



**Convention on the
Rights of the Child**

Distr. General
30 March 2010
English
Original: French

Committee on the Rights of the Child

Forty-fourth session

Summary Record of the 1216th Meeting

Held at the Palais Wilson, Geneva, on Thursday, 25 January 2007

Chairperson: Mr. Doek

Contents

Consideration of reports of states parties (*continued*)

Initial report of Malaysia on the implementation of the Convention on the Rights of the Child

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10 a.m.

Consideration of reports of States parties (item 4 of the agenda) (continued)

Initial report of Malaysia on the implementation of the Convention on the Rights of the Child (CRC/C/MYS/1 (document in English only); list of issues to be taken up (CRC/C/MYS/Q/1); written replies by the State party concerning the list of issues (CRC/C/MYS/Q/1/Add.1))

1. At the invitation of the Chairperson, the members of the delegation of Malaysia took places at the Committee table.
2. **Ms. Faizah** (Malaysia) said that Malaysia had a very young population – in 2006 there were 10.69 million children among its 26.6 million inhabitants. Since 2004 the Ministry of Women, Family and Community Development had been the key child protection body and a Child Division had been created in 2005; there were plans to establish children’s teams at district level.
3. The education system was subdivided into establishments caring for and promoting the development of the child (for children between 0 and 6 years of age), primary schools (7 to 12 years of age) and secondary schools (13 to 19 years of age). Under the Education Act 1996 as amended in 2002, primary school was compulsory for all children. In 2006 the school enrolment rate had reached 91.8 per cent in primary education, 84.4 per cent in lower secondary education and 72.4 per cent in upper secondary education. In 2004, the Ministry of Education was split into two: the Ministry of Higher Education and the Ministry of Education.
4. The various child protection measures described in the report and the written replies had been enhanced by the establishment in hospital paediatric wards of teams responsible for identifying cases of abuse and neglect.
5. Children were asked to express their views during the drafting of the National Reproductive Health Guideline. The Guideline had been approved by the Government and was due to be incorporated into the curriculum in the coming months. Children had participated in international and regional meetings, notably the United Nations General Assembly Special Session on Children, and the intention was to encourage children, especially those from underprivileged social groups, to participate in drafting policies affecting them.
6. The Government intended to conduct activities for underprivileged children, especially street children and refugee children, to provide them with access to education and identity documents. It also planned to improve the living conditions of indigenous minorities and poor children, to combat violence against children by reforming the Children’s Act 2001 and establishing care centres for child victims of sexual abuse or people trafficking, and to adopt rehabilitation programmes for such children.
7. A hospital specializing in maternal and child health had been established and the Ministry of Women, Family and Community Development was currently drafting guidelines on the education, care and development of young children, a process which should be completed before the end of 2007. Furthermore, the “Permata Negara” Programme, which provided for easier access for young children to high-quality health care

at a reasonable cost, should be adopted by 2008. A policy for persons with disabilities, accompanied by a plan of action, was in the process of being finalized and was due to be adopted in 2007.

8. **Mr. Abdul Gani** (Malaysia) said that there was still much to be done to bring national law into full conformity with the Convention. There were plans to amend the Essential (Security Cases) Regulations 1975, in particular to repeal the article pursuant to which a minor could be sentenced to capital punishment. There were also plans to incorporate new provisions into the Child Act 2001 to protect the identity of child victims of abuse and neglect and to repeal provisions authorizing corporal punishment. The Children and Young Persons (Employment) Act 1966 also had to be amended to include provisions defining the minimum age for admission to employment, protecting minors both against economic exploitation and from performing work that was hazardous or detrimental to their development, and safeguarding access for working children to education.

9. Amendments to the Care Centres Act 1993 were envisaged so that better child welfare safeguards could be provided for. The aim of those amendments was to accelerate the registration process, ensure that all operational centres were registered and complied with the highest quality standards and to delegate certain administrative powers to local authorities to improve the system's effectiveness. There were also plans to revise the Childcare Centres Act 1984 and to incorporate new provisions into the Domestic Violence Act. These new provisions would allow victims, especially children, to be able to lodge complaints and secure temporary protection and would define psychological torture as constituting domestic abuse. The sanctions incurred in the event of sexual offences such as incest had been increased in the Penal Code.

10. In view of the developments in society, the Government had established a Committee comprising *Syariah* Court judges, legal experts, representatives of various government departments and non-governmental organizations (NGOs) to examine the issue of which court (civil law or Islamic law) had jurisdiction in the case of a legal dispute between a married couple where one of the spouses had converted to Islam – a key issue in relation to the custody of children, inheritance rights and the determination of a child's religion. The Government had welcomed several proposals for amendments to legislation, including the Marriage and Divorce Act 1976 and the Islamic Family Law Act 1984. Those amendments were due to be adopted before the end of 2007.

11. In 2007, Parliament would scrutinize a bill against people-trafficking which made the trafficking of children a specific offence; the bill provided both for the establishment of protection mechanisms and care centres for victims and for the issue of special visas allowing the persons concerned to remain in the country until the procedure was closed while receiving social assistance in the interim. Parliament would also be looking at a bill on alien workers which *inter alia* provided for a prohibition on recruiting alien workers aged under 18 and safeguarded access to education for the children of alien workers.

12. Children were not able to bring proceedings directly in court but they could be represented by a third party or counsel and they had the right to legal assistance.

13. Malaysia was prepared to withdraw its reservations to articles 1, 2, 7, 13, 15 and 37 of the Convention. The Committee would be informed of the results of consultations under way with stakeholders on the reservation to article 14 of the Convention (freedom of religion).

14. Despite its reservation to article 28 of the Convention, Malaysia had already introduced compulsory, free primary education. A fee of 4.5 Malaysian ringgit (RM) (US\$ 1.18) per year per pupil was, however, charged for primary education to fund libraries and sports and artistic activities, but the main aim of the charge was to make parents responsible for the education of their children. The fee was also used to fund additional programmes fostering the comprehensive development of the child. If the Committee took the view that primary education was free in Malaysia despite that fee, it would be possible to withdraw the reservation in question.

15. The Government would study the possibility of acceding to the two Optional Protocols.

16. In 2006, following talks with the Indonesian Government, Malaysia agreed to open schools delivering basic education to the children of Indonesian immigrants working on plantations in the State of Sabah. In all, 109 Indonesian teachers were to be seconded to teach in HUMANA centres at the Indonesian Government's expense.

17. Malaysia was endeavouring to collate disaggregated data on street children and the children of illegal immigrant workers and intended to take measures once it had done so.

18. The very high school dropout rate among indigenous children (*Orang Asli*) had been falling since the introduction of the educational assistance programme, free school transport, education up to the third tier, guidance services, seminars and motivational courses.

19. The children currently held in a detention centre would be transferred to a protection centre pursuant to administrative provisions as no Act had yet been promulgated in that regard. An agreement had been reached with the police to trial release on probation for children in pre-trial detention centres, except for those accused of serious offences.

20. **Mr. Krappmann** welcomed the quality of the report under consideration and noted that Malaysia showed by example that it was possible to respect ethnic, cultural and religious diversity. The country had set ambitious social, political and economic targets. Its economic growth had already enabled it to build up the health-care and education sectors, both of which were directly beneficial to children.

21. However, Malaysia had made several reservations to the Convention, declaring that the provisions in question would apply only if they were in conformity with the Constitution, national laws and national policies; the State party had already withdrawn some of its reservations but the Committee asked it to withdraw those remaining as quickly as possible. The Committee found it difficult to understand why the State party had not yet acceded to the two Optional Protocols and encouraged it to do so.

22. The delegation might state whether the 600,000 alien children living in the country, whether lawfully or unlawfully, asylum seekers or victims of trafficking, enjoyed the rights enshrined in the Convention on the same footing as other children as laid down in article 2.

23. It would be interesting to know why the very progressive Child Act 2001 contained no provision on the right of the child to express his or her views freely, why persons working with and for children and teachers were not required to notify cases of child abuse or neglect and why the whipping of children was not prohibited.

24. It would also be interesting to know what the status of the Convention was within the Malaysian legal system and what happened in the event of a conflict between provisions of

the Convention and national law. The delegation might also explain how the two legal systems, namely the Civil Code and *Syariah*, which contained different definitions and provisions on children (age of criminal responsibility, age of marriage, etc.) were able to co-exist without sparking tensions between the various groups.

25. The Committee asked whether dissemination of the Convention and related training activities were aimed at all teachers, people working with and for children, social workers and members of protection services, whether parents were also informed, whether children knew their rights and whether the public was aware of the rights of the child.

26. The opinion of children was taken into consideration by the courts in custody and adoption cases, but it would be useful to know whether it was done so restrictively or whether children's views were always respected. It would appear that children had to obey instructions given by adults and that their point of view was not taken into account. This traditional view of education seemed to be evident in the Child Act, which had no provisions on respect for the views of the child.

27. The Committee asked whether the Plan of Action for Children (2006-2020) would cover all the rights enshrined in the Convention and whether, as advocated at the World Summit for Children in 2002, it established clear, time-bound goals and provided for human and financial resources and follow-up machinery.

28. The delegation might explain the straddling of activities between the Coordinating Council for the Protection of Children, which had representatives from all the relevant ministries, bodies and NGOs and experts in the field, and the National Advisory and Consultative Council for Children. It would also be useful to have some details on the responsibilities of the Federated States and the communities and on coordination between them.

29. **Ms. Aluoch** asked whether the Government would take the opportunity offered by the review of the Child Act to harmonize the terms used in reference to children and change the minimum age for marriage (to make it the same for girls and boys) and the minimum age for admission to employment.

30. She asked whether it was true that many indigenous children and children of refugees or asylum seekers, especially those of Philippine origin, were victims of discrimination.

31. **Mr. Zermatten** noted that despite the efficient registration system and legal provisions making the declaration of a birth compulsory, there were problems with the registration of births of illegitimate or abandoned children and of alien residents' children – whether refugees, asylum seekers, or illegal migrants. The delegation might indicate how the Government intended to remedy these issues, which were borne out of ignorance or the fear on the part of illegally resident parents of appearing before the authorities, the distance from register offices and to the cost, progressive, prohibitive fees and the difficulty of obtaining extra copies of identity papers in the event that they were lost. Withdrawal of the reservation to article 7 would be desirable.

32. The fact that students had been prosecuted or become the victims of police action because they had expressed views attacking the National Security Act raised the question whether freedom of expression, freedom of association and freedom of peaceful assembly were genuinely respected in Malaysia.

33. Article 12, paragraph 4, of the Federal Constitution, which provided that a child's parent or legal guardian had the right to determine the child's religion, was inconsistent with article 14 of the Convention (right to freedom of religion), and with article 12 of the Convention (right of the child to express his or her views freely). In the event of a conflict between national law and the Convention it would be preferable to give precedence to the human rights instruments ratified by the country, in this case the Convention on the Rights of the Child.

34. It would also be useful to know when the Government was intending to abolish corporal punishment as a criminal penalty, thereby allowing it to withdraw its reservation to article 37 of the Convention.

35. **Mr. Siddiqui** asked whether the Government had carried out a systematic assessment of the impact of the considerable investment expenditure allocated to health-care and social services and to education and child protection and whether that expenditure was shared with local bodies and NGOs.

36. It would be useful to know how the Government intended to resolve the problem of the lack of data on vulnerable, indigenous and alien children, children who were victims of trafficking or sexual exploitation, and whether it planned to publish an annual compendium of statistics on all categories of children.

37. The delegation might indicate what links there were between the Coordinating Council for the Protection of Children and the National Advisory and Consultative Council for Children on the one hand, and the Malaysian Council for Child Welfare and other NGOs working with children in the country on the other hand.

38. It would also be useful to know the distribution of duties among the various NGOs working with and for children with disabilities and with child victims of sexual abuse, whether the NGOs working with and for children were able to have access to international aid, whether there were any statistics in that regard and what procedures the NGOs had to follow to receive foreign funding.

39. **The Chairman** asked whether the Government intended to ratify other international human rights instruments in addition to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

40. **Mr. Pollar** asked whether the principle of the best interest of the child, which was largely incorporated into legislation, was also part of the training of relevant professionals.

41. **The Chairman**, referring to article 6 of the Convention, asked what had been done to protect children from traffic accidents, which were particularly frequent in Malaysia.

42. **Mr. Filali** asked whether the body responsible for considering the matter of the reservation to article 14 on freedom of religion drew on practice in other Muslim countries, how the civil and Islamic judicial systems co-existed and whether efforts had been made to unify *Syariah*, the interpretation of which varied depending on the school concerned.

The meeting was suspended at 11.30 a.m. and resumed at 11.45 a.m.

43. **Mr. Abdul Gani** (Malaysia) explained that the process of bringing the law into conformity with international conventions was very complex because of the large number of national laws. The Government was waiting for everything to be in place before making a

decision on accession to instruments such as the International Covenant on Civil and Political Rights and the Convention against Torture.

44. Practice on freedom of religion in other Muslim countries, including Morocco and Tunisia, was indeed considered. The Government preferred not to give a deadline for withdrawing its reservations in case it was unable to meet it. The next session of Parliament would be in April, meaning that the law would be adopted in June at the earliest because it had to obtain the prior consent of the King. The following session would be held in the autumn.

45. Although Malaysia was mostly *Syaff`iyah* there was nothing to preclude it from borrowing principles from other legal schools where they were more favourable or more just. The trend was towards harmonization but the matter was a delicate one because under the Constitution religious affairs fell within the competence of the Federated States. Recommendations had been addressed to them, meetings held to debate the necessary legislative amendments, and model laws drawn up to help the States to bring their laws into line with the Constitution and best practice. Civil and Islamic courts were joined in Sabah and Sarawak by indigenous courts which had jurisdiction in cases which came under indigenous laws, most often offences of a cultural nature. The three systems existed peaceably alongside each other in a society distinguished by its multiplicity of cultures, languages and religions.

46. The absence of a uniform definition of the child did indeed pose a problem, but the Government had welcomed the recommendations made to it in that regard.

47. The concept of "reasonable derogation" which placed limits on the principle of non-discrimination meant that a given measure did not apply to everyone in the same way in all circumstances. For example, in order to make school enrolment possible for children from certain indigenous groups who lived in very isolated regions they had to be provided with free transport, accommodation and even pocket money, whereas children living in the towns were not entitled to this: in cases such as this discrimination was legitimate because it was for the children's good.

48. On the allegations of attacks on the freedom of expression, the Committee could be assured that no young person had been tried for expressing his or her views on the Internal Security Act. Regardless of whether the Act in question was open to criticism, it had to be pointed out that many countries adopted laws in the same vein in order to address terrorism. It was, by contrast, possible that the young people had been charged with unlawful assembly following demonstrations against the Internal Security Act. Any meeting held outside had to be authorized for reasons of traffic management and public protection, among others.

49. The Government had pledged to withdraw the reservation to article 37, but it was not possible to give a deadline on this matter either. The Public Prosecutor had sent the Government an information paper on the matter which had been welcomed. The Committee would be informed as soon as a decision had been taken. Corporal punishment for children was carried out with a cane rather than a rope. The punishment was nonetheless contrary to the Convention and the Child Act would be amended as a result.

50. Children born outside wedlock were able to obtain Malaysian nationality if one of their parents were Malaysian; *Syariah* law restricted their right to inherit but the Government was endeavouring to resolve this.

51. It was true that no article in the Child Act recognized children's right to express their views and teachers were not required to hear them, nonetheless all schools had a counsellor that all children could speak to about anything of concern to them. The counsellors – one for every 500 children, had proved to be particularly effective in identifying cases of ill-treatment and sexual abuse.

52. In Malaysia, Acts which had been promulgated and adopted by Parliament took precedence over any other provisions.

53. **Ms. Faizah** (Malaysia) said that since 2003 the Human Rights Commission of Malaysia had been training trainers in the principles of the Convention. The Social Institute had included a module on the Convention in training for social workers. Since 2004 children had been involved in initiatives to raise their awareness of their rights: some of them had been trained to run workshops on various matters affecting them, including violence between children. The aim of that initiative, which was implemented in five Federated States, was essentially to raise children's awareness of the Convention by reaffirming their right to participate. Pedagogical tools had been distributed in schools and the "Say Yes for Children" campaign aimed to heighten awareness among the entire population.

54. The Coordinating Council for the Protection of Children monitored the implementation of the Child Act, in particular those aspects related to child protection and was part of the Department of Social Affairs, whereas the National Advisory and Consultative Council for Children was part of the Ministry of Women, Family and Community Development and was responsible for coordinating programmes and policies on children across the various public bodies, NGOs and the private sector.

55. Each year the Ministry of Women, Family and Community Development allocated subsidies worth some RM 30,000 to the NGOs present in Malaysia. In 2006, subsidies awarded just to NGOs working with and for children amounted to over RM 7 million and those allocated to the 24 NGOs working with and for children with disabilities amounted to RM 1.6 million. The Ministry assessed the activities carried out by each recipient NGO each year to determine whether the subsidy should be renewed.

56. The second National Plan of Action for Children which was due for completion at the end of 2007 was, like its predecessor, the result of the commitments entered into at the World Summit for Children.

57. **Mr. Krappmann** asked whether the year of compulsory pre-primary education which the Government intended to introduce would be free of charge.

58. The rationale behind the school fees payable by non-citizen pupils was questionable; although they were negligible in terms of their contribution to the State budget they were sufficiently high to deter some families. Non-citizen pupils seemed to be admitted only into public establishments on the proviso that there were unfilled places. It would unquestionably be among that group of the population that the children who were not enrolled in primary school would be found; fortunately, they were few in number. The delegation might indicate the other categories of children for whom the school enrolment rate left something to be desired and explain why. If the obstacles were financial in nature, the State party ought to plan to increase aid for very poor families in order to raise the primary and secondary school enrolment rates.

59. The delegation might also supply further information on vocational training which appeared to be the poor relation of the education system even though the economy of Malaysia had a great need for qualified manual workers.

60. The methods of instruction used in civic and moral education should be reviewed in Malaysia. The lessons should not be so strict that they frightened children but by contrast should encourage them to reflect and become more responsible. Malaysian society seemed to have a very intransigent attitude towards children's behaviour and some children were labelled as uncontrollable and were removed from their parents' care for minor transgressions such as causing a disturbance in the street.

61. **Ms. Lee** was surprised that malaria and tuberculosis were still problems in Malaysia as health indicators were otherwise excellent. Malaysia should collect data on sexual behaviour so as to be in a position to improve targeting of HIV/AIDS prevention measures. Teenage sex was a reality and the earlier young people learned about the risks inherent in unprotected sex, the more those risks would be controlled; it was therefore necessary to introduce sex education lessons and set up advice centres where young people were able to address issues including those associated with reproductive health.

62. It was important to set up a free telephone help line for victims of sexual violence, all the more so since the number of cases of sexual violence was twice as high as that for other violent crime, a matter which needed some explanation, and to expressly prohibit by law child prostitution and sexual exploitation of children.

63. The delegation might state when the new code on breastmilk substitutes would be published; it might also indicate the extent to which children with disabilities had access to education and health-care services and which body was responsible for the protection of persons with disabilities.

64. Further information on refugees would be welcome. The delegation might in particular indicate whether the children of the many refugees in Malaysia had birth certificates and had access to education free of charge, whether there were unaccompanied minors in the country and if cases ever arose where children remained on Malaysian soil while their parents were expelled.

65. **The Chairperson** asked whether Malaysia monitored free trade agreements to ensure they did not prejudice its population's access to generic medications.

66. **Ms. Vuckovic-Sahovic** urged the State party to accede to the relevant Hague Conventions and to review the legislation under which custody of children younger than 7 years was systematically awarded to the mother in divorce cases. She asked whether there were plans to allow alternating custody.

67. She noted with satisfaction that parental guidance workshops were organized following a court ruling but noted that similar workshops should be open to all couples who felt they needed them as a preventive measure. It would be useful to know whether the advice services were accessible to families nationwide and in all the country's languages, how many families used on those services and whether they had made an effective contribution to reducing domestic violence.

68. The delegation might indicate whether programmes to strengthen family values had regard to the cultural differences between the various communities where the programmes were implemented.

69. **Mr. Filali** asked about the method used to determine the “reasonable delay” after which a minor in custody had to appear in court, whether juvenile courts covered the whole country, whether the judges presiding over them were specialist magistrates who were familiar with the provisions of the Convention, whether the right of the child to be heard in judicial proceedings was respected and whether educational measures could be imposed instead and in place of a criminal trial.

70. He would like further information on the operation of the schools registered to rehabilitate juvenile offenders, uncontrollable minors and probation hostels and the ill-treatment to which some minors were subject during their arrest or detention. Many minors were tried as adults and it would be useful to know who took the decision to that end and on what criteria.

71. While noting that 62 minors had spent between three and six months in pretrial detention in 2005 he asked whether the maximum duration of pre-trial detention depended on the gravity of the offence and whether persons who were acquitted after being held in pre-trial detention were compensated.

72. **Mr. Zermatten** asked how many young children were in detention with their mothers and the protection measures offered to this extremely vulnerable group.

73. The delegation might also indicate whether homosexual adolescents were the subject of targeted HIV/AIDS prevention measures despite the fact that homosexual relations appeared to be a taboo subject in Malaysia and apparently constituted an offence there.

74. **Ms. Ouedraogo** regretted the lack of accurate data on drug use among minors. Usage appeared to be on an upward trend, especially where injectable drugs were concerned. Prevention campaigns for the whole population, including children who were not enrolled in school, had to be established along with detoxification and rehabilitation centres.

75. Given that Malaysia had pledged to participate in the Association of South-East Asian Nations Plan of Action to Combat Transnational Crime, it was surprising that it had not adopted specific laws against sexual exploitation, forced labour and the sale of children, especially as Malaysia was both a country of origin and destination for these three types of trafficking. The Malaysian authorities were therefore asked to do all they could to punish the traffickers but not the child victims: to detain the child victims was to victimize them further; instead they should be given care and offered reintegration programmes.

76. **The Chairman** noted with concern that some families who ought to have been entitled to a temporary residence permit were apparently not issued with one and the Office of the United Nations High Commissioner for Refugees had experienced difficulty in gaining access to aliens placed in holding centres. The delegation might indicate in that regard whether Malaysia intended to accede to the 1951 Convention relating to the Status of Refugees.

The meeting rose at 1.05 p.m.