



大会

Distr.  
GENERAL

A/HRC/11/8/Add.2  
20 March 2009

CHINESE  
Original: ENGLISH

人权理事会  
第十一届会议  
议程项目 3

增进和保护所有人权、公民、政治、经济、  
社会和文化权利，包括发展权

教育权问题特别报告员

弗农·穆尼奥斯·比利亚洛沃斯的报告

增 编\*

对马来西亚的访问

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\* 本报告的内容提要以所有正式语文分发。报告本身附于提要之后，仅以英文印发。

## 内 容 提 要

教育权问题特别报告员弗农·穆尼奥斯·比利亚洛沃斯 2007 年 2 月 5 日至 13 日访问了马来西亚。特别报告员希望对马来西亚政府的邀请和他访问期间所会见的个人表示感谢。

特别报告员在访问期间考察了各级教育机构——学前、小学、中学和大学——的教育权享受情况。特别报告员发现，马来西亚作出了很大努力改善教育系统，着力使教育成为国家发展的最重要引擎之一。他注意到，由于这些努力，马来西亚学校已实现了高水平的入学率和性别平等。他还证实政府在基础设施和教师培训方面作了大量投资。

然而，特别报告员发现马来西亚在教育权方面也面临许多挑战，他认为，要使全国人人都充分享受教育权，还需要作出更大的努力。许多人，如难民儿童、寻求庇护者、无国籍者、移民工人子女、无证件者、街头儿童、边远地区的土著儿童仍接受不到任何教育。

此外，特别报告员还注意到，华人和泰米尔人对教育政策普遍不满，主要是对政府对其学校和教学语言所分配的资源不满。他还注意到，尽管政府明令禁止体罚，但体罚在学校中司空见惯。

关于高等教育，特别报告员发现，虽然政府努力扩大大学教育的入学率，但公立高等院校的覆盖面仍然很低。此外，他表示关切大学生和教师所受到的严格限制，尤其是政治权利、言论自由和结社自由方面的限制。

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT  
TO EDUCATION, VERNOR MUÑOZ VILLALOBOS, ON HIS  
MISSION TO MALAYSIA  
(5-13 February 2007)**

**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1	4
I. HISTORICAL, SOCIOCULTURAL AND ECONOMIC CONTEXT .....	2 - 9	4
A. General .....	2 - 4	4
B. Ethnic diversity and multilingualism .....	5 - 6	5
C. Legal framework for protection of human rights .....	7 - 9	6
II. PRIMARY AND SECONDARY EDUCATION .....	10 - 68	7
A. National education system .....	10 - 20	7
B. Progress and challenges .....	21 - 68	10
III. HIGHER EDUCATION .....	69 - 83	22
A. Coverage .....	69 - 71	22
B. Legal framework: Universities and University Colleges Act 1971 .....	72 - 77	23
C. Autonomy .....	78 - 83	24
IV. CONCLUSIONS AND RECOMMENDATIONS .....	84 - 87	25

## Introduction

1. The Special Rapporteur on the right to education undertook a mission to Malaysia from 5 to 13 February 2007. He visited the cities of Kuala Lumpur, Kota Bharu (Kelantan) and Kuching (Sarawak), and had more than 40 different meetings with officials of the Ministry of Education, the Ministry of Higher Education, the Ministry of Women, Family and Community Development, the Departments of Immigration and Prisons, and SUHAKAM, the Human Rights Commission of Malaysia. He also met representatives of non-governmental organizations, teachers, parents and students. The Special Rapporteur deeply regrets that he was unable to have a meeting with the Ministers of Education and of Higher Education. This made it difficult to glean important details about how the commitment of the authorities is being manifested in activities currently under way and prevented discussion on crucial items of information gathered during the mission.

### I. HISTORICAL, SOCIOCULTURAL AND ECONOMIC CONTEXT

#### A. General

2. Malaysia is a federated constitutional monarchy belonging to the Commonwealth. It obtained its independence from the United Kingdom in 1957, and its Constitution was approved in the same year. The State religion is Islam, but the Constitution guarantees the freedom to practise other religions in any part of the Federation.<sup>1</sup> The Head of State is the King (the *Yang di-Pertuan Agong*), who is chosen from the Conference of Rulers. The Rulers govern 9 of the 13 federal states.<sup>2</sup> The non-peninsular States of Sabah and Sarawak<sup>3</sup> enjoy certain prerogatives granted by the Constitution, which allow them to exercise greater autonomy in various areas.<sup>4</sup>

3. The Head of Government is the Prime Minister, who is chosen by the King,<sup>5</sup> and there is a bicameral Parliament. The upper chamber, the Senate, has 69 members, 43 of whom are appointed by the King and 26 by the federal states. The lower chamber, the House of Representatives, comprises 180 members elected by popular suffrage. There are two legal systems in Malaysia: one comprising the courts that apply sharia law, which have jurisdiction over the Muslim population in family and religious matters; and the civil system with jurisdiction over non-Muslims and all other matters affecting Muslims.

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<sup>1</sup> Constitution of Malaysia, Part I, art. 3, para. 1.

<sup>2</sup> The States of Johor, Kedah, Kelantan, Negeri Sembilan, Pahang, Perak, Perlis, Selangor and Terengganu have a hereditary Governor. The Governors of the States of Melaka and Pulau Pinang (Penang), Sabah and Sarawak are appointed by the Government.

<sup>3</sup> These are called non-peninsular States, because of their situation on the island of Borneo, contiguous to the peninsula where the other States are located.

<sup>4</sup> See Constitution of Malaysia, Part VI, Chapter 8 and Part VII, Chapter 2.

<sup>5</sup> *Ibid.*, Part IV, art. 40a, para. 2.

4. Over the past 30 years Malaysia has enjoyed very strong economic growth, becoming a manufacturing country and a producer of services. Indeed, between 1970 and 2003, it had sustained economic growth equivalent to a 7 per cent annual increase in GDP.<sup>6</sup> During that period, Malaysia planned and implemented its development policies by means of five-year plans, which have been systematically carried out. The current plan is the ninth development plan (2006-2010). This economic advancement has made it possible for the country to make major investments in sectors such as health, infrastructure and education.<sup>7</sup>

### **B. Ethnic diversity and multilingualism**

5. According to the Department of Statistics, the total population of the country, as at 2007, was 27,170,000.<sup>8</sup> Approximately 80 per cent of the population live on the peninsula and the remaining 20 per cent are divided between the provinces of Sabah and Sarawak.<sup>9</sup> The population is made up of various ethnic groups, the three largest of which are: the *Bumiputera* (sons of the soil), which is the name used to refer to the Malay and indigenous peoples; people of Chinese origin and those of Indian origin.<sup>10</sup> According to official statistics, 61.47 per cent of the population are *Bumiputera*, 23.55 per cent Chinese, 7 per cent Indian and 6.75 per cent of foreign origin.<sup>11</sup> Indians and Chinese are concentrated in the more developed states, with an economy based on industry and the production of services. The *Bumiputera* are distributed between the latter states and those, with an agriculture-based economy, in which they are the predominant group.<sup>12</sup>

6. The official language of Malaysia is Bahasa Melayu (Malay), although English is widely spoken. Also, various Chinese languages are used, such as Cantonese, Mandarin, Hokkien, Hakka, Hainan and Teochew. The communities of Indian origin speak Hindi, Tamil, Telugu, Malayalam and Punjabi, amongst others. Various indigenous languages are also spoken by peoples that for the most part live on the island of Borneo, the primary ones being Iban and Kadazan.<sup>13</sup>

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<sup>6</sup> *Malaysia achieving the Millennium Development Goals*, UNDP, Malaysia, 2005, p. 13.

<sup>7</sup> *Ibid.*, p.21 and CRC/C/MYS/CO/1, p. 1.

<sup>8</sup> Available at [http://www.statistics.gov.my/eng/index.php?option=com\\_content&view=article&id=50:population&catid=38:kaystats&Itemid=11](http://www.statistics.gov.my/eng/index.php?option=com_content&view=article&id=50:population&catid=38:kaystats&Itemid=11).

<sup>9</sup> See footnote 6, p. 10.

<sup>10</sup> It is estimated that the populations of Chinese and Indian origin came to Malaysia during British rule, in the mid-18th century. See CRC/C/MYS/1, p. 3.

<sup>11</sup> CRC/C/MYS/1, p. 6.

<sup>12</sup> See footnote 6.

<sup>13</sup> See [http://www.virtualmalaysia.com/our\\_malaysia/in\\_brief/language.cfm](http://www.virtualmalaysia.com/our_malaysia/in_brief/language.cfm).

### C. Legal framework for protection of human rights

7. Part II of the Constitution enshrines the fundamental rights guaranteed in Malaysia, including the right to personal liberty (article 5), equality before the law (article 8) and freedom of expression, assembly and association (article 10). The right to education is not explicitly enshrined in the Constitution, but article 12 prescribes that there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth, in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any public or private educational institution. It also prescribes that every religious group has the right to establish and maintain institutions for the education of children in its own religion, adding that no person shall be required to receive instruction in a religion other than his own.

8. The Human Rights Commission of Malaysia (SUHAKAM) was established in 1999.<sup>14</sup> Its functions include offering education in human rights, advising the Government on matters relating to human rights and making recommendations on measures to be taken, including the ratification of international human rights treaties. It is also empowered to receive individual complaints relating to violations of human rights. By virtue of its powers and responsibilities, SUHAKAM has taken various initiatives in the field of education in human rights, although some observers consider that because it has only limited independence, it avoids dealing with matters that the Government considers too sensitive.<sup>15</sup> Nor does it have any mechanism for ensuring that its recommendations are implemented, and in the view of some observers, SUHAKAM is not taken seriously enough by the senior Government authorities.<sup>16</sup>

9. In the international arena, Malaysia ratified the Convention on the Elimination of All Forms of Discrimination against Women<sup>17</sup> and the Convention on the Rights of the Child in 1995.<sup>18</sup> However, it has not yet ratified the principal human rights protection instruments, despite SUHAKAM's recommendation that it do so.<sup>19</sup>

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<sup>14</sup> It is composed of 18 members, appointed by the King on the recommendation of the Prime Minister. See Human Rights Commission of Malaysia Act 1999, Act 597. Part II, 5.2.

<sup>15</sup> See Suaram, *Malaysia Human Rights Report 2005:- Civil and Political Rights*, Malaysia, 2006, p. 129.

<sup>16</sup> *Ibid*, p. 130.

<sup>17</sup> Malaysia originally made reservations to articles 2 (f), 5 (a), 7 (b), 9 and 16. On 6 February 1998 reservations for the following articles were withdrawn: 2 (f), 9 (1), 16 (b), 16 (d), 16 (e) and 16 (h).

<sup>18</sup> Malaysia has made reservations to articles 1, 2, 7, 13, 14, 15, 28, para. 1 (a) and 37.

<sup>19</sup> SUHAKAM recommended ratification of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and the two Optional Protocols to the Convention on the Rights of the Child. See SUHAKAM, 2005 Annual Report, 2006, p. 110.

## II. PRIMARY AND SECONDARY EDUCATION

### A. National education system

10. The education system in Malaysia forms part of Vision 2020, which lays down in its first challenge the objective of establishing a Malaysian nation that stands as one, ethnically and territorially.<sup>20</sup> This challenge has been implemented by way of a national education policy-based on the national education philosophy - that establishes a national education system including a national language of instruction, namely Malay, a national curriculum and standardized assessments.<sup>21</sup> The Government has also set out its education policies in a detailed blueprint which contains the general guidelines governing those policies and sets forth certain specific objectives.

11. Education is administered centrally, even though Malaysia is a federal State. The Ministry of Education bears responsibility for implementing education policies and administering the education system. As part of its functions, the Ministry drafts policy implementation guidelines, prepares plans and programmes, establishes the curriculum and sets examinations. At the state level, the state education departments (14 in all) are the regional arm of the Ministry of Education<sup>22</sup> and are responsible for coordinating implementation of the national plans.

#### 1. Preschool education and childcare centres

12. The Education Act 1996 (Act 550) provides that the programmes of kindergarten activities must be based on the curriculum guidelines adopted by the Ministry of Education.<sup>23</sup> Additionally, the ninth five-year plan has the objective of extending preschool education to all children between the ages of 5 and 6 by the year 2010. However, it is a matter for concern that 42 per cent of preschool pupils attend private institutions,<sup>24</sup> from which it may be inferred that the coverage of what is offered by the public authorities has to be improved as a matter of urgency, in terms of quality, accessibility and availability to this segment of the child population.

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<sup>20</sup> See First Development Plan 2020. See also <http://www.epu.jpm.my/new%20folder/development%20policies/cont%20key%20policies/vision.htm>.

<sup>21</sup> Information given to the Special Rapporteur during his meeting with the Ministry of Education on 6 February 2007.

<sup>22</sup> See Ministry of Education, "The development of education, national report of Malaysia", 31 July 2004, available at [http://www.ibe.unesco.org/International/ICE47/English/Natreps/Nrep\\_main.htm](http://www.ibe.unesco.org/International/ICE47/English/Natreps/Nrep_main.htm).

<sup>23</sup> In 2003 a compulsory preschool curriculum was adopted for children between the ages of 4 and 6.

<sup>24</sup> See footnote 23.

13. In the case of the childcare centres, there is no Government programme providing for generalized access on an equitable basis.<sup>25</sup> However, there do exist various projects, promoted by different Government agencies,<sup>26</sup> that seek to provide a childcare service, but they are far from covering the total population in need.

14. The Special Rapporteur takes the view that the Government needs to redouble its efforts to ensure that all children have access both to preschool education and to childcare centres, and should bear the cost of both services, in order to prevent certain children being excluded from pre-primary education as a result of economic or social inequalities. In particular, special attention should be paid to pre-primary schooling of poor children living in the urban areas, who seem to have fewer opportunities for access to preschool education. Furthermore, the limited access to preschool education for children living in the states of Sabah and Sarawak, particularly in rural areas is also of concern.<sup>27</sup>

## 2. Primary and secondary schooling

15. The public primary and secondary education system, governed by the Education Act 1996 (Act 550), is complex and is divided into three cycles of studies.<sup>28</sup> The first, the primary level, is a six-year cycle of studies for boys and girls between the ages of 6 and 11. This stage is subdivided into national schools, type C schools (Chinese national type) and type T schools (Tamil national type). The national schools use Malay as the language of instruction and are set up and financed entirely by the Government; at present, they number 5,774. The type C schools use Mandarin as the language of instruction and number 1,288; while the type T schools use Tamil and total 523.<sup>29</sup> The C and T type schools are totally subsidized by the Government, making them Government-aided educational institutions. Parents can choose whether they wish to enrol their children in a national school, or in one of type C or T, generally making this choice in line with their ethnic origin. According to figures provided by the Ministry of Education, the total number of pupils at the primary level in 2006 was 3,143,207.<sup>30</sup>

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<sup>25</sup> Information given by the organization *Persatuan Pengasuh Berdaftar Malaysia*, Association of Registered Childcare Providers in Malaysia.

<sup>26</sup> Ministry of Women, Family and Community Development, Ministry of Rural and Regional Development, Department of National unity and Integration.

<sup>27</sup> See also CRC/C/MYS/CO/1.

<sup>28</sup> From 6 to 18 years.

<sup>29</sup> See footnote 23.

<sup>30</sup> The Special Rapporteur has estimated these numbers on the basis of statistical information given by the United Nations Children's Fund (UNICEF) Malaysia, based on information provided by the Department of Statistics.



16. The second cycle of studies is the lower secondary or academic secondary, which is taught in Malay and is intended for boys and girls between the ages of 11 and 14, who have to complete three years of studies. The official number of pupils at this level in 2006 was 1,322,212, equivalent to 18.8 per cent of the population of school age.

17. The third stage is the upper secondary, which is also taught in Malay. This stage is of two years' duration and intended for boys and girls between 14 and 16. According to figures provided by the Ministry of Education, in 2006 there were 751,473 pupils at this level. The curriculum of this cycle includes optional subjects which may be technical or employment-related, religious, scientific or artistic. At the end of each of the cycles, pupils undergo a national assessment in order to progress to the next level of studies.<sup>31</sup>

18. In addition, there are private schools, including primary and secondary establishments; religious schools, which may also be of primary or secondary level; international schools and expatriate schools. The Ministry of Education estimates the total number of pupils at private schools to be 500,000, or 7.1 per cent of the population of school age. Under the Education Act 1966, private primary and secondary schools have to fulfil the requirements of the national curriculum and have to prepare their pupils for the standardized examinations. One of the most sensitive topics is that of secondary schools administered and financed by the Chinese communities. The Special Rapporteur was informed that there are 60 secondary schools of this type, with some 55,000 pupils,<sup>32</sup> which use Mandarin as the language of instruction, unlike all the public secondary schools, where the language of instruction is Malay. The Government does not recognize the examination that is taken at the end of the programme of studies in these schools, notwithstanding the fact that various countries accept its academic validity. In consequence, pupils from these schools have to sit two end-of-cycle examinations.

### 3. School enrolment rates

19. Malaysia has high rates of school enrolment: at the primary level, the differences between boys and girls are not very significant,<sup>33</sup> but the figures differ depending on whether the children considered are *Bumiputera* or not. For *Bumiputera* in the period 2002-2005 the net enrolment rate was 96 per cent. For other groups, it was 92 per cent. This means that approximately 172,176 children, or 8 per cent of all children in Malaysia, were never enrolled in primary school

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<sup>31</sup> These exams are the UPSR at grade 6, the PMR at grade 9, the SPM at grade 10 and the STPM at grade 13.

<sup>32</sup> Information given by the United Chinese School Committees Association of Malaysia - *Dong Zong* - during the meeting on 5 February 2007.

<sup>33</sup> From 1 to 2 per cent according to different sources of statistics. See for example [http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF\\_Language=eng&BR\\_Country=4580](http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF_Language=eng&BR_Country=4580).

or dropped out at some point. This number, comprising both *Bumiputera* and *non-Bumiputera*,<sup>34</sup> is still high despite all the progress made. Furthermore, during this period around 96-98 per cent of *Bumiputera* and *non-Bumiputera* children completed the sixth grade, which means that 2 to 4 per cent, equivalent to 21,522-43,000 *Bumiputera* and *non-Bumiputera* children, dropped out of school.<sup>35</sup> On this point the Special Rapporteur would like to draw attention to the alarming drop in the number of pupils completing primary education in the state of Sabah.<sup>36</sup> Also, these statistics do not cover children enrolled in religious primary schools, or undocumented migrant children. He also wishes to stress that, at the time of the visit, there was no available data disaggregated by rural and urban areas, and that it is urgently necessary for the authorities to compile statistics that include each of these categories.

20. With regard to secondary schools, there is a more marked gender-based difference. Thus, in 2005 the net enrolment rate for girls was 81 per cent and for boys 77 per cent.<sup>37</sup>

## **B. Progress and challenges**

21. In this section the Special Rapporteur intends to make an analysis of the progress made, and the challenges still facing the right to education in Malaysia, taking as reference points the features of availability, accessibility, acceptability and adaptability, on the basis of which it is possible to analyse the level of compliance of States with their international obligations in the education field.<sup>38</sup>

### **1. Availability**

22. Availability implies that there are sufficient teaching institutions and programmes and also that the conditions under which they operate meet certain minimum requirements, including sanitation facilities for both sexes, safe drinking water, qualified teachers, teaching materials, and so on. The Special Rapporteur recognizes and praises the efforts made by Malaysia in this area, since the country has invested considerable resources in the education system on an ongoing basis.

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<sup>34</sup> “A focussed situation analysis of children in Malaysia”, Government of Malaysia and UNICEF, 2006, p. 19.

<sup>35</sup> Ibid.

<sup>36</sup> From 96 per cent in 1996 to 88 per cent in 2001, Ibid.

<sup>37</sup> Ibid. p. 20.

<sup>38</sup> This model corresponds to the categories used by the previous Special Rapporteur in her preliminary report E/CN.4/1999/49, and also in general comment No. 13 (1999) on the right to education (art. 13) of the Committee on Economic, Social and Cultural Rights (CESCR).

**(a) Investment**

23. Malaysia invests a high percentage of its national budget in education. For example, in 2004 the figure was 25.2 per cent. The same applies to its GDP: in 2004, it invested 6.2 per cent of GDP in education. Of that amount, 1 per cent went to pre-primary education, 29 per cent to primary, 35 per cent to secondary and 35 per cent to tertiary education.<sup>39</sup>

24. Moreover, as result of substantial investment in the education sector, the country's literacy level has increased dramatically in recent years. While in 1970 one in every three persons over the age of six was illiterate, by the year 2000 the figure had dropped to only 1 in 10 and in 2005 a literacy rate of 97.3 per cent was recorded.<sup>40</sup> However, the levels of literacy do vary from state to state, with Sabah and Sarawak showing less progress.<sup>41</sup>

25. Finally, the teacher-pupil ratio is 1 to 17, although this information was not available during the visit in disaggregated form for the various states or for rural and urban areas.

**(b) Infrastructure**

26. In the course of his mission, the Special Rapporteur visited primary and secondary schools and observed that they were equipped with the infrastructure required to meet the needs of the pupils, both male and female. He was also informed that there are high numbers of primary and secondary schools in the rural areas, accounting for 89 per cent and 58 per cent, respectively, of the total number of schools.

27. However, he noted that overcrowding in some Chinese schools is placing considerable strain on the infrastructure in general. The Special Rapporteur was informed that Chinese schools tend to be overcrowded, owing to a ban on the establishment and operation of new educational centres for this ethnic group. The Special Rapporteur was also informed of infrastructure deficiencies, primarily in remote rural areas, in particular in Sabah and Sarawak. The Special Rapporteur also heard complaints concerning a lack of qualified teachers and was informed that children who had reached the sixth grade still could not read or write properly. Another complaint was that secondary schools are concentrated in the urban areas, which means

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<sup>39</sup> See [http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF\\_Language=eng&BR\\_Country=4580](http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF_Language=eng&BR_Country=4580).

<sup>40</sup> Ibid.

<sup>41</sup> *Malaysia achieving the Millennium Development Goals*, UNDP, Malaysia, 2005, p. 69.

that once children reach the age of 13 they have to leave home. This particularly impacts girls, since poor families, rather than sending them to the urban areas to continue their studies, prefer that they remain at home to look after their younger siblings.<sup>42</sup>

28. Likewise, in Sarawak, the differences with regard to infrastructure as between the rural and the urban areas is very marked, with the rural schools often lacking electricity or drinking water, or access roads. In spite of various measures taken by the authorities to assist the indigenous communities, the latter are the ones most seriously affected by the infrastructure shortcomings.<sup>43</sup> Also, the school dropout rate is fairly high, for various reasons, including the lack of maintenance and overcrowding in boarding schools which accommodate pupils who live far away; the low incomes of families, preventing them from sending their children to school; the perception of education as being of little importance; the lack of education of the parents which means that they cannot help their children with their school work; the lack of preschool education that would better equip the pupils to start school; and the difficult living conditions of teachers.<sup>44</sup> In Sarawak, furthermore, there is a general shortage of secondary schools in urban areas. Those that there are have difficulty in meeting demand and find themselves obliged to implement multiple teaching shifts.

## 2. Accessibility

29. Accessibility is the requirement that both educational institutions and programmes should be accessible to all without discrimination and should be accessible in material terms, which includes physical accessibility and economic accessibility.

### (a) Cost-free education

30. Although the Education Act 1996 was amended in 2002, making primary education compulsory, cost-free status has not yet been guaranteed. The Special Rapporteur is concerned at the fact that enrolment and other education-related costs, such as uniforms, transport, teaching materials, etc. are obstacles hampering access to education for all children, especially those of limited means. This is all the more true for primary education, the provision of which is

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<sup>42</sup> The Government stated that it has enhanced efforts to improve education in rural areas, providing programmes and opportunities for the purpose of bridging the rural-urban gap. See also NGO Shadow Report on the Initial and Second Periodic Report of the Government of Malaysia, *Reviewing the Government's Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women*, 2005.

<sup>43</sup> The Special Rapporteur was informed that the *Dayak, Iban, Penan and Bidayuh* communities are considered as equal, despite their cultural differences and the fact that they are situated in different areas. The Special Rapporteur was also informed of the differences in infrastructure in relation to the State-run religious Muslim schools, which have been provided with better facilities.

<sup>44</sup> Universiti Kebangsaan Malaysia, "Analysis of factors contributing to the school dropout problem in Sarawak", Workshop on School Dropouts in Sarawak, January 2002.

considered an essential State obligation by various international human rights instruments.<sup>45</sup> The Special Rapporteur endorses the recommendation from the Committee on the Rights of the Child to the Government of Malaysia that it should ensure that all boys and girls have equal access to quality education at all levels and that their access is not impeded by economic handicaps.<sup>46</sup>

**(b) Indigenous communities**

31. The Government has taken a number of initiatives to promote access to education for indigenous communities. Thus, in the case of the *Orang Asli*, it has established a special curriculum which takes account of their particular needs. It has also implemented a special programme of integration for *Orang Asli* pupils, established a special school model (*Paloh Inai Pahang*), implemented a programme to improve literacy levels and reduce absenteeism and undertaken to provide the necessary infrastructure, including dormitories for pupils living far from school, especially secondary school pupils. At the same time, it gives money to some families to cover transport costs for travel to school and provides meals during the school day. However, the Special Rapporteur was informed that many fathers of limited means have serious difficulty in paying their children's enrolment fees, even when those fees are low, and sometimes withdraw them from school; he was also informed that the criteria for determining which children will benefit from financial assistance are not very clear.

32. Regarding other indigenous communities, especially those located on the island of Borneo, the Special Rapporteur concluded that there are various obstacles impeding their access to education. Unlike those living in peninsular Malaysia, these communities do not have their affairs taken in hand in the same way, and this impedes the harmonious implementation of policies on their behalf.

33. Lastly, one of the most serious problems affecting the access to education of indigenous communities is the lack of a register of births. A birth certificate is required, among other things, for admission to any school at any level, but many indigenous children do not have one because of ignorance of the requirement or because they live in very remote areas. The Government states that it has implemented a number of initiatives to ensure that all indigenous children have birth certificates, but the indigenous communities consider that the problem is far from being resolved.<sup>47</sup>

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<sup>45</sup> Article 26, para. 1 of the Universal Declaration of Human Rights, art. 13, para. 2 (a) of the International Covenant on Economic, Social and Cultural Rights, art. 28, para. 1 (a) of the Convention on the Rights of the Child.

<sup>46</sup> CRC/C/MYS/CO/1, para. 75. The Government also stated that the Ministry of Education allocates more than MYR 1.0 billion a year to assist students from poor families and disabled students through various support programmes.

<sup>47</sup> Meeting with representatives of 28 indigenous communities, including *Dayak Iban, Penan and Bidayuh*, 12 February 2007.

**(c) Foreign children with unlawful immigration status**

34. The Special Rapporteur considers one of the most serious education-related problems in Malaysia to be the lack of access to education, at all levels, for children lacking Malaysian citizenship status, including refugee children, asylum-seekers, children of migrant workers, and stateless children, possibly as well street children. A problem common to all these children is the lack of documentation, which is an insuperable obstacle as regards access to education since, as was mentioned previously, no child may be enrolled in any recognized public education institution unless he/she has a birth certificate.<sup>48</sup>

*(i) Refugees and asylum-seekers*

35. According to estimates of the Office of the United Nations High Commissioner for Refugees (UNHCR), there are approximately 6,000 refugee children in Malaysia.<sup>49</sup> Most of them come from neighbouring countries, particularly Myanmar. Malaysia has no legal framework for the protection of these children, since it has not ratified the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the 1954 Convention relating to the Status of Stateless Persons, or the 1961 Convention on the Reduction of Statelessness. Nor are the rights of these children guaranteed in its internal legislation, since the Immigration Act (Act 1959/63) does not differentiate between refugees, asylum-seekers and stateless persons. One of the most serious cases is that of the *Rohingyas* living in Malaysia, who are unable to return to their country of origin because the latter does not recognize their citizenship. According to UNHCR estimates, there are 12,000 *Rohingyas* in Malaysia, including 3,000 children, many of whom were born in Malaysian territory and most of whom have no access to education.<sup>50</sup> Along with the recommendations of the Committee on the Rights of the Child, the Special Rapporteur appeals to the Government to strengthen its cooperation with UNHCR,<sup>51</sup> for example by carrying out a study to evaluate the scope and impact of the lack of education of these children. Also, cooperation with UNHCR could be improved by enabling that agency to have access to immigrant detention centres, so as to improve the means of detecting persons or families who could qualify for legalization of their status and thereby be guaranteed the right to education which, in the case of children at least, should be recognized independently of whether or not they qualify for legalization of their status.

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<sup>48</sup> See CRC/C/MYS/CO/1, para. 45.

<sup>49</sup> Information provided by the Office of the United Nations High Commissioner for Refugees Malaysia.

<sup>50</sup> The Government has announced its intention to grant residency permits to the *Rohingyas*, nevertheless there has not been any initiative to implement this decision.

<sup>51</sup> See CRC/C/MYS/CO/1, para. 86.

(ii) *Migrant workers*

36. Before 1997, all children were entitled to attend primary school, regardless of nationality, provided that they held a birth certificate. However, as from that year, the words *Daftar Asing* (foreigner) were written on the birth certificates of children of non-Malaysian parentage even if they had a birth certificate and were born in Malaysian territory.<sup>52</sup> Hence, the children of migrant workers, whether legal or illegal, with or without birth certificates, and with or without residence permits (IMM13), are not granted access to public education.<sup>53</sup> Consequently, the only option left to them is to attend private schools, but they do not have the means to do so. There are no official statistics showing how many children are in this situation.

37. Most migrant workers come from the neighbouring countries of Indonesia and the Philippines. The Government of Malaysia has concluded an agreement with Indonesia, under which Indonesian teachers come to live in Malaysia in order to provide education to children of Indonesian origin, following the Indonesian curriculum and system of education.<sup>54</sup> However, the Government of Malaysia accords no academic validity to the training received by these children and the system only covers the preschool and primary levels.<sup>55</sup>

38. As far as Filipinos are concerned, no programme aimed at giving them access to education is known to exist.

**(d) Street children**

39. The Special Rapporteur was informed that some 4,000 street children live in the state of Sabah;<sup>56</sup> but there are no official statistics. Many of these children were abandoned by their parents when they were detained or deported, pursuant to the Immigration Act<sup>57</sup> and found themselves in the situation of not being recognized as Malaysians, despite the fact that many of them had been born in Malaysian territory, nor as Filipinos or Indonesians, because they had not

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<sup>52</sup> Malaysia does not grant citizenship by birth; in order for a child to be registered as Malaysian, the father must prove his Malaysian citizenship.

<sup>53</sup> The Rapporteur was informed of the case of children who completed primary education but could not, due to the lack of identity documents, present themselves for the final exams.

<sup>54</sup> In the Humana Schools.

<sup>55</sup> According to Government data, as of June 2008, the Humana Schools provided education for more than 5,000 children.

<sup>56</sup> Information provided by the non-governmental organization (NGO) Tenaganita, 7 February 2007.

<sup>57</sup> In 2002, the Government reformed the Migration Act, which resulted in a zero-tolerance policy towards undocumented migrants. Under the present Act, any person found undocumented in Malaysia may be sentenced to up to 5 years of imprisonment, to fines or caning. In addition, the Government also initiated a series of round-ups followed by deportations.

been born in either of those countries. In addition, the Special Rapporteur was informed that many of these children, when deported to their “countries of origin”, are arrested there by the police because they are undocumented, for which reason they prefer to return to Sabah, despite the total uncertainty of their status.<sup>58</sup> None of these children have access to education, either in Government schools, as they do not have the necessary documentation, or in private schools, as they do not have the means to pay for enrolment.

40. The Special Rapporteur would like to remind the Government that the Universal Declaration of Human Rights provides that every person has the right to education, which must be free of charge, at least as regards elementary and basic education. At the same time, he appeals to the Government to withdraw the reservations it entered to articles 2 and 28 (1) (a) of the Convention on the Rights of the Child and to implement the measures needed to guarantee that all children in its territory have access to education.<sup>59</sup>

#### **(e) Children with disabilities**

41. Various State entities have responsibility for providing for the special needs of children with disabilities. The Special Education Department attached to the Ministry of Education deals with “single disabilities” and the Ministry of Women, Family and Community Development deals with other types of disability.<sup>60</sup> A special education programme has been implemented to enable various children with disabilities to attend mainstream schools, including children with auditory and audiovisual disabilities, who follow the national curriculum. The Special Rapporteur noted, however, that special schools continue to operate and that, depending on their disability, children attend separate special classes within mainstream schools or only take certain subjects together with other children.

42. The Special Rapporteur acknowledges the efforts made by Malaysia, including preparation of the plan of action for persons with disabilities, which was to have been adopted at the end of 2007.<sup>61</sup> However, he wishes to repeat what he said in his report on the right to education of persons with disabilities,<sup>62</sup> on the need for more thorough and rapid progress in the construction of educational systems in which pupils with special educational needs have access to the general education system, that is to say that it is necessary to guarantee the right of such

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<sup>58</sup> See *Acting Today for Tomorrow’s Generation: Regional Conference on Stateless/Undocumented Children in Sabah*, 16-18 November 2005.

<sup>59</sup> See CRC/C/MYS/CO/1, para. 32.

<sup>60</sup> “A focused situation analysis of children in Malaysia”, Government of Malaysia and UNICEF, 2006, p. 22.

<sup>61</sup> The Government informed the Special Rapporteur that the Policy and Plan of Action of Persons with Disabilities (PWDs) was adopted on 21 November 2007 and the PWD Act 2008 came into force on 7 July 2008.

<sup>62</sup> A/HRC/4/29, paras. 9 and 12.



persons to inclusive education, which must be accompanied by genuine structural changes, such as the organization of schools, curricula and teaching and learning strategies, so as to ensure that the integration is truly inclusive and does not imply exclusion of persons with disabilities within mainstream schools. On this topic, the Special Rapporteur considers that a worthwhile starting point for guaranteeing the right in question would be to implement the recommendations made at the round-table discussion on education for children with disabilities organized by SUHAKAM in March 2004, which are consistent with the above-mentioned concept of inclusive education.<sup>63</sup>

43. At the same time, the Special Rapporteur regrets the lack of official statistics from which to establish the number of children with disabilities in the country and the lack of data on their schooling in public or private institutions. For this reason, he urges the Government to take the necessary measures to set up a database containing information on children with disabilities, so as to integrate them into policies targeting this sector of the population.

44. Finally, with regard to conditions of access, the Special Rapporteur was informed by some sources about the difficulties that continue to be faced by teenage and expectant teenage mothers, who have to overcome numerous obstacles in order to remain at school. The situation of these adolescents must be addressed by the educational authorities, so as to guarantee educational opportunities on an equal footing with other students and in the same educational institutions.

### **3. Acceptability**

45. Acceptability relates to the good quality and relevance of education, which in turn must be consistent with the specific cultural features of each society and with the views of students and, where necessary, of parents.

46. Malaysia has invested resources in teacher training. It has increased the number of teachers with university degrees, offering various options for those who have no degree to obtain one, through scholarships, distance learning programmes and the establishment of training institutes. It has also increased salary scales in line with the level of training. Incentives are also granted to teachers who teach in difficult conditions. The Special Rapporteur was also informed of the establishment of a quality assessment mechanism under the education blueprint, as well as of standards for quality education in Malaysian schools.

47. Regarding curricula, in the context of the national education philosophy, a national curriculum has been established which seeks to ensure that Malaysians are prepared to meet the challenges of the twenty-first century. The curriculum includes programmes directed towards their future participation in the country's economic development, through technology, science and business-oriented courses. Various kinds of extracurricular activities are also offered, including student clubs, sports and participation in activities of uniformed bodies. Students are obliged to participate in at least one of these activities.<sup>64</sup>

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<sup>63</sup> Round-table discussion on education for children with disabilities, SUHAKAM, March 2004.

<sup>64</sup> Ministry of Education, "The development of education, national report of Malaysia", 31 July 2004, pp. 29-34.

48. The Special Rapporteur is concerned at the fact that education is oriented towards economic issues and market demands, leaving aside the holistic approach proposed under article 29 of the Convention on the Rights of the Child. That approach provides for a specific orientation of educational processes whereby, in addition to the organizational skills needed to live in a consumer society, attention is paid to the building of knowledge, skills and capacities that are also necessary to form fully developed, democratic and tolerant individuals.<sup>65</sup> This is reflected in the dearth of humanities-based courses and subjects in the school curriculum. The Special Rapporteur considers that vocational activities should also be diversified and that students should be given more freedom of choice.

49. The Special Rapporteur has identified certain areas where the Government faces challenges with respect to the acceptability of education. These concern the language of instruction, corporal punishment, the gender perspective in education and the lack of involvement of students and teachers in the taking of decisions that affect them.

**(a) Languages of instruction**

50. As was explained previously, the language of instruction in national schools is Malay. However, in type C primary schools it is Mandarin and in type T schools Tamil. In secondary schools, the language is Malay; however, in both lower and upper secondary schools it is possible to study Mandarin and Tamil, as well as Iban (an indigenous language) as an optional subject. Moreover, the language of instruction at all levels for mathematics and science is English.

51. The Special Rapporteur noted the concern by the Chinese and Tamil communities of the fact that their primary schools (type C and type T) receive less funding than national schools. He was also informed that, despite the increased population density of some urban areas inhabited by people of Chinese origin, it has not been possible to establish new type C schools. He was told that a number of Tamil schools have been closed, despite having students in attendance.<sup>66</sup> In this connection, the Special Rapporteur requests the Government to take account of the provision in the Convention on the Rights of the Child to the effect that education shall be directed to development of respect for the child's own cultural identity, language and values.<sup>67</sup>

52. At the same time, with regard to the teaching of mathematics and science in English, the Special Rapporteur found that pupils and teachers face serious difficulties, especially in rural areas, despite the efforts made to train teachers in that language. He was informed of difficulties in learning mathematics and science, particularly for indigenous children and children living in rural areas. In many instances, not even the teachers have an acceptable grasp of English, which

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<sup>65</sup> Objectives of the National Philosophy System and of the National Education System.

<sup>66</sup> Between 1999 and 2006, 461 national primary schools were established, of which 4 were Type C and none were Type T (meeting with NGOs on 5 February 2007); in 2008, the Government approved building of 6 new type C and one new type T schools.

<sup>67</sup> Convention on the Rights of the Child, article 29 (c).

makes the learning process even more difficult for these children, who do not have the opportunity to practise English either. Similarly, there are learning difficulties for children whose mother tongue is different from the language of instruction, i.e. Malay. Cases of secondary school pupils experiencing serious learning difficulties are common, firstly because their mother tongue is not Malay; secondly because they have to learn mathematics and science, inherently complex subjects, in a third language, English, totally alien to their environment.

53. While the learning of English is important and constitutes a useful tool for students, the Special Rapporteur nevertheless urges the Government to analyse the impact of this policy on the educational process, so that supplementary measures of support, restriction or promotion, as appropriate, may be put into effect.<sup>68</sup>

#### **(b) Corporal punishment**

54. Although some Governmental authorities have expressed the intention to cut down on the use of corporal punishment,<sup>69</sup> the Special Rapporteur found that it is still practised extensively in schools. He was informed by pupils and teachers themselves that corporal punishment is applied by headmasters in serious cases of indiscipline, such as smoking or absenteeism.<sup>70</sup> Thus, at the meeting held with the Secretary-General of the Ministry of Education, the latter openly justified the use of corporal punishment as a “last resort”.

55. As the Special Rapporteur was not given the opportunity to meet the Minister of Education, it was not possible for him to determine whether the Government’s intention to reduce corporal punishment will really lead to its total elimination, as required by the Convention on the Rights of the Child. The Special Rapporteur urges the Government to prohibit the use of corporal punishment in schools definitively, in compliance with its international obligations.<sup>71</sup>

#### **(c) Gender perspective in education**

56. As was mentioned earlier, education enrolment levels for boys and girls in Malaysia are virtually identical, being slightly higher for girls than for boys. At the same time, the curriculum does not differentiate at all between boys and girls. However, some professional careers are considered more appropriate for girls, such as nursing, nutrition and education. Although in principle girls and young women are encouraged to study for technology or business-oriented

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<sup>68</sup> The Government informed that the MoE is monitoring this policy since it was implemented in 2003.

<sup>69</sup> The Government stated that it is at the final stage of amending the Child Act 2001 so as to repeal all provisions relating to the punishment of whipping.

<sup>70</sup> The rules which provide grounds for corporal punishment are contained in the National Directives of Discipline of the Ministry of Education.

<sup>71</sup> Article 19 of the Convention on the Rights of the Child, see also CRC/C/MYS/CO/1, para. 49.

careers, they tend to choose jobs in which they can strike a balance between career and family. No programme of professional or vocational guidance includes a gender perspective, just as there is no gender-based approach in the general education system.

57. Similarly, the number of women occupying senior positions in all fields of social and political life is very low.<sup>72</sup>

58. Moreover, it was reported that most teachers are women because the profession is perceived as a female preserve and there is no social recognition of the profession of educator. Nevertheless, senior posts with decision-making powers in the field of education are occupied by men, although in 2004 the Government adopted a policy of having at least 30 per cent of women in decision-making at all levels in an effort to reduce the gender imbalance in the public sector. The Special Rapporteur was also informed that many female teachers contribute to perpetuating the perception of roles in society, imposing their own views on the way in which teaching and administration are carried out in schools.<sup>73</sup>

59. School textbooks have undergone a number of revisions to prevent any gender-stereotyped content. However, there is no clear policy on the criteria used for textbook revision or on the frequency of revision.

60. Finally, there are still cases of parents refusing to send their daughters to school and preferring the modality of home education. The Government has introduced various initiatives aimed at reducing the number of school-age children outside the school system, including prison sentences and high fines.<sup>74</sup> The Special Rapporteur recognizes the efforts made by the Government, including the decision to make education compulsory; however, he considers that, instead of coercive measures, it would be desirable to undertake awareness-raising campaigns on the importance of education, especially for low-income populations in remote areas. He also wishes to point out that parents are at liberty to choose the education they wish to give their children,<sup>75</sup> provided that it meets the minimum standards laid down by the State, which must be in conformity with human rights.

#### **(d) Participation of the educational community**

61. The Special Rapporteur was able to observe that teachers, students and parents have little input on decisions concerning them. Their opinions are rarely taken into account in the elaboration of public education policies, in curriculum design or in decisions pertaining to schooling in general. The Special Rapporteur considers that participation by the educational community is a fundamental aspect of the right to education, particularly as regards the design of educational programmes and curricula. He therefore urges the Government to take the necessary

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<sup>72</sup> See CEDAW/C/MYS/1-2, paras. 90-103.

<sup>73</sup> Meetings with NGOs and women's rights organizations, 5 February 2007.

<sup>74</sup> Meeting with education authorities of Kelantan, 10 February 2007.

<sup>75</sup> Article 13, para. 3 of the International Covenant on Economic, Social and Cultural Rights.

measures to ensure that suitable mechanisms are made available to teachers, parents and students to enable them to participate in the design of such programmes, and to give them the opportunity to express their opinions on decisions of direct or indirect concern to them in the field of education.

#### **4. Adaptability**

62. Adaptability in education refers to the need for flexibility so that education can adapt to the needs of students in diverse cultural and social settings. Education must respond to the immediate reality faced by children in their own community, as well as to rapidly changing global realities.

63. The Special Rapporteur considers that Malaysia faces two major challenges concerning the adaptability of its education: sex education on the one hand, and education in human rights on the other.

##### **(a) Sex and reproductive health education**

64. Malaysia currently has no formal sex or reproductive health education programme. The Special Rapporteur found that the Government and many teachers consider that students' education needs in respect of sexuality and reproductive health are covered by the subject of biology.

65. Moreover, the Special Rapporteur was informed that sex education has been the subject of national public debate on various occasions, and that the Government has undertaken to adopt measures to incorporate sex education in school curricula.<sup>76</sup> The Special Rapporteur recognizes that the Government has started some initiatives in this field,<sup>77</sup> but urges it to incorporate a sex and reproductive health education programme in curricula without delay, at least at the levels of primary and secondary education.

##### **(b) Education in human rights**

66. Act 597 of 1999, by which SUHAKAM was established, gave it the task of promoting and providing education in human rights. SUHAKAM has developed numerous activities under this mandate. In coordination with the Ministry of Education, it organizes conferences and training programmes for teachers at different educational levels, as well as grants and prizes to schools that participate in its human rights promotion programme, etc. However, human rights education is taught in the context of civic and citizen education.

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<sup>76</sup> NGO Shadow Report on the Initial and Second Periodic Report of the Government of Malaysia, *Reviewing the Government's Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women*, 2005, p. 27.

<sup>77</sup> The Special Rapporteur was briefed that a pilot project on sexual education was being implemented in 20 schools and a national policy on reproductive health and social education being drafted.

67. The Special Rapporteur observed that neither teachers nor pupils have a clear understanding of what human rights are and, in some cases, are not even familiar with the basic concepts. He urges the Government to step up its efforts to develop a national strategy aimed at establishing a programme of human rights education in the formal education system. While recognizing and commending the efforts made by SUHAKAM, education in human rights remains an obligation which must be assumed without delay by the State, as it has the institutional and economic capacity to institute such programmes which should be accompanied by a human rights training programme for teachers. Efforts should also be undertaken to ensure that human rights are reflected in each and every one of the aspects of school life.

68. The Special Rapporteur has no doubt that a human rights approach to education will be a useful tool in achieving the objectives of the national education philosophy, that Malaysian children should build a united Malaysia and, furthermore, that they should be intellectually, spiritually, emotionally and physically balanced people capable of contributing to the harmony and betterment of society and of the Malaysian nation.

### **III. HIGHER EDUCATION**

#### **A. Coverage**

69. In the area of higher education, public and private institutions coexist. The disparity between the two systems is surprising, given that there are currently 20 public universities and more than 500 private higher education institutions, of which 37 are private universities.<sup>78</sup> These institutions provide education to some 800,000 students, which is equivalent to a tertiary education rate of 29 per cent.<sup>79</sup>

70. Public higher education is open to all nationals and foreigners possessing the necessary academic proficiency for admission, in line with the meritocracy policy promoted by the Government. However, given the low level of coverage, students of limited economic and social means or those belonging to vulnerable groups are admitted in relatively small numbers. The Special Rapporteur was also informed that even many Malaysians with economic means choose to pursue higher studies outside the country.<sup>80</sup>

71. The Government has made some efforts to improve university access, such as the elimination of quotas and the establishment of scholarship programmes for outstanding students, and is investing a high percentage of its budget in tertiary education. Those efforts are inadequate, however, bearing in mind that higher education coverage has not reached a level of 40 per cent of the population, which the Special Rapporteur was informed is the goal of the Government for 2010.

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<sup>78</sup> Information provided by the Ministry of Higher Education on 8 February 2007.

<sup>79</sup> See [http://www.uis.unesco.org/profiles/EN/EDU/countryProfile\\_en.aspx?code=4580](http://www.uis.unesco.org/profiles/EN/EDU/countryProfile_en.aspx?code=4580).

<sup>80</sup> According to unofficial data, more than 54,000.

## **B. Legal framework: Universities and University Colleges Act 1971**

72. At the time of writing of this report, the 1971 Act governing universities in Malaysia remains in force, but the Government has announced publicly that it will be amended by Parliament in 2008. Accordingly, the analysis which follows is intended to develop some recommendations with a view to the forthcoming review of the Act.

73. The current Act provides that no university student may be a member of or in any manner associated with any society, political party, trade union or any other organization or group of persons, whether or not established by law, within or outside the university, and within or outside Malaysia, except as may be approved in writing by the Vice-Chancellor of the university to which the student belongs. The same prohibition applies to student groups or organizations. University students and any student group or organization are also barred from expressing any kind of support, sympathy or opposition to a political party, trade union, or any type of organization.<sup>81</sup>

74. The Act also provides for drastic presumptions against students; for example, it is presumed that, if certain materials, such as documents, lists of members, insignia, etc., relating to any type of organization, are found in the possession of a university student, it shall be presumed, until the contrary is proved, that the student is a member of the organization and participates directly in its management.<sup>82</sup>

75. Regarding the penalties of suspension and expulsion from a university, the Act provides that students who are the subject of a criminal investigation, regardless of whether judicial proceedings are pending, shall immediately be suspended from their university studies. Students who are detained, including in preventive detention, or convicted, shall be expelled from the university. Such students have no possibility of enrolling in any other university within Malaysian territory, unless they obtain special authorization at the discretion of the Minister.<sup>83</sup>

76. The Special Rapporteur urges the Parliament of Malaysia urgently to amend this Act so as to recognize and give effect to the freedom of expression and association of university students, as required by any modern and humane developed society. He considers that it is time for university students to be given back the right to participate actively in the political life of the country, and this is moreover in line with the democratization objectives enunciated by the Government. It is necessary that their rights within and outside the university be guaranteed and that they be given the opportunity to participate fully in the discussion of the reform agenda.

77. Moreover, the Special Rapporteur was informed that elections of student representatives are not conducted in a transparent manner. To stand for election, candidates must meet a very high academic threshold and adhere to limits on the scope of their proposals. SUHAKAM has

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<sup>81</sup> See Universities and University Colleges Act 1971, Act 30, article 15.

<sup>82</sup> *Ibid.*, articles 15B and 15C.

<sup>83</sup> *Ibid.*, article 15D.

requested authorization to monitor university elections, but this has been systematically rejected by the Ministry of Higher Education. The Special Rapporteur appeals for reconsideration of the way in which such elections are conducted and for the implementation of the necessary mechanisms, within the framework of reform of the Act, to ensure that they are conducted in accordance with democratic and participatory principles.

### C. Autonomy

78. The right to education can only be enjoyed if accompanied by the academic freedom of staff and students. Academic freedom includes the liberty of individuals freely to express opinions about the institution or system in which they work, to fulfil their functions without fear of repression by the State or any other institution, to participate in representative academic bodies and to enjoy all the recognized human rights applicable to other individuals in the same jurisdiction.<sup>84</sup>

79. The highest authority in every Malaysian university is the Vice-Chancellor who is elected by a committee appointed by the Ministry of Higher Education. The Vice-Chancellor has extensive powers over students and teaching staff, and this has a rather negative effect on university autonomy.

80. The disciplinary rules applicable to students are fairly strict. For example, the Special Rapporteur was informed that any meeting of more than five students on the campus is categorically prohibited unless expressly authorized by the Vice-Chancellor. The disciplinary authority has extensive discretionary power to impose penalties on students, which range from a warning to expulsion. Students have the possibility of appealing against such decisions to the Minister of Higher Education, who may summarily dismiss the appeal.<sup>85</sup>

81. As regards teaching staff, the Special Rapporteur was informed that, at the time of signing an employment contract, they are required to sign a declaration in which they undertake to obey Government policies, both present and future,<sup>86</sup> while they are also prohibited, in the same way as students, from participating in any kind of political activity.<sup>87</sup> As a result of all this, the academic freedom of university professors is severely curtailed, and their trade union rights are also quite seriously restricted.

82. In addition, the State exercises control over the management of the budget of all public universities.<sup>88</sup>

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<sup>84</sup> CESCR general comment No. 13 (1999) on the right to education (art. 13), paras. 38-39.

<sup>85</sup> Universities and University Colleges Act 1971, Act 30, art. 16b.

<sup>86</sup> See Statutory Bodies (Discipline And Surcharge) Act 2000, Act 605, second schedule, part II, code of conduct.

<sup>87</sup> Ibid.

<sup>88</sup> Information provided by the Ministry of Higher Education on 8 February 2007.



83. Private universities, for their part, have a little more freedom of activity, but the disciplinary rules applicable to students and faculty are very similar to those enforced in public universities.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

84. **Malaysia has invested a significant proportion of its resources in the education system and has achieved high levels of school attendance, particularly in primary schools, partly as a result of the enshrinement in law of the principle of compulsory education. It has also enabled young girls and adolescents to have full access to education at all levels. However, economic obstacles continue to hamper access to education, inasmuch as the cost-free principle has not yet been guaranteed.**

85. **There is also another type of difficulty preventing full exercise of the right to education for all inhabitants of the country. The Special Rapporteur considers that one of the most serious problems is the requirement of a birth certificate as an essential precondition for enrolment in recognized educational institutions, particularly if account is taken of the extremely strict conditions for obtaining such a certificate, which exclude a large part of the population.**

86. **Another major challenge facing Malaysia, in the view of the Special Rapporteur, is the need to guarantee the rights of students and faculty members, in accordance with the principles applied by any modern democratic society and the international standards of human rights. Both students and faculty members must have the possibility of full and transparent participation in all processes that concern them and, above all, their rights to freedom of expression and association must be respected. The Special Rapporteur is convinced that this would make it possible to consolidate the democratization process which the Government is interested in promoting.**

87. **The Special Rapporteur recommends the following action by the Government of Malaysia:**

- **Ratify at least the basic instruments of international protection of human rights, that is to say, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and withdraw its reservations to the Convention on the Rights of the Child. At the same time, he suggests that Malaysia should ratify the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education**
- **Guarantee the principle of cost-free education, irrespective of membership of an ethnic group or citizenship, at least in the case of primary education, with gradual extension to the secondary level**
- **Decentralize the education system, so that local authorities and all actors in the educational process may have a hand in the design of education policies relevant to them**

- **Establish policies that enable preschool education and infant care to be made the responsibility of the State, thereby guaranteeing access to those services on an equal footing for all children**
- **Guarantee that all educational programmes offered by duly authorized public and private educational institutions receive academic recognition in accordance with the Malaysian Qualification Act 2007**
- **Establish an indigenous affairs unit in the Ministry of Education, with links to the indigenous communities, to deal with educational matters affecting all indigenous communities in the country, including those located on the island of Borneo, so that the needs of these communities and their views on ways of improving the education of their members can be integrated into educational policies**
- **Develop statistical policies and programmes providing constant information on the number of children without access to public education, including refugee children, asylum-seekers, stateless children, children of (legal and illegal) migrant workers, street children, throughout the territory of Malaysia, disaggregated by state, ethnic origin, gender, disabilities, rural and urban areas, with a view to establishing a policy and appropriate measures for including such children in the national education system**
- **Revise the Education Act 1996 so that children who do not have a birth certificate may enrol in educational institutions, thereby guaranteeing the right of education for all children in the territory of Malaysia, as prescribed by international standards on the subject, regardless of whether they are refugees, asylum-seekers, stateless children, children of legal or illegal migrant workers or street children**
- **Develop intercultural linguistic initiatives in all educational centres in Malaysia, in order to strengthen harmonious coexistence between the country's different ethnic communities**
- **Take the necessary measures to implement a gender perspective in education at all levels, including teacher training and the establishment of a clear policy on textbooks. It is also recommended that policies be adopted to encourage women to take up decision-making posts in all fields**
- **Continue its efforts in the field of education in order to promote the equality of girls, adolescents and women**
- **Introduce into the school curriculum courses concerned with sexual and reproductive health education and human rights. For this purpose, the Special Rapporteur recommends implementation of the first phase of the World Programme for Human Rights Education<sup>89</sup>**

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<sup>89</sup> In conformity with General Assembly resolution 59/113.

- **Take effective measures to expand significantly the coverage of university education**
- **Introduce amendments to the Universities and University Colleges Act, so as to guarantee recognition of the right of teachers and pupils to freedom of expression, freedom of assembly and their right to participate in political activity; and amend the rules on elections of student representatives, so as to ensure that they are conducted in a truly democratic spirit. Similarly, it is recommended that the disciplinary rules applicable to students and teachers should be amended to prevent any impairment of university autonomy**

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