (From PLUSOS, July 2020; name and identifying information have been changed or redacted for the child's protection and privacy)

PLUSOS provides live chat services for LGBTIQ persons seeking peer support. Between May 2018 and December 2019, they received 70 cases of individuals seeking support for a range of issues, including sexual health, mental health, coming out and termination because of gender identity.

In July 2020, Joseph, 18, reached out to PLUSOS to seek support for bullying, which he experienced in school and on social media because of his gender expression and sexual orientation. Joseph's school life was challenging due to, among other things, discriminatory school rules and reinforcement of gender binary constructs in school. As a result, Joseph experiences depression and insomnia, for which he has been receiving medical treatment for more than a year. The medication prescribed by the doctors, however, gives him side effects, including suicidal ideation. He feels lonely, as he has no friends.

Joseph's situation snowballed into his dropping out of school due to a lack of support and a sense of mental overload. His schoolmates continue to bully and harass him via social media messaging. He enrolled in a new school, but even there, he was still unable to avoid harassment. He was picked on for being gay.

Joseph's parents are religious. He was always told that being gay is a sin, as he grew up in a Christian household. His family tells him to talk like a man, and that he must enjoy sports. His classmates also reinforce gender stereotypes and binary constructs by telling him that he talks like a girl, which makes him uncomfortable. His parents once asked a pastor to perform exorcism and pray away the 'bad spirit' out of Joseph's body. With no emotional support and no one to turn to, Joseph wants to leave his home. His only escape for now is music.

bullying exist, they are not well known, and to civil society's knowledge, there are no SOPs on the reporting of child sexual abuse). It has been found that teachers have not been trained on the wide ambit of the provisions under the SOACA in relation to child pornography, and the implications child pornography has on children. The cases of child pornography (as defined by the SOACA) produced by children is on the rise with the widespread access of children to smartphones and social media. Whilst the MOE already has a safe schools programme, it does not include such areas. Incorporating these into SOPs and monitoring compliance through the school inspectorate would strengthen the role the MOE plays.

## CORPORAL PUNISHMENT

Corporal punishment is still allowed in Malaysia in schools, alternative care settings, day centres, penal institutions, and as a sentence for crimes (Global Initiative to End All Corporal Punishment of Children).

Provisions still exist for corporal punishment in the Education Regulations (Student Discipline) 2006, and there are provisions in the Child Act, the Penal Code, the Criminal Procedure Code, and the Prison Act 1995; the last allows corporal punishment as a disciplinary measure in penal institutions

(Global Initiative to End All Corporal Punishment of Children (2019)). The Syariah Criminal Offences laws allow for the corporal punishment of children and young people found guilty of a criminal offence.

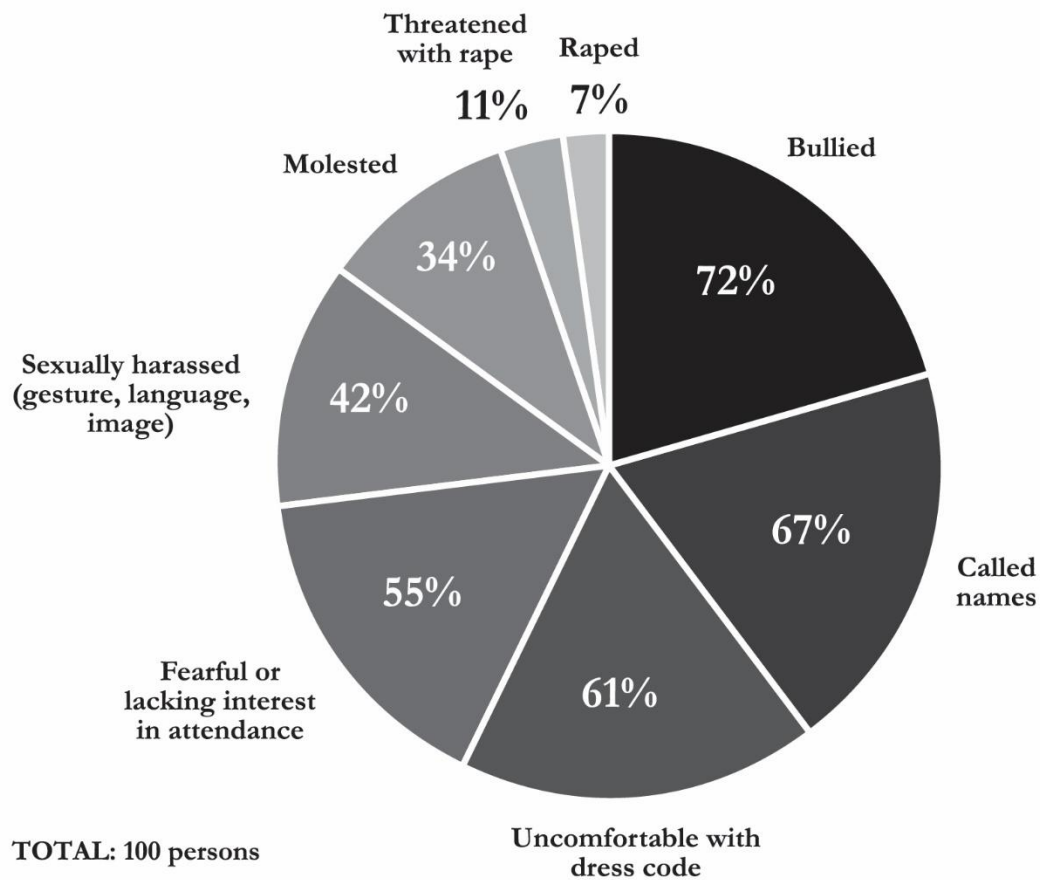
In the CRC Committee's 2006 review of Malaysia, it reiterated in its Concluding Observations that "that corporal punishment is not compatible with the provisions of the Convention and is inconsistent with the requirement of respect for the child's dignity, as specifically required by Article 28 paragraph 2, of the Convention. Therefore, the Committee recommends that the State party prohibit by law all forms of corporal punishment in schools (UN Committee on the Rights of the Child (2007) Paragraph 78)."

## VIOLENCE AGAINST LGBTIQ CHILDREN

LGBTIQ (Lesbian, gay, bisexual, transgender, intersex, queer) children are not only vulnerable to corporal punishment and other forms of punishments or disciplinary measures in educational institutions, but also lack protection from discrimination and violence perpetrated against them on the basis of their sex characteristics, sexual orientation, gender identity and gender expression.

LGBTIQ children lack protection from multiple forms of violence and discrimination, in particular at home and in schools. School

**Chart 5.4 Discrimination and violence in educational institutions against transgender persons, from the 2019 SUHAKAM Study on Discrimination against Transgender Persons**



Source: SUHAKAM (2019)

regulations, such as Circular No. 7/2003: Caning of students by teachers (*Surat Pekeliling Iktisas Bil. 7/2003: Kuasa Guru Merotan Murid*) allows corporal punishment against students on the basis on their sexual orientation, gender identity and gender expression. In addition, the student handbook by the Federal Territory of Kuala Lumpur Education Department includes homosexuality and 'gender confusion' as a serious offence, which can be punished with caning, suspension and expulsion, among other forms of punishment (Women's Aid Organisation (2019) p227).

Circular No. 7/2003: Caning of students by teachers (*Surat Pekeliling Iktisas Bil. 7/2003: Kuasa Guru Merotan Murid*), a 2003 school circular (Ministry of Education) categorises pre-marital sex, *liwat* (refers to both anal sex or sexual relations between men), sex against the order of nature (*melakukan zina, liwat, hubungan luar tabii*) and prostitution, being a *bohsia/bohjan* (wayward teens)/*pondan*

(pejorative term for gay men and trans women) (*melacur/ menjadi bohsia/ bohjan/ pondan*) as serious offences. A student can be hit not more than three times with a light cane on their clothed buttocks for committing a serious offence.

A best interests analysis must not be viewed through a religious or cultural lens that justifies silencing, violence, or other harmful action against the child, most especially in the context of LGBTIQ children in Malaysia (UNICEF (2014)).

LGBTIQ and gender non-conforming children, as well as other children who are perceived as lesbian, gay, bisexual, transgender or queer, are vulnerable to multiple forms of surveillance, correction or rehabilitation, and violence by state actors and non-state actors alike. In June 2017, a gender non-confirming youth died as a result of brutal assault by four teenagers and former classmates, who bullied

him in school for being effeminate (The Sun Daily (2018)).

LGBTIQ and gender non-conforming children face multiple forms of violence and discrimination, including violation of privacy, hate speech, physical violence, sexual violence, among others.

The 2019 Study on Discrimination against Transgender Persons based in Kuala Lumpur and Selangor by the Human Rights Commission of Malaysia (SUHAKAM) with 100 transgender respondents documented the respondents' previous experiences in relation to discrimination and violence in educational institutions (Human Rights Commission of Malaysia (2019)). The respondents consisted of 69 trans women, 29 trans men and 2 intersex persons. In terms of age, 37% of the respondents were from 18 to 29 years old; 32% from 30 to 39 years old. Being bullied and called names were the most common experiences. Many also felt out of place with the environment, including being compelled to wear a uniform or adhere to a dress code. A few have been threatened with rape and even raped (see Chart 5.4).

The study noted that three respondents aged from 50 to 59 years old and 60 years and above said there had been fewer incidents of bullying and discrimination in recent years, but a rise in bullying based on gender identity and sexual orientation.

These trends have not changed that much based on the findings from interviews by Justice for Sisters and documentation by People Like Us Support Ourselves (PLUSOS), two LGBTIQ human rights groups.

## **BULLYING**

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A 2018 research ranked Malaysia sixth among 28 countries—and second in Asia—in a survey to measure cyberbullying (Nortajuddin, Does Malaysia have a cyberbullying problem? (2020)). According to a 2019 study of 20

countries by UNICEF, 1 out of 3 young people have been a victim of cyberbullying, with 1 in 5 having reported skipping school due to cyberbullying and violence (UNICEF). Another study, “Malaysian and Global Views on Bullying,” conducted by the market research firm IPSOS, found that awareness of cyberbullying is increasing globally, up nine percentage points in 2018 from 2011, and that one in four Malaysian parents said that their child had experienced cyberbullying (Nortajuddin, Does Malaysia have a cyberbullying problem? (2020)).

In May 2019, a 16-year-old Malaysian girl committed suicide after being goaded by responses to a poll she had put on social media asking whether she should die (Hassan).

In a 2019 consultation with 35 children from the ages of 8 to 17 years old, organised by the Children's Commissioner of SUHAKAM with the support of the Children Unit of JKM, the issue of bullying was raised, with the perpetrators being identified as both their peers as well as teachers.<sup>11</sup> The children shared that bullying negatively affects their studies as well as their mental health. They suggested that school management take urgent and proper action when confronted with cases of bullying; that, in bullying cases involving children as perpetrators, the perpetrators be given counselling and proper assistance; and, in cases of bullying by teachers, that the perpetrator be removed from their position as a teacher.

Refugee children have been found to experience higher rates of bullying (Caravita (2016)). From assessments conducted by UNHCR with refugee children, they highlight that they are also bullied by local children in their apartment, playground, en route to school, etc., which poses a protection risk for this vulnerable population, who are not able to address this issue.

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<sup>11</sup> Information provided by Women's Aid Organisation, which participated in the consultation and facilitated the participation of the children.

## CHILD TRAFFICKING

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Malaysia remained on the Tier 2 Watch List in the 2020 US Trafficking in Persons Report, which was released in June 2020 (US Embassy in Malaysia (2020)). This is Malaysia's third consecutive year of being in that category. In 2019, the government identified 2,229 potential victims and confirmed 82 victims of trafficking, an increase compared with 1,305 potential victims and 97 confirmed victims in 2018, and in line with the 2017 number of 2,224 potential victims, though substantially less than the 721 confirmed victims (US Embassy in Malaysia (2020)). Girls are trafficked from Southeast Asia, Bangladesh and Nigeria into sex work, although men and children—including Malaysians—are also trafficked for sex. Increasingly, Malaysian women and children are being trafficked into forced labour. The report said, "Stateless children in Sabah were especially at risk of forced labor in palm oil production, service industries and in forced begging."

Furthermore, "As of the end of the reporting period, the government had not made public the results of a survey it funded in 2018 on the prevalence of forced and child labor in the palm oil sector, despite having completed data collection in January 2019." The report also highlighted that "Malaysian birth registration policies left more than 450,000 individuals, including children, stateless and therefore unable to access some government services, including legal employment, increasing their vulnerability to trafficking."

In recent years, there have been increased reports of trafficking of children for sexual exploitation, including the trafficking of boys. It was estimated that more than 5,000 children were involved in sex work in the Klang Valley as of 2015 (Singh (2015)). Refugee women and children have been trafficked for all forms of labour exploitation, whilst refugee children are also trafficked for child marriage, and even forced begging and criminal activity (UN General Assembly (2019)).

In 2019, there were 98 children of concern to UNHCR engaged in other forms of child labour, and 92 in worst forms of child labour.<sup>12</sup> According to the Special Rapporteur on the sale and sexual exploitation of children, Rohingya children are trafficked to Malaysia via maritime and land journeys that last from 10 days to 1 month.<sup>13</sup>

Initially smuggled across borders, some are subsequently trafficked to fishing boats and palm oil plantations for labour exploitation, including the sex trade, ending up in bonded labour to repay their debts. Underage victims whose information and age are reportedly falsified by recruitment agencies to meet the demand for domestic workforce face additional distress in trying to escape their abusive employers. Many girls are sold to marriage brokers as child brides, often by parents who reportedly resort to marrying off their daughters to foreigners to "protect" them. According to information from UNHCR, in 2014, some of the 26 Rohingya child brides detained at the Thai border by Malaysian immigration authorities reportedly revealed that they had been trafficked for marriage. As at end of August 2018, UNHCR had identified 203 cases of child marriage of Rohingya girls as young as 10 years old.<sup>14</sup>

In addition, there are reports of children who have been trafficked for adoption to childless couples in Malaysia.

In its 2018 Concluding Observations to Malaysia, the CEDAW Committee stated that it "it remains deeply concerned that the State party remains a destination country for trafficking of women and girls, including asylum-seeking and refugee women and girls, for purposes of sexual exploitation, begging, forced labour, or forced marriage (UN Committee on the Elimination of Discrimination Against Women (2018) Paragraph 25)," and also cited "the lack of a formal and uniform victim identification procedure, which may lead to the punishment of women and girls who have been trafficked

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<sup>12</sup> Information provided by UNHCR upon formal written request.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

for violation of immigration laws (UN Committee on the Elimination of Discrimination Against Women (2018) Paragraph 25(a)).” The CEDAW Committee made several recommendations to Malaysia related to the issue of trafficking, including to promptly identify and refer victims of trafficking to appropriate services and protection, ensure victims are not punished for immigration violations, and investigate, prosecute and punish all cases of trafficking, especially of women and girls.

ECPAT International, formerly known as End Child Prostitution and Trafficking, released a 2016 report entitled “Sex Trafficking of Children in Malaysia,” which found that Malaysian children and women were trafficked to Singapore, Hong Kong, Taiwan, Japan, Canada, the United States, Europe and Australia for prostitution. But these children were not just trafficked overseas, as the report also stated that girls from indigenous groups and rural areas in Malaysia were also internally trafficked for the same purposes (The Asean Post (2020)). The report stated that:

The demand for sex drives child sex trafficking globally while poverty, domestic violence and abuse, discrimination and the desire for a better life makes children vulnerable. Children are especially vulnerable to being trafficked because they are often uneducated, easy to overpower and easy to convince. Children may also be in a position where they feel they must help to support their families, and may be sold or sent abroad by family members to do so. Street children, children in refugee camps, and children whose family and community life have been disrupted and do not have someone to look out for them are all especially vulnerable to human trafficking.

Civil society and media reported cases of forced labour that were charged as disparate labour law violations instead of criminal cases of human trafficking. The Special Court in Selangor has two judges with expertise in trying trafficking cases, but the government has not implemented plans to expand special trafficking courts around the country. As of the end of 2019, a group of 45 judges drafted

best practices for handling trafficking cases, but had not yet finalised their recommendations or disseminated the practices. A 2014 directive required prosecutors to meet victims at least two weeks prior to the start of trial to prepare victims to record their statements and to help them understand the judicial process. Prosecutors reported that they engaged with victims; however, limited availability of interpretation services made effective communication difficult, and NGOs reported that some prosecutors did not meet with victims at least two weeks before trial as per the directive.

## HARMFUL PRACTICES

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### Child marriage

According to the Ministry of Women, Family and Community Development in a reply to a parliamentary question on child marriage, in 2018, there were 1,542 cases involving Muslim children, consisting of 170 boys and 1,372 girls; 1,480 of them were Bumiputera, 7 were Chinese, 3 were Indian, whilst 52 were of other ethnicities (Yunus (2020)). Cases involving non-Muslim children totalled 314, of whom 21 were boys and 293, girls; in terms of ethnicity, 194 were Bumiputera, 93 were Chinese, 17 were Indian, and 10 were others.

Overall, there remains a lack of centralised, systematic and disaggregated inter-agency data on child marriage and why it occurs, as well as a lack of documentation on the reasons for approval.

Gender discrimination, patriarchal norms, poverty, religious conservatism, and lack of education and awareness are all considered driving factors of child marriage in Malaysia (UNICEF (2018)). According to a joint report by NGOs Sisters in Islam (SIS) and Asia-Pacific Resource and Research Centre for Women (ARROW):

...child marriage in Malaysia not only has its roots in religious conservatism but also in the patriarchal structure of our society which embraces and opts for patriarchal beliefs and interpretations of religious texts. This is apparent in both Islamic and civil laws in



relation to the minimum age of marriage whereby girls generally have a lower permissible age of marriage or have an exception to the minimum marriageable age where boys do not (Sisters in Islam & Asia-Pacific Resource and Research Centre for Women (2018)).

SIS's efforts to get other Islamic NGOs to jointly call for a legal ban on child marriage were generally met with reluctance. The main reason stems from the perceived societal need to have child marriage as a 'solution' to sexual improprieties among teenagers, especially if they were found to be having premarital sex or teenage girls were found to be pregnant out of wedlock. It was expressed that many parents and child brides themselves saw marriage as their only way out, partly in fear of the 'shame', and, for the parents, fear for their daughters' seemingly bleak future (Sisters in Islam & Asia-Pacific Resource and Research Centre for Women (2018)).

The legal framework on this issue is complex, as child marriage is governed at the federal level by three systems with varying legal ages of marriage: civil law, i.e. the Law Reform (Marriage and Divorce) Act 1976, for non-Muslim children; *Syariah* laws for Muslim children; and customary laws. Although Malaysia has removed its reservation to Article 16(2) of CEDAW on this issue, it has yet to comprehensively reform the legal framework to prohibit child marriage without exception.

In January 2020, the then Deputy Prime Minister Datuk Seri Dr Wan Azizah Wan Ismail announced a five-year plan to address the causes of child marriage in Malaysia, including poverty, lack or absence of access to sexual reproductive health education, and lack of access to education (The Malaysian Reserve (2020)). It is unclear whether the current government plans to follow through on this.

Under civil law, i.e. the Law Reform (Marriage and Divorce) Act, which applies to non-Muslim children, the minimum age of marriage is 18; however, a girl who is at least 16 years old can marry with the authorisation of her state's Menteri Besar or Chief Minister

(Law Reform (Marriage and Divorce) Act 1976 Section 10, 21(2)).

Under the Islamic Family Law (Federal Territories) Act 1984, the minimum age of marriage is 18 for boys and 16 for girls; however, a *Syariah* judge may grant them permission to marry younger, as there is no minimum age designated (Islamic Family Law (Federal Territories) Act Section 8). Notably, in an analysis of case files from the *Syariah* courts of seven states from 2012 to 2016, of 2,143 applications for child marriage, only 10 were rejected, "emphasising that child marriage is easily accepted within the judicial system" (UNICEF (2018)).

Native customary marriages conducted in Sabah and Sarawak are not subjected to the marriage requirements of the Law Reform (Marriage and Divorce) Act, hence its minimum age of marriage for boys and girls does not apply. According to custom, children from these communities may marry at an age younger than the statutory minimum of the Law Reform (Marriage and Divorce) Act, and there is no requirement for the marriage to be registered (UNICEF (2018)).

Sarawak had the highest rates of child marriage in the country, with 1,609 incidents involving non-Muslim girls from 2005 to 2015, and 1,284 Muslim cases from 2011 to 2016 (Ng, Seah and Tay (2020)). Sarawak's Minister of Welfare, Community Well-Being, Women, Family and Childhood Development, Dato' Sri Fatimah Abdullah, has expressed support for raising the age of marriage to 18 (C. (2019)) However, as noted by activists, in view of the three legal systems—including the native *adat*—change will take time, involving, as it were, discussion among communities and

**Case study** (provided by Women's Centre for Change, Penang; name and identifying information have been changed or redacted for the child's protection and privacy)

Zara, 12, got to know a man named Qimie through Facebook. He told her he was 24 years old. After two months of socialising online, Zara wanted to meet Qimie.

On 25 January 2018, Zara asked her best friend, Senah, to accompany her to meet Qimie. That morning, which was a school day, they met Qimie at a shop and got into his car, supposedly to visit a recreational park. Along the way, Qimie stopped his car and raped Zara in the car in Senah's presence. Terrified, Senah ran off and left Zara with Qimie.

Senah told Zara's aunt and father about the incident. When Zara returned home, she disclosed that Qimie had raped her. Zara's aunt brought her to a police station to lodge a report, and then brought her to the hospital. Zara stopped schooling after that.

Qimie was arrested by the police two days after the incident and charged for raping a minor. Qimie's real name was revealed to be Mansor. Worse, he was actually 45 years old and married with five children. He was allowed out on bail.

The hearing of the case began on 25 August. During the trial, a watching brief lawyer was present on behalf of several women's organisations monitoring the case. Zara was called to testify. The case was postponed to 21 September.

However, on 1 September, Mansor gave RM5,000 to Zara's father and married her.

When the case came up for continued trial on 21 September, Zara informed the court that she had withdrawn the police report against Mansor because she had got married to him and hence did not want her husband to be jailed. She also informed the court that Mansor did not rape her and that she was forced to lie by her aunt.

other stakeholders (Ng, Seah and Tay (2020)) (Ng, Seah and Tay, Married at 12, a mother at 13: A Malaysian child bride's story (2020).

Among the many concerns with child marriage is the lack of accountability of rapists when they marry their victims who are minors. A man commits rape when he has sexual intercourse with a girl, with or without her consent, if she is under 16 (The Penal Code of Malaysia (Act 574) Section 375). The lower age of 16 for girls to marry is premised upon the fact that any sexual relations with a girl under 16 can be prosecuted as statutory rape. An exception to this section is that sexual intercourse by a man with his own wife is not rape (Sisters in Islam & Asia-Pacific Resource and Research Centre for Women (2018) p32).

Currently, State intervention programmes on eliminating child marriage often exclude refugees, despite information revealing that Rohingya girls from Bangladesh are being trafficked to Malaysia for marriage (Ahmed (2019)). The marriage of an 11-year-old Rohingya girl was stopped in Penang following intervention by CSOs, the religious department and the police. The state welfare department in this instance agreed to monitor

the child's situation (Nambiar (2019)).

However, such intervention by authorities is inconsistent and must be standardised.

There is underreporting of child marriages in the refugee community, particularly from Muslim refugee communities. These marriages are not registered and are conducted by ustaz or religious leaders in the community; hence, marriages are not regulated and the marriage certificate in such cases is not recognised as a legal document (Tatam (2018)). In 2019, there were 190 children of concern to UNHCR who were child parents; 171 were married.<sup>15</sup>

### Female genital mutilation

Female genital mutilation (FGM) is still a common practice in Malaysia. The National Fatwa Council introduced a fatwa (religious edict) in 2009 declaring that female circumcision is obligatory for all Muslim women (International Institute of Advanced Islamic Studies Malaysia (2019)).

In its 2018 Concluding Observations to Malaysia, the CEDAW Committee stressed that "female genital mutilation, female circumcision or female genital cutting cannot be justified on religious grounds and

<sup>15</sup> Information provided by UNHCR upon formal written request.

constitutes a harmful practice to exert control over the bodies and sexuality of women and girls in violation of the Convention, irrespective of the extent of removal or cutting of the female genital organs and of whether or not it is performed within or outside a medical institution.” The Committee recommended that Malaysia prohibit all forms of FGM in its criminal code, to undertake awareness raising and educational activities aimed at promoting consensus towards the elimination of FGM, and—within a two-year timeframe—to engage in constructive dialogue with religious authorities, women’s NGOs and the public to convey the point that FGM cannot be justified by religion.

In its reply to the CEDAW Committee’s Concluding Observations in 2018, the Malaysian government stated that the MOH monitors all states’ submissions of the inspection of the genitalia of Muslim baby girls aged 18 months who visit clinics to obtain their DTAP (diphtheria, tetanus, pertussis) booster vaccination. It said that since 2015, a total of 83–85% of these Muslim baby girls circumcised by medical professionals in private clinics have not faced any complications (UN Committee on the Elimination of Discrimination against Women (2018) p5).

In other words, however, 15–17% of them have had complications.

The government has not complied with the CEDAW Committee’s recommendation, as there has not been any significant development towards eradicating FGM and making it illegal. The public discussion around FGM has been intermittent, and the government has failed to identify it as a harmful practice irrespective of the extent of removal or cutting of the female genital organs, and whether it is performed within or outside a medical institution.

The issue of FGM was raised during Malaysia’s Universal Periodic Review in November 2018, wherein the Malaysian delegates defended the practice of infant female circumcision as a “cultural obligation.”

A week later, the then Deputy Prime Minister and Minister of Women, Family and Community Development, Datuk Seri Dr Wan Azizah Wan Ismail, reiterated the government’s stand on female circumcision, calling it part of Malaysian culture. This is despite her training as a medical doctor; doctors are required to abide by the Hippocratic Oath of “first, do no harm.” She also stated that her ministry was holding discussions with the Ministry of Health to look at the benefits and downsides of the practice (Babulal (2019)).

NGOS are aware of only two initiatives related to FGM since Malaysia’s review. The first of these initiatives was a dialogue convened by the National Council of Women’s Organisations (NCWO) in March 2019 with Islamic studies expert Dr Afifi al-Akiti and representatives from the Ministry of Women, Family and Community Development, the Attorney General’s Chambers, and the Department of Islamic Development (commonly known by its Malay acronym JAKIM), among others. Subsequent to this, NCWO submitted a memorandum to the National Fatwa Council and JAKIM to recommend a review of the 2009 fatwa on FGM. No new developments have followed since. The second initiative undertaken was a multi-year study on knowledge, attitudes, and practices of parents and health professionals around FGM, funded by the Ministry of Women, Family and Community Development, and administered by NCWO.

In November 2019, in its submitted commitment statement for the Nairobi Summit on the Twenty-fifth Anniversary of the International Conference on Population Development (ICPD), the Ministry of Women, Family and Community Development was silent on the issue of FGM or even of its preferred terminology: female circumcision. The Ministry’s silence is deafening in view of its role as the national focal point for addressing reproductive health issues and gender equality (The Nairobi Summit Commitments on ICPD25 (2019)).

In December 2019, in response to the Child Rights Coalition Malaysia's launch of a report which cited Malaysia's obligation to eradicate FGM under both CEDAW and the CRC (UN Committee on the Elimination of Discrimination against Women & UN Committee on the Rights of the Child (2014)), the government committed to submit its overdue second State Report to the CRC Committee in 2020 (The Sun Daily (2019)).

Six years after both treaty bodies emphasised FGM as a harmful practice that discriminates against women and girls, the practice remains unchecked and thriving in Malaysia.

## **VIOLENCE AGAINST REFUGEE CHILDREN**

In its 2018 Concluding Observations, the CEDAW Committee stated its concern that

...the lack of legal and administrative framework to protect and regularize the status of asylum-seekers and refugees in the State party exposes asylum-seeking and refugee women and girls to a range of human rights violations, including arbitrary arrest and detention, exploitation, sexual and gender-based violence, including in detention centres, as well as limited access to the formal labour market, public education, health, social services and legal assistance (UN Committee on the Elimination of Discrimination Against Women (2018) Paragraph 45).

It also recommended that Malaysia ratify the 1951 Convention Relating to the Status of Refugees, adopt national asylum and refugee legislation and procedures in conformity with international standards, and establish alternatives to detention for asylum-seeking and refugee women and girls (UN Committee on the Elimination of Discrimination Against Women (2018) Paragraph 46).

The joint general comment of the CRC Committee and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families makes clear that immigration detention as well as acts to intercept refugees and asylum seekers are a violation of children's rights (UN

Committee on Migrant Workers and UN Committee on the Rights of the Child (2017)).

The Immigration Act 1959/63 does not differentiate adults and children; children below the age of 18 are treated like adults and can be arrested, detained and deported, and receive whipping and imprisonment sentences like an adult, although the provision that allowed the Children's Court to hand down whipping as a sentence was deleted in the 2017 amendment to the Child Act. The Immigration Department of Malaysia's SOPs also refer to a child as being a person under the age of 12 (Immigration (Administration and Management of Immigration Depots) Regulations 2003, Regulation 11). The result is that any child above the age of 12 is treated as an adult, and that data being captured on the number of children in immigration detention centres is also potentially incorrect.<sup>16</sup>

Specific incidents of abuse and neglect of children within immigration detention is unknown, as cases go unreported or the child is deported to the country of origin. There is no formal mechanism within the detention system to protect children from potential violence, especially for children detained with large numbers of unrelated adults.

In 2019, a group of Filipino migrants who were deported from detention centres in Malaysia were reportedly treated like animals, the children were terrified of the verbally abusive officers, and many detainees were in need of medical attention (Choong (2019)). The harsh treatment in these centres appears to amount to neglect and abuse of detainees.

Refugee, asylum-seeking, migrant, stateless and other undocumented children can also be subjected to whipping for violation of an immigration offence under the Immigration Act. Although it is applied at the discretion of the courts, access to legal representation and incorrect age determination have resulted in children being sentenced to whipping for violating immigration offices.<sup>17</sup>

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<sup>16</sup> Information provided by Asylum Access Malaysia.

<sup>17</sup> Ibid.

## RECOMMENDATIONS TO THE GOVERNMENT

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### 1. Domestic violence against children

- a.* Collect and disseminate comprehensive and sex-disaggregated data on domestic violence against children, including by integrating national data among all stakeholders such as the police, JKM and hospitals.
- b.* Include refugee children affected by domestic violence in inter-agency data collection and action-oriented research, and share information with relevant stakeholders.
- c.* Establish a dedicated hotline for child survivors of domestic violence, sexual abuse, trafficking and other forms of violence, or have dedicated staff as part of *Talian Kasih* who are trained to respond to children, including refugee, asylum-seeking and stateless children.
- d.* Allocate resources for specialised training for first responders—especially police and JKM officers—as well as legal and judicial authorities on how to handle child abuse cases under the Domestic Violence Act, the Child Act, and the SOACA, as well as on the best interests principle and determination, communicating with children, and how to determine cases of abuse with limited evidence.
- e.* Implement platforms to build up inter-agency collaboration at both State and district levels.
- f.* Conduct community awareness-raising programmes (e.g. programmes on strengthening family unity under JKM and the Ministry of Women, Family and Community Development), including among refugee communities.
- g.* Repeal all provisions in the law, including in the Child Act, Education Regulations, Penal Code, Criminal Procedure Code, and the Syariah Criminal Offences laws allowing for corporal punishment of children, in line with the CRC Committee’s 2006 Concluding Observations.

### 2. Child sexual abuse

- a.* Conduct regular trainings of all stakeholders, including judges, magistrates, DPPs, intermediaries and first responders in SOACA, the SOAC Guidelines, and other related legislation.
- b.* Engage in the regular and systematic inter-agency collection of disaggregated data on child sexual abuse, including the number of police reports, prosecutions and convictions under the SOACA, Domestic Violence Act, and Child Act. This should adhere to requirements of consent and confidentiality, include refugee children within the scope, and include data from community partners, including relevant NGOs and community-based organisations.
- c.* Institute clear SOPs for schools on what to do when a case of child abuse is disclosed or suspected. These SOPs must extend to refugee learning centres, community-based organisations and *madrasahs*, and need to be consistently regulated. All staff from such places must be trained on child protection, recognising sexual and gender-based violence, laws governing children, response, referral pathways and SOPs developed to understand their roles and responsibilities.

- d.* Train teachers and those qualifying to be teachers how to conduct child personal safety programmes.
- e.* Implement a standard system for rural clinics, schools, *madrasahs*, learning centres, and all relevant agencies and organisations that come into contact with children to liaise with One Stop Crisis Centres and Suspected Child Abuse and Neglect (SCAN) teams when dealing with a child who has been abused.
- f.* Introduce a simple means for children when they are experiencing abuse online to be able to report it from their device.
- g.* Allocate adequate resources to the police through the federal budget for human resources, training and technology to catch online perpetrators.
- h.* Institute widespread awareness campaigns for children to educate them on how to protect themselves and report online sexual abuse, online abuse and bullying, and whom to contact for help. This should extend to children in learning centres, madrasahs, community-based organisations, public transportation, and public and private spaces.
- i.* Introduce victim support mechanisms and counselling for survivors of child sexual abuse.
- j.* Enhance police measures and protocols for child sexual abuse cases, including reverting to a policy that such reports cannot be categorised as “No Further Action.”

### 3. Child trafficking

- a.* Issue a clarifying mandate that the definition of a child in the Child Act is to be supreme, and that this definition must be applied in any matter regarding a child, regardless of immigration status or any other factor. Harmonise anti-trafficking laws, the Child Act and SOACA.
- b.* Include refugee children sent to Malaysia for marriage in the response and legislative framework.
- c.* Adopt the CEDAW Committee’s recommendations on trafficking from its 2018 Concluding Observations to Malaysia:
  - i.* Establish a formal victim identification procedure that is applied uniformly throughout the country, to promptly identify and refer victims of trafficking to appropriate services and protection, including assessment of their needs for international protection, and systematically train all relevant law enforcement officials on gender-sensitive procedures for dealing with victims of trafficking;
  - ii.* Ensure that victims of trafficking are not punished for violations of immigration laws, and that they obtain effective protection—such as temporary residence permits irrespective of their ability or willingness to cooperate with law enforcement authorities—as well as redress, including rehabilitation and compensation;
  - iii.* Investigate, prosecute and punish all cases of trafficking in persons, especially women and girls, including those involving law enforcement

officials, and ensure that the sentences imposed on perpetrators are commensurate with the gravity of the crime in order to combat impunity;

- iv. Allocate adequate resources for the effective and sustainable implementation of existing services and assistance offered to victims of trafficking, and remove all bureaucratic barriers to guarantee in practice their right to freedom of movement and the right to work;
- v. Reinforce international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking. This includes by exchanging information and harmonising legal procedures to prosecute traffickers with countries of origin, transit and destination, in particular with countries in the region.

#### **4. Cyberbullying**

- a. In accordance with the suggestions of children during the consultation with the Children's Commissioner in April 2019:
  - i. take urgent and proper action when confronted with cases of bullying;
  - ii. in bullying cases involving children as perpetrators, provide the perpetrators counselling and proper assistance; and
  - iii. in cases of bullying by teachers, remove the perpetrator from their position as a teacher. Such support must also be extended to refugee, asylum-seeking and stateless children.
- b. Incorporate within the MOE's safe school SOPS on how to address all forms of bullying, including informing pupils how to report.

#### **5. Child marriage**

- a. Amend the Age of Majority Act 1971, Law Reform (Marriage & Divorce) Act 1976, Child Act and Islamic Family Law Section 8 provisions in all states and Federal Territories Enactments to standardise the age of marriage for children in Malaysia, including refugee, asylum-seeking and stateless children.
- b. Enact a Prohibition of Child Marriage law, similar to the Indian Prohibition of Child Marriage Act 2006, which not only bans child marriage but also penalises person(s) who conduct the marriage rituals or solemnise the ceremony and the parent(s) who facilitates the child marriage, as well as protects children who wish to exit from child marriages when they reach adulthood.
- c. Engage in public education for all stakeholders on the disadvantages and negative impacts of child marriage on society and children, including refugee, asylum-seeking and stateless children.
- d. Adopt Resolution 71/175 adopted by the United Nations General Assembly on 19 December 2016 on Child, Early and Forced Marriage.
- e. Engage in the regular collection of comprehensive data and research around the frequency and causes of child marriage in Malaysia, including among refugee communities.

- f. Formulate a National Plan of Action that aims to eliminate child marriage in Malaysia by 2024, including among refugee, asylum-seeking and stateless children. Extend the current national action plan to refugee children (currently only the sexual and reproductive health services and education are extended).
- g. Strengthen governance for the protection of children by establishing a Children's Commission (with wider powers than those currently held by the SUHAKAM Child Commissioner) and a high-level inter-sectoral committee that includes NGOs, to formulate policies and monitor the implementation of the policies by all relevant agencies at State and Federal levels, such as the ministries of health, education and labour; and to collect and analyse data pertaining to the status of children, and take steps for improvement and enhancement. The Child Commission should be headed by a Child Commissioner who shall report directly to Parliament, with the powers to oversee, regulate and supervise all agencies dealing with children—including refugee, asylum-seeking and stateless children—to address not only the issue of child marriage but to ensure that all issues pertaining to children in Malaysia can be monitored, supervised, regulated and enforced by one Commission, which is answerable to Parliament.
- h. Provide sexual and reproductive healthcare and education to all—irrespective of age or marital status—and strictly on a non-judgmental basis.
- i. Provide adequate support, solutions and measures for pregnant girls—including refugee, asylum-seeking and stateless girls—including finding means by which these girls can continue with their education.
- j. Make secondary education compulsory and ensure free access for all children. Providing cash incentives to families that have girls who complete their secondary school education up to a minimum of SPM (*Sijil Pelajaran Malaysia*, or Malaysian Certificate of Education) could also help prevent drop-outs. Relatedly, allow refugee children to access government schools or work together with UNHCR and UNICEF to establish similar programmes for refugee children who complete skills training or alternative education.
- k. Strengthen the provisions in the SOACA relating to sexual offences against children, and the Penal Code offences listed in the schedule to the said Act, with express provisions stating that marriage at any time shall not be a defence to any of the stated offences.

## 6. Female genital mutilation

- a. In accordance with the CEDAW Committee's 2018 Concluding Observations to Malaysia: 1) prohibit all forms of FGM in the Penal Code; 2) undertake awareness-raising and educational activities aimed at promoting consensus towards the elimination of FGM, and 3) engage in constructive dialogue with religious authorities, women's NGOs and the public to convey the point that FGM cannot be justified by religion.

## 7. Violence against refugee children

- a. Amend the Immigration Act to reflect the age of children as being below 18 so that children are not charged with immigration-related offences.



- b.* Issue a clarifying mandate that the definition of a child in the Child Act is to be supreme, and that this definition must be applied in any matter regarding a child, regardless of immigration status or any other factor.
- c.* Establish alternatives to detention for all children.
- d.* Include abused, neglected and exploited refugee, asylum-seeking, and stateless children (including those suspected to have been abused) in state/NGO programmes and ensure they have non-discriminatory access to child protection systems and services in Malaysia.
- e.* Adopt the CEDAW Committee's recommendations on trafficking from its 2018 Concluding Observations to Malaysia:
  - i.* Ratify the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol thereto without further delay;
  - ii.* Adopt national asylum and refugee legislation and procedures, in conformity with international standards to ensure that the specific needs of women and girls are addressed and the principle of non-refoulement codified;
  - iii.* Fully respect the principle of non-refoulement and ensure that no individual who is registered with the UNHCR is deported;
  - iv.* Ensure full access to asylum procedures for persons seeking asylum in the State party, including women and girls;
  - v.* Establish alternatives to detention for asylum-seeking and refugee women and children, and in the meantime take concrete measures to ensure that detained women and girls have access to adequate hygiene facilities and goods, and are protected from all forms of gender-based violence, including by ensuring that all complaints are effectively investigated, perpetrators are prosecuted and adequately punished, and victims are provided effective remedies;
  - vi.* Ensure that asylum-seeking and refugee women and girls have access in practice to income-generating opportunities, education, healthcare and other basic social services that are appropriate to their particular needs, as well as legal assistance.



# Cluster 6— Family environment & alternative care

Articles 5, 9–11, 18(1), (2), 19–21, 25, 27(4), 39

It is estimated there are 64,000 children in Malaysia who are in institutional care and 90% of those who live and grow up in institutions are not orphans as they have at least one living parent (Orphan Care).

## ADOPTION

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In general, there are three categories of adoptions in Malaysia: Muslim adoption, non-Muslim adoption, and international adoption, as well as a range of legal means to adopt, whilst Sarawak and Sabah have their own separate laws.

The first of these is registrar adoption, or departmental adoption. This type of adoption is made under the Registration of Adoptions Act 1952 via the National Registration Department (NRD). The prospective parents, who can be either Muslims or non-Muslims, will need to take care of the child for at least two years before they may apply to register the adoption of the child at the NRD. The adoptive parents have only custodial rights over the adopted child, with the responsibility to care and educate the child. That child will not inherit any property belonging to their adoptive parents should the latter die intestate.

The second is court adoption. This is effected through the court process under the Adoption Act 1952. Only non-Muslims can adopt through a court order. The adoptive parents have a duty to obtain a statutory declaration

from the child's natural parents consenting to the adoption. After three months of caring for the adoptive child, the adoptive parent(s) can petition the Sessions Court through a lawyer for the adoption order. The original birth certificate of the child to be adopted must be produced.

The adoption order is given after the court weighs written reports from the Department of Social Welfare (JKM) and the child's adoptive parents. The adopted child must be younger than 21 years old. Once an adoption order under the Adoption Act has been made, a replacement birth certificate that names the adoptive parent(s) as the child's new parent(s) will be issued.

The East Malaysian states have their own systems. Registration of adopted children in Sabah (National Registration Department of Malaysia) is made as per the Adoption Ordinance 1960, Native Adoption Regulations 1961 and the Sabah Syariah Court Enactment 2004 and the rules of the Sabah Syariah Court (adoption and adoption practices) (National Registration Department of Malaysia).

In Sarawak, adoption is governed by the Adoption Ordinance 1958 and the Adoption Ordinance (Amendment) 2002 (Chapter A100) administered by the state government through the District Office under the Resident, the later amendment being brought

in to close a loophole spotted by overseas agencies arranging international adoptions.

Malaysia has strict adoption laws designed to end baby farming. However, instead of solving the problem, this move has pushed it underground (Nortajuddin (2020)). The same was observed of Indonesia, where similar laws were put in place for the same reason. Strict adoption requirements erect barriers in the legal adoption channels. This, combined with ineffective policing, fuels the underground baby market.

Malaysia does not have a National Plan of Action (NPA) on child protection (UNICEF East Asia and Pacific Regional Office (2009)). An NPA is essential for producing a clear legal framework, organising agency coordination, identifying victims, collecting data and implementing strategies to combat the sale and trafficking of children. The first step to combating the sale of children must be to implement an NPA with the help of UNICEF, UNHCR, UN Population Fund (UNFPA), other international NGOs and relevant stakeholders.

## ALTERNATIVE CARE

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### Informal

Kinship care is mostly informal alternative care and a common form of care for children who are no longer with their parents. Kinship care is seen as most successful when taken up by immediate relatives, uncles, aunts, grandparents etc., as it allows children to continue established relationships and usually allows them to remain in their community. Kinship care is often long-term and at times permanent.

The measurement of success in kinship care is when the child's basic needs and safety are met, i.e. these caregivers are not perpetrators of abuse or violence. In the case of refugee and asylum-seeking children, depending on the family's socioeconomic background, there

are instances of these children being passed to other relatives who can care for the child.

It should be noted that there are very limited guidelines given or any legislation governing the informal alternative care to safeguard the rights and benefits of the children. To ensure that the children are able to access their rights (education, healthcare, food etc.), the Malaysian government has provided aid or financial assistance to the families who take care of related children and fulfil the requirements.

Kinship care is the most common form of childcare for stateless and refugee children, according to UNHCR's case management information on unaccompanied and separated children. Other types of care identified are unsupervised independent living, particularly common amongst unaccompanied minor boys, community-based and family-like care.

However, the information gathered indicates that such care arrangements are not stable given poverty and livelihood constraints, poor awareness of gender equality and child rights, poor access to child protection systems, services and educational opportunities, hazardous working environments, e.g. construction sites. Hence refugee unaccompanied children in particular experience all forms of abuse, neglect and exploitation.

Placement of the child in an institution, i.e. shelters, can also be done without the court. It can be done legally, e.g. by relatives who are not able to care for the child. According to a case management and mapping by a member of the Child Rights Coalition Malaysia (CRCM), there is a lack of institutional care or safe placements for adolescents, particularly boys.<sup>18</sup>

Institutional care is used as the last resort for refugee children experiencing heightened risks, i.e. abuse, exploitation or neglect, and when perpetrators are found to be at large.

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<sup>18</sup> Please also see key findings in the Handbook for Foster Care Agency (UN High Commissioner for Refugees (2018))

No.	Form of Care	Legislation
1.	Foster care	Child Act 2001, s30
2.	Adoption	Registration of Adoptions Act 1952 & Adoption Act 1952 (satisfied with evidence either oral or documentary for adoption, which is applicable to Muslims and non-Muslims), Muslims—Islamic Family Law (Federal Territories) Act 1984 (procedures on guardianship for children of Muslim families).  In Sabah: Adoption Ordinance 1960, Native Adoption Regulations 1961 and the Sabah Syariah Court Enactment 2004 and the rules of the Sabah Syariah Court (adoption and adoption practices).  In Sarawak: Adoption Ordinance 1958 and the Adoption Ordinance (Amendment) 2002 (Chapter A100)
3.	Residential care/Institution care (NGOs)	Care Centres Act 1993 & Child Act 2001, amended in 2016 governing the establishment of child care centres in Malaysia, which means child care centres would need to be registered with the Department of Social Welfare, some eligible to receive grants or subsidies from the government.

Table 6.1. Laws governing formal alternative care in Malaysia

## Formal

Formal alternative care includes but is not limited to foster care, legal adoption and/or institutional care. There are three legislations to safeguard formal alternative care, as stated in Table 6.1 (Mohd and Kadir (2012)).

All child care places—especially state-run children’s homes—should enable all children to feel culturally safe and connected to their culture of origin.

## Uncertainty due to lack of citizenship

For children without record of parents with Malaysian citizenship, the adoption process by interested parents would be hampered (The Star (2020)).

## Family support programmes

The government also provides family support programmes, which are the first level of care to prevent children from entering institutional care. A range of services such as financial assistance and psychosocial interventions are provided to families in crisis situations in order to try to prevent a child from being separated from his or her family.

The Department of Social Welfare (JKM) runs programmes to help families improve their

socioeconomic situation and to enhance their quality of life. The programmes are two-fold:

- direct financial assistance and psychosocial support to poor families and their children; and
- community-based preventive services provided to children at risk and their families through child activity centres supervised by child protection teams (UNICEF and UNFPA) (UNICEF (2006)).

## Insufficient number of social workers

The ratio in Malaysia is 1 social worker for every 8,576 citizens—lower than countries such as the United States (1 for every 490); Australia (1 for every 1,040), and Singapore (1 for every 3,448) (Anwar and Surip (2020)). It is reported that not all social workers employed by JKM hold the right qualifications.

Legislation is due to be tabled in Parliament to bring in a licensing system for professional social workers which over time will ensure key child protection officers are qualified. However, a bigger budget will be required if there are to be enough professionals on the ground.

The philosophy behind the Child Act is to help children at risk to be cared for in their own community, by working with families to enable them to give the child the care they need or finding alternative, appropriate care. For the children who have come to the authorities' attention due to their being charged with an offence, the aim is to try to divert them from institutional care, if feasible, taking into account the severity of the offence and the child's situation. With current ratios of trained child care officers and the general population, these laudable intentions will be hard to realise.

The staff of children's homes or places of detention also often lack the appropriate training. This needs to be addressed. Good child care practice dictates that children removed from their own families, for whatever reason, should be able to maintain their own sense of identity and stay connected to those within their families who can be helpful to them. Whilst institutions need to cater to the cultural norms of the country, all children, whatever their ethnic background, should feel culturally safe. This requires staff to be culturally sensitive and culturally competent.

## RECOMMENDATIONS TO THE GOVERNMENT

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### 1. Government's duty to children

- a.* Plan and make all necessary arrangements to enable the children to stay with their parents.
- b.* Make new laws, policies and plans for emergency, short-term and long-term (permanent) alternative care to ensure that the children's interests are safeguarded in a timely manner.
- c.* Register all agencies and facilities offering alternative care services and adhere to a code of conduct.

### 2. Monitoring of family-based care

- a.* Encourage family-based care for children instead of institutional care and monitor all placements to review the quality of care and the need for them to continue (UN General Assembly).
- b.* Carry out rigorous assessment processes before matching parents and children for adoption or fostering or any type of alternative care. After the adoption, closely monitor the children's development to ensure their safety and well-being. Most important of all is the role of the lead agencies—notably the NRD and JKM in ensuring the successful implementation of family-based care for children (Child (Family Based Care) Regulations 2017). The family-based care should aim to:
  - Re-integrate children with their biological families;
  - Place them with other family members, adoptive or parents; and
  - Place special needs children in a family-based environment where they can receive need-specific professional care.

Where no family-based or community-based alternatives can be found, offer institutional care only as an interim, short-term option with the goal of placing children in protective and permanent family settings as soon as possible. Institutional

care should be considered a last resort, only after all other alternative care options have been exhausted.

### **3. Urgency for data**

- a.* Produce accurate and reliable figures of children living in alternative care to enable Malaysia to meet the objectives of and obligations under the CRC.
- b.* Conduct more studies on alternative care of children in Malaysia, as some children living in privately owned or unregistered centres or some sort of informal alternative care are often not counted (due to their stateless or refugee status).

### **4. Aftercare support**

- a.* Require facilities to equip the child with social and life skills to become self-reliant and to play a role in the community. The process of transition from care to aftercare should take into consideration the child's gender, age, maturity and circumstances.
- b.* Encourage children leaving care to take part in the planning of aftercare life. Provide children with special needs, such as disabilities, with an appropriate support system. Prepare aftercare as early as possible, well before the child leaves.

### **5. Increase the number of social workers**

- a.* Legislate a Social Workers Profession law and assist NGOs in employing qualified people. Provide more social workers to better serve the needs of the children. Current child care services working with both the child's family of origin and any alternative family are too overstretched to provide an effective system. Alternative care such as fostering, with or without a view to adoption, also requires implementation by skilled people to provide adequate services with follow-up.

### **6. Expand protection for stateless & refugee children**

- a.* Establish a specific programme for unaccompanied children including refugee children, or leverage on nonprofits like SUKA Society Malaysia and Yayasan Chow Kit on their alternative care programmes for these children.
- b.* Establish a suitable and specialised alternative care arrangement and rehabilitation programme for sexually abused children who manifest risky sexual behaviours.





# Cluster 7— Disability, basic health & welfare

Articles 6(2), 18(3), 23, 24, 26, 27(1-3), 33

## **DIGNITY, SELF-RELIANCE, & ACTIVE PARTICIPATION OF CHILDREN WITH DISABILITIES; NON-DISCRIMINATORY ACCESS TO HEALTHCARE & WELFARE SERVICES**

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### **Statistics**

According to the National Health Morbidity Survey 2019, childhood overall functional difficulty prevalence is at 4.7% (at least one domain of functional difficulty) among children aged 2–17 years old. Based on the estimated population of children under 18 years of age in 2019, there would be approximately 437,100 children with a disability in Malaysia (Institute for Public Health, National Institutes of Health, Ministry of Health (2020) p248–9) (Department of Statistics Malaysia (2019)).

The number of children (0–18 years old) registered in the Department of Social Welfare's (JKM) database as having a disability was 176,520 in 2018, which was approximately 1.9% of the population under 18 years old. This number grossly underrepresented the 4.7% of childhood disability prevalence reported by the Ministry of Health (MOH) (Department of Social Welfare Malaysia

(2019) p151) (Department of Statistics Malaysia).<sup>19</sup>

Among the likely reasons for such discrepancy are the system of voluntary registration of disability status, a lack of awareness among the public regarding the need to register, and a fear of stigmatisation, discrimination, and rejection from mainstream schooling.

Until the Persons with Disabilities Act 2008 is amended to include a clause on anti-discrimination against people with disabilities, mandatory registration of children with disabilities may be a barrier to access education in regular mainstream schools. However, mandatory registration of children with disabilities would ensure that every child with disabilities is accounted for, and equitable resources could be allocated by relevant agencies, including to ensure access to education.

### **Legislative framework to address disability, basic health & welfare**

Malaysia acceded to the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2010, but maintains formal reservations to Article 15 (freedom of torture or cruel, inhuman or degrading treatment or punishment) and Article 18 (liberty of movement and nationality), and has not yet

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<sup>19</sup> Child population at 9.4 million in 2018.

ratified the Optional Protocol to the CRPD (Harapan OKU Law Reform Group (2019)). Malaysia has not once submitted its state report to the UN CRPD Committee since becoming a party to the convention.

Although Malaysia has acceded to the CRPD, disability schemes are still treated as welfare benefits, leading to the social exclusion of persons with disabilities (PWD). Due to a lack of implementation and comprehensive domestic legal provisions—as well as a lack of understanding of disabilities—children with disabilities are often socially and institutionally excluded (UNICEF Malaysia (2017)). Although Malaysia has the Persons with Disabilities Act 2008, the Act is not fully aligned with the CRPD and fails to explicitly protect against discrimination based on disability status, as does the Federal Constitution (Harapan OKU Law Reform Group (2019)). The Act has been described as a “toothless tiger” due to its lack of redress and enforcement mechanisms (Harapan OKU Law Reform Group (2019)).

### **Access to education**

Under the Ministry of Education (MOE), children with disabilities have three educational options: (a) Special Education, (b) Special Education Integration Programme and (c) Inclusive Education Programme. Special Education schools for deaf and blind children only provide up to Form 3 education (Ministry of Education (2019) p9). As of 2019 there are 28 special education primary schools (20 urban, 8 rural); 6 special education secondary schools (5 urban, 1 rural); and 15 private special education schools including both primary and secondary (Ministry of Education (2019) p11).

The Special Education Integration Programme places children with special educational needs in segregated classrooms within the mainstream school compound. At the preschool level there are 179 classes (179 teachers); at the primary level there are 5,653 classes (8,191 teachers); and at the secondary level there are 4,278 classes (5694 teachers) (Ministry of Education (2019) p22).

Within the Inclusive Education Programme, in which students with special educational needs study fully or partially together in regular classrooms with other students, there were 26,326 students enrolled in 2019 (24,998 in partial inclusion and 1,328 in full inclusion) (Ministry of Education (2019) p23).

As of January 2019, a total of 83,039 children with disabilities were enrolled in MOE’s Special Education schools, Special Education Integration Programmes, and Inclusive Education Programmes from preschool to secondary school (Ministry of Education (2019) p22). These statistics, whilst welcomed, would be more useful if there were more details so that it could be ascertained the levels of access to education for specific types of special needs (e.g. children with learning difficulties, physical disabilities, etc.) and which children are rejected and why in different parts of Malaysia. For instance, it has been reported that more than half of children with disabilities are not attending school in Sabah, at all levels of education (UNICEF (2019) p25).

The total number of children with disabilities in private Special Education schools is 864 (Ministry of Education (2019) p21).

There is no comprehensive data on children with disabilities in alternative schooling (regular mainstream schooling in private, international, home schools etc.).

With 16,032 students in full inclusion programmes via the Special Education Integration Programme and regular schools, this represents 19.3% of the total population of children with disabilities who are fully included in MOE schools. With 24,998 students in partial inclusion programmes, this represents 30.1% of the total population of children with disabilities who are partially included in MOE schools, although it is unclear what partial inclusion means. The Malaysian Education Blueprint 2013–2025 targeted 30% children with special educational needs to be in mainstream education in 2015; the current full inclusion rate is far below the target for 2015 (Amar-Singh, Education in

Malaysia for children with Special Needs: Progress, Critical Gaps, Efforts under Way and Policy (2019)).

In January 2019, the Zero Reject Policy was implemented to ensure that no child with a disability would be refused from government primary schools of their choice (either mainstream or Special Education programmes) (The Sun Daily (2019)). As a result, enrolment of children with disabilities in national schools increased by 4,535 as of June 2019 after the implementation of the policy. However, the Education (Special Education) Regulations 2013 states that children with disabilities are subject to a maximum three-month probation to “determine suitability” of the child with a disability to attend school, without the child or his/her parents’ input (Education (Special Education) Regulations 2013).

In October 2019, NGO Malaysian CARE’s Miri office organised a training on Positive Behaviour Solutions training for parents of children with special needs in collaboration with Sunflower Centre, Supa Readers, KADZ Development Centre and Flourish Platform. The participants revealed that despite implementation of the Zero Reject Policy, some schools limit how many students they are able to take in. Some children were not able to be retained in schools as they did not receive adequate support. Additionally, it was identified that there were not enough specialists (speech therapists, occupational therapists, physiotherapists, psychologists) in Miri, leaving children on waiting lists for an appointment. Furthermore, the waiting period is between one week (if urgent) and five to six months.

In November 2019, NGO Malaysian CARE’s Miri office conducted a Shadow Aide Training for parents and teachers of children with special needs in response to an increase in demand for shadow aides (stemming from the government’s Zero Reject Policy). Teachers

(i.e. from mainstream classes) said that they feel unable to cope with children with disabilities, as they do not have the experience, support, or training. Parents were not sure how to engage or what to do should there be a need for their child to have extra assistance in school or the classroom (i.e. to have a shadow aide with their child).

It is recommended that the Education (Special Education) Regulations and Education Act 1996 be amended to mandate inclusive education as a right of all children with disabilities, and to repeal the probation period to determine ‘suitability’ of the child to attend school.

The barriers that remain for children with disabilities—including refugee, asylum-seeking, and stateless children with disabilities—to participate in regular schools reflects the attitude of society at large, which continues to marginalise and discriminate against children with disabilities from fully participating in society.

### **Access to healthcare**

Existing community-based rehabilitation (or in Malay, program pemulihan dalam komuniti, or PDK) centres were meant to act as a one-stop centre in the local communities to provide rehabilitation services to people with disabilities and help integrate them into the community, including schools. Unfortunately, the majority of these centres operate more as day care centres or sheltered workshops for adults with disabilities.<sup>20</sup> From NGO observation, children with disabilities are often referred to PDK centres when they are rejected from enrolling into schools. PDK centres are often considered as the last resort for families of children with disabilities to obtain minimum access to services, and to some extent education. However, a distinction must be made about the services provided by PDK centres—they do not equal an educational provision. Additionally, the

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<sup>20</sup> This information is not included in the JKM statistics report but is based on situational observation by NGOs.

number of children with disabilities accessing intervention and rehabilitation services with PDK centres is not disaggregated by age and type of programme.

Depending on their location, some children with disabilities lack access altogether to facilities and services. According to information provided by the NGO Malaysian CARE, in both urban and rural areas in Miri, Sarawak, there are insufficient numbers of Early Intervention Programme (EIP) and PDK centres. The lack of facilities and services means that children are not receiving the care and interventions they need. Existing PDK centres are at capacity, with a waiting list, (according to disability intervention centres such as Persatuan Ibu Bapa Kanak-kanak Istimewa Miri, Sunflower Centre, and PDK centre itself, Pusat Pemulihan Dalam Komuniti Morsjaya). Furthermore, children with disabilities living in the interior of Sarawak (e.g. Ulu Baram) are unable to access any facilities or services, as the nearest PDK centre is six to eight hours away, and the distance and cost of the journey is substantial. According to information provided to Malaysian CARE, one family with a child (aged 6) with Down Syndrome lives in the village at Tegulang, Belaga, Ulu Baram. The child is registered with JKM and has a Persons with Disabilities (PWD) card. However, the child is not receiving any intervention or attending school, as the family lives approximately six hours from the nearest PDK centre in the coastal town of Bintulu or Batu Niah.

Multiple barriers exist for children with disabilities to access health care services. This includes high fees for allied health services (speech and language therapy, occupational therapy, physiotherapy, clinical psychology) (Amar-Singh and Wong, *The way forward for children with disabilities in Malaysia* (2016)). The allied health practices were not regulated, as the Allied Health Professions Act 2016 only came into effect on 1 July 2020 (Appointment of date coming into operation: Allied Health Professions Act 2016).

Children with disabilities generally face barriers to accessing healthcare, including long waiting lists for diagnosis of developmental disabilities; costly and inaccessible healthcare facilities for children in rural communities; a severe shortage of qualified professionals, including clinical psychologists, developmental paediatricians, speech and language therapists, occupational therapists, and physiotherapists; and long waiting lists for hospital-based therapy services (speech, occupational, physiotherapy) (UNICEF (2019) p6).

For disabled children with rare diseases, there can be delays of diagnoses of more than one year, and there are barriers to access treatment and therapies, including the high cost of treatment, a lack of support systems, lack of transportation to treatment centres, and limited social insurance (Institute for Democracy and Economic Affairs (2019) p21).

### **Social protection**

Children with disabilities face increased vulnerability to being coerced into behaviours such as vaping or smoking, watching pornography, and consuming drugs (UNICEF Malaysia (2017) p65–6). The Child Act 2001 does not specifically account for children and adolescents with disabilities and this leaves them particularly exposed in the justice system. Apart from the fact that children with disabilities are vulnerable to being abused and tricked into criminal behaviour like drug peddling, the current criminal justice system does not account for young offenders who have disabilities, particularly those with learning disabilities that have not been identified. When these children are admitted to rehabilitation centres for young offenders, they are unable to benefit from the system and some also become the subject of bullying and discrimination.

Children with disabilities also face increased vulnerability to abuse (UNICEF Malaysia (2017) p8). This is supported by the experience of NGOs and news reports that emerge from time to time about the abuse (physical and sexual) of children with

disabilities (New Straits Times (2019)) (The Star (2019)). However, there is no national data available regarding its prevalence in the country.

From NGO experience, there is also a lack of awareness and clear guidelines on the management of children with disabilities who come in contact with authorities such as the police force. Legal procedures and processes are usually written in sophisticated and complex language that is not accessible to children with intellectual disabilities. In a positive development, the police have created new standard operating procedures (SOPs) for handling cases involving suspects who have autism (The Malay Mail (2019)).

### **Social security**

Social security for parents of children with disabilities is limited in Malaysia. In a positive measure, in 2019, the state of Selangor introduced a social protection fund or scheme for such parents. Known as *Bantuan Khas Anak Istimewa Selangor* (ANIs), the scheme allows for a maximum withdrawal of RM5,000 per family for rehabilitation equipment purchases, therapy services, assessment costs from government hospitals, or in case of emergencies. The purpose is to reduce the cost of living borne by families in providing education and rehabilitation for children (Muthiah, Fund set up to help parents of special children in Selangor (2019)) (Yayasan Warisan Anak Selangor). The impact of this initiative should be measured and, if found to be effective, be expanded across the country.

### **Accessibility**

Accessibility remains an issue for children with disabilities. Many public buildings—such as schools, hospitals, government offices—are not compliant with the Uniform Building By-Laws 1984. This creates significant barriers to participation for these children as well as families with disabilities in their local community (10-Year Post-Ratification of the UN Convention for the Rights of Persons

with Disabilities (2019)).<sup>21</sup> There is a lack of autism-friendly spaces, which is crucial to enable participation of children with autism in community spaces such as playgrounds, local eateries, local supermarkets, schools, community events, hospitals, businesses, etc. (Institute for Democracy and Economic Affairs (2015) p14).

### **Children's right to health**

The government remains committed to ensuring access to quality healthcare for all as part of its aspiration of creating an inclusive Malaysian society, through an allocation of RM30.6 billion for 2020 (Tee (2019)).

Positively, the Children's Commissioner, with the support of the Children Unit of JKM, held a consultation in February 2019 with 35 children from the ages of 8 to 17 years old, including Girls Rights Advocates who were part of a programme run by the NGO Women's Aid Organisation (WAO). The children related that they did not have enough time for leisure due to lengthy school hours, and made a corresponding suggestion to allocate 20 minutes for rest during the school day outside of the designated recess time. They were also concerned over the prevalence of suicide cases due to severe stress amongst their primary and secondary school peers, including as a result of bullying by both peers and teachers, and high parental expectations. They distrusted their school counsellors, as the latter did not practice client-counsellor confidentiality, and often did not counsel effectively. The children also drew attention to the lack of lifts or wheelchair lanes in most schools, the increasingly heavy school bags which are causing physical health issues, and non-environmentally friendly practices in schools, such as excessive use of paper.

### **Malnutrition—childhood obesity & stunting**

Malaysia is one of several Association of Southeast Asian Nations (ASEAN) countries facing simultaneous crises of over- and under-

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<sup>21</sup> Written proceedings of the forum are not available.

nutrition (Andexer). In developing countries like Malaysia, childhood obesity is common in both poor and rich families. In the poor families, children tend to consume cheaper priced food with less nutrition but high calories, whilst children in rich families make unwise decisions by consuming the wrong kinds of foods (New Straits Times (2019)).

### ***Childhood obesity***

Malaysia ranked second among ASEAN countries on the highest prevalence of obesity among children and adolescents ages 5–19 years in 2016 (Ministry of Health (2019)). The National Health and Morbidity Survey (NHMS) indicated upward trends in overweight, obesity and abdominal obesity from 2011 to 2015, with overweight prevalence rising from 29.4% to 30%, obesity from 15.1% to 17.7%, and abdominal obesity from 45.4% to 48.6% (Institute for Public Health (2020)). As for children, 29.8% of those 5–17 years of age are overweight (15.0%) and obese (14.8%).

The national prevalence of overweight (>+1SD, equivalent to BMI 25kg/m<sup>2</sup> at 19 years, according to WHO) or obesity (>+2SD, equivalent to BMI 30kg/m<sup>2</sup> at 19 years) among children aged less than 18 years was 11.9% in 2015 (Ministry of Health (2019)).

- Prevalence by gender: boys (13.6%) and girls (10%).
- Prevalence by ethnicity: Chinese (13%), Indians (12.6%) and Malay (11.8%).
- Prevalence by location: Highest in Kuala Lumpur (19.4%) and lowest in Sabah and Labuan (8%).

Overweight children are likely to become obese adults. They are likely to develop diabetes and cardiovascular disease at a younger age, which in turn is associated with a higher chance of premature death and disability (World Health Organization (2017)).

Among the causes of childhood obesity in Malaysia are (Institute for Public Health (2020)):

- A total of 95% of Malaysian adults do not eat the recommended daily amount of both fruits and vegetables. Eating enough fruits and vegetables is important in weight management and disease prevention.
- Sugary drink intake among Malaysian adults via (1) self-prepared drinks, 53.2% daily (2) carbonated and non-carbonated drinks, 4.2% daily and (3) premixed drinks, 6.7% daily.
- One in four adults (16 years and above) in Malaysia were not physically active; the least physically active groups being 28% of females, 59% of those aged 75 years and above, 39% of students and 27% of urban dwellers. Physical inactivity has been shown to be the fourth leading risk factor for global mortality (World Health Organization (2010)).

For children in urban areas, there is a lack of safe space to play (due to crime, child protection issues, vandalism of public spaces, and poor upkeep or lack of playgrounds) and time to play (some are engaged in odd jobs to support the family income).

The risk of being overweight goes up with increased access to junk food and drinks, physical inactivity and increasingly sedentary lifestyles (Andexer (2016)).

### ***Childhood stunting & underweight***

A total of 21.8% of children under five years of age were stunted in 2019, an increase from 2011 (16.6%) and 2015 (17.7%) (Institute for Public Health (2020)). As for the underweight data in the same age group, there was an improvement from 2006 (12.9%) and 2011 (12.4%), but it degraded in 2016 (13.7%).

A study conducted among 269 Orang Asli children aged two to six years old and their mothers in Negeri Sembilan found that 36%

of the children were stunted, 28% were underweight, and 6% were wasted (Murtaza, Wan and Sulaiman (2019)). The study revealed that children with fathers earning a high income had better working memory and cognitive proficiency, and suggested that combating poverty may increase Orang Asli children's learning outcomes through improving their nutritional status.

An earlier study conducted in Krau Wildlife Reserve also reported a high prevalence of underweight (48.7%) and stunting (64.2%) among the 304 Orang Asli children studied. Among the mothers who participated in this study, 28% of them were overweight and obese. Not having adequate health and nutrition knowledge could lead to caregivers being insensitive to their own health and their children's too (Wong, M.S. and Chua (2015)). This resonates with findings of the National Survey Health and Morbidity 2019, where 1 in 3 adults in Malaysia have low health literacy, which means that 1 in every 3 Malaysians lack the ability to find, understand and use health information and services needed to make everyday health decisions (Institute for Public Health (2020)). Based on the findings, it can be seen that prevalence of malnutrition among rural and indigenous children is much higher than the city-dwelling children.

### ***Children in rural & remote areas***

The government is planning to allocate a total of RM1.6 billion in 2020 for new hospitals and the upgrading of health facilities including the Labuan Hospital off the coast of Sabah and the Queen Elizabeth Hospital cardiology centre in the capital of Sabah, Kota Kinabalu. They are allocating RM250 million for broadband and internet connectivity between rural and urban communities, RM326 million for rural road projects in Sabah, and RM470 million for rural water supply projects in Borneo, which will hopefully improve the living conditions in rural areas and improve

the residents' accessibility to hospitals and healthcare (S. Lee, Budget 2020: Mixed reactions among Sabahans (2019)). The government also plans to allocate RM5 million to provide mobile clinics in rural areas, especially for Orang Asli to achieve universal health coverage as stated in the Sustainable Development Goals (SDGs).

Whilst such developments are welcomed, the issue of access to quality health care for remote rural areas will need to be continuously monitored to ensure these aspirations are realised.

### ***World Vision Malaysia Study***

From 2017 to 2019, the NGO World Vision Malaysia conducted the Caregiver Survey on two villages, Tulid<sup>22</sup> and Tatalaan,<sup>23</sup> in a rural area in Sabah. Communities here use the land for subsistence farming and any additional crops for trading. Crops from the small-scale agriculture activity include vegetables, paddy, hill paddy and fruits. The locals hunt wild animals such as wild boars, snakes and deer, and harvest forest produce to feed their family, as well as for income generation. The purpose of the survey was to obtain household demographic data and status with regard to education, health, child protection and economic development. It was an interviewer-administered survey, and responses were recorded on the questionnaire form by the note-taker. Qualitative data was collected through focus group discussions involving men and women in the community and Key Informant Interviews of various stakeholders such as teachers, health officers and village leaders.

A systematic random sampling was employed where a list of households was gathered from the heads of each village. The majority of the community in Tulid Community Development Programme (CDP) are from the Dusun ethnic group, while the majority of the community in Tatalaan CDP are from the

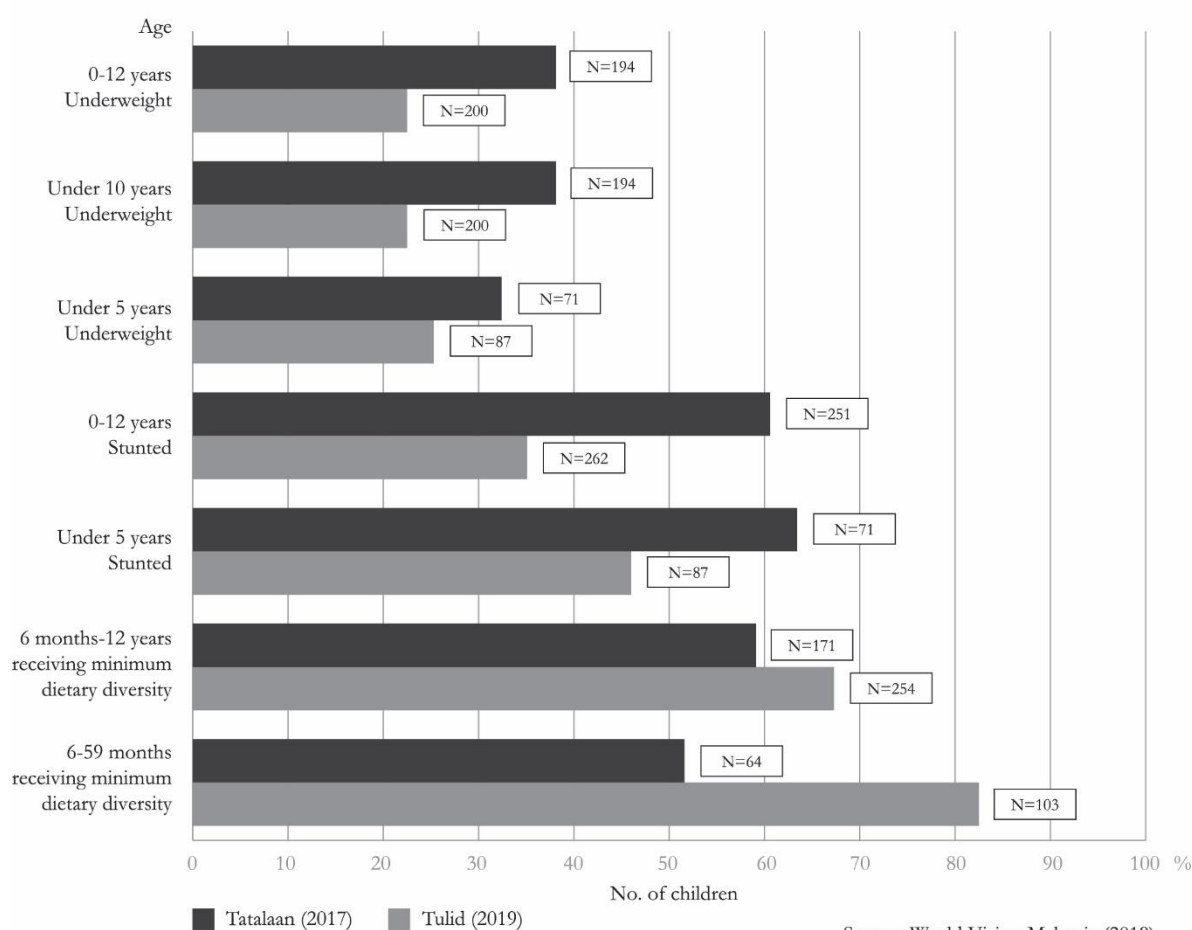
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<sup>22</sup> Tulid is one of six administrative divisions of sub-district Sook, located southeast of Keningau town.

<sup>23</sup> Tatalaan is the third administrative level of local government under the District of Nabawan.

Nabawan district is about 180km from Kota Kinabalu.

**Chart 7.1 Prevalence of stunting, underweight and minimum diversity among children aged 12 years and below in Tatalaan (2017) and Tulid (2019)**



Murut ethnic group. In the Tulid study, conducted in 2019, the survey population consisted of 176 caregivers with children aged 12 years old and below, and 262 children aged 12 years old and below. In the Tatalaan study, conducted in 2017, the numbers were 131 households with children aged 12 years old and below, and 265 children aged 12 years old and below.

The findings from these two communities in Sabah indicate that in a small part, interior of the country, the prevalence of stunting and underweight is still above the national average

(see Chart 7.1). Specifically, the stunting in Tatalaan is more concerning and warrants immediate action. Early childhood stunting is associated with a myriad of long-term factors such chronic insufficient protein and micronutrients, frequent infections, sustained inappropriate feeding practices, and often, poverty.

Through focus group discussions and key informant interviews conducted in 2017 (Tatalaan) and 2018 (Tulid), it was found that caregivers lack knowledge and skills on food preparation and child feeding practices,

Indicator	NHMS 2016 (%)		Tatalaan Baseline (%)	Tulid CDP Evaluation (%)	World Vision International Threshold (%) <sup>1</sup>
	Malaysia	Sabah			
Stunting (height-for-age)	20.7	23.5	63.4	38.8	Critical (≥30%)
Underweight (weight-for-age)	13.7	15.2	32.4	25.3%	Critical (≥20%)

Table 7.1. Comparison of malnutrition rates among children under five years of age in Tulid and Tatalaan CDPs with the National Health and Morbidity Survey (NHMS) 2016 and World Vision International (WVI) threshold ranges for action.



contributing to malnourishment in children. Children too, lack adequate knowledge to make good decisions about their food selection. A lack of financial means to provide nutritious food for their children was also found to be one of the main problems contributing to child malnourishment. A health officer from a government clinic, Klinik Sook, noted the difficulty communities faced in acquiring meat-based protein for their children. Apart from obtaining meat through hunting, communities have to travel outside their villages to buy meat, and this is a challenge, as they need financial resources for the cost of transportation. They are also daunted by the high prices for food items such as fish. Many households also do not own a refrigerator to store meat or seafood, thus needing either to pickle it or to consume it on the same day of purchase.

It was found through the study that community members were able to obtain basic health care from the nearest village clinics (*Klinik Desa*). Nurses in village clinics monitor the development of pregnant mothers, offer basic outpatient treatment, provide immunisation, and assess the development of children under seven. However, the nearest government clinic is at least 25km away from the villages, and the nearest government hospital is at least 65km away. The government clinics (e.g. Klinik Sook) conduct nutrition programmes for pregnant women and senior citizens, as well as provide appointments and food aid for malnourished children every month.

Hospital Keningau conducts monthly mobile clinics (*Klinik Bergerak*) to the communities to offer health checks for children, conduct seminars, and to dispense medicine. At times, doctors and midwives join these clinics and stay in the villages to provide health services. Whilst the government clinics are able to provide basic healthcare, often they do not have sufficient medicine supplies, advanced medical facilities, or specialist doctors.

A common challenge that communities and health personnel face in receiving and

providing healthcare is the distance between the villages and healthcare facilities, as well as the road conditions. Communities must secure private transportation to bring their children to the clinic or hospital, and this is an added financial burden for hardcore poor families. Further, slippery road conditions after rain also make it difficult for health officers to travel to the villages. Communities also reported the infrequency of mobile clinic visits to their villages, which may be due in part to the wide area that the hospital needs to cover and accessibility issues.

World Vision Malaysia provided the following health interventions:

- Nutrition-specific and -sensitive interventions in order to improve the health status of children in Tulid and Tatalaan.
- Nutrition-specific interventions to mobilise and equip community leaders and volunteers to implement activities, to create awareness and educate the community with knowledge on health issues and positive health behaviours. Communities' nutritional practices are improved through activities such as the Mothers' Cooking Group, where mothers learn good meal preparation, and through nutrition awareness activities such as food preparation competitions, campaigns and sports. Children are also equipped with knowledge on nutrition through Children's Club activities, an after-school platform set up in the villages.
- Nutrition-sensitive interventions aimed to assist communities to build their resilience and capacity to provide for their children. Communities are trained with appropriate agricultural skills to produce marketable products and supplementary food through home gardening. Communities are also trained on financial literacy to

encourage positive financial management.

- Partnership with community and other stakeholders such as schools and government clinics, is vital in the successful implementation of health interventions. Such partnerships include delivering talks in the village, sharing information, education and communicating health matters, as well as providing useful data to track progress.

### ***Government initiatives***

The government has several policies and initiatives geared at improving child nutrition. Among them is the “*Program Hidangan Berkhasiat di Sekolah*” (HiTs), which began in 2017 (Ministry of Health). MOH Food Science Officers prepare a menu of balanced and nutritious meals for children in primary schools. This programme was implemented in select schools in 2019 but has yet to be extended to rural schools.

The Nutrition Division in MOH produces information, education and communication material (brochures, posters, videos) to raise awareness of the food pyramid; proportioning meals according to a quarter carbohydrate, a quarter protein, half vegetables and fruits (*suku-suku-separuh*); reducing sugar intake; and the importance of a balanced diet and exercise. The Healthy School Canteen Management Guide was enforced in 2018 to limit children’s access to unhealthy food and drinks in school (Rajaendram (2018)). The 12 prohibited food items for sale in school canteens were expired food and drinks; sweets and chocolates; pickled foods; coffee and tea; cordial drinks; alcoholic foods and beverages; drinks containing flavoured syrup, sweeteners, creamers and whipped cream; iced confectioneries and ice cream; cream-filled or sugar-coated foods; foods sold with toys; instant noodles; and junk foods such as chips.

The National Nutrition Policy of Malaysia aims to achieve and preserve the healthy nutritional status of Malaysians in order to

contribute towards nation-building. The efforts underlined in the National Nutrition Policy and the National Plan of Action for Nutrition are directed to different age groups (National Coordination Committee on Food and Nutrition (2016)). For school-going children (5–17 years old), the MOH provides guidelines on ensuring nutritious foods are provided for children, and that they are prepared safely. There are plans to introduce nutrition education to children in schools as part of the Third National Plan of Action for Nutrition (2016–2025).

The MOH also initiated the Food Basket Programme for moderately and severely malnourished children, through which the district health department monitors the number of malnourished children and allocates a budget to provide food baskets until the child recovers from the state of malnourishment (National Coordination Committee on Food and Nutrition (2016)). The programme was found to be unsuccessful based on a study conducted in Gua Musang, Kelantan, on 237 children who participated in the programme from 2010 to 2014. It was found that 79.7% of them were still unsuccessful in growth after six months of participation (Mas-Harithulfadhlhi-Agus, Hamid and Rohana (2018)).

Overall, efforts to improve children’s nutrition have primarily been taken up by only one ministry—the MOH—whilst at the same time, there is a lack of coordination within the MOH itself, as well as with other ministries and stakeholders. For example, the MOH had proposed 13 policies for a Healthy-Promoting Environment for implementation in 2018 and 2019. Policies included imposing an excise tax on sugary drinks; a ban on advertisements for food and drinks with high fat, salt and sugar content; cultivating the habit of eating fruits and vegetables in schools and communities; and carrying out national health campaigns to ensure schools serve nutritious food. The Director General of Health denied that there were concrete plans to impose a sugar tax, whilst other groups expressed disagreement with the policies (Chu (2018)). Whilst there

are challenges working with other ministries, MOH has been open to collaborate with like-minded organisations and NGOs such as World Vision Malaysia (World Vision Malaysia (2019)).

### **Mental health**

The prevalence of mental health problems among Malaysian children is growing. The MOH allocated RM344.82 million in Budget 2020 for psychiatric and mental health work, marking a 3% increase from 2019 (CodeBlue (2019)), in keeping with the ministry's renewed focus on the mental well-being of Malaysians. In July 2019, MOH announced its backing of insurance company AIA Malaysia's newly launched mental health policy that covers six disorders including depression (CodeBlue (2019)). This will provide mental health patients with some autonomy and reduce their burden of cost. AIA also has a medical plan to cover psychiatric consultation fees, up to RM1,500 annually, for major depressive disorder, obsessive compulsive disorder (OCD), schizophrenia, bipolar disorder and postpartum depression.

However, the biggest problem that arises related to children's mental health in Malaysia comes from the parents who are not aware of their children's mental health (Sakinah (2020)). Furthermore, studies show family issues to be the biggest reason for children's ending their lives (Sakinah (2020)). Therefore, as a start to tackling this issue, the MOH is now observing World Mental Health Day on 10 October to create more awareness on the need to prioritise mental health (CodeBlue (2019)).

In 2019, a total of 424,000 children in Malaysia were found to have mental health problems. The problems are most prevalent among children aged 10–15 (9.5%), followed by children from B40 (the bottom 40% household income group) households (9.2%), rural children (8.8%) and girls (8.4%) (Institute for Public Health (2020)). The most common contributing factor was peer problems, with 42.9% identifying it as a cause. Problems related to conduct were a far second

(15.9%); followed by emotional problems (8.3%); and hyperactive problems (2.3%).

Mental health problems in adolescents were associated with negative behaviours such as substance abuse, teenage pregnancy, school dropout and delinquency (Malaysian Healthcare Performance Unit and Psychiatrist Group (2017)). The 2017 Adolescent Health Survey reported 1 in 5 adolescents were depressed, 2 in 5 were anxious and 1 in 10 were stressed (Othman and Essau); the prevalence of adolescents suffering from depression and anxiety disorder has increased to 29% from 12% in 2011.

The number of mental healthcare professionals was worryingly low with a ratio of 1 psychiatrist per 100,000 and only 15 clinical psychologists employed in the public health service sector in 2018 (Relate Mental Health Malaysia (2020)).

A technical report in 2016 recommended, among others, that medical officers be encouraged to take up the postgraduate course in psychiatry (Malaysian Healthcare Performance Unit and Psychiatrist Group, Ministry of Health (2017)).

In 2019, the government instituted *Program Inspirasi Anak Muda* (I AM) a comprehensive programme to reduce social ills among vulnerable or at-risk adolescents (Malaysia Youth Council (2019)).

The MOH, in collaboration with the MOE, has initiated mental health screening in schools using the MINDA SIHAT application. This screening uses the depression, anxiety and stress scale (DASS) to measure the level of mental health problems among adolescents. The programme was conducted among 16-year-olds. Students in Perlis recorded the highest rates, whilst six states (Sabah, Sarawak, Selangor, Kedah, Pahang and the Federal Territory of Labuan) had rates below the national average.

One noteworthy initiative is the piloting of the Super Skills for Life (SSL) programme in Malaysia, covering Sabah, Sarawak and Penang, with the support of the Ministry of

Youth and Sports, and the Malaysian Youth Council (SOLS Health (2019)). The programme was developed by Prof Cecilia A. Essau from the University of Roehampton, the United Kingdom, and Prof Thomas H. Ollendick from Virginia Polytechnic Institute and State University, Virginia, the United States. Based on the principles of cognitive-behaviour therapy and behavioural activation, the programme aims to enhance self-confidence, build emotional resilience, improve social skills, and help young people cope with stressful situations (University of Roehampton London).

### **Sexual health & education**

Bound by conservative values and cultural taboos, Malaysia generally deems sex education a sensitive topic, and many people are kept in the dark about matters like contraception, sexually transmitted diseases (STDs), and consent (M. Z. Tan, In Malaysia, talking about safe sex online sparks criticism as cultural taboos persist (2020)). The Federation of Reproductive Health Associations Malaysia (FRHAM) said one study showed only 5% of Malaysian respondents aged from 20 to 23 years stated that their teachers taught sex education clearly in schools (M. Z. Tan, In Malaysia, talking about safe sex online sparks criticism as cultural taboos persist (2020)). To tackle this, the then Deputy Education Minister had planned to include in the school syllabus in 2021, sexual education about statutory rape from the perspective of the law, with content made suitable for the ages concerned for Physical Education under the Reproductive and Social Health Education (PEERS) topic (Teh (2019)). He said that the increased number of rape crimes involving minors was among the factors behind the introduction of the syllabus, which is tailored to create awareness among youths on matters such as sexual consent, sexual health, sexual harassment, and child grooming from the perspective of the law. It was pointed out that teaching children about sexual health also helps to reduce the risk of mother-to-child transmission of human immunodeficiency

virus/acquired immunodeficiency syndrome (HIV/AIDS) and syphilis. It is not known whether the new Perikatan Nasional government will be pursuing this plan.

### **Vaccinations**

Global vaccination coverage—the proportion of the world's children who receive the recommended vaccinations—was at 85% in 2019 (World Health Organization (2020)). In Malaysia, there are increased vaccine hesitancy and geographic clustering outbreaks in recent years (Third International Symposium for Asia Pacific Experts (2017)), starting in 2012–2013. This may have led to a reduction of immunisation coverage in some states, e.g. Kedah and Pahang.

In 2019, polio returned to Malaysia after a 27-year hiatus when a three-month-old baby was admitted to hospital with the virus in Sabah (Lum (2019)). Polioviruses only occur if a population is seriously under-immunised.

A study conducted by the Institute for Health Behavioural Research under the MOH in 2018 revealed that the hesitance of Malaysian parents to vaccinate is due to low awareness about vaccination benefits, constraints in availability and accessibility of affordable vaccines, incorrect perceptions, worries about side effects and reliance on alternative medicines (CodeBlue (2020)).

### **Healthcare resources**

In 2016, all the states had more than 1 physician per 1,000 population (national average: 1.8) except Sabah (0.84) and Labuan (0.83) (Ministry of Health (2019)). There were 3 nurses per 1,000 population (national average: 3.24); the lowest nurse density was in Sabah (2.14). The federal territories of KL and Putrajaya had the highest health clinic ratio per 100,000 population in 2016 (57.69), whilst Sabah had a total of 665 health clinics (295 public and 370 private), or 1 clinic to 5,734.

A total of 45.5% of the population in Malaysia and 70.6% of the 20% poorest population did not have any form of supplementary financial coverage for healthcare, other than existing

tax-funded healthcare coverage provided by the government (Institute for Public Health (2020)).

In parts of Malaysia, and particularly East Malaysia, distance to healthcare can also be an issue. Prof Philip Alston, the then Special Rapporteur on extreme poverty, noted in his report after his 2019 visit to Malaysia, “A third of rural households in Sabah and 43.6 percent in Sarawak are more than 9km from a public health centre. And villagers need to go much further to a hospital for any serious medical issue (UN Office of the High Commissioner for Human Rights (2019)).”

### **Abandoned babies**

A total of 125 babies were abandoned in Malaysia in 2019 (Yuen (2020)). Lack of sex education, strict laws around abortion, and social stigma around single mothers contribute to the issue of abandonment of babies in this country (Ng and May-Lin (2019)). A total of 64% of babies abandoned from 2018 to 2019 were found dead, despite there being more than 1,000 couples on the JKM waiting list for adoption as of 2019 (Free Malaysia Today (2019)).

Despite the existence of baby hatches, according to NGO experience and observation, some women and girls may not be able to access these due to their health, lack of transport, ‘shame’ of being spotted, or lack of awareness of their existence. Some cases of abandoned babies may also be linked to teen pregnancy.

It is critical that mothers who have abandoned their babies are treated with empathy, and any mothers under 18 years of age, if prosecuted, should fall under the Child Act and also be provided with the psychosocial support to overcome their trauma.

### **Access to healthcare for non-citizen children**

According to the Department of Statistics Malaysia, there were 3.2 million non-citizens (or 9.8% of the total population of Malaysia) in 2019 (Department of Statistics Malaysia

(2019)). Whilst there is no exact figure for non-citizen children in the country, the government in 2016 announced that there were 290,347 stateless children in the country (Loganathan and Khor (2019)).

However, the statistics for non-citizen children and stateless children with a Malaysian parent were not available. According to the NGO Foreign Spouses Support Group (FSSG), non-citizen children pay foreigner rates even when either parent is Malaysian. Therefore, children with disabilities and those who require long-term treatment are disadvantaged as they are not given any social protection.

From the experience of FSSG, despite Malaysia’s having an efficient Universal Healthcare System, non-citizens, including children, are excluded from essential services. Among the critical issues facing non-citizen children are:

- Cost of healthcare stands as a barrier for these children. At Hospital Kuala Lumpur (General Hospital Kuala Lumpur), the minimum medical ward deposit for Malaysians is RM20; for a non-citizen it is RM1,400. This makes it difficult for children and parents alike to access essential healthcare services at an affordable rate.
- Another issue is access to immunisation programmes, maternal and child health services, as well as vaccinations for children. Vaccinations for non-citizen children costs RM40 per vaccination; a newborn child will have up to 17 vaccinations within their first year. This is a minimum of RM680 for the first year, which is unaffordable for some families (The Malay Mail (2018)).
- Additionally, non-citizen children in the Malaysian National School system are not included in mandatory general health and dental check-ups, booster

shots and other initiatives overseen by the MOH.

- Facilities at specialist centres and hospitals that fall under the Ministry of Higher Education charge a higher rate.

A Malaysian mother with a non-citizen child relates her experience at a government hospital in Kedah:<sup>24</sup>

“Healthcare is so expensive. Registration alone is RM100, not inclusive of consultation and medication. He (the child) was once bitten by my pet dog and was referred to a government hospital and had to take five shots of injection. RM100 for registration and another RM100 for each shot. I didn’t have the money to continue, and stopped his treatment. Thankfully, he was fine. I also fear his getting admitted, because I would not be able to pay the registration and ward charges.”

In such circumstances, the child’s life is endangered as the cost of treatment is too expensive and parents cannot afford to continue treatment.

In another case provided by FSSG, the client shared:

“My three-year-old child has developmental delay symptoms (not yet diagnosed by a doctor), and I need to bring her to therapy and treatment. In Malaysia, government charges are very expensive for non-Malaysians, and medical insurance also does not cover therapy charges.”

Again, in this case, cost of consultation and diagnoses is exacerbated when it is not a common health issue, putting the child’s life at risk.

## PROTECTING CHILDREN FROM SUBSTANCE ABUSE

Roughly 300,000 adults in Malaysia have used drugs at least once in their lifetime, and there are 100,000 adults in Malaysia who are currently using drugs (Institute for Public

Health). Drug use was highest among rural dwellers, low-income individuals and men. The majority of drug users started the habit from the ages of 18 to 24 years (Institute for Public Health, National Institutes of Health, Ministry of Health (2020)). Children as young as seven years old are abusing drugs because they picked up the habit from their drug-using parents.

As of October 2018, Sarawak recorded the highest number of secondary school students found positive for drugs in the country (New Straits Times). The National Anti-Drugs Agency (NADA) reported that most of these students are addicted to methamphetamine (New Straits Times (2019)).

In 2015, alcohol consumption prevalence was highest in Kuala Lumpur (20.3%), followed by Sarawak (19.7%) and Sabah (18.4%), and was lowest in Kelantan (0.4%) (Institute for Public Health (2018))

Malaysia adopts a punitive drug policy approach. However, despite its strict regulations, drug abuse is a critical issue in the country. The MOH officially started methadone maintenance treatment in 2005, and launched needle and syringe exchange programmes (NSPs) in 2006 (The Malaysian Administrative Modernisation and Management Planning Unit (2019)).

The following are some of the government programmes aimed at reducing drug abuse among children:

- *Kempen Sayangi Generasiku* (Love My Generation Campaign) by the Drug Prevention Association of Malaysia (Muthiah, Younger and younger people becoming drug abusers, says Selangor MB (2019));
- the PINTAR (*Program Intelekt Asuhan Rohani*) programme for primary school students (10–12 years old) identified as at risk of involvement in drug abuse (The Malaysian

<sup>24</sup> Information provided by Foreign Spouses Support Group.

Administrative Modernisation and Management Planning Unit (2019));

- the SHIELDS (*Sayangi Hidup Elak Derita Selamanya*) programme for students (13–18 years old) identified as at risk of drug abuse;
- the Family on Alert Programme, which targets families at risk; and
- the SMART programme, which strives to lead and educate the youth to increase their skills and knowledge, and awareness of the dangers of drugs.

The previous government had announced plans to decriminalise drug use by removing criminal penalties for the possession and use of drugs in small quantities. No timeline was given, and it is not known whether the new government would pursue the matter (Al Jazeera).

Sarawak National Anti-Drugs Agency's approach in addressing drug issues is through prevention and public awareness, treatment and rehabilitation, and enforcement. Some of the initiatives under prevention and public awareness include urine testing among students in schools and universities, and a programme for students, communities, as well as the public and private sectors. NADA also ran SHIELDS, PINTAR, SMART, Family on Alert and Tomorrow's Leaders for Youth camps. Since August 2018, the Sarawak Government has introduced One Stop Centres to address the issue of drug and substance abuse through collaborative action by various stakeholders (The Borneo Post (2018)).

For treatment and rehabilitation, drug addicts may enter the Cure and Care Service Centre (CCSC) on a voluntary basis. Voluntary admission to the Narcotic Addiction Rehabilitation Centre may be done through Sections 8 and 9 of the Drug Dependents (Treatment and Rehabilitation) Act 1983 or through an order by the Court under Section 6 of the same Act (Jee (2019)).

## CHILDREN & POVERTY

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Poverty line income (PLI) in Malaysia has been revised from a monthly income of RM980 to RM2,208, pushing up Malaysia's poverty rate to 5.6% in 2019 (Kaos Jr and Zainal (2020)). The revision was made after the 2019 country visit to Malaysia by the then UN Special Rapporteur on extreme poverty and human rights, Prof Philip Alston, who criticised the previously reported poverty rate of 0.4% as being "misleadingly low and unrealistic (UN Office of the High Commissioner for Human Rights (2019))."

As Alston also pointed out, "The mainstream narrative that poverty in Malaysia is largely confined to small numbers in rural areas and indigenous peoples must be discarded. While those groups face dire and unique challenges, urban poverty is also readily apparent." For example, "In contrast to the official 2016 poverty rate of 0.0 percent for the capital Kuala Lumpur, a 2018 UNICEF survey of low-income apartments in the city found 7 percent of people living below the national poverty line, 85 percent in relative poverty, and 99.7 percent of children living in relative poverty."

According to Alston's report, the child poverty rate in Malaysia was thrice the national poverty rate, but the government did not have an adequate support system for addressing child poverty.

Alston's report also noted that sub-groupings of poverty status were not clear, including among the indigenous peoples of Sarawak and Sabah, who were classified collectively as Bumiputera, concealing any differences that may exist between ethnicities.

There is a lack of disaggregated data on the number of children living in poverty, which is a key indicator of the status of children. This is critical for relevant programmes to be introduced and monitored so that the lives of children and their families can improve.

In addition to the income line, accessibility of key services is another important dimension

of poverty. For children from rural communities, including in Sarawak and Sabah—two states with the highest poverty rates in Malaysia—accessibility to basic services including pre-schools, schools, health clinics, internet—and for some, even electricity and running water—is an issue. As Alston pointed out, “A third of rural households in Sabah and 43.6 percent in Sarawak are more than 9km from a public health centre. And villagers need to go much further to a hospital for any serious medical issue (UN Office of the High Commissioner for Human Rights (2019)).”

Alston’s report also highlighted poverty as an obstacle to education—despite MOE programmes to support very low-income students—pointing out that:

“The government subsidises school fees, but parents may not be able to pay for the costs of school uniforms, books and supplies or afford the missed-opportunity cost of child labor. Low income families repeatedly told me that fees or costs associated with education, even as low as RM1, were enough to keep their children out of school. These low amounts could certainly be covered more comprehensively by government programmes.”

Alston made a number of key recommendations to the Malaysian government to address poverty, which are incorporated at the end of this chapter.

## **RIGHT TO SURVIVAL & DEVELOPMENT: REFUGEE, ASYLUM-SEEKING & STATELESS CHILDREN**

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Although the Preamble to the Child Act states that “every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind,” the true application of the Act is often not extended to groups of children with irregular status under the Immigration Act 1959/63. As a result, these groups of children—including refugee children generally, as well as those in detention—are not given access to the child protection mechanisms, education and basic

healthcare services as other children with recognised legal statuses in the country.

### **Cost of healthcare**

Refugee and asylum-seeking children have limited access to healthcare, particularly due to cost and fears of arrest and detention. In June 2005, the MOH issued a circular that enabled refugees to be recognised by UNHCR to receive a 50% discount on foreigner fees for healthcare services at government hospitals. In August 2018, this discount was extended to all persons holding UNHCR documentation, including registered asylum seekers (Ministry of Health).

However, in 2016, the overall fees for foreigners were doubled, resulting in the cost of healthcare services being inaccessible to most even with the discount (Ministry of Health). The discount also does not extend to undocumented asylum seekers pending registration with UNHCR, or to other migrant or stateless children.

There have been some promising practices put in place by the MOH through the issue of circulars that include those guaranteeing the rights of persons to life-saving medical treatment upon assessment, irrespective of the patient’s ability to pay for admission deposit or treatment, and free-of-charge diagnosis and medical interventions against infectious diseases, regardless of immigration status (Ministry of Health (2015)).

UNHCR works in partnership with several NGOs to provide primary care services, but this is limited to the Klang Valley area. UNHCR also works with some private healthcare providers to provide discounted primary care services for refugees and asylum-seekers. The Qatar Fund for Development, through the National Welfare Foundation, is providing support for five primary healthcare static clinics, including one in Kedah and one in Johor, to cater to the needs of refugees, including provision of antenatal care and vaccinations from 2020 to 2022. Mobile clinics and vaccinations will also be part of this programme to reach out to refugee



populations. Sustainability of these clinics is unknown when the funding is over. Sustainable, affordable access to healthcare for this population should be carefully planned to align with the country's SDGs to have universal access to healthcare with inclusive programming for "Leaving No One Behind."

### **Arrests & detention**

On arrests and detention, a 2001 MOH circular, Directive 10, instructs government healthcare staff to report undocumented persons seeking treatment at government facilities (Ministry of Health (2001)). This circular has resulted in vulnerable unregistered asylum-seekers and other undocumented migrants and stateless persons being arrested and taken from the hospitals directly to immigration detention centres.

It has been found that children throughout their detention period experience poor physical and mental health (Arshad (2005)). These children have inadequate nutrition and are deprived of an ordinary life. They are also exposed to abuse as they are vulnerable to abuse by adult detainees (Gopal and Khoo (2019)).

Whilst children detained in immigration detention centres experience similar conditions as adult immigration detainees face, children are particularly vulnerable to adverse long-term effects on their development and health. Even being detained for short periods in these centres causes damaging harm to children's mental and physical health (International Detention Coalition (2012)).

As at 2 July 2020, the number of children in immigration detention in Malaysia was 608. However, this number is based on the Immigration Department's definition of children as under the age of 12 years old, so it excludes children from age 12 to 18.

Deaths in immigration detention have been reported and documented (Parliament of Malaysia (2020)):

- 151 deaths from 2016 to September 2019.

- 1 death of a newborn child in detention from septic shock secondary pneumonia with persistent pulmonary hypertension.

These deaths appear to be recorded only when a detainee dies in the detention centre itself. Unknown numbers of children have likely died in hospitals after being sent there from immigration detention.

### **Prenatal & postnatal care**

Pregnant women—including child parents and pregnant teenagers—with irregular immigration status face considerable challenges and discrimination in accessing healthcare.

A UNHCR survey among pregnant Rohingya women revealed that while 91.8% of them had at least one antenatal visit, 44.6% of them reported difficulties in accessing these services due to the costs of medical care, language and communication difficulties (Chuah, Sok and Yeo (2018)).

The exorbitant cost of delivery based on the foreigner rate and the reporting of undocumented pregnant women by public health facilities to immigration authorities impede mothers accessing pre-natal care.

From the experience of NGO service providers, documented migrant women who are found to be pregnant will be deported as part of the country's immigration policy. This results in many migrant women not seeking timely maternal healthcare services out of fear of deportation.

Although Malaysia has an inclusive programme for pregnant women to access antiretroviral therapy (ART) during pregnancy to control transmission of the human immunodeficiency virus (HIV) under its Elimination of Mother-to-Child Transmission (EMTCT) programme, refugee women who were pregnant often sought antenatal care late during the pregnancy due to difficulties with cost and fear of arrest. As a result, at least two cases of vertical transmission occurred in 2019 among refugees registered with UNHCR.

## Vaccinations

In 2018, MOH announced that vaccinations would be available for *all* children, including undocumented children, at health clinics. However non-citizen children would still have to pay a fee of RM40 for registration, consultation and five days' supply of medication, and an additional RM40 per immunisation (The Malay Mail (2018)).

BCG vaccination, for the prevention of tuberculosis, requires a second dose when the child reaches seven years old. Citizen children can obtain it in school, but refugee and migrant children, who have no access to the national school system, often fail to get this second dose.

As a result of these high fees, many refugee, asylum-seeking, migrant, stateless and undocumented children have no access to vaccinations. In December 2019, a three-month-old baby in Tuaran, Sabah was infected by the polio virus, ending Malaysia's 27-year run of being free from the virus (The Malay Mail (2019)). Following this, the MOH has been working with UNICEF to ensure non-citizen children have access to vaccines. Numerous health groups have called on the government to extend the National Immunisation Programme to non-citizens as a matter of public health, and to view this as an investment towards the health of citizens.

## Mental health

Many refugees and asylum seekers experience poor mental health or mental health illnesses due to traumatic pre-flight, flight and post-flight conditions, among others factors, in the country of asylum (Health Equity Initiatives). Since June 2016, among patients of the NGO Health Equity Initiatives, 42% Sri Lankans, 25% Burmese, 8% Afghans and 8% Pakistanis suffered from post-traumatic stress disorder (PTSD), with 63% experiencing torture and requiring multiple and intensive interventions that they would likely not be able to get from the Malaysian system (Health Equity Initiatives). Although these figures were of adults, they have an impact on the children whom they provide care for, and it is crucial that the stress disorder is recognised and appropriate interventions provided.

### Refugee children & poverty

Refugee and asylum-seeking persons have no legal rights to work formally in Malaysia. As such, parents struggle to provide an adequate standard of living for their children. Refugee families in Malaysia often find themselves living in extreme poverty, working in exploitative environments, and hiding on urban margins. To survive, many take on informal work despite risk and fear of being arrested, detained and subject to police harassment, as the UNHCR card is not a valid work permit under Malaysian law.<sup>25</sup>

## RECOMMENDATIONS TO THE GOVERNMENT

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### 1. Children with disabilities

- a. Amend the Persons with Disabilities Act 2008 to include:
  - i. a provision on anti-discrimination against persons with disabilities, including in the school context, and
  - ii. include redress mechanisms for abuse and harassment of children with disabilities.

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<sup>25</sup> Information provided based on the experience of Asylum Access Malaysia and other NGOs.

- b.* Conduct an independent audit on accessibility of schools and other government facilities.
- c.* Repeal Sections 41 and 42 of the Persons with Disabilities Act which protect the government, public servants and their representatives from being sued when they fail to fulfil their legal duties and obligations towards persons with disabilities.
- d.* Amend the Education (Special Education) Regulations 2013 and Education Act 1996, to mandate inclusive education as a right of all children with disabilities, and repeal the probation period to determine ‘suitability’ of the child to attend school.
- e.* Amend the Child Act 2001 to address the specific needs of children with disabilities in all aspects of child protection.

## **2. Children’s right to health**

- a.* Systematically collect and publish disaggregated data on children’s access to healthcare, including the number of clinics, healthcare professionals, specialists, and private versus public providers at the sub-district, district and state levels.
- b.* Ensure all children in Malaysia (citizens and non-citizens) have equal access to healthcare. Financing schemes can be introduced to minimise the burden on taxpayers.
- c.* Develop sound public health strategies that are all-inclusive in a time of new emerging infectious diseases and pandemics.
- d.* Introduce a holistic nutrition intervention programme that promotes healthy eating and active living for all primary school children.
- e.* Introduce regulations for schools that provide that only nutritious food is to be served in canteens, and no junk food is to be sold within a certain radius from schools.
- f.* While the MOH’s current initiatives such as the Food Basket Programme are commendable, these should go hand-in-hand with educating and creating awareness among caregivers, children and communities—including refugee, asylum-seeking and stateless communities—on health and nutritional knowledge. Caregivers with adequate knowledge would be able to attend to their child’s nutritional needs better with this programme.
- g.* As per UNICEF’s recommendation, all systems must be integrated to work collectively, such as social protection, food, education, health, water and sanitation.
- h.* Concentrate more efforts on equipping community health workers as outlined in the community-feeding programme. Trained community health workers would be able to monitor the health status of children more frequently and be able to communicate necessary actions or information much faster. This too enforces the use of social capital, which is strongly found in small, rural communities.
- i.* Allocate more time in school for physical activity or incorporating physical activity in existing classroom learning to promote adaptation of active lifestyle among children (the current school curriculum provides for 90 minutes per week of physical education and a 30-minute recess each day). A good model of physical education can help to develop fundamental motor skills and should include sports education on

training to become skilful players, and fitness education, which promotes the benefits of exercise and the concept of physical fitness. Promoting physical activity can also serve as a preventive factor for mental health issues.

- j.* Allocate more budget to promote preventive initiatives instead of curative ones only, in line with the recommendation made in the Malaysian Mental Healthcare Performance Technical Report 2016. Children and adolescents should be equipped with knowledge on where to seek help (other than school counsellors) if they feel emotionally overwhelmed.
- k.* Formulate a multi-pronged strategy to tackle the issue of undernutrition among children under five years of age, an age group that has been identified by the WHO as being at risk globally for undernutrition, which is also in line with the data collected by World Vision Malaysia. This includes awareness creation, and educating caregivers actively on proper feeding practices and exclusive breastfeeding, promoting complete vaccinations, as well as providing clean and quality water, sanitation, and hygiene facilities as per WHO's recommendation.
- l.* Implement the suggestion by the former Health Minister Datuk Seri Dr Dzulkefly Ahmad to make the five-series vaccination compulsory in order to curb preventable diseases in Malaysia. The MOH must strengthen its efforts to create awareness, and educate parents on the benefits of vaccination, especially in states where hesitance towards vaccination is high. Special attention should be given to refugees, undocumented and immigrant children residing in Malaysia. It is vital to ensure that these underprivileged children are vaccinated.
- m.* As per SUHAKAM's calls, adopt a no-children detention policy and advocate alternatives to detention so that refugee and immigrant children will have an opportunity for better living conditions and an education. Look to the Thai and Indonesian governments for successful models.
- n.* Enforce the teaching of age-appropriate comprehensive sexuality education in schools.
- o.* For non-citizen children, as a signatory to the CRC:
  - i.* The MOH should look into allowing the same rates as Malaysians at Universiti Hospital (UH) and Hospital Universiti Kebangsaan Malaysia (HUKM), which fall under the purview of the MOE. These rates should be extended to: 1) foreign spouses of Malaysian citizens, upon showing their marriage certificate or card, 2) permanent residents, with red identity cards, 3) children with one Malaysian parent, upon showing the identity card of the Malaysian parent, and 4) non-citizen children born overseas to Malaysian mothers, and who currently reside in Malaysia (some of them continue to hold on to a foreign passport due to difficulties of securing Malaysian citizenship).
  - ii.* In the interest of inclusivity and upholding Malaysia's obligations under the CRC, these non-citizen children of Malaysians without a Malaysian Birth Certificate be included in the MOH directives until the age of 18.
  - iii.* The MOH should grant free-of-charge vaccinations and immunisations to non-citizen children and maternal care for their mothers.

- iv. Non-citizen children in the national school system should be included in the regular school health, dental check-ups, and other initiatives of the MOH, as they lack this critical access to healthcare and also feel excluded when they are not given the check-ups provided to Malaysian children in schools.
- p. Recommendations from children via a consultation with the Office of the Children's Commissioner (OCC), Human Rights Commission of Malaysia (SUHAKAM) in February 2019:
  - i. Allocate 20 minutes for rest during the school day outside of the designated recess time.
  - ii. Ensure that all school counsellors are licensed and qualified counsellors and undergo sufficient training.
  - iii. Ensure that school management takes urgent and proper action when confronted with cases of bullying. In bullying cases involving children as perpetrators, provide counselling and proper assistance. In bullying cases involving teachers as perpetrators, remove the teachers from their positions.
  - iv. Ensure proper facilities are built within school grounds for differently abled children.
  - v. Allow for the usage of e-books to be more environmentally friendly and save children from having to carry too many textbooks when attending classes.
  - vi. Implement a locker system in school to ease the physical burden on students of having to carry too many heavy textbooks.
  - vii. Where e-learning or remote learning is required, ensure access to devices such as laptops for all students and provide training on any necessary software.
  - viii. All of the above recommendations should also be implemented in learning centres and *madrasahs*.

### 3. Substance abuse

- a. Undertake more awareness-raising initiatives about drugs in schools, refugee communities, learning centres, and community-based organisations.
- b. Decriminalise drug use by removing criminal penalties for the possession and use of drugs in small quantities.

### 4. Poverty

- a. Based on the recommendations of the former Special Rapporteur on extreme poverty and human rights, Prof Philip Alston, the government should:
  - i. Improve collection, disaggregation, and transparencies on all relevant data to help assess the status of children and monitor the impact of targeted programmes.
  - ii. Undertake a comprehensive reform of the social protection system, including significantly expanding overall spending.

- iii. Increase budget allocations for the MOE to improve the quality of schools and education throughout the country and improve accessibility of schools in rural areas and among indigenous communities.
- iv. Include refugee children and their families in action-oriented research, programmes, education, and services to alleviate poverty in their communities, and address begging issues.

## 5. Refugee children

- a. Issue a clarifying mandate that the definition of the child in the Child Act is to be supreme, and that this definition must be applied in any matter regarding a child, regardless of immigration status or any other factor.
- b. Allow refugee children to attend public schools.
- c. Allow refugee children fair access to child welfare programmes and services, including to be protected under the Child Protectors in each state and the Assistant Child Protectors, public healthcare system, and Suspected Child Abuse and Neglect (SCAN) team in hospitals.
- d. Initiate a health financing scheme that allows refugees to contribute to their own healthcare, and include access to maternal child health services within this scheme to ensure wellbeing of mother and child (refer to regional good practices, e.g. Thailand (Tangcharoensathien, Thwin and Patcharanarumol (2016))).
- e. Amend the Immigration Act to reflect the age of children as being below 18 so that children are not charged with immigration-related offences.
- f. Establish alternatives to detention for all children.
- g. Adopt the CEDAW Committee's recommendations around trafficking from its 2018 Concluding Observations to Malaysia:
  - i. Ratify the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol thereto without further delay;
  - ii. Adopt national asylum and refugee legislation and procedures, in conformity with international standards, that ensure that the specific needs of women and girls are addressed, and codify the principle of non-refoulement;
  - iii. Fully respect the principle of non-refoulement and ensure that no individual who is registered with the United Nations High Commissioner for Refugees is deported;
  - iv. Ensure full access to asylum procedures for persons seeking asylum, including women and girls;
  - v. Establish alternatives to detention for asylum-seeking and refugee women and girls, and in the meantime take concrete measures to ensure that detained women and girls have access to adequate hygiene facilities and goods, and are protected from all forms of gender-based violence, including by ensuring that all complaints are effectively investigated, perpetrators are prosecuted and adequately punished, and victims are provided effective remedies;

- vi. Include refugee and asylum-seeking children in alternative care programmes that promote family-like and community-based care and strengthen family unity, including positive parenting and positive disciplining;
- vii. Ensure that asylum-seeking and refugee women and girls have access in practice to income-generating opportunities, education, healthcare, and other basic social services that are appropriate for their particular needs, as well as legal assistance.





# Cluster 8— Education, leisure & cultural activities

Articles 28, 29, 31

## EDUCATION

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Education in Malaysia is governed by the Education Act 1996. It is compulsory for children to attend public education from age 7 to 12 years old. There are only nominal fees to be paid for an education here, as it is heavily subsidised by the government. Education is mainly under the purview of the Ministry of Education (MOE), whilst states and federal territories have their own education departments to coordinate related matters.

The education system follows the development of a child, from preschool, primary, secondary, post-secondary to tertiary education. There are two types of education providers: public and private. The multilingual public school system provides free education for all Malaysians, whilst international and private institutions charge school fees. There is also the option of homeschooling.

Standardised tests are a common feature and admission to schools are generally exclusive for Malaysian citizens.

## RIGHT TO EDUCATION

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### Access to education

The Education Act 1996 mandates primary education that is free for children whose parents are Malaysian citizens (Education Act 1996). Many children from refugee, asylum-seeking, stateless and irregular migrant

communities lack access to formal education, as government schools generally do not accept non-Malaysian or undocumented children.

Article 28(I)(a) of the Convention on the Rights of the Child (CRC) makes it the obligation of the State to “make primary education compulsory and free to all.” Article 22 of the Convention Relating to the Status of Refugees 1951, which Malaysia has been recommended to ratify by the CRC Committee, spells out clearly that refugees should receive the same treatment as nationals when it comes to elementary education. What the Malaysian government has managed to do is to establish an Alternative Education Programme (AEP), which allows children of refugees to pursue education in privately and NGO-run alternative learning centres and community schools (Ministry of Education Malaysia (2013)).

### Refugee/Stateless children

Until a policy change in 2019, refugee children did not have access to the public education system. Their access to education had been limited to schools run by NGOs and ethnic communities, and UNHCR estimated that no more than 40% of refugee children attended school. The Zero Reject Policy of the MOE in 2019 has enabled 4,821 special needs and 2,636 stateless children to be enrolled in schools and through the Zero Student

Dropout Programme<sup>26</sup> another 4,369 school dropouts have been enrolled back into school<sup>27</sup>. The Zero Reject Policy is a good start. However, there are reports that Malaysian children could not be accepted in formal public schools due to documentation issues, for example, not having a birth certificate despite one parent holding a Malaysian identity card. A lack of resources and qualified teachers limit opportunities for the majority of school-age refugee children (US Embassy in Malaysia).

NGO learning centres report that state and local authorities in Sabah are shutting down these education centres, and harassing the parents and students who attend these schools due to their stateless status. There are also reports of such learning centres/schools being fined and closed in Kuala Lumpur.

Even if refugee children make it past primary school, their access to tertiary education is limited as they do not qualify to sit for local examinations. Marginalised and disadvantaged children who cannot access formal education or exams are often at risk of entering into the informal workforce at a young age. Refugee children who do not have access to formal education therefore have little option but to attend alternative learning centres or *madrasahs*.

Hence, refugee communities may not prioritise education given the limited prospects that their children have upon graduating or completion of their education. For unaccompanied refugee children, this opportunity is further restricted as they have to prioritise their survival over education (UN High Commissioner for Refugees (2018)).

Some refugee communities who come from a patriarchal society would dissuade girls from furthering their education after they hit puberty. These communities tend to marry off their daughters as a form of ‘protection’ from unwanted advances from men in their

community, or before their daughters elope and ‘bring shame’ to the family.

The refugees’ 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 remained a challenge, impacting some 17,000 children.

### **Children born to Malaysian mothers & foreign fathers**

According to the Mid-Term Review of the Eleventh Malaysia Plan, primary education in Malaysia attained universal enrolment in 2017, with a rate of 97.9% (Mid-Term Review of the Eleventh Malaysia Plan (2016–2020)). However, there is still a statistical void in data provided by the MOE as there is little to no indication of inclusion of the non-citizen count. Figures of non-citizen school registrations remain inaccessible, making it difficult to estimate the numbers of enrolment and subsequent understanding of the educational policy implemented for non-citizen participation in the national school system.

In 2018 however, the MOE changed its policy to allow non-citizen children registration in government schools the following year, with the condition that relevant documentation is produced by the parents or guardians (N. A. Ibrahim (2018)). This policy extends to:

- Non-citizen children adopted by Malaysian parents.
- Children whose parents’ marriage is not registered legally in Malaysia (either parent being a citizen).
- Undocumented children with one Malaysian parent.

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<sup>26</sup> Information provided by a Child Rights Coalition Malaysian member

<sup>27</sup> Ibid.

Despite this change in policy, there are still issues that stand in the way of a smooth-sailing process. These are as follows:<sup>28</sup>

- Parents, particularly Malaysian mothers, who wish to admit their children in public schools have to face the bureaucracy in the admission process. This may result in the children's being admitted to school much later after the start of the academic year.
- The parents are also only given two years to secure citizenship or proper documentation with the National Registration Department (NRD), failing which, the child will no longer be allowed to continue schooling.
- Seats in public schools for non-citizen children are also given on a yearly basis, hence, the Malaysian mother and non-citizen child would have to undergo the bureaucratic application process repeatedly.
- There are additional costs of education for non-citizen children of Malaysians, for example, costs attached to their being ineligible for aid such as textbook loan schemes, the Supplementary Food Programme, and free health and dental check-ups.
- In some cases, it also prohibits children from participating and representing their schools in state and national-level competitions.
- In the event the non-citizen child is not admitted to a public school, the parent has no choice but to admit the child in a private school, which incurs high costs that some may not be able to afford.

The NGO Foreign Spouses Support Group (FSSG) has documented the experiences of more than 65 Malaysian parents with non-

citizen children. The following are some anecdotes about the registration process and the government schooling system (names have been omitted to protect the identity of the Malaysian mothers):

“To register in kindergarten, they asked a lot of questions. They asked us to give a copy of our citizenship application. To apply for school, I called the National Education office and spoke to an officer. She asked me to come and apply if we are holding Borang W or a passport. So, the next day I went there. But the person who spoke to me was not there. Another officer said I can't do online registration because my child has no birth certificate. They asked me to wait till end of year... ‘Come back two months before child starts government school. Then we can register you, but before that please check with the school where you plan to send your daughter whether got place or not. If no place, we have to give her any school where got place for her.’”

“We have to submit the application at the end of the year, and we have to wait for the result, which is on 15 of January the following year. So, our children cannot start school as the same time as the local children. No guarantee with the spot, the seat to study in the local school has an expiration date—meaning we have to redo the same process when approaching the expiration date. Children are not given the free dental appointments, will be feeling left out in school. We also have to purchase all the books.”

### **Pre-school & early childhood education**

Early childhood care and education, and preschool education have expanded rapidly in Malaysia. However, gaps remain in relation to monitoring and evaluation of providers, and in access to preschool education for marginalised 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.

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<sup>28</sup> Information provided by a member of the Child Rights Coalition Malaysia.

Many private schools and centres are unregistered, so standards are not monitored. The lack of regulation and monitoring of kindergartens and childcare centres including madrassahs and refugee learning 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.

A serious gap is the limited access to preschool education for children from marginalised and disadvantaged communities, such as Indian Malaysian children from lower-income households and indigenous children living in remote areas.

Despite the government's admirable efforts to raise the standard of early childhood education, the number of children who struggle to attain age-specific learning benchmarks keeps increasing. A 2017 study, "Comparing the kindergarten curriculum framework of the Philippines and Malaysia," identified four key problems with preschools in Malaysia—incompetence and lack of training for teachers, inadequate English skills, the wrong use of play and poor parental involvement (Aquino, Mamat and Mustafa (2017) p27–40).

Malaysian preschool teachers have limited training in making lessons more "interesting and fun (Ann (2019))." It has been suggested that continuous effort from the government is needed to improve the quality of education (Lim (2020)). For example, the ability to develop the pre-literacy or pre-numeracy skills of the children by using the right play multiplies the ability of young children to excel in higher education and social life.

### **Sexual health education**

It is a human right to receive a proper education, and this includes on sexual health, yet the rampant cultural stigma, the inclination towards a negative or shaming attitude and flagrant misinformation with anything sex-related in Malaysia have prevented the implementation of an adequate sexual health education programme in schools outside of

basic biology. This applies similarly in stateless or refugee learning centres.

A 2019 study by the KL-based Centre for Governance and Political Studies found that each year there is an average of 3,000 rape cases, 18,000 teenage pregnancies and 100 cases of baby dumping in Malaysia (Jazmin). Furthermore, the study highlights that the public have some serious misconceptions about consent, healthy relationships, safe sex and birth control.

The success of sexuality education in Malaysia requires experts to deal with the misconception about the impact of sexual education, disagreement on curriculum, lack of availability of trained teachers or trainers, lack of parental involvement, as well as poor multidisciplinary collaboration. The concept of sexual education in Malaysia requires harmonisation so that it can be accepted by society.

## **DRUG ABUSE PREVENTION**

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Drug abuse among the younger generation in Malaysia is becoming a cause for concern, with children as young as seven years of age getting involved in it. According to criminology expert Datuk Seri Akhbar Satar, 2,169 drug abuse cases in 2018 involved students from primary school, secondary school and university/college (Kaur (2019)). Therefore, it is very important that education in Malaysia includes drug prevention education for children.

Research showed the mean age in which students received prevention education was 10.57 years, which is younger than the perceived age appropriate for initiating prevention education at 11.68 years (Qiu, Cai and Bonn (2015)). A test further indicated that the minimum age in which students were first exposed to drug prevention education is six years. However, the earliest age deemed appropriate to initiate prevention education is four years, which is at preschool level.

## SABAH & SARAWAK

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School affordability is “consistently identified as a major cause of inadequate preschool and upper secondary enrolment rates (UNICEF Malaysia (2019)).” Poverty still excludes children from attending school despite school fee subsidies from the government, as parents may not be able to afford school uniforms, the cost of travel to school, books and supplies or even the opportunity cost of child labour. To low-income families, costs as low as RM1 (US\$0.25) associated with education is enough of a barrier to keep their children out of school.

Distance is another serious barrier, which also has an impact on costs. A total of 12% of households in Sarawak and 7.5% of households Sabah live more than 9km from a government primary school; for secondary school, the figures are 37.4% in Sabah and 50.9% in Sarawak (Ministry of Education and UNICEF (2019)). In rural areas, children are forced to leave their villages at a young age to stay in hostels far from their families to attend school.

Until the Zero Reject Policy was implemented in 2019, for refugees, stateless persons, migrants and some indigenous peoples, public schools were closed to them due to a lack of documentation, and they must make do with an informal education. There are stateless children in Sarawak born to Malaysian parents or in unrecognised mixed marriages. People are in limbo as to how to process admittance of children to school. It is reported that primary head teachers in rural areas who are aware of the local situation would accept these children, and even in secondary schools too.

Teachers in rural schools in Sabah and Sarawak face many difficulties, including unsafe living accommodations and lack of access to medical infrastructure. In a 2018 fire at a primary school in Mulu, Sarawak, a teacher lost her life, whilst another, injured with 22% burns to her body, had to wait for more than five hours for a helicopter to transport her to a hospital (Ringgit (2018)). Although initial investigations revealed that a

short circuit might have caused the fire, as late as July 2019, the wiring of the other teachers’ accommodations had yet to be fixed.

It is even reported that in Sabah, the state government actively closes alternative learning centres catering to stateless children. The NGO CRIB Foundation reported that magistrates and judicial officers in Sabah confirmed during a child rights skills training for the judiciary in March 2020 that children travelling to learning centres were being arrested by police for lack of documentation, kept in police lock-ups and produced in court, sometimes after a period of more than 40 days in detention.

There are many dilapidated schools in rural areas, especially in Sabah and Sarawak. In a reply to the Sabah State Assembly, the MOE said 589 of the 1,296 schools in Sabah have been classified as dilapidated by the Public Works Department (Chan (2020)). Eighty-four of them were rated unsafe, but just 22 were scheduled for repair in 2019.

In Sarawak, the Minister of Education, Science and Technological Research revealed in July 2018 that 1,020 out of 1,454 schools in Sarawak were in dilapidated condition, of which 415 were in critical condition (The Borneo Post (2018)). He also said that 205 of the 415 dilapidated schools have been approved for rebuilding or upgrading under the Eleventh Malaysia Plan (2016–2020). The following was also revealed:

- 428 schools still did not have treated water supply, and were still depending on various water sources such as rainwater harvest, gravity feed, tube well and water from rivers.
- 721 schools do not have proper road access; 200 of which are accessible only by rivers or sea, and the rest (521 schools) do not enjoy all-weather road access.

### Alternative schooling

In Sarawak, there are only a handful of people reaching out to provide alternative schooling.

A school in Kuching houses 40 students: 20 whose one parent is Malaysian; 7 whose parents are both Malaysians but 1 has documentation problems; and 13 whose parents are both foreign.

### Children with disabilities/Differently abled children

There was not enough on-the-ground data on the situation of children with disabilities, reflecting the serious general need for resources in East Malaysia.

### LGBTIQ children

According to Justice for Sisters, at least three persons have been outed in schools by their peers or their teachers recently. A 19-year-old student whose name is withheld for protection said she faced microaggression from teachers, who would stare and gossip about her when she entered the teachers' office.

State and school-endorsed programmes targeting LGBTIQ and gender non-conforming students on the basis of their actual or perceived sexual orientation and gender identity have been reported in the media since 2011, although many similar programmes in educational institutions remain hidden due to lack of reporting and monitoring of such programmes.

In 2017, a counselling unit in a secondary school in Sabah was reported to have organised a year-long gender awareness programme called *Kunyit* (a Malay word for turmeric, which is also used as a pejorative term for gay men and LGBTIQ persons in general), allegedly targeted 15 'effeminate' students, according to the school's 2017 yearbook. After a public outcry that started on social media, the school issued an apology and agreed to introduce positive programmes for the 15 students (Pillai (2019)). However, no information is available on the proposed programmes.

There is overwhelming evidence against conversion therapy and efforts to change sexual orientation and gender identity, due to its long-lasting psychological and physical

### Case study\*

Natasha, a 19-year-old bisexual young person, explains the challenges that she faces in expressing herself:

"Just trying to be myself is so hard. Even though I am surrounded by people who are friendly, there is such a huge social stigma surrounding LGBT issues. Even though I try to be myself, it's really difficult when people around you just demonise these things, and then you realise that they just don't understand, and that's why the social stigma is so strong.

When it comes to school, my course mates, whenever they hear about LGBT, they just express disgust, hate, ridicule, and I feel bad because I am one of them, but because I don't express myself and tell them that's just who I am, out of fear of ending up being an outcast, and that just deepens the fear.

My parents are super religious, and they don't even believe in mental health. When I try to reason with them, they just think that you need to pray. They don't want me to get *terpengaruh*. (influenced) And they nail in that fear. If I were to come out and express myself, I will instantly be an outcast, and they will try certain things to put me on the 'right' path, which is not needed at all."

(\*Interview with Natasha for the CRC report by Justice for Sisters, 16 October 2020; name and identifying information have been changed or redacted for the child's protection and privacy)

damage (UN Independent Expert on Protection Against Violence and Discrimination Based On Sexual Orientation and Gender Identity (2020)). However, the promotion of rehabilitation or the notion of 'return to the right path' is still commonplace among state and non-state actors.

As a result of the restrictive environment, LGBTIQ children are often afraid to come out or express themselves, fearing ostracism by their peers and family members. In interviews by the NGO Justice for Sisters with nine bisexual, pansexual and queer girls, non-binary, and gender-fluid persons between 15 and 19 years old, seven persons revealed that they faced challenges expressing themselves, including at home, school and public places. Meanwhile, two others who have come out to their family members face resistance from the latter, who keep telling them that they would 'change.'

People Like Us Support Ourselves (PLUSOS), an LGBTIQ human rights group, provides live chat services for LGBTIQ persons

**Case study** (name and identifying information have been changed or redacted for the child's protection and privacy)

Debbie, a 19-year-old queer person, recalls being subjected to an 'intervention' to correct her sexual orientation by a teacher upon their discovering her sexual orientation:

"I was openly being me on my private social media, and other students noticed it and reported it to a teacher. After that, the teacher, who is a Christian and really religious and everything, called me and asked for my help. I said, okay, and followed the teacher. They took me to an empty classroom. They locked the door, and turned off the light. In my mind, I was asking myself, what are they doing?

"The teacher then asked me to sit down, and asked me to pray. And I did it because they are my teacher and I am a student, and there's fear. So, I just followed what they said. The teacher said, 'I know about you' and talked about the things that I have done. And I thought to myself, 'Oh, no...how do they know?' I was surprised. At that time, I was very feminine and gender-conforming.

"Even the way I spoke was very feminine, not like now. So, I kept quiet and did not admit to anything, although she asked plenty of questions and told me that she is aware of the kinds of photos that I post—there were photos of LGBT people, pride, and all of that. She then revealed to me that a junior reported it to her with my screenshots. At that time, I was so afraid. I couldn't say anything, I just cried there. I could hear my teacher talking, but I couldn't comprehend anything because of my fear.

"After a while, I gave an excuse and left the classroom. I kept quiet until I returned home. When I got home, I was really, really scared, but I couldn't say anything about this to anyone, as I was afraid of people blaming me instead. I asked for help from my mum after almost week, and she said, 'It's okay. You will forget about this. You will be normal.'

"But the thing is I don't want to be 'normal,' and what the teacher did was wrong. A few weeks after that, I still felt that I needed help, and I reached out to my counsellor. Although, the counsellor in the past had told me to return to the 'right' path, she felt the teacher's action was not right, that it was not within her role, and that the teacher should have referred the case to the counsellors. The teachers are all the same, and they impose their religious values. No action was taken against the teacher. I later found out that the teacher had conducted an inquiry with my classmates about me before carrying out the 'intervention.'

"But this is not an isolated case. When I was 13, I had also heard that the teacher had carried out a similar intervention in a dark room with two seniors in school.

"After the incident with me, everyone knew about it and my sexuality. I received stares and other microaggression from teachers until I left school, three years later.

"At that time, I buried myself in my studies and exams in order to deal with everything."

seeking peer support. Between May 2018 and December 2019, they received about 70 cases seeking support for a range of issues, including sexual health, mental health, coming out, and termination because of gender identity.

Kristina, a 15-year-old bisexual student from the East Coast, told PLUSOS that she feels pressured to hide her sexuality due to the conservative environment she lives in. She periodically hears religious condemnation of LGBTIQ persons during her religious and Arabic classes.

## RECOMMENDATIONS TO THE GOVERNMENT

### 1. Access to education

- a. Continue and expand the Zero Reject Policy to ensure that no child is left behind irrespective of documentation status.
- b. In Sarawak, provide children with preschool education in their *kampung* so they are not disadvantaged when joining primary school compared with their peers who have had this opportunity.

## **2. Collaboration, not obstacles**

- a.* Federal and state government authorities should communicate and address any security concerns with the operators of alternative learning centres instead of creating obstacles for children from marginalised communities to receive education.

## **3. Preschool and early childhood education**

- a.* Allow child learning centres catering to all children to operate and be registered so that they can be monitored to ensure consistency in educational standards for all children.
- b.* Provide support for alternative learning centres and madrasahs to establish child safeguarding policies and child protection procedures, and help build the capacity of all staff, including the board of directors, on prevention and response around child safety issues.

## **4. Scale up capacities**

- a.* To solve the problem of lack of resources and qualified teachers in alternative learning centres for refugee and stateless children, the MOH should leverage the technologies brought by the Fourth Industrial Revolution. For example, the ministry can use big data and the Internet of Things to identify and broadcast the lessons of the best teachers in the country.

## **5. Address poverty as a root cause**

- a.* Provide financial aid to families in need to prevent their children from dropping out of school, especially boys in secondary schools in rural areas, who often drop out to work as labourers.
- b.* Assist schools in arranging for transport from trusted drivers to lessen the burden of the cost of travel, which has been identified as a barrier for families to send their children to school.

## **6. Sexual health education**

- a.* Improve formal and informal education programmes to ensure that children possess sexual knowledge at a young age to prevent sexual abuse or early pregnancy.

## **7. Drug abuse prevention**

- a.* Begin drug abuse prevention programmes at preschool level for children aged 4 to 6 years old, as it is found to be the most effective period.

## **8. Infrastructure**

- a.* For Sabah and Sarawak, improve school facilities and ensure that there are basic amenities such as electricity, treated water supply, road accessibility and internet connectivity.

## **9. Bureaucratic process**

- a.* Grant non-citizen children Permanent Resident status as long as either parent is Malaysian, in order to prevent disruption of their access to education.



- b.* Streamline processes within relevant government departments in granting the necessary documentation to parents so as to not exceed the two-year limit. This will prevent children from dropping out of the national school system.

## **10. Protection of LGBTIQ Children**

- a.* The government should take a firmer stance against discriminating children based on their perceived non-conformity to gender identities and acceptable sexual orientation. Emphasis should be given that educational institutions are not where a child should feel unsafe during their formative years.



# Cluster 9—Special protection measures

Articles 22, 30, 32–36, 37(b)–(d), 38–40

## ARREST & DETENTION

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As explained in Cluster 2, the Immigration Act 1959/63 does not distinguish between adults and children, hence children can be arrested and detained like adults. In January 2019, the NGO SUARAM and Human Rights Commission of Malaysia (SUHAKAM) jointly called on the Federal Government to release the 142 children that were detained under Malaysia's security laws then. SUARAM pointed out that the incongruity of 16- and 17-year-olds being detained under such laws that were supposed to be used only against hardcore criminals (US Embassy in Malaysia (2019)).

By November 2019, there were 306 children in 48 immigration detention centres in the country. There are 14 immigration detention centres, 42 prisons, 4 temporary detention facilities in Sabah and numerous police lockups where refugee and asylum-seeking children can be held for violating immigration offences.

The Immigration Act allows authorities to arrest and detain non-citizens for 30 days but no maximum renewal period of detention, pending a deportation decision. There are also limited administrative or judicial channels to challenge the legality of the detention under

the Act. Children are held with adults in all places of detention (on remand, in prison, or immigration detention).

The Penal Code, which allows investigative detention for up to 14 days to prevent a criminal suspect from fleeing or destroying evidence during an investigation, may also come into play. SUHAKAM<sup>29</sup> has noted in multiple annual reports from 2015 to 2018 that immigration detention conditions generally fall below internationally acceptable minimum standards.

Children have no access to education or recreational activities, and have limited access to healthcare whilst in detention. There are no specific standard operating procedures (SOPs) in place to provide special care and treatment for children in immigration detention centres. UNHCR staff members have conducted numerous visits to prisons and immigration detention centres to provide counselling, support, and legal representation for refugees and asylum seekers, including these children.<sup>30</sup>

There is no automatic right to legal representation for children who commit immigration offences. Children need to request for representation but they are not given the information or support to do so. Cost of representation is also an issue for

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<sup>29</sup> Question No. 296, Notice of oral question from YB Maria Chin (Petaling Jaya), Third Meeting, Second Session, Fourteenth Parliament, Dewan Rakyat, December 2019. (Human Rights Commission of Malaysia), Section 34(1) Immigration Act 1959/ (Amnesty International (2010))

<sup>30</sup> Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human

Rights' Compilation Report Universal Periodic Review: Malaysia, July 2018, 3rd Cycle (UN High Commissioner for Refugees Malaysia), and the National Security Council Directive No. 23 (Illegal Immigrants Holding UNHCR Cards Management Mechanism), which provides that UNHCR card holders will be allowed temporary right to stay in the country based on humanitarian grounds (The Borneo Post).

refugees and asylum seekers, as the National Legal Aid Foundation only provides legal aid assistance to non-Malaysian children facing criminal charges which includes minors facing immigration charges. There is also no automatic right to seek asylum, contact embassies, or other family members under the Immigration Act.

Para 10 of Part B, of the Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the CRC, states that offences concerning irregular entry or stay cannot have consequences similar to the commission of a crime, and that the measure of last resort principle is not applicable in immigration proceedings—making immigration detention even for the shortest time, never in the best interest of the child.

However, Malaysia continues to treat immigration offences by children as a crime, sentencing children to prison with adults before they are transferred to immigration detention pending deportation.

There are also no known assessments on the use of immigration detention and whether it is in the best interest of the child. Refugee and asylum-seeking children who cannot be deported are detained indefinitely unless released by UNHCR's intervention.

In Sabah, there were anecdotal reports that stateless and undocumented children were frequently arrested by authorities while buying books or leaving alternative learning centres or schools run by NGOs. One community member reported families being held in Rumah Merah, the immigration detention centre in Kota Kinabalu, for up to three months and repatriated back to whichever country the authorities thought was their home of origin despite the fact that they had lived in Malaysia for generations. The conditions in Rumah Merah were overcrowded, the detainees reported bad hygiene and instances of abuse. There were also allegations of police requesting payoffs to avoid being arrested or detained.

## **Arbitrary arrest or detention**

The law prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of their arrest or detention in court, and the government generally observes these requirements (US Embassy in Malaysia (2019)). Police may use certain preventive detention laws to detain persons suspected of terrorism, organised crime, gang activity, and trafficking in drugs or persons without a warrant or judicial review for two-year terms, renewable indefinitely. Within seven days of the initial detention, however, police must present the case for detention to a public prosecutor. If the prosecutor agrees that sufficient evidence exists to justify continued detention and further investigation, a fact-finding inquiry officer appointed by the Minister of Home Affairs must report within 59 days to a detention board appointed by the king. The board may renew the detention order or impose an order to restrict, for a maximum of five years, a suspect's place of residence, travel, access to communications facilities, and use of the internet.

## **Whipping**

Civil and criminal law exempt men older than 50, unless convicted of rape, and all women from caning.

## **Deaths in detention**

There have been reports and documentation of deaths in immigration detention. From 2016 to September 2019, there were 151 deaths in these facilities (Parliament of Malaysia (2020)), but the actual figures could be higher as unknown numbers of children have died in hospitals after being sent there from immigration detention.

## **Separation from families**

A child arrested for immigration-related offences may be sometimes separated from their parents against their will and best interests depending on their age, gender, and the gender of the parent.

The Immigration (Administration and Management of Immigration Depots) Regulations 2003 provides that a child under the age of 12 may remain with any of their parents.

However, in practice, children below five years old who were arrested with their fathers, were often separated and held in the adult female facility.<sup>31</sup>

A male child over 12 years old who is arrested with his mother will be separated and placed in detention with the adult male population.

There also appears to be inconsistent application of the age separation, and it is likely that each detention centre may adopt their own practices.

Children may also be arrested and detained on their own as part of an immigration raid, and separated from their parents and caregivers. Unaccompanied children detained without their parents or caregivers will be held in the adult facility according to their gender.

A particularly harrowing incident was the immigration detention of two migrant Filipino babies in 2019 (Palansamy, NGO: Immigration Dept detaining undocumented Filipino babies for nearly three weeks (2019)). The babies were detained during a raid while in the care of relatives. They were held for nearly three weeks despite their mothers' having valid documents. Reports indicate that the Immigration Department continued to detain the babies despite interventions from CSOs, the Ministry of Women, Family and Community Development, and the Philippine embassy.

Refugee, asylum-seeking, and migrant children may also be separated from a parent or caregiver who is arrested for immigration offences. When a family member is separated or detained, it is difficult to obtain clear information about their whereabouts and well-being. Family members with UNHCR

documentation are also frequently denied visitation access in immigration detention facilities.

### **Unaccompanied and separated children<sup>32</sup>**

The total number of unaccompanied and separated children registered with UNHCR Kuala Lumpur is 782 (UN High Commissioner for Refugees Malaysia (2019)). Of this figure, 273 are females. Majority of unaccompanied children are from the ages of 13 to 17 years from the Rohingya community (Khoo and Parthiban (2019)). Based on data gathered from UNHCR's child protection case management, most boys live independently without supervision with their villagers or co-workers in unstable and unsafe care arrangements. They do not attend school and are involved in hazardous work, either at construction sites or collecting scrap metal and are susceptible to arrest and detention, exploitation, neglect and abuse.

Critical needs of survival, arrest and detention de-prioritise child protection issues exposing unaccompanied children to precarious environments and risks of re-victimisation in refugee communities. In the Rohingya community for example, the unaccompanied boys in this age range are expected to work and support themselves. Boys below the age of 13 years, are usually in a *madrasah*. They attend religious classes here and have their basic needs met.

Most unaccompanied girls belong to the Rohingya community. Similar to the male unaccompanied children, majority are adolescents. Several of them are married with children. Generally, trafficked mail order spouses/ brides are unaccompanied minor girls from the Rohingya community who are married off by proxy by their parents or relatives in Myanmar or Bangladesh due to poverty or as a protection from sexual violence and kidnapping (UN Office of the

<sup>31</sup> Information obtained from an interview by a member of the Child Rights Coalition Malaysia with a legal practitioner who declined to be named; December 2019.

<sup>32</sup> As this is an underreported issue, information shared is based on data from case management, community leaders, caregivers, partners and unaccompanied and separated children themselves.

High Commissioner for Human Rights (2020)).

Patriarchal structures and traditional harmful practices in refugee communities promote child marriage. Girls are expected to marry once they reach puberty. Unaccompanied girls particularly from the Rohingya community have limited options apart from being married off as a means of survival, as most Rohingya families lack the financial capacity to provide adequately for an additional member in the family.

In not signing the 1951 Refugee Convention, Malaysia has put many refugee and asylum-seeking children in a vulnerable position, even more so when the children are unaccompanied, without parental care and access to guardianship. Not having a legal status also prevents them from receiving timely and adequate protection and assistance if they face violence and abuse.

Not many NGOs provide care and support to refugee and asylum-seeking unaccompanied and separated children and adolescents in Malaysia. This care and assistance include case management, shelter and psychosocial support. During the COVID-19 Movement Control Order (MCO) in Malaysia that has been in force since 18 March 2020, this vulnerable group has experienced livelihood constraints, domestic violence, xenophobia, arrest and detention, and has limited access to helplines, food aid, safe placements, Suspected Child Abuse and Neglect (SCAN) team and key child protection services due to their

illegal status, language barrier and poor awareness of host and refugee communities.

Although unaccompanied children are prioritised and referred for vocational skills training and alternative education, these children face challenges attending learning centres or skills training, prioritising their survival, employment, spousal and maternal responsibilities over their protection and development needs, resulting in the increase of their risk exposures whilst reducing their well-being.

### **Prosecution of LGBTIQ children**

The legal threats that LGBTIQ children face have been explained in Cluster 5.

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## **CHILD ABUSE IN SCHOOLS**

The Malaysian Education Blueprint (2013–2015) does not address students' safety and disciplinary acts such as abuse and bullying. In 2009, the UN Special Rapporteur on the right to education, Vernor Muñoz Villalobos, stated that corporal punishment was still practised extensively in schools. Students reported, among other things, being slapped in the face, pinched, hit on the back of the head, having part of their bodies pulled, verbally abused, and so on.

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## **HUMAN TRAFFICKING**

The Anti-Trafficking in Persons Act 2007 punishes trafficking a child for the purpose of exploitation with a jail term of 3 to 20 years, and a fine.

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## **RECOMMENDATIONS TO THE GOVERNMENT**

1. Withdraw remaining reservations to the CRC, particularly Article 2 and 37, and insert provisions into the Immigration Act that fully incorporate the spirit and provisions of the Convention.
2. Uphold the principle of non-discrimination and ensure all children in Malaysia are treated equally under the Child Act and have access to state child protection mechanisms and basic services including affordable healthcare and quality education.
3. Apply and integrate the principle of the “best interests of the child” in the implementation of legislation, government policies and programmes, and administrative and judicial decisions that impact children, regardless of nationality and immigration status of a child.

4. Abolish whipping as a punishment under the Immigration Act.
5. The Ministry of Home Affairs and the Ministry of Women, Family and Community Development must develop a formal policy to end child immigration detention. As first steps:
  - a. Immediately approve and implement the Alternatives To Detention (ATD) pilot programme in collaboration with NGOs and release unaccompanied children into alternative care arrangements that are not lock-down shelters, for example welfare homes.
  - b. In the meantime, improve conditions in jails, lockups and detention centres for detainees. Ensure that SOP is implemented to prohibit abuses towards detainees whilst under arrest and detention.
  - c. Ensure families are detained together, or if separately, segregate children from the adult detainees to prevent any further abuses by the adults to the child.
  - d. Improve access to healthcare in detention centres to prevent any further deaths of detainees due to untreated illness or related unhygienic cramped living conditions.
6. Develop screening and referral mechanisms to capture and respond to the vulnerabilities of children, including to make decisions around placement in alternative care options and support services.
7. Repeal Directive 10 (2001), and any other subsequent circular(s) to remove the obligations on healthcare providers to identify and report undocumented patients seeking treatment to immigration authorities.
8. Amend the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (as per the 2010 amendments) to avoid non-national children with revoked interim protection orders and protection orders being sent to immigration detention pending deportation.
9. Allow refugee and asylum-seeking children who are at risk fair access to state child protection systems and services, whilst availing interpretation services for helplines and hotlines such as *Talian Kasih* and face-to-face services (i.e. health, welfare, Sexual, Women and Child Investigations Division (D11) law enforcement officers including Child Interview Centres).
10. Enable refugee and asylum-seeking children at risk to access non-institutionalised alternative care arrangements under the state child protection systems to ensure their overall well-being.
11. Considering language barriers, illiteracy, poverty, patriarchal structures and phone and internet connectivity, avail child-friendly, gender-sensitive and culturally appropriate audio-visual messaging in refugee languages on protection and support services, i.e. Suspected Child Abuse and Neglect (SCAN) team, police protection, welfare, psychosocial support.
12. Establish interagency data collection, case management and SOPs to maximise resources and avoid duplication.
13. Regularly publish data on the numbers of children in immigration depots, disaggregated by age, gender, nationality, and those registered with UNHCR.
14. Build capacity of frontliners, welfare, health, enforcement, border control agencies and NGOs on refugee protection, child protection and sexual and gender-based violence,

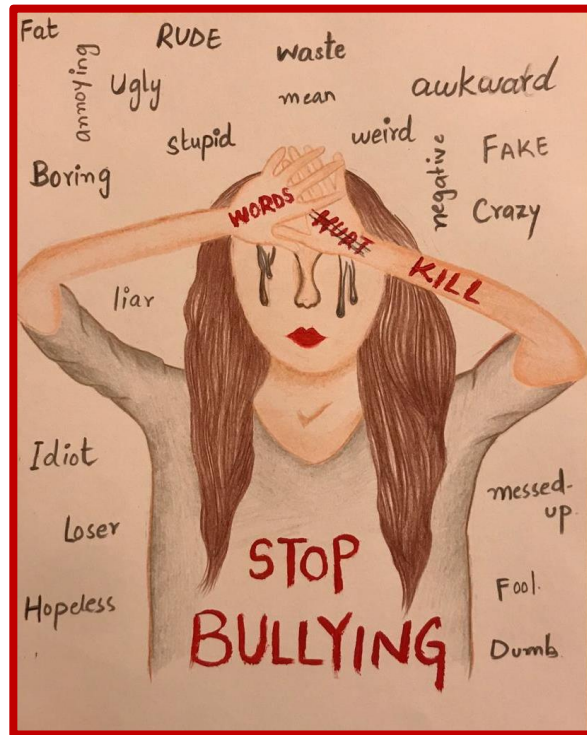
including a adopting child-centred approach and operationalising the best interests principle in the context of refugees.

15. Conduct more evidence-based and action-oriented research on unaccompanied and separated refugee and asylum-seeking children in Malaysia, for example, on the violence they experience and alternative care arrangements.
16. Include refugee and asylum-seeking children and their families in child protection, education, sexual and reproductive health and mental health programmes, for example, positive parenting workshops by the Ministry of Women, Family and Community Development.
17. Include refugee and asylum-seeking children in the National Plan of Action to eradicate poverty, child marriage trafficking and child labour.
18. In line with the National Strategy Plan in Handling the Causes of Child Marriage:
  - a. Provide education and services on sexual and reproductive health, including comprehensive sexuality education for children, women and sexual and gender-based violence survivors;
  - b. Build the capacity of refugee parents and families with positive parenting information and skills, including positive discipline methods.
19. Strengthen collaboration between government, NGOs, UN agencies, international agencies, refugee community-based, refugee and asylum-seeking men and women, youth and children on matters such as expanding alternative care models in the community, including transitional shelter arrangements, foster care arrangements, and holistic case management practices.
20. Develop and implement a national comprehensive refugee framework and policy in consultation with UNHCR, NGOs and community-based organisations to enable refugees and asylum seekers to access basic needs such as safe housing, food, and healthcare.
21. Include refugee and asylum-seeking children in a child parliament group or other similar platforms so that they are able to participate in programming and policymaking processes and decisions.

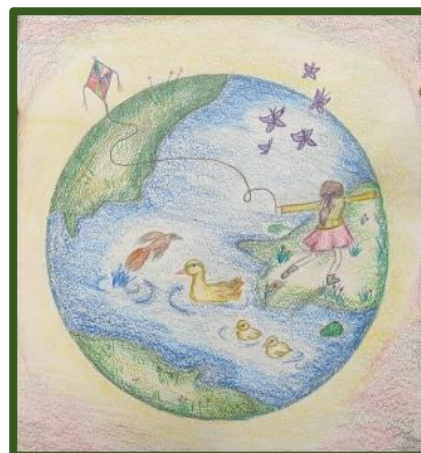


# Gallery of hope

Artworks by children exploring their dreams & future in Malaysia



Clockwise from top right:  
 'STOP BULLYING. Think before you speak.'  
 'Watercolour wall decoration painting of flowers.'  
 'Untitled.'  
 'Cubism art of a simple Afghan woman'  
 'Beauty of nature.'  
 By Sumaiya, 18, refugee.



'Green Lives Matter' (left) and 'Untitled' (above) by Sumayyah, 9, refugee.



# Special Insert on children & the COVID-19 pandemic

The COVID-19 pandemic has eroded human rights in many parts of the world, and Malaysia is no exception. Children's rights were affected in numerous ways by the onset of the pandemic, as well as the necessary Movement Control Orders (MCOs) that were implemented by the government to curb the spread of the virus.

## OVERALL IMPACT ON CHILDREN

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In April 2020, an online meeting was organised by the Office of the Children's Commissioner with more than 60 participants comprising governmental and international agencies, non-governmental and civil society organisations (NGO/CSOs). The participants included lawyers, academicians, psychology experts and children protection activists. Child representatives were also present and given an equal opportunity to express their views and propose recommendations on issues and challenges faced by children in Malaysia amidst the COVID-19 pandemic and during the MCO period.<sup>33</sup>

The children noted that during the MCO period, some of their friends had no access to devices such as laptops, and even those who did have access did not know how to use certain software or programmes needed for online learning, as no training was given beforehand. Furthermore, the children

pointed out that due to heavy stress from their parents, teachers and a disruption in their daily social life where they are unable to meet their friends at school, children found themselves feeling more depressed and anxious. They requested that their teachers be more understanding when it came to giving too much homework and learning assignments, as they felt that the emotional and mental toll from COVID-19 was not being taken into account when it came to their well-being and education.

On 12 June 2020, an online consultation on "Children's Right to Education during the Covid-19 Pandemic in Sarawak," was held by the Sarawak chapter of the Human Rights Commission of Malaysia (SUHAKAM), moderated by the Children's Commissioner. It drew 90 participants, including those from governmental and non-governmental organisations, teachers, parents and children representatives. Speakers included the Minister of Education, Science and Technological Research Sarawak, Dato Sri Michael Manyin Jawong; Director of Sarawak State Education Department, Tuan Haji Abang Mat Ali Abang Masagus; a child representative from Majlis Perwakilan Kanak-kanak Sarawak. Several of the issues and recommendations discussed below relating to

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<sup>33</sup> Information provided by the NGO Women's Aid Organisation, whose representative participated in both consultations.

the impact of the pandemic on children in Sarawak were raised.

### Violence against children

During the period the MCO was enforced, the police reported an increase in cases of children being abused by their parents (Jayamanogaran (2020)). Additionally, the Ministry of Women, Family and Community Development reported a 500% increase in calls on *Talian Kasih*—the hotline it runs which serves survivors of domestic violence among different categories of individuals—although the Ministry also attributed the vast majority of these calls to inquiries about food baskets being distributed by the Department of Social Welfare (JKM) (The Star (2020)). However, an issue of concern among NGOs is that *Talian Kasih* operators are not necessarily trained to respond to children, despite the line being established to be a channel to help when there are issues of child safety. Based on reports received from refugee children, their families and communities, and NGOs, refugee children were turned away when accessing *Talian Kasih*. Referrals made by the public, NGOs and refugee communities on refugee children were not addressed.

During the MCO period, Mercy Malaysia and the Ministry of Health's (MOH) Crisis Preparedness and Response Centre (CPRC) set up a national COVID-19 psychosocial support hotline, which has been in operation since 15 April 2020. This was later linked to Women's Aid Organisation's (WAO) domestic violence hotline (New Straits Times (2020)).

The Ministry of Women, Family and Community Development also opened up *Talian Kasih* for those struggling with emotional breakdowns due to MCO. This line also provided children with the opportunity to call in (Karim). Refugee children had inconsistent access to *Talian Kasih*. Some reported being turned away by frontliners, and other barriers include language and lack of access to a phone. While other helplines were available, calls were chargeable, and refugees

**Case study** (2020 case provided by WAO; name and identifying information have been changed or redacted for the child's protection and privacy)

Sarah is a child who was adopted. There were suspicions that her adoptive family was abusing and neglecting her. A family friend brought Sarah to the hospital for treatment, and a Social Welfare (JKM) officer saw her. After that, Sarah stayed with a family (distant relatives), to whom Sarah's adoptive mother had entrusted with Sarah's care whilst she was in the hospital for treatment. Because no police action had been taken yet, JKM allowed the distant relatives to continue caring for the child, and had to wait for police direction to take Sarah into JKM care, despite this resulting in Sarah being returned to a potentially abusive situation, and despite JKM officers having the authority to conduct their own investigation and suggest for a child to be removed from a situation.

The NGO service providers assisting on the case noted that the MCO implemented in March 2020 due to the COVID-19 pandemic may have resulted in some delay in the JKM officers' executing their responsibilities. The JKM officers and child protectors did not come across as well-equipped or skilled in communicating with children or assessing alleged child abuse (partly due to a language barrier). They did not take the lead and instead relied on the medical officers' assessment (both physical and psychological). Additionally, JKM was slow and hesitant to initiate an investigation into the adoptive parents, despite there being a child protector in the parents' location.

faced livelihood constraints and lack of credit to call.

Additionally, with children being out of school, abuse may be going undetected more often, as schools are in a prime position to detect abuse.

### Physical and mental health

There is concern that the rates of immunisation of children has been dropping as parents are reluctant to take children for their regular inoculations. According to paediatricians and NGO service providers, there had been an improvement in Sarawak in the number of children who had been immunised (including given the distances to the clinic).

There are also issues with children staying safe from COVID-19, as children from poor families cannot afford to replace masks daily; there is a need for distribution of reusable ones, to be carried out by the government. Poor families may also face issues of the

affordability of fines if they do not have access to masks.

Mental health of families has been a major concern during the MCO, with 2 out of 3 heads of household being emotionally distressed, especially among female-headed households (UNICEF and UNFPA (2020)). From 18 March to 11 August, 2020, at least 100 calls were received via *Talian Kasih* reporting various such cases (Ministry of Women, Family and Community Development (2020)).

### Impacts on refugee children

During the first wave of the COVID-19 pandemic in Malaysia, between March and April, multiple boats carrying Rohingya refugees arrived on the shores of Malaysia. Some of the boats were allowed to dock (G. C. Tan (2020)), while one boat carrying women and children was pushed back into international waters (The Malay Mail (2020)). This act of pushing back boats puts very vulnerable refugee children at risk of losing their lives, and goes against the spirit of the Convention on the Rights of the Child (CRC), to which Malaysia is a party. Similar boats that had tried to land in Malaysia had also drifted out at sea, with many people perishing along the journey. The hardships and threat to life for children on board these boats were recounted by those who were rescued (Natarajan and Hossain (2020)).

Between May and June 2020, authorities intercepted and pushed back 22 boats. Survivors of pushed-back boats recounted how people died on board. Rohingya refugees from the boats that were allowed to dock were eventually charged for violating immigration offences and sentenced to imprisonment; among them were women and children (Hamid (2020)). Their access to asylum procedures remains unknown.

The Malaysian government has continued to arrest and detain adults and children for

immigration offences and violations of the MCO.

Refugee and asylum-seeking children were arrested for MCO violations, although numbers are unknown. Reports emerged of excessive remand periods of 4 to 7 days for MCO violations, compounding immigration offences, disproportionate sentencing to the offence, and lack of access to legal representation (Fishbein (2020)). A 13-year-old Rohingya refugee boy was arrested and charged in a Magistrate's court in April 2020 for violating the MCO (Mohd. (2020)). The child was detained on remand for seven days in police lock-up with other adults during the peak of a first wave of the pandemic in Malaysia. In further violation of the Child Act 2001 of Malaysia, the child was brought handcuffed with other adults without the opportunity to maintain physical distancing. The action by the authorities to charge a 13-year-old boy in court for breaching the MCO can never be in the best interests of the child nor of the public. Compounding an immigration investigation for an MCO violation is an unjust application of immigration regulations and constitutes a deprivation of liberty (Child Rights Coalition Malaysia (2020)).

Further reports were also received of other refugee children being charged for violation of the MCO when playing in their apartment complex and going out to buy food within walking distance from their homes. In all instances, the children were held in remand in police lock-up for a week to allow for investigations for immigration offences. Children were also fined exorbitant amounts up to RM1,000, which was difficult for refugee parents to pay.<sup>34</sup> The CRC Committee has also stated that in the context of migration, the detention of a child because of their parents' migration status always contravenes the child's best interests (UN Committee on the Rights of the Child (2012)). However, in Malaysia, children continue to be

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<sup>34</sup> This is based on cases reported to and assisted on by Asylum Access Malaysia (AAM).

detained for the immigration offences of their parents.

Children were also handcuffed to adults without physical distancing, and there were reports of children being caned/whipped by the authorities (S. Lee, Cop caught on video whipping teens to face disciplinary action (2020)). On 23 June 2020, a Magistrates' Court sentenced six 17-year-old Rohingya children (including two girls) to seven months imprisonment and imposed three strokes of whipping on 27 other Rohingya refugee men. Counsel for the defendants asserted that the children had been wrongly tried as adults. On appeal, the whipping sentences were set aside and the court made an additional order that the children be released to UNHCR upon completion of their prison sentence (Asia News Desk (2020)).

These arrests and detention for MCO violations put children at risk for contracting COVID-19 as people arrested and on remand were not being screened for COVID-19, and due to the lack of physical distancing and hygiene practices. On 17 June, there was a report of a four-year-old boy testing positive in the Bukit Jalil depot (A. Lee (2020)).

In June 2020, the Coalition of Sovereign Migrant Workers in Indonesia issued a statement on findings from interviews with recently deported Indonesian migrants from Sabah. The coalition had interviewed migrants, including children, who reported systematic abuse and torture-like conditions in immigration detention centres in Sabah. Migrants reported being treated like animals, constantly verbally abused; some reported being beaten and kicked by officers (Koalisi Buruh Migran Berdaulat (2020)). In Parliament, when questioned about the report, Deputy Minister of Home Affairs Tuan Jonathan bin Yasin asserted that the Ministry is investigating the claims.

Large-scale raids took place in certain Enhanced Movement Control Order (EMCO) areas, with women, children, elderly, refugees and asylum seekers among the arrested and detained (Fishbein and Jaw (2020)). Videos

emerged of people being handcuffed without physical distancing and crammed onto immigration trucks. UNHCR document holders and persons with valid visas were also detained for document verification purposes and released subsequently. These were the reported operations:

- 1 May—3,352 foreign persons living in three areas in Kuala Lumpur (Jalan Masjid India, Menara City One and Malayan Mansion) were checked. Approximately 586 persons were detained.
- 3 May—raid at the Selangor Mansion building in Kuala Lumpur, in which 180 undocumented persons, mainly from India and Bangladesh, were detained (Tahir and Palanisamy (2020)).
- 11 May—early morning mass raids at the Selayang/KL Wholesale Market, during which 7,551 foreigners were checked and 1,368 persons detained, including 261 women and 98 children. The majority of persons detained, 790, were from Myanmar.
- 14 May—raid at Selayang Baru in the state of Selangor, during which 1,683 persons were screened, and 113 persons were detained, including 36 women and 11 children.
- 20 May—mass raid at Petaling Jaya Old Town area in Selangor, in which 200 people were arrested and detained; number of children unknown (The Star (2020)).

With all the arrests and mixing of the detention population, COVID-19 positive cases emerged in detention centres. On 3 June the MOH Director General announced a new detention centre cluster with 466 COVID-19 cases in four detention centres in Kuala Lumpur, Putrajaya and Selangor (Fadli (2020)):



- 338 cases from the Bukit Jalil immigration detention centre.
- 66 from the Semenyih centre.
- 60 from the Sepang/KLIA centre.
- 2 cases from the Putrajaya centre.

As at 6 August 2020, 72,736 foreigners have been tested for COVID-19, out of which 2,683 people (3.7%) tested positive, making up 30% of the total 9,038 confirmed cases in Malaysia (CodeBlue (2020)).

It is unclear how many of those testing positive were children. Persons testing positive were treated for free and upon testing negative were returned to detention centres to be deported. Presumably the same fate awaits those testing positive after successful treatment.

The MOH Director General also reported that persons being treated are handcuffed to their hospital beds; presumably this includes pregnant women and older children (Chung (2020)).

Because the government has continued these raids and arrests even as the pandemic is spreading, the number of persons detained in immigration detention centres far exceeded maximum capacity.

As at 2 July 2020, the number of children in immigration detention centres in Malaysia was 608. However, this number is based on the Immigration Department's definition of children as under the age of 12, so excludes children from the ages of 12 to 17.

The overcrowding, limited space and lack of ability to practice physical distancing contributed to the spread of COVID-19 in immigration detention centres. The government has directly put these children at risk of contracting COVID-19.

This right to a standard of living was also significantly impeded as a result of a loss of livelihoods during the MCO period and when mass evictions began to occur in the Selayang area around July 2020.

Reports emerged of refugees and other undocumented asylum seekers being kicked out by property owners around the Selayang area possibly due to various reasons, including not being able to pay rent over several months during the MCO, a notice by the Immigration Department that it would take action against owners who rent out their properties to "illegal foreign immigrants," and due to the rising xenophobia and discriminatory practices against Rohingya refugees in the area (Razak (2020)). The Minister of Women, Family, and Community Development, when quizzed in Parliament about the evictions and what assistance was being provided as children were made homeless, appeared to not know of these incidents and referenced transit centres for refugees who were evicted (Kamarulzaman (2020)). It is unclear where these transit centres are located, as evicted refugees have only thus far been assisted by the UNHCR and CSOs. Subsequently the Federal Territories Minister responded by saying that property owners are allowed to rent premises to UNHCR cardholders (Palansamy (2020)).

### **Impact on non-citizen children**

Initially, the MOH issued a commendable directive exempting fees for testing and treatment of foreigners suspected or found to be positive for COVID-19 and foreigners who are close contacts of positive persons.

However, following these assurances, mass immigration raids and arrests occurred at the EMCO areas. This and the 2001 circular to report undocumented persons have resulted in migrants and refugees being fearful of coming forward to get tested and treated.

During the MCO, non-citizen spouses and children of Malaysians without a Long-Term Social Visit Pass (LTSVP) were not able to enter the country or renew their visas. According to the NGO Foreign Spouses Support Group (FSSG), between 5 and 12 August 2020, about 70 spouses have managed to return to Malaysia; 205 are still stranded overseas, many who have children with them. Whilst the concerns of national security and public health that arise as a result of opening

Malaysia's borders must be acknowledged, it must also be emphasised that in many of these cases, there are severe impacts on the lives of women, children and families of Malaysians.

Families who reached out to FSSG for assistance during the MCO period included:

- Foreign spouse stranded overseas—189 cases.
- Non-citizen children stranded overseas—5 cases.
- Both non-citizen spouse and child stranded overseas—11 cases.
- 44 individuals who are either pregnant or have given birth during the MCO period.
- 109 individuals who have children and have been separated from family for five months now.

The following are a few examples of cases of Malaysian children's being affected due to COVID-19, and feeling the full brunt of not being given an automatic long-term visa or Permanent Resident status upon birth (cases are based on FSSG's data):

1. A Malaysian mother is facing difficulties in registering the birth of her child who was born on 27 July 2020 as her foreign spouse is stranded overseas.
2. A child born overseas to a Malaysian woman during COVID-19 is facing difficulties in birth registration. The Malaysian woman could not return to Malaysia to deliver as her husband was not permitted to enter Malaysia.
3. An 11-month-old non-citizen child of a Malaysian is stranded overseas, whilst the baby's three other Malaysian siblings are living in Malaysia. The Malaysian mother is hoping to reunite with the child.
4. Some of the children are being forced to stay out of school, as they are

stranded overseas and unable to relocate to Malaysia as a family.

5. Some of the children stranded overseas have yet to receive all their vaccinations.

Among the most impacted and in need after the MCO were stateless individuals, including indigenous individuals without citizenship who were excluded from relief assistance as a result of their status (Sibon (2020)). The travel curbs imposed under the MCO also posed an additional barrier for stateless individuals in rural areas to seek medical treatment and access basic necessities and banking facilities.

### **Financial impact**

For most households with children, the unpaid care burden during the pandemic increased with children being out of school (Women's Aid Organisation (2020)). This has already pushed many women out of the workforce, which creates a disproportionate financial strain on single mothers and female-headed households (Yap (2020)). Furthermore, these individuals may not have received the benefit of federal grants, as they were not engaged in formal employment (Women's Aid Organisation (2020)).

### **Impact on education**

Based on the experience of NGO service providers, there has been significant inequality in learning opportunities among children since the start of the pandemic. For example, 50% of children in Sarawak have no access to internet or electronic devices (Bong, 50 per cent of students in Sarawak unable to follow online learning (2020)). With schooling moving online, this puts a strain on many lower-income families who may not own a computer and further have to pay for internet access, which are expenses beyond their means. Even for those who have access, they may have to deal with issues of poor or unstable connections. The lack of access to internet, technology, and even electricity is estimated to affect around 50% of pupils in Sarawak, and thus online learning is not an option for a significant number of children.



Educational TV programmes are also not accessible to all due to a lack of electricity in some parts of the country, and the inability to afford satellite TV provider Astro, which was one of the providers during the pandemic. Such issues exacerbate existing inequalities: Children of richer families with internet access and the required technology are able to partake in online educational opportunities, unlike children from poorer households.

Additionally, long absences from school have been predicted to lead to increased rates of school dropouts due to loss of interest in school or the lack of a conducive learning environment at home.

Whilst online learning may be a luxury that many students cannot afford, there are simultaneously concerns about the reliance of online learning and the impact it may be having on children's brains and development (Wolf (2020)), and about the lack of play and social interaction which are also key to children's learning and development.

Sarawak has 651 *Sekolah Kurang Murid* (low-enrolment schools) (Aubrey (2020)). These schools were closed although physical distancing would have been easy to practise; they were in green zones and came from areas where online learning was not an option. On a national level, it has been suggested that students collect their work from their schools on a weekly basis; however, this overlooks the realities for many students in Sarawak and Sabah, where their homes may be very far from their schools, so the time, distance and cost barriers would make it highly impractical and unfeasible for them to go back and forth. The distance also affects teachers. For example, teachers from the school SK Lusong Laku must charter a four-wheel-drive vehicle to reach their school from Bintulu, a distance of 275km, which costs them RM1,600 (The Dayak Daily (2020)). During the MCO, they stayed in the closed school.

The Ministry of Education's (MOE) SOPs for opening schools included a survey on children's health to be completed by their parents, and the same survey was given to all

schools, which resulted in many children with disabilities, by default, not being able to pass the test to re-enter school (e.g. children with Down Syndrome often have heart conditions), including schools taking in only special needs children. The SOPs did not seem to have taken into account such special schools, especially those catering to children with more profound physical disabilities. Online learning also created obstacles for some disabled children who are not able to operate computers, and a lack of educational outlets and the inability to play outside also created stress for these children.

## Poverty

Many families who were already struggling with poverty are worse off because of the pandemic. Sabah and Sarawak remain the poorest states in the country (Free Malaysia Today (2020)). In Sarawak, many rural families are not even earning RM1,000 per month, vis-a-vis the revised poverty line for monthly household income of RM2,208 (Then (2020)). Unfortunately, even Malaysians who qualify for the government's COVID-19 stimulus aid may not be able to access it, as many of the poor either lack bank accounts or internet accessibility to register for them, which is a requirement as the government is using registered tax information to distribute these direct payments (Women's Aid Organisation (2020)). In Sarawak, a Member of Parliament set up a task force to assist his constituents who were eligible for the stimulus aid (The Dayak Daily (2020)). The dual crises of the COVID-19 pandemic and the MCO for the urban poor in Sarawak and Kuala Lumpur have also been highlighted by experts (The Dayak Daily (2020)) (Sibon, Twin crises of Covid-19, MCO highlight plight of Sarawak's growing urban poor (2020)).

Period poverty is an issue for many poor girls, but this has also become exacerbated during the pandemic in both East and West Malaysia (The Borneo Post (2020)) (M. Z. Tan, Malaysian woman kickstarts initiative to donate sanitary pads to poor women and girls during MCO (2020)).

## RECOMMENDATIONS TO THE GOVERNMENT

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1. Change the relevant policies and streamline processes within the authoritative bodies to grant Permanent Resident status to children born to either Malaysian parent abroad or out of a legally recognised marriage within six months' stay in Malaysia to enable them access to basic rights.
2. Introduce a streamlined criteria or standard operating procedure (SOP) with regard to the approval process for Malaysians with foreign spouses stranded outside Malaysia to re-enter, so that families with special circumstances such as pregnancy, medical conditions, long responsibility for caring for children, family or elderly adults, unemployment (especially while being stranded in a third country), lack of financial resources in a foreign country, etc. shall be prioritised during the pandemic.
3. Increase internet infrastructure and coverage in East Malaysia, and provide financial support for telecommunications companies to operate there. For example, there have been calls for corporate social responsibility (CSR) initiatives in Sarawak, but the response is poor as the consumer traffic is relatively small, and it is difficult and costly to construct in interior areas (The Dayak Daily (2020)).
4. Utilise radio more, as well as WhatsApp and Telegram, as these communication means are more accessible than other channels although the latter two still require internet.
5. Allocate budget to help both students and teachers obtain the necessary technology to continue schooling.
6. Open *Sekolah Kurang Murid* even during conditions of restricted movements and pandemics, with physical distancing guidelines implemented, as they serve a population in dire need of education.
7. Revise the current survey on children's health that parents need to complete before their children can return to school; take into account children with disabilities, and review systems on how to help children with disabilities not to be left further behind during the pandemic.

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