Promoting Children's Rights through the law in Malaysia
"The principle of 'all children, all rights' is still much too far from being a reality"

Kofi Annan (former UN Secretary-General)
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article 2

The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from.

It doesn't matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.

The best interests of children must be the primary concern in making decisions that may affect them.

All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This applies particularly to budget, policy and law makers.

article 3
The United Nations (UN), founded in 1945 to replace the League of Nations, is an inter-governmental organisation to stop wars between nations, to provide a platform for dialogue and to facilitate cooperation in international fields.

The purposes of the United Nations, as set forth in its Charter, are to maintain international peace and security; to develop friendly relations among nations; to cooperate in solving international economic, social, cultural and humanitarian problems; and in promoting respect for human rights and fundamental freedoms.

The UN is truly an international body, as shown by the 192 member states, including almost every recognised independent state.

Amongst them, Malaysia was admitted on 17 September 1957, originally as the Federation of Malaya.

The UN currently uses six official languages (Arabic, Chinese, English, French, Russian, and Spanish). Its most visible public figure is the Secretary-General, currently Ban Ki-Moon of South Korea, only the second Secretary-General to be selected from the East Asia region.

The UN is a huge agency that contains many different organisations with their respective mandates.

The Security Council is mandated to ensure international security; the UN Development Programme (UNDP) to support economic development in the world's developing countries; the World Food Programme, especially important in times of rising prices, to reduce starvation and malnutrition; the World Health Organisation, or WHO as it is often known, is the leading research and policy agency working to improve the health of the world.

The UN is also responsible in the sphere of international law and human rights issues, notably with the International Court of Justice (ICJ). An example of the ICJ's intervention is in its actions against Yugoslavia's former president Slobadan Milosevic who was found guilty before the ICJ for war crimes, crime against humanity and genocide. So, where does UNICEF fit into this global agency?
After the devastation of World War II, children in Europe faced famine and disease. The newly founded United Nations created a special agency in December 1946 to provide them with food, clothing and health care. This new agency was called the United Nations International Children’s Emergency Fund or UNICEF for short.

For many years after, UNICEF focused on emergency relief in under-developed countries, ensuring children’s basic survival needs. In many regions of the world, UNICEF continues this important mandate today for the world’s children whose lives are still in jeopardy every day.

Whether they are growing up in countries affected by natural disasters, civil conflict and war, or in countries with poor governance and oppression, children may still – even in 2008 – not have the basic essentials of food, shelter and clean drinking water to survive.

UNICEF contributes to securing these basic needs by providing supplies and services to ensure that children will be able to continue their schooling and enjoy their childhood despite emergencies.

- In many countries torn apart by war or civil strife, UNICEF helps children continue to learn with school-in-the-box kits that carry supplies such as exercise books, pencils, erasers and scissors, as well as a wooden teaching clock, wooden cubes for counting and a set of three laminated posters.

- In countries affected by natural disasters such as floods, cyclones and earthquakes, UNICEF facilitates children’s psychosocial recovery by providing recreation-in-a-box kits with sports equipment such as balls for several types of games, coloured tunics for different teams and a measuring tape for marking play areas, a whistle and scoring slate.

The disparity or gap between 'children who have' and 'children who have-not' is increasing. These children remain far more vulnerable to abuse, violence, neglect, trafficking, sexual exploitation, child labour and recruitment into armed forces.
Over the years, as countries achieved their Millennium Development Goals in terms of health, education, child and maternal survival, so too has UNICEF’s mandate evolved.

Many countries, especially middle income countries like Malaysia, have experienced an increasing emphasis on the realisation of a full package of child rights that extend way beyond the basic rights to survival.

In several of these countries however, there are still children who live on the margins of society because of their race, gender, disability, HIV status or simply because of a parent's drug abuse.

Whilst they have more chance today of surviving to adulthood than 25 years ago, many still do not receive equal treatment under national laws and policies.

For many, the disparity or gap between 'children who have' and 'children who have-not' is increasing.

The reality of the Global Picture

- Daily, some 26,000 children die before their fifth birthday from preventable diseases such as diarrhea and pneumonia. This translates to almost 10 million unnecessary deaths annually.

- Around 93 million children between the ages of 7 and 12 did not go to school between 2005 and 2006.

- 370,000 children under the age of 15 were newly infected with HIV in 2007.

- Some 126 million children between the ages of 5 and 17 are employed in hazardous labour.

- Around 6 million children were permanently disabled or seriously injured during conflicts around the world between 1995 and 2005.
PART I: AN INSIGHT TO THE UN AND UNICEF

UN Convention on the Rights of the Child
Establishing children's rights as enduring principles to uphold

The Convention on the Rights of the Child states that children everywhere are entitled to basic human rights which include:
- the right to survival
- the right to develop to the fullest
- the right to protection from harmful influences, abuse and exploitation
- the right to participate fully in family, cultural and social life

UNICEF's work for children and their childhood are guided by these principles, enshrined in the UN Convention on the Rights of the Child (CRC).

This international Convention, adopted by the United Nations General Assembly on 20 November 1989 in New York sets out – for the first time – the civil, political, economic, social and cultural rights of all children.

This ground-breaking document recognises that specific measures need to be taken, and specific rights protected, to uphold and promote the human dignity of our most vulnerable citizens: children.

It should be noted that the CRC is the first ever human rights treaty which grants a role in its implementation to a specialised United Nations agency, in this case UNICEF.

For UNICEF, the CRC has become more than just a reference document, but rather a systematic guide to everything it does for children.

UNICEF's Mandate
As expressed in its Mission Statement, UNICEF is mandated to "advocate for the protection of children's rights".

In line with its mission, UNICEF "strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children".

The CRC provides UNICEF with guidance as to the child rights violations that need to be assessed and addressed. It also serves as a tool against which UNICEF measures the progress achieved in reversing such violations.

In more than 150 countries and territories where UNICEF has a presence, the agency works with a range of actors that include governments, communities, media and individuals to respect children's rights, promoting full compliance with and implementation of the CRC.
UNICEF: Protecting children's rights through the CRC

UNICEF strives to protect children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. We make this happen by ensuring governments, families and communities are aware of their duties to children and by working to support them in upholding these rights as outlined in the Convention on the Rights of the Child (CRC).

Advocacy
UNICEF’s advocacy role focuses on working with those responsible for the development and implementation of legislation and policy.

This requires facilitating and forging relationships with key policy makers in government ministries and departments responsible for the wellbeing and protection of children.

In terms of promoting societal change, UNICEF may also support advocacy campaigns through publications, awareness raising activities and exposure to good models of practice.

A classic example is seen in the response to the former UN Secretary-General's Report on Violence against Children.

Launched in 2006 following a five year global study, the Report amongst others, considered the endemic nature of violence against children.

Whilst all countries in this region have ratified the CRC, few have enacted legislation to protect children from violence, in contravention of the CRC provisions under Article 19.

The Report recommends that national legal frameworks need to be brought into line with the provisions of the CRC, namely that violence and beatings in the home, corporal punishment in schools and caning of children in detention should be prohibited.

Since the launch of the Report, there has been a notable response to develop laws and policies to protect children in accordance to the CRC.

Technical assistance
It is a sad reality that compliance with international law and standards is unlikely to be sustained if there is no monitoring process.

In order to maximise compliance, UNICEF is assigned a special role under the CRC to provides technical support to the Committee on the Rights of the Child.

This Committee monitors implementation of the CRC by States parties.

UNICEF facilitates this process by participating in the consideration of State parties reports and providing expert advice on the implementation of the CRC.

In addition to contributing advice and assistance to the Committee, UNICEF facilitates broad consultations within States to develop the country reports and to strategise with the concerned government to implement the Committee's recommendations.
Children have the right to live. Governments should ensure that children survive and develop healthily.

All children have a right to a legally registered name, officially recognised by the government. Children have a right to a nationality (to belong to a country). Children also have the right to know and, as far as possible, to be cared for by their parents.
The Universal Declaration of Human Rights (1948) and the Convention on the Rights of the Child (CRC) are key international legal instruments for the promotion and protection of children’s rights.

Adopted by the United Nations General Assembly in its resolution 44/25 of November 1989, the CRC is the first specific set of universally agreed non-negotiable standards and obligations which recognises in law the human rights of children and young people up to the age of 18.

For the first time, children are considered as subjects with their own entitlements and freedoms which must be respected and upheld by signatory governments.

The rights of children secured in the CRC are founded on respect for the dignity and worth of each child, and apply to every human being everywhere, regardless of race, gender, language, religion, citizenship, ability or wealth.

Built on varied legal systems, the CRC is the result of years of deliberations between governments, non-government organisations, human rights advocates, lawyers, health specialists, social workers, and child development experts from all corners of the globe.

Since its adoption, the CRC has been ratified more quickly and by more governments than any other human rights instrument. In fact, only two governments have yet to ratify it, namely Somalia and the USA.

The CRC offers a new vision of the child as both an individual and a family and community member with rights and responsibilities appropriate to his or her age and stage of development.

The human rights framework constituted by the CRC ensures that all children should enjoy the same fundamental rights, whether they be in Denmark or Dubai, Mozambique or Malaysia.

This includes special protection measures and assistance by State parties to all children in their territories.

Because so many countries were involved in its development, the CRC is a consensus document that takes into account the importance of traditions and cultural values for the protection and harmonious development of the child.

Whilst it undoubtedly reflects the principal legal systems of the world, it does acknowledge the specific social and economic contexts of developing countries.

Indeed, in light of these particular needs, the CRC makes special mention of the importance of the promotion and the encouragement of international cooperation so as to provide these countries with support for the implementation of children’s rights.
UN CRC Optional Protocols
Protecting children from the worst forms of exploitation

Despite the strong provisions of the Convention on the Rights of the Child (CRC), there are child rights violations that require special attention in the law.

The United Nations General Assembly, in 2000, adopted two Optional Protocols to supplement the provisions of the CRC:

- The Optional Protocol on the involvement of children in armed conflicts is to strengthen the CRC’s implementation and increase the protection of children in armed conflicts.

- The Optional Protocol on the sale of children, child prostitution and child pornography provides States with detailed standards and recommendations to end the sexual exploitation and abuse of children. It protects children from being sold for non-sexual purposes such as for hazardous child labour, illegal adoption and organ donation.

As with other human rights treaties, these Optional Protocols were created in order to further address specific, substantive issues related to the treaty, supporting achievement of the purposes of the CRC and the implementation of its provisions.

States parties to these protocols are required to submit additional reports to the Committee on the Rights of the Child for review.

Today, more than 100 countries have signed and ratified these Protocols.

Whilst the protocols must always be interpreted in light of the CRC, they may also act independently.

Indeed, these Protocols are so important that they can be ratified or acceded to by non-States parties to the CRC, as in the case of the USA which has not ratified the CRC, but has ratified both of the Optional Protocols.

The Optional Protocols must always be interpreted in light of the original treaty as a whole, in this case guided by the principles of non-discrimination, best interests of the child and child participation.
Ensuring the fulfillment of the Convention on the Rights of the Child

As a result of their agreement to meet the standards in the Convention on the Rights of the Child (CRC), governments have been obliged to bring their legislation, policy and practice into accordance with these standards.

The establishment of the Committee on the Rights of the Child has proved an essential monitoring body to ensure that commitments made and legislations enacted, actually transform into real change in children’s lives.

Indeed, to ensure the fulfillment of the CRC statements, governments which have ratified the treaty are required to submit regular reports on the status of children’s rights in their country to the Committee.

The Committee is an internationally elected body of independent experts from all over the world that sits in Geneva.

A number of other recommendations were spelled out, including to amend the existing laws, like the Child Act 2001 (Act 611), in order to ensure that the deprivation of liberty is in full conformity with the CRC, meaning to take the necessary measures to ensure that deprivation of liberty is used only as a measure of last resort and limited to the shortest time possible.

The Committee reviews and comments on these reports. It encourages States to take special measures and to develop special institutions for the promotion and protection of children’s rights.

Its recommendations aim to help governments to conform national legislation to the CRC.

An example of this can be found in the specific recommendations of the Committee of the Rights of the Child to the Government of Malaysia in 2007.

Compared with many other countries, Malaysia has a significant number of reservations to the CRC, including provisions on the deprivation of liberty of young people under the age of 18.

The CRC Committee strongly recommended to the Government of Malaysia that the reservation to these important provisions be overturned.
When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account.
article 19

Children have the right to be protected from being hurt and mistreated, physically or psychologically.

Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them. Children should be disciplined in non-violent ways which are appropriate to the child's level of development and take the best interests of the child into consideration.
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Convention on the Rights of the Child
Advancing the realisation of children's rights

The Convention on the Rights of the Child (CRC) is not about commitments or promises, but about obligations.

Although implementing the CRC is a government’s responsibility, others too are duty bound to protect and guarantee the rights of children. They include parents, teachers, health workers, scientists, researchers and children themselves.

Two main characteristics define the power and potential of the CRC: its legally binding status and its ability to engage and empower people, from government officials to ordinary citizens.

Since the realisation of the CRC in 1989, the push for children’s rights has accelerated and expanded, growing into a child rights movement that has shaped and developed the lives of millions of children across the world.

While it is difficult to directly quantify the positive impact of the CRC on children’s lives, the facts perhaps speak for themselves.

- In 2006, for the first time since annual records have been kept, the number of children dying before their fifth birthday fell below 10 million, to 9.7 million. This reduced to 9.2 million in 2007.

- In the 47 countries where 95 per cent of measles deaths occur, measles immunisation coverage increased from 57 per cent in 1990 to 68 per cent in 2006.

- Attendance data based on household surveys shows that the number of children of primary school age who are out of school has declined markedly in recent years, from 115 million in 2002 to 93 million in 2005-2006. This is substantial progress, and many countries are close to delivering universal primary education.

- Additionally, 1.6 billion people have gained access to clean drinking water since 1990.
Children have the right to good quality health care – the best health care possible – to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy.
Children have the right to a standard of living that is good enough to meet their physical and mental needs.

Governments should help families and guardians who cannot afford to provide this, particularly with regard to food, clothing and housing.
UNICEF has been working in partnership with the Government of Malaysia since 1954. Of course, a largely rural Malaysia back then was very different to the thriving, urbanised Malaysia of today.

As was seen in the recent UNICEF publication, 'The State of the World's Children 2008', the Government has achieved many of the targets set in terms of health, nutrition, water and sanitation, formal and non-formal education, as well as welfare services for deprived children in poor urban areas.

As a result, childhood for the vast majority of children in Malaysia, is a time of great learning, fun and freedom.

However, it is well known that there are still remaining disparities in the lives and childhoods of children living in Malaysia.

Children are being compromised in many ways and due to several factors, underpinned mainly by social, geographical and economic disparities.

Statistics show that some 7,000 children under five years old continue to die each year from preventable and treatable diseases while four percent of children are not enrolled in primary schools.

Children who live in rural areas where access to schools, availability of trained teachers and educational supplies is limited are unable to benefit the same opportunities as the others.

In order to respond to these continuing inequalities which violate child rights, UNICEF once again takes the guiding principles of the Convention on the Rights of the Child as its mandate, namely to ensure that all children have equality of opportunity.

To this end, in the last few years, UNICEF has worked closely with the Government, notably the Attorney General’s Chambers of Malaysia, to ensure that international legal commitments are fulfilled.
Malaysia ratified the Convention on the Rights of the Child (CRC) on 17 February 1995 as part of its commitments to the protection and wellbeing of its children.

Whilst this marked a major milestone, Malaysia's ratification was noticeable for the number of 'reservations' to the provisions of the CRC, which include:

**Article 1** which provides the standard definition of a child as all human beings under the age of 18.

**Article 2** upon one of the main principles of the CRC: the principle of non-discrimination

**Article 37** pertaining to torture and deprivation of liberty towards children.

The underlying reason for these reservations stem from the existence of certain domestic laws being in direct contradiction with the CRC's provisions.

Malaysia's first report was submitted to the Committee on the Rights of Child in late 2006.

The CRC Committee's concluding observations were adopted in its meeting of 2 February 2007.

In its report, the Committee recognised the serious attempts of the Government to comply with the CRC requirements, and especially noted that, in 2001, a comprehensive Child Act, aligned to the CRC, had been instituted at the national level.

*'Reservation' means the ability for a State Party to a treaty to express its disagreement with some provisions of the latter by making an exception to the overall approval.*

**Committee on the Rights of the Child: Some recommendations to Malaysia**

The review and abolition of the existing reservations to the CRC

The ratification of more international laws, especially the two Optional Protocols

The review of the dual legal system in Malaysia, not least because some domestics laws are an obstacle to achieving the principles and standards of the CRC

The review and reform of certain domestic laws, such as the Essential (Security Cases) Regulations of 1975 to abolish the imposition of capital punishment on children, or the Children and Young Persons (Employment) Act 1966 (Act 350) to ensure that acceptable conditions of permissible work are clearly and strictly detailed to comply with the international labour standards.
In all countries of the world, there are still children who suffer from abuse in their homes. Often this abuse is at the hands of parents and relatives who are responsible for their care and protection.

This abuse may be in the form of physical beatings and violence, whilst some children suffer sexual molestation. Others may be neglected: abandoned, starved of emotional love and uncared for.

In Malaysia there have been increasing reports of children who slip through the social welfare 'safety net'.

Over 2,000 cases of abused children were reported in 2007, but this figure is undoubtedly the tip of the iceberg.

It is well recognised that these victims are more vulnerable to psychological and social problems in adolescence, leading them to drop-out of school, run away from home and become involved in crime.

Left to fend for themselves, they are vulnerable to adults who would exploit them sexually and force them into dangerous work.

The Committee on the Rights of the Child recognised the Government of Malaysia's efforts to prevent and respond to abused children.

The introduction of the Child Act in 2001 established the duty of all citizens to report cases of abuse and neglect, as well as providing shelter and counseling to child victims.

The Committee noted, however, that implementation of the law needed to be strengthened to ensure that perpetrators are appropriately punished and that court systems are made child-friendly to reduce the stigma of disclosing abuse.

UNICEF recognises that the key to protecting children is to identify and provide more professional support to families in crisis.

In line with the recommendations of the CRC, UNICEF Malaysia works with the Department of Social Welfare to develop child policy and programmes to encourage positive caregiving.
Case Study: Corporal punishment in schools

Some of Malaysia’s successful strategies to encourage all children, especially those from low income families and rural areas, to enroll in primary education include the:

- abolishment of school fees in 1962
- introduction of a school health programme in 1967
- introduction of the supplementary food scheme in schools in 1972

Corporal punishment by teachers such as beating and caning however is still common practice in schools and is still widely accepted as an appropriate way to discipline children.

The consequences for children can be damaging: apart from the physical pain, corporal punishment undermines children’s dignity and feeling of protection.

As studies have shown, corporal punishment in schools is often a precursor for dropping out of the education system. This undermines the achievement of their rights to an education.

Therefore, Malaysia was recommended by the Committee on the Rights of the Child in its 2007 report to prohibit by law all forms of corporal punishment in school so as to permit a real implementation of the CRC in the national legislation.

Today, UNICEF and the Ministry of Education are engaged in a process to promote positive discipline techniques in the classroom and create child-safe schools free from bullying and violence.

Whilst attitudinal and behavioural change may take time to be effected, the development of a strong anti-violence policy in schools, as required in the CRC, must be the foundation of efforts to implement change.

UNICEF’s Country Programme Action Plan 2008-2010 was signed with the Government of Malaysia in 2008, guided by the CRC. Working with partners, UNICEF will ensure that underserved groups of children are supported with policies, strategies and partnerships that will lead to improved access to health, education and social services.
Malaysia’s rapid economic development has engendered a wide influx of migrant workers from Asian countries like Indonesia and the Philippines to meet the increasing demand in the country’s labour market.

This migration phenomenon also creates risk for those involved, including children. Their status in Malaysia is precarious and they become vulnerable to those who would exploit them, whether in the labour market or in sexual service.

Others may be trafficked into false adoptions, servile marriages and domestic servitude.

It is widely acknowledged now that Malaysia has become – or is at risk of becoming - a source, transit and destination country for trafficking in children.

In its report to the Government of Malaysia, the Committee on the Rights of the Child requested the development of national legislation to protect children and families from trafficking.

While it is not clear if this recommendation was the direct cause, the Government enacted the Anti-trafficking Bill by the Parliament in May 2007.

This Bill gives Malaysia a real opportunity to face trafficking in persons, by addressing it with greater prevention, protection and prosecution measures.

This is a welcome first step and - providing measures for implementation are put in place – provides a basic framework for protecting children.
Conclusion

Protecting children's rights in Malaysia for more than 50 years

Malaysia's ratification of the Convention on the Rights of the Child (CRC) in 1995 was a major step forward in ensuring children's happy and fulfilling childhoods.

It acts as a beacon to guide policy makers and service providers in ensuring minimum standards of care and protection for all children living in the country.

As mandated under the CRC, UNICEF continues to play a significant role in supporting the Government to accomplish its goals for children, especially those most vulnerable and stigmatised. For example:

- UNICEF has worked with the Government of Malaysia to prepare the National Strategic Plan (NSP) for HIV and AIDS 2006-2010. The Plan addresses strategies to uphold children's rights to education, care, treatment and protection.

- In 2006 and 2007, UNICEF worked with the Ministry of Education to complement existing educational activities through a supplementary reading programme for Malaysia's Orang Asli children.

Having children's fundamental rights enshrined in international law is essential. However, the greater challenge is to ensure that these public commitments are translated into the everyday lives of children and their families.

While it is relatively straightforward to create sound national laws and policies in line with the international standard, the CRC demands more than this.

It asks all members of society, from politicians to parents, from religious leaders to teachers to subscribe to a set of principles that include equality, justice and respect for children.

If real change is to be seen, it is essential that the spirit of the law is understood and acted upon, acknowledging that everyone has a role to play in protecting all children in Malaysia.
All children have the right to a primary education, which should be free.

Children’s education should develop each child’s personality, talents and abilities to the fullest. It should encourage children to respect human rights and their own and other cultures. It should also help them learn to live peacefully, to protect the environment and respect other people.

Children have a particular responsibility to respect their parent’s rights, values and culture.
RESOURCES

Convention on the Rights of the Child
www.unicef.org/crc

Malaysia Child Act 2001

United Nations
www.un.org

United Nations Children's Fund
www.unicef.org

United Nations Children's Fund, Malaysia
www.unicef.org/malaysia

UN Secretary-General's Study on Violence Against Children
www.unicef.org/violencestudy