

## **State Party Examination of Malaysia's First Periodic Report**

### **Session 44 of the Committee on the Rights of the Child**

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Malaysia ratified the Convention on the Rights of the Child (CRC) on 17 February 1995. On 25 January 2007, the Committee on the Rights of the Child (the Committee) examined Malaysia's First Periodic Report.

#### **Opening Statements**

Attorney General Tan Sri Abdul Gani Patail, who presented the report, headed the delegation. In a comprehensive introduction, Ms. Datuk Faizah Mohd Tahir, Secretary General of the Ministry of Women, Family and Community Development noted the creation of the Child Division under the Department of Social Welfare and of the National Advisory and Consultative Council, which allowed the Ministry to handle and administer all matters pertaining to children. Coordination was handled by the Coordinating Council for the Protection of Children. A second National Plan of Action and a National Child Policy were being drafted to more effectively deal with children's issues. They stressed the importance of the new Community Based Rehabilitation Centres (CBRs) for persons with disabilities and the introduction of compulsory education under the amended Education Act of 2002. The implementation of Child Protection Teams under the Child Act 2001 has ensured community protection for children and families in crisis. They noted the participation of children in many national and international forums, as well as the creation of BRATS (Bright, Roving and Annoying Teens) which seeks to sensitize teenagers to important social issues. The Child Act 2001 specifically sought to promote the core principles of the CRC. Many legal provisions for children were in place and many were in the process of revision and updating. New legislation, such as the Anti-Trafficking of Persons Bill, the Foreign Workers Bill and the Persons with Disabilities Policy were in the final drafting stages.

The country rapporteur, Mr. Lothar Krappmann warmly welcomed the delegation and noted the anticipation of the Committee on this long-awaited report, which was nine years overdue. He noted the significant investments made in the health and education sectors, the consolidation of children's issues in the Ministry of Women, Family and Community Development and the establishment of many effective mechanisms for child protection, such as the Child Protection Teams and crisis centres. Although many steps had been taken, he expressed concern over the many reservations to the CRC, the non-ratification of the Optional Protocols, the rights of vulnerable children, the conflict of law in the dual legal system, the dissemination of the CRC and the respect for the views of the child.

#### **General Measures of Implementation**

The Committee noted with concern that many international human rights treaties and conventions have not been ratified and asked if there were any plans to do so. The delegation responded that the priority was to bring national law in line with the conventions and treaties before signing international agreements and therefore the priority was on revising domestic legislation first. The Committee asked to what extent children and the public at large were aware of the principles of the CRC and what was being done about this. The delegation noted that under the Department of Social Welfare officers have specific training in the CRC and through the Social Institute of Malaysia children have been trained as facilitators and educators on the

principles of the CRC. In addition, public awareness was raised through specific campaigns, Child Protection Teams and community training on the CRC. The Committee asked about the substantial lack of data, particularly in reference to underserved and abused children. The delegation admitted that there was no comprehensive database or statistical yearbook on children; however efforts have been made in this direction. The Committee asked about governmental funding of NGOs and what procedures needed to be followed for the use of foreign funds. The delegation said that financial grants were made available for NGOs through the Ministry of Women, Children and Community Development. NGOs are required to submit an application, which is then subject to approval by a committee and annual review and renewal. There is no procedure in place for the monitoring of foreign funding for NGOs. The Committee also asked about the drop in budgetary allocations for health. The delegation responded that the drop was in the development sector because most of the major building of hospitals and clinics was finished.

The Committee was particularly concerned about the dual legal system and the implications for children's rights. The delegation explained that there are difficulties in integrating Shyariah law and civil law, however with such a diverse population; the system seemed to work fairly well. It noted the creation of a working group, made up of religious and legal leaders in the country who are working on solving the discrepancies between the two systems. Specifically the working group was seeking to unify provisions for the age of marriage, custody and jurisdiction. Currently, the court has jurisdiction where couples are first married. If a couple is married under Muslim rites, the Syariah court had jurisdiction, if they are married through the civil process, the civil courts had jurisdiction.

The Committee commended the possibility of withdrawal of the numerous reservations to the CRC and asked the delegation about the timeframe for such actions. The delegation responded that such a timeframe was difficult to give, because this would be subject to cabinet approval, however it indicated that efforts would be made to withdraw the reservations within the next year.

## **Legislation**

The Committee commended the work of the National Advisory and Consultative Council as well as the Coordinating Council for the Protection of Children, but asked if the overlap in their mandates hindered their progress. The delegation responded that the Coordinating Council was an active council whose main responsibility was the protection of children, particularly through the monitoring of the Child Act whereas the National Advisory coordinated all national policies and programmes for children on the national, regional and local levels. The Committee inquired about the second National Plan of Action and whether or not it would take up all the rights and principles in the CRC. The delegation affirmed that the second Plan of Action was based on commitments made in the World Summit 2002 and that it would focus on the principles of the CRC in six major areas: early childcare and development, early education and literacy, children in need of protection and rehabilitation, disabled children, parenting education and children and the environment.

## **Civil Rights and Freedoms**

The Committee was concerned that “qualified” discrimination was allowed for allocative purposes, according the report and expressed concern that such qualification may lead to discrimination. The delegation responded that this was used particularly with Panan children and

was used to ensure their access to schooling. The delegation admitted this discrimination, but stated that it needed to continue for the betterment of children's rights as a whole.

The Committee drew the delegation's attention to the low rate of birth registration. These children were often from vulnerable groups, refugees, asylum seekers or the children of clandestine workers. The delegation highlighted the fact that all children born in Malaysia had the right to registration and documentation, however many of these groups were either afraid to register or were in very remote areas. There has been much work done to try and bring registration services and mobile registration units to remote areas and underserved regions. The delegation stressed the importance of UNICEF in helping to document the large numbers of unregistered children. The Committee inquired about the right of a child to the mother's nationality. The delegation replied that citizenship is determined by the father's nationality and cannot be determined by the mother's under current law. This is a fundamental provision in the Constitution and although under review, there are many obstacles to its amendment. The Committee asked if it was a problem to obtain citizenship if a child was born out of wedlock. The delegation responded that if the father was unknown, the child could receive citizenship from its mother, however inheritance may pose a problem under Sharia law.

The Committee took special note of recent events on a university campus where students were allegedly detained and prosecuted for demonstrating and criticising the Internal Security Act. The Committee asked what was being done to protect freedom of expression and the freedom of association. The delegation responded that these allegations were false and that these students were not detained because of the content of their demonstration, but rather because of the lack of a demonstration permit. The delegation denied that any children have been put on trial for expressing their views—freedom of expression is respected.

## **Education**

The Committee praised the progress made in education, particularly noting the high level of achievement by students. The Committee asked if there were any plans for early childhood care and education. The delegation responded that pre-school was not compulsory, but children are encouraged to attend—enrolment has increased to over 100,000 children. All materials are provided and parents only have to pay a nominal fee. The Department of Social Welfare monitors all programmes for children under four and oversees the Childcare Centre Act. They insure minimum standards on safety, sanitation and registration. Efforts to increase community childcare centres have been made in order to provide affordable and accessible childcare. The Committee welcomed the high enrolment rate, but inquired about programmes targeting unenrolled children. The Committee also asked what was being done to assist poor families. The delegation responded that there are many programmes which seek to improve parental outreach, transportation, hostels for students, transit homes for visiting parents, uniforms and food, particularly for children in rural and poor areas. The Committee asked if undocumented children have access to education. The delegation responded that they did not have access to public schools, but efforts were being made to register them and enrol them in specialized NGO schools for unregistered children. The Committee asked if undocumented children were able to sit for exams. The delegation explained that since the NGO schools for undocumented children did not follow the national curriculum, there was no way for them to sit for the national exams.

The Committee asked whether vocational training was considered to be a “second-class education”. The delegation clarified the two stream educational system: academic and technical. Vocational schools have been integrated into the overall schooling system and after the diploma level; these students may go to universities for a degree like those in the academic stream. This

is not seen as a “second-class education.” The Committee was concerned that the moral education that children received in schools was more likened to a training manual than an insight-generating model. The Committee asked what was being done to improve the course contents. The delegation said that many programmes have been put in place to help internalize moral values. Character development is encouraged through sports, uniformed units, and community service. The Committee asked what was being done to educate children on human rights. The delegation responded that books on human rights were sent to schools and were being used as teaching materials.

### **Health and Welfare**

The Committee noted that malaria and TB rates are still very high. The delegation noted that these numbers were decreasing in most areas, but were still very high in certain regions. The State was working to strengthen the civilian health system, train medical staff and empower the public on the threat of these diseases. The Committee asked what was being done to promote adolescent health. The delegation noted a survey, which showed a high level of reproductive knowledge in teens. Reproductive health was being taught in schools and there were additional education programmes in youth-friendly health and social services. The Committee asked what was being done to prevent adolescent suicide. The delegation noted a new training manual for adolescent mental health that was being drafted and would be used in all governmental health clinics. The Committee took note of the many programmes to prevent drug abuse, but asked what other measures were being taken. The delegation noted the many awareness campaigns and anti-drug clubs for students. There was also a comprehensive rehabilitation programme for addicts. The Committee inquired about the place of family planning in the development policy of the country. The delegation explained that the Ministry of Health through its clinics provided family planning counselling and methods and it was readily available to all. The focus of family planning was on birth spacing rather than birth reduction. The Committee inquired about exclusive breastfeeding. The delegation noted the creation of a breastfeeding week and a monitoring team that ensures guidelines are being followed.

The Committee asked what was being done to prevent the spread of HIV/AIDS. The delegation pointed out the national strategic plan for AIDS 2006-2010, which provides for the coordination of all partners for the treatment, education and support of AIDS awareness. This programme provides training, capacity building, and education to reduce HIV transfer in drug use, marginalized groups, and between mothers and children. The Committee asked if anti-retroviral treatment was available and to what extent they were affected by free-trade agreements. The delegation responded that ARVs were free and were not affected by free trade agreements.

The Committee posed questions about children with disabilities and their access to education and healthcare. The delegation said that access to healthcare for these children was provided throughout government healthcare centres. Early detection, autism testing, and education was also provided. There were several schools for specific disabilities, programmes for inclusion of these children in the normal school system and special education through community based rehabilitation centres.

### **Family and Institutions**

The Committee was concerned about provisions which allow children that are “beyond control” to be detained in probation hostels. The Committee asked how it was determined when a child was “beyond control”. The delegation responded that this option required an investigation and

an independent court order—this cannot be decided upon arbitrarily. The Committee asked about the procedure for this type of detention and if there were any psychological professionals who weighed in on the decision. The delegation responded that there are psychologists in some areas, but they are not available to everyone. The Child Act requires that a deputy prosecutor or police officer make a report and then the court makes a final decision. Detention was not the only option available.

The Committee noted that parental workshops are offered as a court order and inquired if these could be considered as preventative measures. The delegation replied that these workshops were provided for parents of children in rehabilitation centres to enhance the coping ability of parents, to counsel parents and teach parenting skills and self-awareness. These services were only available by court order.

The Committee asked about custody in divorce cases. The Committee noted that the law provides that all children under seven were given to the mother for custody, but asked if there was any provision for joint custody. The delegation responded that a court decided upon custody in the best interest of the child and a child under seven has a need for his or her mother. The Committee asked if under Syariah law, a child could be removed from custody if the mother changed religion or remarried. The delegation replied that this was possible and custody could be given to another person. This would be decided in the court where the marriage was performed (civil or Syariah). The Committee asked what provisions were made for maintenance, particularly from father's living abroad. The delegation noted various regional agreements on this issue.

The Committee asked about the monitoring and registration of children's homes. The delegation responded that there are guidelines for the management of these homes to ensure that they are child-focused and meet the standards necessary for security, health, and care. The Committee noted that the maximum holding period was three years and asked what happened after this period. The delegation stated that children were held in these homes until age 18 or for three years, whichever is shorter. There was an individual review panel for each child, which explored the progress and future options for these children whether it is foster care, adoption, extension of stay or release.

## **Juvenile Justice**

The Committee inquired about the prevalence of juvenile courts. The delegation noted that there were courts for children, but they were not available in every district. The Committee asked if judges and magistrates were specially trained in child issues and the CRC. The delegation responded that magistrates were sensitised to children's issues through the CRC and were given training in the Institute for Judicial and Legal Training. The Committee asked if legal aide was provided for children. The delegation highlighted the mandate of the Legal Aide Bureau, which provides free legal aide to any children in conflict with the law. The Committee asked about pre-trial detention for children and how long children could be held before seeing a judge. The delegation said that a child must be brought before the magistrate within 24 hours of arrest and the court must order further detention. If a child were not charged, he or she would be released. Trials did not have a time limit, but there were efforts to expedite this process. The Committee asked if there were penalties for newspapers that publish the identity of minors in a criminal case. The delegation responded that this was a very difficult situation and that recommendations were needed on this issue. The Committee asked if a child being tried as an adult had the same protections as a child in the juvenile courts. The delegation responded that these children had all of the same rights and that the child's interests were taken into account by the magistrate. The

Committee asked about the possibility of restorative justice or diversion. The delegation responded that it was looking into possibilities for mediation and restorative justice.

The Committee asked about the different types of detention centres for children. The delegation explained that Probation Hostels were rehabilitation centres for children that were deemed out of control. These centres provided protection, accommodation, food, clothing, guidance and education. Approved schools were centres for the detention and rehabilitation of children in conflict with the law. The Committee asked if specialised professionals worked with the children in Probationary Hostels and if there was a process for reintegration. The delegation emphasised the importance of assessment, intervention, recovery and integration. Staff in these centres were specifically trained in casework. The Committee asked about efforts to provide alternatives to detention centres. The delegation highlighted the administrative efforts to increase the release of children on bail and detention in children's homes. The Committee asked if there was any compensation for detention when a child was proved innocent. The delegation said that there was no such compensation. The Committee asked how many young children were in detention with their mothers and how long they could be so. The delegation responded that there were 69 children with their mothers in prison and 360 children in immigration centres. Children could stay with their mothers until the age of three.

## **Abuse**

The Committee asked why caregivers and teachers were not under the obligation to report child abuse. The delegation responded that counsellors were provided to schools to hear the views and the complaints of children. This has been very useful in abuse and sexual harassment cases. The Committee asked about the high numbers of sexual abuse cases and what was being done to prevent sexual abuse. The delegation responded that the increased numbers signified the increase in reporting, not the increase in cases of abuse. Child Protection Teams are very involved in awareness, prevention and assistance in this area. The Committee suggested that a helpline be considered. The delegation responded that discussions were already underway for such a helpline. The Committee asked what the status of homosexuality was and if it was criminalized. The delegation responded that it was not tolerated and was an offence.

The Committee was very concerned about the use of corporal punishment despite provisions against such a practice. The Committee asked about the timeline for the abolishment of corporal punishment and the withdrawal of the reservation to Article 37. The Committee expressed great concern over the continued whipping and caning of children and the reservation on this issue. It asked what was being done in response. The delegation replied that they are committed to withdrawing the reservation on this article and making provisions for such behaviour in the Children's Act, although a specific timeline for doing so was not given. The delegation also said that flogging and the use of small canes against children is still seen as culturally acceptable. The delegation was ambiguous as to if these practices were still condoned.

## **Child Trafficking**

The Committee was very concerned about child trafficking and the criminalisation of victims. The delegation responded that progress was being made in protection of victims, the prosecution of violators and the use of special non-immigrant visas; however they did note that it was impossible to let illegal immigrants go free. This meant that victims must stay in detention centres. Efforts were being made on the global level, as this problem was not reserved to one state. The Committee asked if there were any plans to ratify the Optional Protocol on the Sale of

Children, Trafficking of Children and Child Pornography (OPSC). The delegation said that these issues were dealt with in the Child Act 2001 and various other laws although it is good advice to look into making one comprehensive set of laws on these issues. The Committee asked if there were any specific laws on child pornography. The delegation confirmed that there were not.

### **Refugees**

The Committee asked if there were any laws regarding the status of refugees. The delegation confirmed that there were no laws, but there was support for them. There were many programmes which sought to provide assistance, but the state closed its eyes to most refugee activity. The Committee asked about temporary residence permits for refugees, particularly those from Myanmar. The delegation responded that these permits were available on a one-year renewable basis and that citizenship was even a possibility if they met the requirements. The Committee asked if there was a problem with deportation and the splitting of families. The delegation replied that this did not happen intentionally, although there was the possibility if a parent claimed a child was not his/her own. The Committee asked why the UNHCR was not allowed access to immigration detention centres. The delegation responded that they were allowed access, but needed to give adequate and official notice.

### **Child Labour**

The Committee enquired about preventative and remedial actions to prevent the economic exploitation of children. It noted that the conditions and definition of work still needed to be addressed. The delegation noted that it was a child's choice to work and he/she should have this option provided that all other rights (such as education) were being upheld at the same time. The definition of light work was not sufficient and needed to be clarified to protect children from exploitation. Dangerous work for children was prevented by the employment act, but it needed to be clarified as well.

### **Concluding Remarks**

Mr. Krappmann thanked the impressive delegation for its hard work, clear dialogue and commitment to children's rights. There were many positive developments such as the Child Act, the Children's Division, Child Protection Teams, Child Activity Centres and Crisis Intervention Centres. He emphasised the partnership between the Committee and the delegation against the shortcomings and deficits. More focus needed to be placed on vulnerable children, domestic violence and corporal punishment, pockets of poverty, pre-school education, sexual abuse, trafficking, domestic servants, and problems with the dual law system. He encouraged the delegation to keep working towards these goals and expressed anticipation for the next report, preferably on time.

Mr. Abdul Gani also expressed thanks to the Committee for their questions and critiques. He acknowledged the many concerns left and made a commitment to prepare another report in five years.