Child Rights References in the Universal Periodic Review

Summary:
A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

Malaysia - 4th Session - 2009
11th February, 2.30pm to 5.30pm

National Report
16. Malaysia enacted the Child Act 2001 to safeguard the welfare and interest of children which was promulgated based on the principles enumerated in the Convention on the Rights of the Child (CRC) which Malaysia acceded to in 1995.4 This Act provides for care, protection and rehabilitation of a child without discrimination as to race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any other status.

18. The Anti-Trafficking in Persons Act came into force on 28 February 2008 and provides, among others, the legal mechanism to criminalise human trafficking and providing care, protection and shelter for the victims. At the international level, Malaysia has signed the United Nations Convention Against Transnational Organised Crime (UNTOC) in 2002 and ratified it in 2004. Malaysia is currently in the process of acceding to the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing UNTOC.5

21. Malaysia is also undertaking a comprehensive review of national legal framework to ensure compatibility with the principles and provisions of the CRC and CEDAW. In that regard, a Committee has been established to study the issues relating to dissolution of marriage, maintenance, custody, inheritance and determination of the religion of the child of a civil marriage during conflict situation resulting from one of the spouse converting to Islam. Simultaneously, a Committee was also established to review laws relating to women’s rights under the Islamic family law.

35. Students with special needs are provided education opportunities in special schools and in integration programmes in regular schools. Malaysia provides educational facilities to three types of children with special educational needs, namely, children with visual impairment, children with hearing impairment and those with learning difficulties. As of 2007, there were 28 special education national schools, two special education secondary schools, two special education vocational secondary schools and 973 schools under the Special Integrated Education Programme. The national school curricula are used in special education schools and in inclusive education programme. The curricula, however, have been modified to meet the needs of these students.

38. In full compliance with its treaty obligation under the CRC, all children in Malaysia are not denied access to education. The Government also constantly engages with various international organisations such as the United Nations Children’s Fund (UNICEF) and the Office of the United Nations High Commissioner for Refugees (UNHCR), and civil societies, to ensure that children of illegal immigrants attend informal classes to be conducted by NGOs, such as, through community-based schooling.

91. Trafficking in persons especially women and children is viewed from a holistic perspective and not isolated from violence against women or abuse of children or confined solely to migrant women. Malaysia is supportive of measures and resolutions to protect women against rape, criminal force and assault, kidnapping, abduction, slavery and forced labour.

UN Compilation
5. In 2007, CRC welcomed the adoption of the Child Act 2001 22 and many other laws aimed at protecting and promoting the rights of the child. 23 CRC shared Malaysia’s view that laws which were not consistent with the definition of the child under article 1 of the Convention should be reviewed 24 and recommended that Malaysia take all necessary measures to harmonize the definition of the child in national laws. 25
7. CRC welcomed the establishment of the Human Rights Commission of Malaysia (SUHAKAM) 27, particularly its mandate, which included carrying out analyses and awareness-raising and training activities, as well as receiving and investigating individual complaints, and visiting places of detention. 28 SUHAKAM was accredited with “A” status by the International Coordinating Committee in 2002. 29 In April 2008, during the re-accreditation process, SUHAKAM retained its ‘A’ status, however the ICC gave the Commission the opportunity to provide, within one year of notice, the documentary evidence to establish its continued conformity with the Paris Principles. 30

9. CRC noted that MWFCD was finalizing a second comprehensive National Plan of Action for Children, which would be streamlined with the National Child Policy. 35 CRC recommended, inter alia, that activities related to this second National Plan of Action be oriented towards the implementation of the Convention. 36

10. CRC also recommended that Malaysia include human rights education, including the rights of the child, in the curriculum. 3

14. While noting the work of the Ministry of Education in providing guidelines to eliminate gender stereotypes from schoolbooks, CEDAW was concerned about the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men. 50 CRC recommended that Malaysia continue to address the problems faced by the girl child and to raise awareness regarding the equality of girls and boys.

15. While appreciating the principle of non-discrimination in the Constitution and in the Child Act 2001, and the special measures taken to advance and protect the status and existence of indigenous peoples, CRC recommended that Malaysia undertake steps to prevent and combat discriminatory disparities against children belonging to vulnerable groups. These include the Orang Asli, indigenous and minority children living in Sabah and Sarawak and particularly in remote areas, asylum-seeking and refugee children, children born out of wedlock, children of migrant workers, 51 and children with disabilities living in remote areas. 52

16. CRC noted that capital punishment was not imposed in practice for offences committed by persons who were under 18 at the time of the offence but was gravely concerned that Malaysia has not yet withdrawn its reservation to article 37 of the Convention. 53 CRC recommended that Malaysia, as a matter of priority, expedite its measures to amend the Essential (Security Cases) Regulations to abolish the imposition of capital punishment on children.

21. While appreciating that violence against children, including incest, was addressed by various laws, CRC was gravely concerned that domestic violence, including violence against children in the family, remained a serious problem. Owing to strong taboos, victims and witnesses rarely reported these cases, despite established mechanisms to receive reports on child abuse and neglect. CRC was also concerned that corporal punishment in the home was lawful 62 and made several recommendations in this regard. 63 The Committee also recommended the prohibition by law of all forms of corporal punishment in schools. 64

22. CRC regretted that the unclear definition of the child due to disparities in national laws impedes the full implementation of the 1999 ILO Worst Forms of Child Labour Convention. 65

24. In 2007, CRC noted with appreciation the establishment of a Coordinating Committee on Trafficking in 2006 and that Malaysia was in the process of submitting an Anti-Trafficking of Persons Bill to Parliament in 2007. It noted with concern, however, that trafficked children were often detained, subsequently deported, and not provided with adequate specialist support. CRC also noted with deep concern reports suggesting that babies were trafficked from neighbouring countries for sale to childless couples in Malaysia. 67

25. CRC appreciated legislation criminalizing sexual exploitation of children, including child prostitution, and the preventive work of Child Protection Teams and Child Activity Centres. Considering the reportedly high demand for commercial sex in Malaysia, CRC was concerned about prostitution involving children, in particular the vulnerability of certain children to being exploited, such as those without any official record of their existence. 68 CRC recommended that Malaysia design and implement policies and measures to prevent and combat the sexual exploitation of children, 69 with particular attention to existing risk factors, such as the increasing sex tourism in the region, and continue to collaborate with relevant actors dealing with the protection of children from sexual commercial exploitation in travel and tourism. 70 CRC encouraged Malaysia to consider adopting specific legislation on the obligations of Internet service providers in relation to child pornography on the Internet. 71

26. As regards children living and/or working in the streets, particularly in Sabah, CRC noted with concern that “cleaning operations” have resulted in detaining street children and that negative public attitudes and prejudices against street children exacerbated their situation. 72

28. CRC noted with concern the low minimum age of criminal responsibility (10 years), and the discrepancies between the minimum age standards in the Penal Code, the interpretation in the Sharia Court and the Sharia Criminal Procedure (Federal Territories) Act 1984. CRC expressed concern, among other things, at long pre-trial detention periods, and delays in dealing with cases involving children. 74

39. CRC noted with concern that the Children and Young Persons (Employment) Act permitted employment involving light work and employment as a domestic servant without detailing the acceptable conditions of such work.

40. In 2006, CRC commended Malaysia on its continuous and remarkably successful efforts to reduce poverty in Malaysia. However, CRC noted with concern that indigenous groups, especially in Sabah and Sarawak, and the Orang Asli in peninsular Malaysia, were affected by poverty 92 and made recommendations in this regard. 93 The 2006-2008 WHO Country Cooperation Strategy noted that the highest incidences of poverty are in Sabah (16 per cent) and Kelantan (12 per cent). 94

41. CRC commended Malaysia on the significant progress achieved in the field of health care and the provision of health services, especially to improve maternal health care and to reduce infant mortality rates, 95 and made recommendations in this regard. 96
43. CRC was concerned that, despite the adoption of plans and programmes, the incidence of HIV/AIDS was rapidly rising and that existing resources were insufficient. It was also concerned at the increasing number of children orphaned by AIDS. 99 UNICEF noted on its website that reported HIV cases are doubling every three years. 100

45. CRC recommended that Malaysia continue and increase, where necessary, assistance for tsunami-affected children suffering from post-traumatic stress disorder and other emotional and mental problems and their families. 101

48. CRC welcomed the Education Amendment Act 2002 which made primary education compulsory for all children aged 6. CRC noted as a positive factor that the enrolment rate of girls and boys in primary education was relatively equal but regretted that an estimated 200,000 children of primary-school age were not attending school. 105

49. CRC was concerned that, despite certain programmes, other costs of schooling were likely to cause financial obstacles to education for children from low-income families. It noted with concern that non-citizen children had to pay a school fee and that they were accepted in schools only if they had adequate documents and if places were available. 106 CRC also noted with deep concern the high dropout rate of indigenous children and in particular the Orang Asli and recommended that Malaysia strengthen efforts to address the special educational needs of these children. 107

54. CRC was alarmed at the high number of migrant domestic workers in Malaysia, including child domestic workers who work under hazardous conditions which interfere with the child’s education 121 and made recommendations in this regard. 122

62. CRC also recommended that Malaysia seek assistance from a variety of United Nations agencies regarding different issues. 133

**Stakeholder Compilation**

4. The Child Act 2001, currently under review, suffers from weak enforcement, as noted by SUHAKAM. 12 BCM highlighted the absence of express statutory provisions for children to be able to make their views known, particularly in the juvenile justice system or in civil proceedings. BCM also noted that the underlying spirit of the CRC to treat children differently from adults, has not been applied by the Courts in the interpretation of detention provisions, nor has the Federal Court annulled a legal provision which allows for an undetermined length of deprivation of liberty of a child. 13

8. Concerns raised by the Committee on the Rights of the Child have yet to be comprehensively addressed, especially the National Plan of Action for Children 2005-2010 and the Child Protection Policy, as indicated by some organizations. 25

22. According to COMANGO, official statistics show a sharp increase in child abuse cases from 2002 to 2006, and the police is slow in investigating cases of commercially and sexually exploited children. There are no adequate provisions to protect the safety of the children physically, emotionally or otherwise. More agencies and mental health practitioners specialising in the area of child sexual exploitation are needed. 56

29. The stalled amendments to the Islamic Family Laws and the Law Reform (Marriage and Divorce) Act 1976 continue to place hardship on women and children, as noted by COMANGO. Despite the calls by women’s groups, no Special Select Committee of Parliament was established to ascertain what would best reflect the needs of women and children. 67

52. BCM made reference to the declaration made by Malaysia when ratifying the CRC, that even though primary education is not compulsory and available free to all, primary education is available to everybody. 118 However, such education is not sufficient for children with disabilities; 119 children (of Malaysians) without birth certificates are denied the opportunity to attend schools; and 120 asylum seeking children, refugee children, stateless children as well as children of migrant workers are not given free primary education in government-run schools, as indicated by MWG-JUMP 121 and BCM. 122

**Final Report**

29. Thailand welcomed Malaysia’s constructive participation in human rights at the regional level, within ASEAN and the OIC, its efforts in ensuring social harmony in a multi-racial society, its successful economic growth policies and the special attention paid to human rights promotion and protection of vulnerable groups, including women, children and people with disabilities and the establishment of a Committee to review laws relating to women’s rights under the Islamic family law. Welcoming enactment of the Child Act 2001 and the Persons with Disabilities Act, it urged Malaysia to continue to focus its efforts on ensuring full protection of human rights for all vulnerable groups. One such avenue is through the rigorous capacity building programmes it has initiated in this area particularly for public officers.

31. Morocco welcomed the attention given to poverty eradication in partnership with the private sector and civil society. It noted Malaysia’s Education Master Plan and the measures taken for the promotion and protection of children’s and women’s rights. It recommended that Malaysia”(a) continue its efforts to support children with special needs, notably the categories mentioned in paragraph 35 of the national report; (b) share its experience with other countries as regards education programmes for students to teach them the values of tolerance and openness of Islam; (c) take the necessary measures to effectively promote and strengthen family and moral values; and (d) continuing to organize training programmes for parental competencies targeted to general public to ensure the well-being of children.

43. Libyan Arab Jamahiriya noted that the Federal Constitution guarantees economic, social and cultural, as well as civil and political rights. It cited the 2001 law on the rights of the child, and mandatory primary education for all, as proof of the Malaysia’s interest in the rights of the child. It said Malaysia has worked to guarantee human rights for all children without distinction, and asked about measures adopted to implement the ILO Convention on the Elimination of the Worst Forms of Child Labour.
56. Although the death penalty and corporal punishment were still applied for certain serious offences, Malaysia’s immediate concern was to abolish the imposition of death penalty and caning on children. The Ministry of Women, Family and Community Development was in the midst of preparing a paper to recommend to the Government to withdraw the sentence of caning for children. Malaysia was also in the midst of amending the relevant provision of the Essential (Security Cases) Regulations 1975 to abolish the imposition of capital punishment on children.

57. In response to questions on issues related to women’s and children’s rights, the delegation informed that an inter-agency committee had been established to address the implementation of the recommendations of CEDAW. The committee had embarked on a review of existing laws and legislation which were deemed discriminatory against women. The Committee was also finalising its study with regard to the proposal to withdraw Malaysia’s reservation to Articles 5(a) and 16(2) of CEDAW.

59. Recent measures taken by Malaysia to fulfill its obligations under the Convention on the Rights of the Child and implement the recommendations of the Committee on the Rights of the Child, included a review of Malaysia’s reservations and the legislative framework as well as the formulation of policies and plans of action on children. A technical committee was in the process of recommending to the Government to withdraw Malaysia’s reservations to Articles 1 and 13 of the CRC. Malaysia was currently reviewing the Child Act 2001, including the recommendation to prohibit the imposition of corporal punishment and to introduce community service order as an alternative punishment. Additionally, Malaysia was at the final stage of completing the National Child Policy as well as the National Child Protection Policy. Both the policies and their plans of action were scheduled to be tabled for the Government’s approval. Malaysia had engaged experts from the University Malaysia Sabah to undertake a comprehensive study on street children. Malaysia unequivocally stated that street children had never been arrested or detained by the police if they had not committed any criminal offence. In the event that they were arrested for criminal offences, they would be detained in a special area, separated from other detainees.

64. Turkey noted that an Inter-agency Coordinating Committee was studying Malaysia’s possible accession to ICCPR, ICESCR, CAT and CERD. It recommended that Malaysia (a) speed up its considerations over the signature and ratification of the international human rights covenants. Pleased that Malaysia is in the process of considering withdrawing its reservations on CRC and CEDAW, Turkey asked about a timetable. Turkey recommended (b) ratification of the Optional Protocol to CEDAW. Turkey encouraged Malaysia to consider comments by the Special Representative of the Secretary-General for human rights defenders on detention conditions under the ISA. Turkey welcomed the signature of the Convention on the Rights of Persons with Disabilities and the enactment of Persons with Disabilities Act. It recommended that Malaysia (c) continue its positive actions for further promoting the rights of disabled people; and (d) continue to enhance its activities towards the eradication of poverty in all its states and share its experiences with other countries.

65. The Islamic Republic of Iran noted that despite its diversity, Malaysia’s socio-economic policies and constitutional provisions have enabled it to maintain and strengthen national unity through inclusiveness. It encouraged Malaysia’s major steps to ensure compatibility of the national legal framework with principles and provisions of the CRC and the Child Act 2001, and its review of laws relating to women’s rights under the Islamic family law. It recommended that Malaysia (a) consider undertaking a comprehensive study on the positive implications of the legal system of civil law and Shari’ah law; (b) undertake more effective measures to further improve the implementation of Shari’ah law in the country; (c) explore further ways and means aimed at improving and enhancing the welfare and protection of victims of child abuse; and (d) take more effective measure to strengthen family institution and inculcate good moral values and effective ways to protect and promote the rights of the child.

69. Sri Lanka noted, inter alia, that Malaysia had developed comprehensive policies and strategies for the development of indigenous groups and communities; and enacted such laws as the Child Act 2001, the Persons with Disabilities Act 2008 and the Anti-Trafficking in Persons Act 2008. It cited the Inter-Agency Coordinating Committee on treaty accession and noted the comprehensive review of the national legal framework to ensure compatibility with CRC and CEDAW. It commended Malaysia for reducing poverty drastically and lessening inequalities in income and education while achieving rapid economic growth and maintaining racial harmony. It recommended that Malaysia: a) continue to intensify its efforts to prevent and combat discriminatory disparities against children belonging to vulnerable groups, including children of indigenous group, children with disabilities as well as those living in remote areas; and b) continue its efforts in providing educational facilities to students with special educational needs, such as children with visual and hearing impairment and those with learning difficulties.

84. South Africa noted the promulgation of the Child Act, the establishment of the National Council for Persons with Disabilities, the promulgation of the Anti-Trafficking in Persons Act and shelter homes for victims of trafficking, the introduction of compulsory primary education, provision of adequate health services, implementation of strategies for poverty eradication, as well as the establishment of the Cabinet Committee on Gender Equality, among others. South Africa noted however that Malaysia is still considering acceding to other core human rights instruments, and it encouraged Malaysia to intensify this effort. South Africa recommended that Malaysia (a) implement the recommendations of the Committee on the Rights of the Child to ensure comprehensive protection of the rights of children, including those of minority groups, indigenous peoples and migrant workers and (b) that comprehensive protection is accorded to all migrant workers, including access to essential services like education, health and housing.

Conclusions and Recommendations

3. Continue to spearhead progress towards gender equality and development for women, in particular by giving due consideration to the recommendations of the Inter-agency Committee coordinated by the Ministry of Women, Family and Development regarding the compliance of Malaysia with the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women and the withdrawal of its reservations to both conventions (Algeria);

4. Continue to implement the comments and recommendations of the Committee on the Elimination of Discrimination Against Women
and the Committee on the Rights of the Child (Ukraine);

14. Continue to take measures to protect the rights of women, children and people with disabilities (Belarus);

20. Continue its efforts in finding ways to improve the protection of children victims of abuse and to enhance family institutions and reinforce moral values as an effective mean to promote and protect child rights (Bahrain); Take more effective measures to strengthen family institution and inculcate good moral values and effective ways to protect and promote the rights of the child (Iran);

21. Explore further ways and means aimed at improving and enhancing the welfare and protection of victims of child abuse (Iran);

22. Continue to intensify its efforts to prevent and combat disparities against children belonging to vulnerable groups, including children of indigenous groups, children with disabilities as well as those living in remote areas (Sri Lanka);

23. Continue its efforts in providing educational facilities to students with special educational needs, such as children with visual and hearing impairment and those with learning difficulties (Sri Lanka); Continue its efforts to support children with special needs, namely, children with visual impairment, children with hearing impairment and those with learning difficulties (Morocco);

24. Pay special attention to the problems of the children living and working on the streets (Kazakhstan);

34. Continue to organize training programmes for parental competencies targeted to the general public to ensure the well-being of children (Morocco);