



**Convention on the  
Rights of the Child**

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**COMMITTEE ON THE RIGHTS OF THE CHILD**  
**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES**  
**UNDER ARTICLE 44 OF THE CONVENTION**

**Initial report of States parties due in 1997**

**MALAYSIA \***

[20 December 2006]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## PART I: INTRODUCTION

### CHAPTER 1

#### GENERAL BACKGROUND

1. Malaysia is a Federation comprising thirteen states and three federal territories. Straddling the South China Sea, the land comprises Peninsular Malaysia and the northern portion of the island of Borneo. Countries bordering Malaysia are Thailand to the north, the Philippines to the east and Indonesia and Singapore to the south. To the west, Malaysia is separated from the island of Sumatra by the Straits of Malacca.

2. Malaysia lies within the equatorial zone, which is characterised by a hot, humid and invariable climate throughout the year. The climatic regime is governed by the seasonal northeast and southwest monsoons that bring heavy rainfall to nurture the luxuriant flora of the tropical rainforest, which extends over a large part of the country. The coastal areas are typified by mangroves, tropical wetlands and sandy ridges.

3. The monsoon winds were an important factor during the days of sailing ships, which brought traders, settlers and colonisers to the Malay Archipelago, particularly from the north, west, and south. Chinese, Indians, Thais, Indonesians, Arabs and later Europeans - mainly the Portuguese, Dutch and British - have contributed to the multi-ethnic population mix along with the indigenous people namely the Malays, *Orang Asli* and natives in Sabah and Sarawak such as *Iban*, *Bidayuh*, *Melanau*, *Penan*, *Kadazan*, *Bajau* and *Murut*.

4. The Malays and other indigenous people are collectively known as *Bumiputera* (sons of the soil). The various *Bumiputera* groups share the characteristics of being rooted in an agricultural-seafaring economy and having a village society where leadership is largely through consensus and where attitudes are formed by a belief in an-all pervasive spirit world. The animistic culture of the Malays came to be overlaid by Hinduism and later was subsumed by Islam.

5. The non-indigenous (non-*Bumiputera*) people are descendants of later migrant settlers. Around the time of the British colonial administration, the Chinese came to the Malay Peninsula (as the country was then known) as tin-mine workers, traders and support workers. The Indians, notably the Tamils and the Telegus, were brought in by the British as indentured labour to work in rubber plantations while others worked as teachers and professionals in various fields.

6. The migrants brought with them their social, religious and cultural traditions. Hence, we have Hindu and Buddhist traditions, Confucian and Taoist values, Christianity, Sikhism and Islamic religious practices. Today, Islam is the official religion of the Federation and Muslims form the largest single religious group i.e. 65.9 percent in 2005. However, the right to freedom of worship is protected by the Federal Constitution and other religions are freely practised in Malaysia.

## **POPULATION AND DEMOGRAPHIC INDICATORS**

7. Malaysia's population increased from 23.49 million in 2000 to 26.12 million in 2005 at an average annual rate of 2.6 percent, with non-citizens accounting for 2.39 million. It is estimated that the population will increase at an average annual rate of 1.6 percent to reach 28.96 million in 2010. The rate of population growth will continue to slow down with the declining fertility rate as the country progresses towards a developed nation status and more women pursuing higher education are entering the labour market.

8. Malaysia has a fairly young population with 60 percent of its population below 30 years as depicted in Table 1.1. Thus, the future success of the country depends on the quality of this human capital.

**TABLE 1.1: POPULATION BY AGE GROUP AND SEX, 2005**

Age Group	2005				
	Male ('000)	percent (%)	Female ('000)	percent (%)	Total ('000)
0-4	1,575.9	51.58	1,479.1	48.42	<b>3,054.9</b>
5-9	1,456.2	51.50	1,371.6	48.50	<b>2,827.8</b>
10-14	1,362.8	51.57	1,279.7	48.43	<b>2,642.5</b>
15-19	1,288.4	50.98	1,239.0	49.02	<b>2,527.4</b>
20-24	1,197.6	50.69	1,165.0	49.31	<b>2,362.6</b>
25-29	1,064.5	50.53	1,042.2	49.47	<b>2,106.8</b>
30-34	974.4	50.56	952.8	49.44	<b>1,927.2</b>
35-39	931.8	50.72	905.4	49.28	<b>1,837.2</b>
40-44	843.8	50.89	814.1	49.11	<b>1,657.9</b>
45-49	734.7	51.28	698.2	48.72	<b>1,432.9</b>
50-54	604.6	51.41	571.5	48.59	<b>1,176.1</b>
55-59	435.4	51.64	407.8	48.36	<b>843.2</b>
60-64	312.6	51.10	299.1	48.90	<b>611.7</b>
65-69	223.6	48.45	238.0	51.55	<b>461.6</b>
70-74	141.8	46.29	164.6	53.71	<b>306.4</b>
75+	154.6	43.98	196.9	56.02	<b>351.5</b>
<b>Total</b>	<b>13,302.8</b>	<b>50.91</b>	<b>12,824.9</b>	<b>49.09</b>	<b>26,127.7</b>

*Source: Department of Statistics.*

9. The population by ethnic group and sex is shown in Table 1.2 below.

**Table 1.2: Population by Ethnic Group and Sex, 2005**

Ethnic group	Sex		Total ('000)
	Male (‘000)	Female (‘000)	
<b>Malaysian Citizens</b>	<b>12,318.3</b>	<b>12,043.7</b>	<b>24,362.0</b>
<i>Bumiputera</i>	8,099.6	7,960.9	16,060.5
Chinese	3,144.5	3,010.4	6,154.9
Indian	916.8	918.0	1,834.8
Others	157.4	154.4	311.8
<b>Non-Citizens</b>	<b>984.5</b>	<b>781.2</b>	<b>1,765.7</b>
<b>Total</b>	<b>13,302.8</b>	<b>12,824.9</b>	<b>26,127.7</b>

*Source: Department of Statistics.*

10. Since 1990, both the fertility and mortality rates have declined. The crude birth rate dipped from 27.9 per thousand in 1990 to 23.4 and 19.4 per thousand in 2000 and 2005 respectively. Meanwhile the crude death rate fell from 4.6 per thousand in 1990 to 4.5 per thousand in 2000 and this rate was maintained in 2005. The total fertility rate dropped from 3.5 per woman in 1990 to 2.6 per woman in 2005. Infant mortality rate declined from 13.1 per thousand live births in 1990 to 5.1 per thousand live births in 2005. Life expectancy for both men and women has increased from 69.2 years (men) and 73.7 years (women) in 1990 to 70.8 years (men) and 75.3 (women) in 2005 respectively.

## **ECONOMY**

11. The general path of the country’s economic evolution has been mapped out in a series of five-year plans beginning from 1970. Presently, the Government is implementing the Ninth Malaysia Plan (2006 to 2010). During the period 1971 to 1990, national development was guided by the New Economic Policy, which focused on growth with equity. The two-pronged strategy of the New Economic Policy was to reduce and eventually eradicate absolute poverty by raising income levels and increasing employment opportunities for all Malaysians. This policy was also to restructure society by correcting economic imbalances to reduce and eventually eliminate the identification of race with economic functions.

12. The National Development Policy (1991 to 2000), which succeeded the New Economic Policy, retained the main elements of the New Economic Policy and introduced several new thrusts for a balanced development. These thrusts served to emphasise the non-materialistic aspects of national development, especially the strengthening of social and spiritual values as well as the protection of the environment and ecology.

13. Subsequently, the National Vision Policy (2001 to 2010) was introduced to guide Malaysia in facing the challenges of the 21<sup>st</sup> century. In essence, the National Vision Policy represents the consolidation of all past development efforts, aimed at establishing a united, progressive and prosperous Malaysia that lives in harmony and engages in full and fair partnership. Emphasis is also given to the building of a resilient and competitive nation as well as an equitable society to ensure unity and social stability.

14. In addition, *Vision 2020* which outlines the progress towards a developed nation by the year 2020 is a key blueprint for the country's future. It calls for total development and envisions that by 2020 Malaysians will live in harmony, in a country which is economically dynamic and robust, democratic, liberal, tolerant, caring, progressive and prosperous, with a society that has strong moral and ethical values.

15. Malaysia achieved significant progress in economic growth as well as in meeting its social objectives in the two decades following 1970. The nation was able to sustain its pace of development with the Gross Domestic Product growing at an average rate of 6.7 percent per annum, while the incidence of poverty was reduced from 49.3 percent in 1970 to 16.5 percent in 1990. As a result of the success in implementing poverty eradication programmes and favourable economic growth, the incidence of poverty among Malaysians further decreased to 7.5 percent in 2000 and 5.7 percent in 2004. In addition, the Malaysian economy grew at an average rate of 4.5 percent per annum for the period 2001 to 2005. It is projected to grow at an average rate of 6.0 percent per annum with low inflation and price stability for the period of 2006 to 2010. This growth will be supported by domestic demand due to strong recovery in private investment. Foreign investment will remain important, particularly for the upgrading of technology, skills and management expertise.

16. There were several temporary economic downturns such as the oil crisis in the mid-1970s, the economic slowdown in the mid-1980s and the Asian financial crisis in 1997, when growth reached below average levels. To overcome the 1997 crisis, for example, the Government formulated the National Economic Recovery Plan in July 1998. This Plan was prepared to revitalise the economy as well as to lessen the impact of the crisis on the country's poverty reduction and restructuring of society programmes. The measures introduced in this Plan include adopting an appropriate exchange rate regime and increasing foreign reserves, strengthening the banking system and continuing with the socio-economic agenda of providing appropriate social programmes for people adversely affected by the crisis.

## **EDUCATION AND LITERACY**

17. Education and skills training are accorded high priority in nation building to provide a sufficient pool of educated, highly skilled, strongly motivated workers as well as responsible

citizens with high moral and ethical values. In addition, there were also measures to increase accessibility and participation in education and training, especially for the low-income groups and rural communities. The Sixth Malaysia Plan (1991 to 1995) and Seventh Malaysia Plan (1996 to 2000), for instance, emphasised on promoting educational opportunities in the fields of science and technology. Meanwhile, under the Eighth Malaysia Plan (2001 to 2005), the thrust of the education programmes is to increase accessibility, strengthen the delivery system and improve the quality of education. Existing facilities were expanded and additional facilities were provided to increase the absorptive capacity as well as to create a conducive teaching and learning environment. Besides focusing on capacity development and quality enhancement, the inculcation of good values and positive attitudes among students was also stressed in curricular and co-curricular activities.

18. Under the Ninth Malaysia Plan (2006 to 2010) the main thrust of education is to strengthen the national schools, enhance the school curriculum and co-curriculum, raise the standard of education institutions, reduce the gap between rural and urban schools, improve the teaching profession and delivery system as well as to expand information and communications technology (ICT) programmes in schools.

19. The student enrolment at primary and secondary school level in government assisted schools is comparatively equal for both sexes. However at the tertiary level, female enrolment is higher than male, except for enrolment in polytechnics as shown in Table 1.3.

**Table 1.3: Student Enrolment in Government Assisted Schools, 2001 and 2005**

Level of Education	Sex	2001 figures (%)		2005 figures (%)	
		Male	Female	Male	Female
Primary School		51.4	48.6	51.4	48.6
Secondary School		49.5	50.5	49.8	50.2
Polytechnic		61.2	38.8	57.5	42.5
Teachers' College		32.5	67.5	29.8	70.2
University		42.2	57.8	38.8	61.2

*Source: Ministry of Education*

20. A good indicator of the progress of human development is the literacy rate. Using the population aged ten years and above who have attended school as a proxy for literacy, it was found that the literacy rate in 2005 is 91.5 percent compared to 88.7 percent in 2000. The overall literacy rate improved as a result of continuing efforts to expand education opportunities to all citizens.



## **LABOUR AND EMPLOYMENT**

21. Overall, the labour force participation rate increased during the period of the Seventh Malaysia Plan (1996 to 2000) at an average annual rate of 2.8 percent to reach 62.9 percent in 2000. As a result of the expanding economy during the Eighth Malaysia Plan (2001 to 2005), the labour force participation rate continued to increase at an annual rate of 3.4 percent to reach 66.7 percent in 2005.

22. The labour force increased from 9.6 million in 2000 to 11.3 million in 2005. The size of the labour force is expected to increase by an average annual rate of 1.9 percent to reach 12.4 million persons by 2010, of which 12.4 percent will be foreign workers. The labour force is expected to continue having a young age profile, be better trained and educated.

23. The economy registered full employment with the unemployment rate at 3.5 percent in 2005. To augment the labour force during the period of labour shortages, the Government liberalised its policy on foreign labour utilisation. The end of 1995 saw a total of 649,680 temporary work permits issued to migrant workers. Nearly two thirds of the temporary work permits were issued for work in the plantation and construction sectors, 11 percent in the manufacturing sector and 23 percent for female domestic helpers. Subsequently, foreign workers with work permits increased to 1.7 million in 2005 with the manufacturing sector as the largest employer, accounting for 31.0 percent.

## **MINISTRY OF WOMEN, FAMILY AND COMMUNITY DEVELOPMENT**

24. The Ministry of Women and Family Development was established on 17 January 2001 as a focal point to achieve gender equality and enhance family well-being as the basis for the formation of a developed nation of distinction. Subsequently, after the general elections in March 2004, the functions and responsibilities of the Ministry were expanded to include social development. In line with this change, the Ministry was renamed the Ministry of Women, Family and Community Development. As a result, matters related to children were entrusted to the Ministry. With the ever increasing necessity to address issues and challenges of children, a special Child Division was created in 2005 at the Department of Social Welfare, an agency under the Ministry. This move allowed the Government to handle and administer matters pertaining to children more effectively.

## **CHAPTER 2**

### **GENERAL POLITICAL STRUCTURE**

#### **Political History**

25. Three major periods in Malaysian history were largely responsible for shaping its current legal system. The first period saw the founding of the Malacca Sultanate at the beginning of the 15<sup>th</sup> century; the second was the spread of Islam to South-East Asia and its subsequent entrenchment in the indigenous culture and the third and probably most significant for modern Malaysia was the period of British colonial rule, which brought constitutional government and the common law system to the country.

26. The establishment of Malacca as a port in the 15<sup>th</sup> century resulted in Islam being spread to Malacca by Indian and Arab traders. Eventually, Islam became the state religion and Muslim laws were applied alongside customary law. Malacca was occupied by the Portuguese from 1511 to 1641, by the Dutch from 1641 till 1795, then by the British, reverting back to Dutch control in 1818. In 1824, British rule was restored. These events brought with them the colonial system, which included the appointment of magistrates to try civil disputes and criminal cases, whilst local people continued to practise Islamic Law and Malay customs.

27. Britain established its colonial presence in the Malay Peninsular in the middle of the 18<sup>th</sup> century with the acquisition of the island of Penang in 1786. Sovereignty over Singapore (which was then part of Johor) was obtained in 1824 and Malacca was acquired from the Dutch in the same year. These three states (Malacca, Penang and Singapore) became colonies, known as Straits Settlements. Many of the other Malay States came under British control through a series of treaties.

28. In states under the rule of the Sultans, the British imposed a system of indirect rule in contrast to the direct government practised in the Straits Settlements. The Malay States were theoretically independent and ruled by their respective sovereigns and their status was accepted and recognised by the British. In some States, a Council of State was set up to advise the Sultan. In other states, the Rulers accepted the office of a Resident-General who had exclusive authority over the administration of the State.

29. In 1909, the Federal Council was established. This formed the basis of the centralisation of authority by the British. After the Second World War, the Malay Peninsula fell under Japanese occupation (1942 to 1945). Subsequently, the Federation of Malaya was brought into being in 1948. It comprised the nine Malay States and the Straits Settlements (except Singapore). The Federation has a High Commission, an Executive Council as well as a Legislative Council while each state had its own Executive Council. The Council of Rulers met regularly with the High Commissioner.

30. In 1956, a Constitutional Conference was held in London wherein an agreement was reached with the British Government that full self-government and independence within the Commonwealth should be proclaimed by August 1957. A commission known as the Reid Commission was appointed to make recommendations for a suitable constitution for the nation. These recommendations formed the basis of the Federal Constitution and Malaya was granted independence on 31 August 1957.

31. The constitutional development of Sabah and Sarawak took a somewhat different path from that of the states in Peninsular Malaya. Sabah and Sarawak were formerly British protectorates. They gained independence in 1963 when the Federation of Malaysia was formed by the then Federation of Malaya, Sabah, Sarawak and Singapore. Special provisions were included in the Federal Constitution to safeguard the interests of these three states. However, Singapore left the Federation of Malaysia in 1965.

## Framework and System of Government

32. The Federal Constitution of Malaysia is both the basic and supreme law of Malaysia. It provides for, *inter alia*, the following basic features of the nation:

- (a) The establishment of Malaysia as a Federation comprising 13 states and three federal territories (Kuala Lumpur, Labuan and Putrajaya);
- (b) The division of powers between the Federal and the State authorities;
- (c) A constitutional monarchy; and
- (d) A Westminster type of parliamentary government which provides for the separation of powers as follows:
  - (i) Legislative authority, the power to make law vested in Parliament (Part IV, Chapter 4 of the Federal Constitution);
  - (ii) Executive authority, the power to govern which is vested in the *Yang di-Pertuan Agong* (the Supreme Head of the Federation) and exercisable, subject to the Federal Constitution; and
  - (iii) Judicial power which is vested in the Judiciary (Article 121 of the Federal Constitution).

## The Head of State

33. The *Yang di-Pertuan Agong* (“King”) is the Supreme Head of the Federation. His Majesty takes precedence over all persons including the Rulers in the nine states in Malaysia (i.e. Terengganu, Perlis, Kedah, Perak, Selangor, Negeri Sembilan, Pahang, Kelantan and Johor). Each of the other four states, namely Penang, Melaka, Sabah and Sarawak is headed by a *Yang di-Pertua Negeri* (Governor) who performs the functions of a titular Head of State but is not eligible to be elected as a Ruler. The Conference of Rulers, consisting of the nine Rulers and the four Governors, elects the King from one of the Rulers in the nine states.

## Federal and State Legislatures

34. Article 44 of the Federal Constitution states that the legislative authority of the Federation “shall be vested in a Parliament.” The Parliament, which is elected for a maximum period of five years, comprises the King, *Dewan Negara* (Senate) and *Dewan Rakyat* (House of Representatives). Members of the *Dewan Rakyat* are elected by the people while the members of *Dewan Negara* are appointed by the King. The legislative power of the States is vested in the legislature of the respective State which consists of the Head of State and one House to be known as the Legislative Assembly. The Legislative Assembly of each State consists of such number of elected members as the Legislature may by law provide. The State of Sabah is an exception because in addition to the elected members, it consists of such number of other members who are appointed by the Head of the State.

35. Chapter 1 Part VI of the Federal Constitution stipulates the distribution of legislative powers between the Parliament and the State Legislative Assembly. Article 73 of the Constitution describes the powers of the Parliament and the State Legislative Assembly to make law. As to the subject matter of the laws, Article 74 and the Ninth Schedule of the Federal Constitution sets out the basic division into three legislative lists, that is the Federal List, State List and the Concurrent List.

36. In exercising the legislative powers conferred on it, the Parliament may make laws with respect to any matters enumerated in the Federal List (First List in the Ninth Schedule) such as the defence of the Federation, internal security, external affairs, finance, education and health. It may also make laws with respect to any matters enumerated in the Concurrent List such as welfare, scholarships, sports and culture, housing, public health, town and rural development, protection of wildlife, civil defence, drainage and irrigation.

37. The Legislature of a State may make laws with respect to any matters enumerated in the State List (Second List in the Ninth Schedule) such as land, agriculture and forestry. It may also make laws with respect to any matters enumerated in the Concurrent List. With respect to any matters not enumerated in any of the Lists set out in the Ninth Schedule of the Federal Constitution, Article 77 of the Federal Constitution provides that the residual power of the legislation rests on the State.

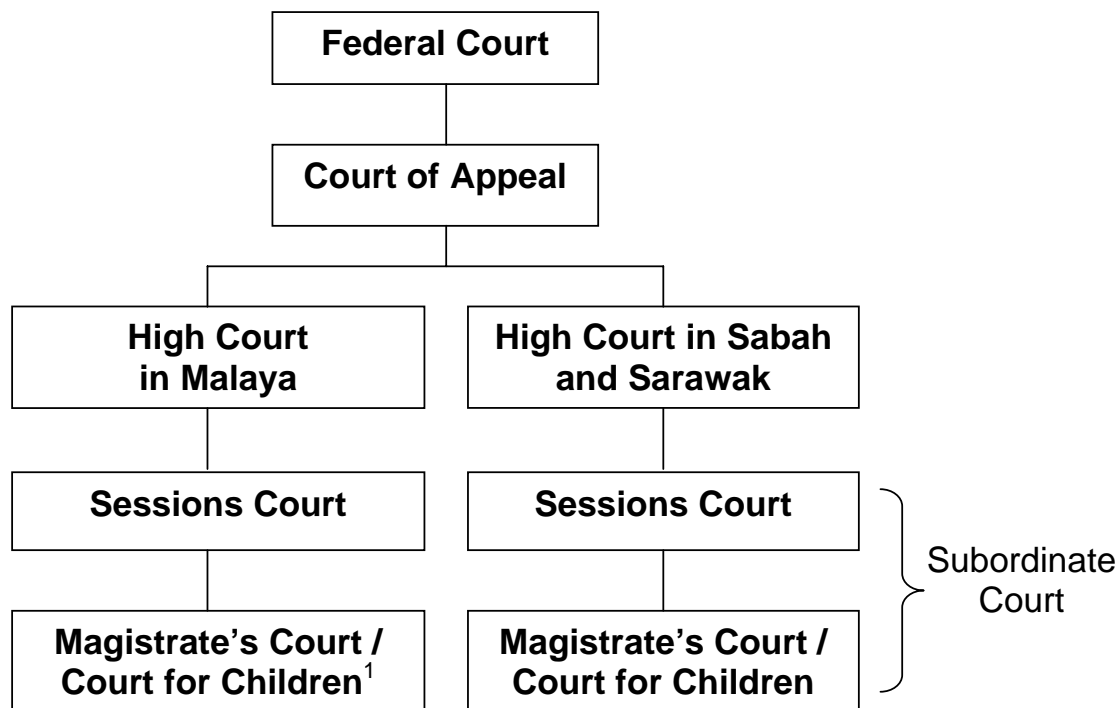
### **The Executive**

38. The executive authority of the Federation is vested in the King, exercisable by His Majesty or by the Cabinet or any Minister authorised by the Cabinet, subject to the provisions of the Federal Constitution. The Prime Minister is appointed from the members of the *Dewan Rakyat* (House of Representatives), who commands the confidence of the majority of the members of that House. The other Cabinet members as well as the Deputy Ministers are appointed by the King on the advice of the Prime Minister.

39. At the State level, the executive authority is vested in the Ruler and the State Executive Council which is headed by a *Menteri Besar* for states which are headed by Rulers and *Ketua Menteri* for states which are headed by *Yang di-Pertua Negeri*. Appointment of the members in the State Executive Authority is governed by the State Constitution and the processes of appointment are generally similar to the Federal practices.

## The Judiciary

40. The Federal Constitution provides for the establishment of the judiciary under Part IX. The diagram below illustrates the hierarchy of courts in Malaysia:



41. The Head of the Judiciary is known as the Chief Justice of the Federal Court. The Court of Appeal comprises eleven judges and is headed by a chairman who is known as the President of the Court of Appeal.

42. Each of the High Court in Malaya and High Court in Sabah and Sarawak is headed by a Chief Judge. All the judges are appointed by the King on the advice of the Prime Minister and the Conference of Rulers. Judicial independence is secured by the Federal Constitution. For instance, the judge holds office until sixty-five years of age. Removal of any judge from office can only be done on the grounds of breach of the code of ethics prescribed by the Federal Constitution or because of the inability of discharging responsibility due to infirmity of body or mind. This must be in accordance with an elaborate procedure set out in the Federal Constitution, which requires, among other things, the establishment of a tribunal by the King consisting of not less than five judges or ex-judges to inquire into the matter.

43. The other securities, which are provided by the Federal Constitution, are as follows:

- (a) Judges' salaries are provided for by an Act of Parliament and are drawn from the Consolidated Fund. Thus, they are paid automatically and are not subjected to annual approval;

- (b) Judges' salaries and other benefits of office including pension rights may not be altered to their disadvantage after appointment; and
- (c) The conduct of a judge may not be discussed in either House of Parliament except on a substantive motion of which notice has been given by at least a quarter of the members of that House. State Legislative Assemblies may not discuss the conduct of a judge at all as the administration of justice and appointment of judges are the preserve of the Federal Government.

44. The jurisdiction of the Federal Court is as follows:

- (a) Appellate jurisdiction i.e. to hear and determine appeals from the Court of Appeal's decisions, the High Court or a judge thereof;
- (b) Original jurisdiction i.e. to exercise jurisdiction over matters vested in it by Article 128(1) of the Federal Constitution; and
- (c) Advisory jurisdiction, where the King may refer to the Federal Court any question regarding the effect of any provision of the Constitution which has arisen or appears likely to arise, and the Federal Court shall pronounce in an open court its opinion on any question so referred.

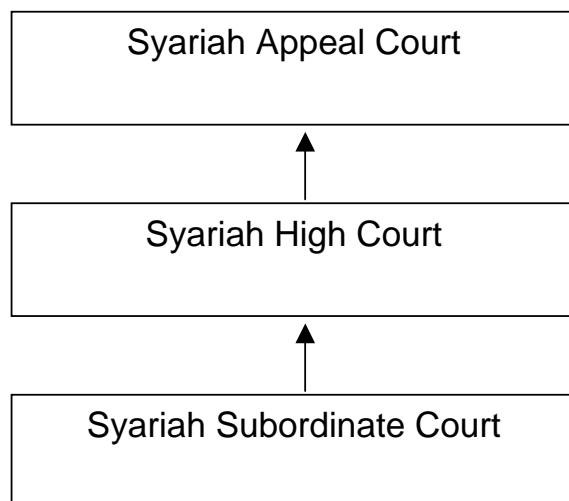
45. The judicial personnel of the subordinate courts comprise of the Sessions Court Judges and the First Class Magistrates.

### **Syariah Courts**

46. The constitution, organisation and procedure of the Syariah Courts are within the legislative powers of the States under List II of the Ninth Schedule of the Federal Constitution. With the exception of the Syariah Court in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Syariah Courts in the States are established by the laws made by the respective State legislatures.

47. The hierarchy of the Syariah Court System consists of the Syariah Subordinate Court, Syariah High Court and the Syariah Appeal Court. The diagram below illustrates the hierarchy of Syariah Courts in Malaysia.

### **Hierarchy of Syariah Courts in the States and Federal Territory**



48. The procedure for the appointment of Syariah Court Judges is governed by the provisions of the Federal Territory and the respective State legislations on the administration of Islamic Law. In every State, the Syariah Subordinate Courts are presided by the Syariah Subordinate Courts Judges whereas the Syariah High Courts are presided by the Syariah High Courts Judges. The Syariah Appeal Courts are presided by the Syariah Appeal Court Judges chaired by the Chief Syariah Judge. Appointments of all Syariah judges are made by the Ruler of each State where the courts are situated in.

49. As a result of a 1988 amendment to Article 121 of the Federal Constitution, Article 121 (1A) provides that the civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts. The Syariah Courts have jurisdiction over matters enumerated in paragraph 1 of Part II, List II of the Ninth Schedule of the Federal Constitution. The criminal jurisdiction of Syariah Courts constituted under the law of the respective States, in respect of offences against precepts of the religion of Islam by persons professing that religion is provided by the Syariah Court (Criminal Jurisdiction) Act 1965 [Act 355] subject to restrictions as provided under Act 355.

#### **Jurisdiction of Syariah Subordinate Court**

50. A Syariah Subordinate Court shall have jurisdiction throughout the relevant State or Federal Territory and shall be presided by a Judge of the Syariah Subordinate Court. This Court shall:

- (a) In its criminal jurisdiction, try any offence committed by a Muslim under the Syariah criminal legislation or any other written law which prescribes offences against the precepts of the religion of Islam for which the maximum punishment provided by such legislation or any other written law does not exceed RM3,000 or

imprisonment for a term of two years or both, and may impose any punishment provided for such offences;

- (b) In its civil jurisdiction, hear and determine all such actions and proceedings as the Syariah High Court is authorised to hear and determine, in which the amount or value of the subject matter in dispute does not exceed RM100,000 or is not capable of estimation in terms of moneys (not including claims of *hadhanah* or *harta sepencarian*)<sup>2</sup>.

51. An appeal shall lie to the Syariah High Court from any decisions of a Syariah Subordinate Court:

- (a) In its criminal jurisdiction, by the prosecution or by a person convicted and such appeal may be against an acquittal, a conviction or a sentence or any of them;
- (b) In its civil jurisdiction:
  - (i) By any person aggrieved by the decision, if the amount claimed is no less than RM1,000;
  - (ii) In all cases involving any decision as to personal status, by any person aggrieved by the decision;
  - (iii) In all cases relating to maintenance of dependants, by any person aggrieved by the decision,but no appeal shall lie against a decision made by consent; and
- (c) In any other case, if the Syariah High Court gives leave to appeal.

### **Jurisdiction of Syariah High Court**

52. A Syariah High Court shall have jurisdiction throughout the relevant State or Federal Territory and shall be presided over by a Syariah Judge. This Court shall:

- (a) In its criminal jurisdiction, try any offence committed by a Muslim and punishable under the Enactment or the Islamic Family Law (Federal Territories) Act 1984, or under any other written law prescribing offences against precepts of the religion of Islam for the time being in force, and may impose any punishment provided therefore;
- (b) In its civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which relate to:
  - (i) Betrothal, marriage, *ruju'*, divorce, nullity of marriage (*fasakh*), *nusyuz*, or judicial separation (*faraq*) or other matters relating to the relationship between husband and wife;



- (ii) Any disposition of, or claim to, property arising out of any of the matters set out in subparagraph (i);
  - (iii) The maintenance of dependants, legitimacy, or guardianship or custody (*hadhanah*) of infants;
  - (iv) The division of, or claims to, *harta sepencarian*;
  - (v) Wills or death-bed gifts (*marad-al-maut*) of a deceased Muslim;
  - (vi) Gifts *inter vivos*, or settlements made without adequate consideration in money or money's worth, by a Muslim;
  - (vii) *Wakaf* or *nazr*;
  - (viii) Division and inheritance of testate or intestate property;
  - (ix) The determination of the persons entitled to share in the estate of a deceased Muslim or of the shares to which such persons are respectively entitled; or
  - (x) Other matters in respect of which jurisdiction is conferred by any written law.
- (c) In exercising its jurisdiction to determine appeals, the Syariah High Court may:
- (i) In a criminal matter, dismiss the appeal, convict and sentence the appellant, order the trial Court to call for the defence or make further inquiry, enhance or alter the nature of the sentence, order a retrial, or alter or reverse any order of the trial Court;
  - (ii) In a civil matter, confirm, reverse or vary the decision of the trial Court, exercise any such powers as the trial Court could have exercised, make such order as the trial Court ought to have made, or order a retrial.
- (d) The Syariah High Court also has supervisory and revisionary jurisdiction over all Syariah Subordinate Courts.

### **Jurisdiction of Syariah Appeal Court**

53. The Syariah Appeal Court shall have jurisdiction to hear and determine any appeal against any decision made by the Syariah High Court in the exercise of its original jurisdiction. When an appeal from a decision of a Syariah Subordinate Court has been determined by the Syariah High Court, the Syariah Appeal Court may on the application of any party grant leave for the determination by itself of any question of law of public interest which has arisen in the course of the appeal and the determination of which by the Syariah High Court has affected the result of the appeal.

54. When leave has been granted by the Syariah Appeal Court, it shall hear and determine the question allowed to be referred for its determination and make such order as the Syariah High Court might have made and as it considers just for the disposal of the appeal. The Syariah Appeal Court also has supervisory and revisionary jurisdiction over the Syariah High Courts.

### **Administration of Syariah Law**

55. The 176<sup>th</sup> Conference of Rulers Meeting held on 1 August 1997 agreed with the Government's proposal to standardise the laws pertaining to Syariah Law in Malaysia. Pursuant to the same, the 188<sup>th</sup> Conference of Rulers Meeting held on 22 March 2001 agreed on five Model Laws relating to the Administration of Islamic Law, Islamic Family Law, Syariah Court Evidence, Syariah Criminal Procedure and the Syariah Court Civil Procedure. The provisions of the Model Laws relating to the said matters are reflected in the Federal Territory and respective state legislations on the said matters.<sup>3</sup> For purposes of this report, the Islamic Family Law (Federal Territories) Act 1984 [Act 303], the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561], the Syariah Criminal Procedure (Federal Territories) Act 1997 [Act 560] and the Syariah Court Civil Procedure (Federal Territories) Act 1998 [Act 585] will be referred to in the elaboration of the rights of the child under the Syariah system.

### **Native Courts**

56. Apart from the civil courts and Syariah courts, there is in East Malaysia a separate system of state's court known as the native courts. These courts are peculiar only to Sabah and Sarawak and their primary function is to hear and determine disputes arising from breach of native law and customs where one party involved is a native. Under the law, native courts are empowered to administer and enforce native law and customs prevailing in the area of the jurisdiction of the court only. Item 13 of List IIA (Supplement to State List for States of Sabah and Sarawak) in the Ninth Schedule provides for the distribution of legislative powers for the states of Sabah and Sarawak which includes the constitution and organisation of native courts.

### **Information and Publicity**

57. All national laws are published by the Government Printers in *Bahasa Melayu* (the official language) and English. Translations into Mandarin and Tamil and other vernacular languages are undertaken by either the news media or political parties representing these communities. The mass media, both print and electronic, in the official and vernacular languages contribute to create awareness among the public with regard to their rights under the law and the relevant international instruments.

58. Press freedom is regulated by the legislation governing the press such as the Printing Presses and Publications Act 1984 which regulates the use of printing presses and the printing, importation, production, reproduction, publishing and distribution of publications and for matters connected therewith.

59. The Ministry of Information is responsible for the dissemination of information via its departments namely the Broadcasting Department, Information Department, Special Affairs Department and Malaysia National News Agency. This is done in the form of broadcasting, face-

to-face communication and press liaison. Being a governmental body, the Broadcasting Department presents Government programmes and policies to the people. Besides promoting and developing national unity, it also stimulates public interest, civic consciousness and provides information, education and entertainment.

60. The Malaysia National News Agency provides valuable services not only to newspapers and news agencies, but also to embassies, banks, universities, industrial firms and various organisations through its news, economic and feature services. It also provides telecommunications facilities to subscribers for the distribution of news and other services such as economic and commodity news, share market and financial services, photographs and international features.

61. The Government has also established the Human Rights Commission of Malaysia under the Human Rights Commission of Malaysia Act 1999 [Act 597]. The functions of the Commission as stipulated under Act 597 are as follows:

- (a) to promote awareness of and provide education in relation to human rights;
- (b) to advise and assist the Government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken;
- (c) to recommend to the Government with regard to the subscription or accession of treaties and other international instruments in the field of human rights; and
- (d) to inquire into complaints regarding infringements of human rights as referred to in section 12 of the Act.

62. For the purpose of discharging its functions, the Commission has the power to:

- (a) promote awareness of human rights and to undertake research by conducting programmes, seminars and workshops as well as to disseminate and distribute the results of such research;
- (b) advise the Government and/or the relevant authorities of complaints against such authorities and recommend to the Government and/or such authorities appropriate measures to be taken;
- (c) study and verify any infringements of human rights in accordance with the provisions of the Act;
- (d) visit places of detention in accordance with the procedures as prescribed by the laws relating to the places of detention and to make the necessary recommendations;
- (e) issue public statements on human rights as and when necessary; and
- (f) undertake any other appropriate activities as are necessary in accordance with the written laws in force, if any, in relation to such activities.

63. Children's rights remain a significant part of the Human Rights Commission of Malaysia's agenda since its inception in 2000. The Human Rights Education and Promotion Working Group focuses on the area of promotion and advocacy of the rights of the child through community and school based programmes, such as "Training of Adult and Young Trainers on the Convention on the Rights of the Child (CRC)", CRC Awareness workshops, message and poster competitions on CRC and also CRC Camps for selected schools and institutions of higher learning. The Working Group conducted a nationwide survey between April and May 2003 on the knowledge and practice of human rights in schools following the success in including human rights education in schools. In January 2004, the Law Reform and International Treaties Working Group organised a roundtable discussion on the status of the implementation of the CRC. The discussion was attended by a wide range of stakeholders including children and the young people.

## **PART II: THE REPORT**

### **CHAPTER 3**

#### **GENERAL MEASURES OF IMPLEMENTATION (ART. 4; 42 AND 44, PARA. 6)**

##### **GENERAL LEGAL FRAMEWORK**

64. The Federal Constitution sets out the basic human rights standards for the country. The principal rights or provisions in the Constitution are:

- (a) Liberty of the person (Article 5);
- (b) Prohibition of slavery and forced labour (Article 6);
- (c) Protection against retrospective criminal laws and repeated trials (Article 7);
- (d) Equality before the law (Article 8);
- (e) Prohibition of banishment and the right to freedom of movement (Article 9);
- (f) Freedom of speech, assembly and association (Article 10);
- (g) Freedom of religion (Article 11);
- (h) Rights in respect of education (Article 12); and
- (i) Rights to property (Article 13).

65. The rights entrenched in the Federal Constitution as mentioned above also extend to a child. In addition the care, protection and rehabilitation of the child is governed by the Child Act 2001 [Act 611] which was enacted based on the principles of the Convention on the Rights of the Child (CRC) as elaborated in the paragraphs below. The rights of the child governed by the Syariah law also reinforces the principle of best interest of the child as reflected in the provisions of the Federal Territory and respective State legislations on matters concerning rights of the child arising from matters enumerated under List II of the Ninth Schedule of the Federal Constitution with regard to personal and family law of persons professing the religion of Islam.

66. In this chapter, relevant legislations pertaining to a child's rights, from the perspective of both civil and Syariah, will be discussed to reflect the different provisions of laws and practices in Malaysia.

## **RELEVANT LEGISLATIONS PERTAINING TO CHILDREN**

### **Child Act 2001 [Act 611]**

67. In fulfilling Malaysia's obligation under the CRC, Malaysia enacted the Child Act 2001 [Act 611]. Act 611 repealed the Juvenile Courts Act 1947 [Act 90], the Women and Girls Protection Act 1973 [Act 106] and the Child Protection Act 1991 [Act 468]. The provisions of Act 611 are based on the four core principles of the CRC that is, non-discrimination, best interest of the child, the right to life, survival and development and respect for the views of the child.

68. The preamble of Act 611 provides that every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any status. The care, protection and rehabilitation of a child under Act 611 is stipulated as follows:

- (a) A child in need of care and protection under Act 611 includes, among others, a child who has been or is subjected to substantial risk that he will be physically or emotionally injured or sexually abused, who have been neglected or abandoned by his guardians or parents, who has no parents or guardian, who needs to be examined, investigated or treated for the purpose of restoring or preserving his health and his parents or guardian neglects or refuse to have him examined, investigated or treated and a child who behaves in a manner that is likely to be harmful to himself or any other person and his parents or guardian is unable or unwilling to take the necessary measures to remedy the situation.
- (b) If the Court for Children is satisfied that a child is in need of care and protection, the Court may make any of the following orders:
  - (i) Order his parents or guardian to execute a bond to exercise proper care and guardianship for a period specified by the Court;
  - (ii) Make an order placing the child in the custody of a fit and proper person for a period specified by the Court;
  - (iii) Without making any other order or in addition to an order made under paragraph (i) or (ii), make an order placing the child under the supervision of:
    - a Protector<sup>4</sup>; or
    - some other person appointed for the purpose by the Court for Children,

for a period specified by the Court for Children;

- (iv) Make an order placing the child in a place of safety for a period as provided under Act 611;
  - (v) In the case of a child who has no parent or guardian or who has been abandoned, make an order placing the child in the care, custody and control of a foster parent found to be suitable by the Director General of the Social Welfare Department for a period as provided under Act 611.
- (c) In determining what order to be made, the Court for Children shall treat the best interest of a child as the paramount consideration.
- (d) Act 611 imposes on every medical officer, member of the family of a child and child care provider the duty to inform a Protector if he or she believes that the child has been physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused. Act 611 makes it an offence for any person responsible for caring of the child to ill-treat, neglect, abandon or expose a child in a manner likely to cause him physical or emotional injury. Any person who causes or procures a child for begging and a parent or guardian of a child who leaves the child without reasonable supervision also commits an offence under Act 611.
- (e) Under Act 611 a child is in need of protection and rehabilitation if the child is being induced to perform any sexual act or he or she is exposed to any physical or social environment, which may lead the child to prostitution and any form of sexual exploitation.
- (f) If the Court for Children is satisfied that a child is in need of protection and rehabilitation, the Court may make the following orders:
- (i) Order the child to be detained in a place of refuge for a period as provided under Act 611;
  - (ii) Make an order placing the child for a period as provided under Act 611, in the care of a person who is willing and whom the Court for Children considers to be a fit and proper person to undertake the care of such child;
  - (iii) Make an order requiring the parent or guardian of the child to execute a bond, with or without sureties, as the Court for Children may determine, for such period not exceeding three years from the date of the order subject to such conditions as the Court thinks fit for the proper care and guardianship of the child;
  - (iv) Make an order placing the child under the supervision of a Social Welfare Officer subject to such conditions as the Court thinks fit and for a period as provided under Act 611.

- (g) In determining what order to be made, the Court for Children shall treat the best interest of a child as the paramount consideration.
- (h) In addition Chapter 2 of Act 611 provides for offences relating to involvement of children in prostitution.

69. Act 611 also requires the setting up of Child Protection Teams and Child Activity Centres at both state and district levels, aimed at mobilising community participation in the implementation of preventive and rehabilitative programmes. Such programmes and activities are targeted towards children at risk or children vulnerable to all forms of abuse and exploitation.

70. In terms of administration of juvenile justice, Act 611 provides for a procedure before the Court for Children which is child-friendly taking into account the mental and emotional maturity of a child. The child is presumed innocent until found guilty and is guaranteed the right to be heard. The child also has a right to a counsel.

71. The Court for Children consists of a Magistrate who shall be assisted by two advisors, one of whom shall be a woman. It shall be the duty of the Court to explain to the child in simple language suitable to the child's age, maturity and understanding the substance of the alleged offence. Where the child admits the facts constituting the offence, the Court shall ascertain that the child understands the nature and consequences of his admission before recording the finding of guilt.

72. The child also has the right to cross examine witnesses through a counsel. Where he is not legally represented, the Court for Children shall allow the child's parents or guardian or any relative or other responsible person to assist him in conducting his defence. If in any case where the child is not legally represented or assisted in his defence, the child instead of asking questions by way of cross-examination, makes assertions, the Court for Children may put to the child such questions as may be necessary in order to bring out, or explain anything in, the assertions of the child; and shall then put to the witness such questions as the Court thinks necessary on behalf of the child.

73. If the Court finds that a *prima facie* case is made out, the Court shall explain to the child the substance of the evidence against him and, in particular, any points in the evidence which specially tells against him or requires his explanation. The child shall be allowed to present his case by giving evidence upon oath or affirmation or make any statement if he so desires. He is also allowed to call witnesses to support his case. The right to cross examine witnesses, to give evidence and produce evidence to support his case are consistent with the core principle on respect for the views of the child under the Convention.

74. Where a finding of guilt is recorded against the child by the Court, the Court shall consider a probation report before any order or decision is made pertaining to the child. The report shall contain information on the child's general conduct, home surroundings, school record and medical history to enable the Court for Children to deal with the case in the best interest of the child. The probation report may also include any written report of a Social Welfare Officer, a registered medical practitioner or any other person whom the Court for Children thinks fit to provide a report on the child.

75. Act 611 also obligates parents or guardian to appear before a Court for Children during the proceedings. Failure to attend the proceedings without reasonable reasons amounts to committing an offence under Act 611.

76. Apart from Act 611 other legislations which promote the welfare and development of the child are the Education Act 1996, Guardianship of Infants Act 1961, Births and Deaths Registration Act 1957, Registration of Birth and Death Ordinance of Sabah, Registration of Birth and Death Ordinance of Sarawak, Married Women and Children (Maintenance) Act 1950, Law Reform (Marriage and Divorce) Act 1976, Childcare Centres Act 1984, Care Centres Act 1993 and the Workers' Minimum Standards of Housing and Amenities Act 1990.

### **Education Act 1996 [Act 550]**

77. Upon accession to the CRC, Malaysia made a declaration to Article 28 (1) (a) of the CRC as follows:

“With respect to Article 28 paragraph 1(a), the Government of Malaysia wishes to declare that in Malaysia, even though primary education is not compulsory and available free to all, primary education is available to everybody and Malaysia has achieved a high rate of enrolment for primary education i.e. at the rate of 98 percent enrolment.”

78. With respect to the development of a child, the Education Act 1996 [Act 550] was amended in 2002 to provide for compulsory primary education. It stipulates that every parent is obliged to enrol their child upon attaining the age of six years in primary school and the child shall remain as a pupil in a primary school for the duration of the compulsory education for six years. Although education is compulsory by law, the current policy in Malaysia still requires students to pay a certain amount of fees upon enrolment in primary school. Although a minimal fee is imposed, financial assistance is provided by various Government agencies to needy children to ensure their rights to education.

### **Guardianship of Infants Act 1961 [Act 351]**

79. The rights and duties of parents in relation to their children are provided for in the Guardian of Infants Act 1961 [Act 351]. This Act provides for the equality of parental rights in relation to the guardianship or upbringing of an infant or in the administration of any property belonging to or held in trust for an infant or in the application of the income of any such property.

80. On the death of any one of the parents of an infant, the surviving parent shall be guardian of the infant, either alone or jointly with any guardian appointed by deed or will. In the event that both parents of an infant died without appointing a testamentary guardian, any Magistrate, *Penghulu*, police officer or Protector<sup>5</sup> may cause the infant to be taken before the Court, and the Court shall appoint a guardian of the infant's person and property or either of them.

81. In the case of an abandoned child, the Court shall appoint a Protector<sup>6</sup> to be a temporary guardian of the child until such time when a guardian of the child can be appointed. In exercising



the power conferred by Act 351, the Court shall have regard primarily to the welfare and best interest of the child.

**Births and Deaths Registration Act 1957 [Act 299], Registration of Birth and Death Ordinance of Sabah (Chapter 123) and Registration of Birth and Death Ordinance of Sarawak (Chapter 10)**

82. These legislations make it mandatory for every birth in the country to be registered. The provisions provide the child with the right to a name and an official document. This official document becomes the basic document for all future transactions for the child concerned.

**Married Women and Children (Maintenance) Act 1950 [Act 263]**

83. Under Act 263, a Court may order a father, who neglects or refuses to maintain his child, to make a monthly allowance in proportion to his means as the Court deems just and reasonable.

**Law Reform (Marriage and Divorce) Act 1976 [Act 164]**

84. In addition to the provisions of Act 263, Act 164 provides for the rights of the child to be maintained by the parents. Act 164 also has provisions pertaining to the custody of the child in the event of a divorce.

**Childcare Centres Act 1984 [Act 308]**

85. Act 308 is intended to ensure quality childcare for children below the age of four years at childcare centres. All centres that take in children for a fee are required to register with the Department of Social Welfare. Through the issuance of a Certificate of Registration, which has to be renewed yearly, the Department of Social Welfare monitors the operation of the childcare centres to ensure compliance with Act 308. This Act also stipulates that all care providers must obtain the basic Childcare Certificate accredited by the Department of Social Welfare. Additional training in Early Childhood Care and Development is also provided for childcare providers and parents.

**Care Centres Act 1993 [Act 506]**

86. Act 506 provides for registration, control and inspection of day and residential care centres. Any care centre which provides care for four or more persons over a continuous period of more than three hours per day and at least three days per week whether, for reward or otherwise, is required to be registered under Act 506.

87. A Certificate of Registration to operate such care centre is granted on the basis of the number of residents which must not exceed the stipulated available space and the specified ratio between care givers and residents. The premise of the care centre must fulfil the requirements of the local authorities, observe the health guidelines as set up by the Health Department and fire safety rules as stipulated by the Fire Services and Rescue Department. Besides that, an appropriate menu and daily activities according to different age groups must be provided. Any

offences under the Act 506 shall be liable to a fine not exceeding RM10,000.00 or imprisonment for a term not exceeding two years or both.

### **Workers' Minimum Standards of Housing and Amenities Act 1990 [Act 446]**

88. Act 446 prescribes the minimum standards of housing and amenities for workers and their dependents in any place of employment or part thereof other than the area of a City Council, a Municipal Council or a Federal Territory. Amongst others it requires the employer to set up a nursery for their workers' children if there are at least ten children below four years old.

89. The employer is also responsible for the maintenance of the said nurseries. Act 446 stipulates the minimum requirements pertaining to staff-child ratio, provision of food as well as programmes and activities for children under their care. An employer who fails to comply with the minimum requirements of Act 446 shall be liable to a fine not exceeding RM2,000.00 and to a further fine of RM100.00 for each day during which the offence continues. As of 2005, there are 348 nurseries in the plantation sector in Peninsular Malaysia compared to 609 nurseries in 2002. The reduction in the number of nurseries is proportional to the smaller number of estates in Malaysia.

90. In addition to the Act 611, other legislations providing protection from exploitation and abuse of children are the Domestic Violence Act 1994, Penal Code and the Children and Young Persons (Employment) Act 1966 (Revised 1988).

### **Domestic Violence Act 1994 [Act 521]**

91. Act 521 aims to control the crime of violence amongst the family and maintain the well-being of the family. It also protects the child against any form of abuse committed within the household. This Act has to be read with the Penal Code [Act 574] and the Criminal Procedure Code [Act 593]. Domestic violence is defined as wilfully placing the victim in fear of physical injury, causing physical injury, compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise from which the victim has a right to abstain, and harassment or psychological harm so as to cause ill health.

### **Penal Code [Act 574]**

92. Provisions of Act 574 under Chapter XVI relating to offences affecting the human body applies equally to children. Sections 312, 313, 314, 315 and 316 specifically provide for offences relating to causing miscarriage and injuries to the unborn child. Section 317 makes it an offence for exposure and abandonment of a child under twelve years by the parent or any person having the care of the said child.

### **Children and Young Persons (Employment) Act 1966 (Revised 1988) [Act 350]**

93. Act 350 is aimed at protecting a child from economic exploitation including child labour. It controls the kind of employment, number of days and hours of work for any child and young person. Under Act 350, a child is defined to be below fourteen years of age and young person is defined to be above fourteen years but has not completed his or her sixteenth year of age. This

Act also enables the child and young person to enter into a contract of service and to sue his or her employer for wages or breach of services. The child and young person is also protected from having to pay damages or indemnity in the event an action is taken on the child or young person, by the employer for breach of contract of service.

94. Malaysia has also enacted legislations governing adoption to safeguard the interest of the adopted child. The legislations are the Adoption Act 1952, Adoption Ordinance Sabah 1960 and the Adoption Ordinance Sarawak 1958, Registration of Adoption Act 1952 and the Islamic Family Law (Federal Territory) Act 1984.

#### **Adoption Act 1952 [Act 257]**

95. Act 257 is enacted to safeguard the interest of the child. Children adopted under Act 257 will have the same rights and status as the natural child of the adoptive parents and will have the rights to inherit the adoptive parent's property as if he or she is a natural child.

96. There is a provision which stipulates a minimum age of the adopter to be at least twenty five years old and at least twenty one years older than the child or over twenty one years if he or she is a relative of the child. Act 257 also prohibits the adoption of female children by a sole male applicant unless under special circumstances. The order of adoption under Act 257 is made by the Court. In the states of Sabah and Sarawak, adoption is governed by the respective states' Ordinances.

97. The provisions of Act 257 shall not apply to any person who professes the religion of Islam and to a child who according to law is a Muslim. The interests and welfare of a Muslim child taken into custody as member of the family is contained in section 78 of the Islamic Family Law (Federal Territory) Act 1984. This Act provides that where a man has accepted a child who is not his child as a member of his family, he is duty bound to maintain the child. The fostered Muslim child is given the same rights as a natural child and may be entitled to benefit from the foster parents' property by way of gift (*hibah*) or the foster parents may devise not more than one third of their property by will (*wasiat*) to the child. However, the fostered Muslim child will not carry the family name of his foster parents, nor will he be entitled to inherit the foster parents' property.

#### **Adoption Ordinance Sabah 1960 and the Adoption Ordinance Sarawak 1958**

98. The Adoption Ordinance Sabah 1960 and Adoption Ordinance Sarawak 1958 are State Laws which are applicable to the states of Sabah and Sarawak by virtue of Article 95B of the Federal Constitution which came into force on 16 September 1963. Both Ordinances are listed in List IIA – Supplement to State List for States of Sabah and Sarawak, Ninth Schedule of the Federal Constitution.

99. Both the Adoption Ordinances provide for the procedures for the registration of adoption and conditions relating thereto. Unlike the Adoption Act 1952 (which is applicable to non-Muslims in Peninsular Malaysia), these Ordinances are applicable to both Muslims and non-Muslims.

### **Registration of Adoption Act 1952 [Act 253]**

100. Act 253 provides for the registration of adoption upon application made by the adoptive parents of a child under the age of eighteen years who has never been married and is in the custody of, and is being brought up, maintained and educated by the adoptive parents. The adopted child must be a permanent resident and have stayed with the adoptive parents for two years before an application for adoption can be made and the certificate of registration of adoption is issued by the National Registration Department.

101. The provisions of Act 253 are to ensure the welfare and development of the adopted child, protection of the adopted child from exploitation and abuse and safeguards on adoption. Act 253 is applicable to both Muslims and non-Muslims.

102. The procedure under Act 253 is only by way of registration of the adoption at the National Registration Department. The procedure of registration of such adoption would not in any way change the paternity of the Muslim child. This procedure is not in contravention with *hukum Syarak* and fosterage made under section 78 of the Islamic Family Law (Federal Territory) Act 1984.

### **Islamic Family Law (Federal Territory) Act 1984 (“IFLA”) [Act 303]**

103. The provisions pertaining to a Muslim child’s rights may be found in IFLA. Section 79 of IFLA provides that parents are obligated to maintain their child until the child reaches the age of 18 or until the child completes higher education or further training.

104. In terms of custody of a Muslim child, section 81 of IFLA provides that a mother is the best person to take care of a child. However, in terms of guardianship, section 88(1) of IFLA provides that the father shall be the first and primary natural guardian of the person and property of his minor child, and where he is dead, the legal guardianship shifts to the father’s father, the executor appointed by the father’s will, the father’s executor’s executor, the father’s father’s executor and the father’s father’s executor’s executor.

105. The IFLA also stipulates provisions pertaining to the welfare of an illegitimate child. The responsibility towards the illegitimate child is placed exclusively to the mother and her relations. In the case of a Muslim child who is abandoned or needs protection, the child may be taken into custody for the purposes of upbringing and education. The Syariah law provides that when any person brings home a child to foster, to educate and treat as if the child is one of his own; he protects, feeds, clothes, teaches and loves the child; but the child is not attributed to him. Section 78(1) of IFLA makes provision for maintenance of a child accepted as a member of the family.

106. In all matters relating to a child, the provision of Part VII under IFLA places the welfare of the child as the paramount consideration.

## **ADMINISTRATIVE ACTION AND PROGRAMMES RELATED TO THE CONVENTION ON THE RIGHTS OF THE CHILD**

107. To ensure effective dissemination and greater understanding of the CRC, a sensitisation workshop was held in 2003 among senior government officers by the Department of Social Welfare in collaboration with UNICEF. For the year 2007, the Department will carry on with more Child Participation programmes to empower children to be facilitators of the CRC. Four programmes will be implemented throughout the country in 2007, targeting mainly the marginalised children as well as children from the Children's Home.

108. The administration of the Department of Social Welfare was restructured in 2005 with the establishment of a Child Division to handle issues involving children more effectively. This exercise resulted in the addition of more officers in charge of children. A Child Unit is also set up at all state and district levels.

109. The Legal and Advocacy Division of the Department of Social Welfare has taken steps to advocate child issues. Since March 2004, the Division conducted 10 training courses on handling child abuse cases throughout the country to all social welfare officers. The Department has targeted that all its officers will be trained and exposed to issues pertaining to children by the end of 2006. With the expansion of the Department and increased number of officers, similar series of training programmes as well as refresher courses are scheduled in 2007.

### **Community Based Rehabilitation Centres**

110. Community Based Rehabilitation (CBR) centres were established throughout the country by the Department of Social Welfare. A CBR center is a one-stop centre for persons with disabilities (PWD), including children. This centre provides services such as diagnosis, rehabilitation, treatment and special education. It also provides vocational training to prepare the PWDs for employment. The CBR centres are run by members of the community, volunteers and representatives from the relevant government agencies, namely the Ministry of Health, Ministry of Education and the Ministry of Human Resources. Presently, there are 313 CBR centres with 8,453 PWDs, including children throughout the country. The Ministry of Women, Family and Community Development plans to open at least 10 new CBR centres every year.

**Table 3.1: Community Based Rehabilitation (CBR) Centres, 2000 to 2005**

<b>Year</b>	<b>No. of CBR Centres</b>	<b>No. of PWDs</b>
2000	229	7,210
2001	243	7,400
2002	259	7,620
2003	274	7,870
2004	293	8,193
2005	313	8,453

*Source: Department of Social Welfare*

111. The Ministry provides yearly monetary grants to the CBR centres for their operational expenses, programmes and activities. PWDs who participate under the CBR receive a monthly allowance of RM 25.00 per month and free meals from the Ministry. This allowance will be increased to RM50.00 per month beginning from January 2007.

112. The CBR centres organise several activities for the benefit of the disabled children. Among them are:

(a) Therapy

There are three kinds of therapy offered, namely physiology therapy, occupational therapy and speech therapy. This training is done under close supervision of selected specialists. Physiology therapy focuses on the rehabilitation of the human body which involves activities concerning basic motion skills such as crawling, walking, running, jumping and kicking. The occupational therapy teaches the PWDs on various occupational skills to help them with their jobs. Lastly, the speech therapy focuses on verbal communications skills, designed with advanced techniques to help PWDs with speech impediments to learn to speak better.

(b) Language and Social Development

The PWDs are taught to express themselves verbally, through writing and inscriptions. This allows them to communicate properly and for other people to understand them better. Under this activity, PWDs are also taught interaction skills, such as sign language and other methods.

(c) Basic Daily Life Skills

This activity provides basic activities on how a person takes care of oneself. It includes food and water intakes, bathing, toilet training, grooming, wheel chair handling as well as getting in and out of bed and vehicles.

(d) Reading, Writing and Arithmetic (3R)

The PWDs, especially the children are taught basic skills in reading, writing and arithmetic. In addition, they are trained to handle writing tools and materials.

(e) Recreational Therapy

In this activity, PWDs are encouraged to explore their talents through games, making handicrafts and playing musical instruments. Often, outdoor excursions to various places are made to further enhance their self esteem and sense of accomplishment.

(f) Independent Living Training

This is a treatment that focuses on helping PWDs to achieve independence in all aspects of their lives. It can provide children with various needs with positive as well as fun activities to improve their cognitive, physical and motor skills. Several 'hostels' are set up where four to five PWDs could learn to live together on their own under the supervision of a coordinator.

113. The CBR training thus benefits the PWDs, their families and the community. Adequate training and suitable rehabilitation services are provided to cater for the different needs and types of disabilities. This will allow the PWDs to be integrated into the society and not left discriminated. It will also instil the value of independence and positive attitude among PWDs. The National Council for Community Based Rehabilitation (NCCBR) was established by the Government to assist in the rehabilitation programmes. In essence, CBR has raised the awareness level among family members on the importance of early prevention as well as to participate actively and contribute to the development of the disabled children.

114. The ratio of carers to children with disabilities in CBR centres was reduced from 1:10 to 1:5 in 2003. This allowed the carers to give more attention to the disabled. A Training Manual was developed in 2003 to train carers, parents, families and the community members on various rehabilitation and vocational modules to improve the quality of care for children with disabilities in the community.

115. In addition, the Department of Social Welfare has developed a portal known as CBR Net ([www.pdknet.com.my](http://www.pdknet.com.my)) in 2003. Through this portal, CBR programmes and activities are readily available online. Parents can access and obtain relevant information for the benefit of their children.

### **Monetary Assistance**

116. With effect from 1 January 2006, the financial assistance by the Department of Social Welfare for needy children was increased from a minimum rate of RM80.00 to RM100.00 per month per child, and the maximum was increased from RM350.00 to RM450.00 per month per family. This monetary assistance is aimed to ease the burden of poor families in bringing up their child.

117. The Department of Social Welfare also provides financial assistance known as *Bantuan Kanak-kanak* (BKK) for the purchase of school uniforms, transportation, examination fees and

spectacles for needy school-going children. This reduces the burden of families that have school-going children. The details of this financial assistance is given in Table 3.2.

**Table 3.2: Financial Assistance (BKK) from the Department of Social Welfare (2001-2005)**

<b>Year</b>	<b>Number of Cases</b>	<b>Amount of Financial Assistance</b>
2001	8,908	RM 19.09 million
2002	11,841	RM 28.51 million
2003	14,234	RM 38.77 million
2004	16,363	RM 39.47 million
2005	19,346	RM 43.66 million

*Source: Department of Social Welfare*

118. The Department of Social Welfare has introduced fostering allowances to encourage the participation of the public in caring for the orphans. The foster family is given RM250.00 for each child. 104 children were fostered out in 2004 and 121 children in 2005, with RM236,894 and RM347,450 spent for the fostering programme for these corresponding years.

### **Intervention Action with Regard to Disabled Children in Institutions**

119. The Counselling and Psychology Division of the Department of Social Welfare has produced four intervention modules specially designed for the children placed in institutions under the Department. These modules are based on the “Counselling and Psychological Service Model”, focusing on children facing low self-esteem problems. The four modules are as follows:

(a) **Assessment Module**

This module is to identify psychological aspects of children and family including:

- (i) Competency of basic skills in education;
- (ii) Psychological being that is personality, self-concept and self-esteem;
- (iii) Self control that is skills in decision making, delay of gratification and life planning;
- (iv) Verbal and non-verbal communications skills, listening skills and assertiveness;
- (v) Coping ability to handle stress and depression;
- (vi) Family functioning and family environment; and



- (vii) Identify any signs of psychopathology and provide referral services to a child psychiatrist.
- (b) Counselling Module  
This module consists of individual, group, family and career counselling.
- (c) Psycho Educational Module  
This module focuses on educational aspects and delivers necessary information to instil internal awareness amongst children. Some children admitted to the institutions are those with behavioural problems and lack of awareness pertaining to negative behaviours. Developmental programmes are geared towards self-enhancement that focus on values, moral, psychosocial, cognitive and affective, physical and sexual as well as career development. This includes coping ability, stress management, decision making, communications skills, eliminate smoking habits and glue sniffing, and anger management.
- (d) Crisis Intervention Module  
This module handles psychopathological cases and cases requiring short-term intervention and immediate expert's attention, such as a child psychiatrist.

### **Training Modules on Handling Child Abuse Cases**

120. The Department of Social Welfare has developed seven Training Modules on Handling Child Abuse Cases through the funding of UNICEF. These modules guide Social Welfare Officers, members of the Child Protection Teams, Health Department, police and the prison personnel in handling child abuse cases professionally. Between 2003 and 2005, five Training for Trainers courses were conducted by the Department.

### **Childcare Centres**

121. The Ministry of Women, Family and Community Development encourages the establishment of more childcare centres at the work place. As an incentive, employers who set up childcare centres are given 10% tax reduction per annum on the cost of setting up the childcare centres for a period of ten years. In the public sector, Government departments receive a RM80,000 grant to set up such centres. The Department of Social Welfare plans to print 3,000 copies of the "Establishing Childcare Centres at Workplace" guideline to create awareness and encourage more employers to open childcare centres. Other agencies involved in the planning and promotion of childcare centres at workplace are the Malaysian Employers Federation, Ministry of Human Resources and the Local Authorities.

122. The Department of Social Welfare together with the Association of Childcare Providers Malaysia conducts Training of Trainers course on childcare. This course aims to provide qualified trainers with basic childcare courses. These trainers must comply with the criteria set by the Department and they must be accredited before they can start teaching.

123. In 2006, the Ministry of Women, Family and Community Development has targeted to set up 10 community based childcare centres on a pilot basis. Thus far, three centres are already operational while the rest are expected to be operational by the end of 2006. These childcare

centres are established in strategic locations throughout the country to cater the needs of low income families. Each new centre is given RM119,000 for the first year and subsequently RM64,000 operational budget every year. A subsidy of RM180.00 per child is given to parents whose income is below RM2,000 per month in the urban areas and RM1,200.00 per month in the rural areas.

### Public Advocacy and Publication on CRC Materials

124. The English text of the CRC was translated into Malay language, Mandarin and Tamil. All these four versions of the CRC were disseminated to schools, Government agencies and NGOs in an effort to promote awareness on the rights of a child.

125. Publicity materials on CRC such as posters, pamphlets, handbooks and calendars were also developed and distributed throughout the country. Amongst some of the handbooks produced were “A simple guide to your rights ... as a child” and “My Rights and Responsibilities as a Malaysian Child”.

126. The Department of Social Welfare organised workshops to create awareness with regard to the implementation of the CRC. These workshops listed in Table 3.3 were targeted for the staff of the Department as well as other Government agencies, NGOs, academicians and children.

**Table 3.3: CRC Awareness Training Workshops, 2003 – 2005**

<b>Program</b>	<b>Date</b>	<b>No. of Participants</b>
Workshop on Convention on the Rights of the Child – Sabah	4– 6 June 2003	31 children from Sabah
Convention on the Rights of the Child workshop (Ministry of Education)	13– 15 Oct. 2003	43 staff
Workshop on Convention on the Rights of the Child - Sarawak	1– 2 March 2004	40 children from Sarawak
Workshop on Convention on the Rights of the Child – Pulau Pinang	24– 26 May 2004	37 children (Northern Zone)
Workshop on Convention on the Rights of the Child – Terengganu	25– 27 July 2004	38 children (Eastern Zone)
Workshop on Convention on the Rights of the Child – Johor	20– 22 Sept 2004	27 children (Southern Zone)
Workshop on Convention on the Rights of the Child – Kuala Lumpur	20–22 Dec 2004	30 children (Central Zone)

Program	Date	No. of Participants
Convention on the Rights of the Child workshop for staff of the Department of Social Welfare	31 March – 2 April 2006	30 staff

*Source: Department of Social Welfare*

127. Malaysia's country report on the implementation of CRC will be printed and circulated to all the stakeholders in the country namely the government departments, NGOs, academicians and the Judiciary. This report will be made available free of charge upon request and will also be posted on the website of the Ministry of Women, Family and Community Development.

#### **NATIONAL STRATEGY AND IMPLEMENTING MECHANISM**

128. Following the commitment made during the World Summit on Children in 1990, Malaysia has formulated a National Plan of Action for Children Survival, Protection and Development through concerted and coordinated efforts of various Government agencies, NGOs and international agencies particularly UNICEF and the World Health Organisation. This plan will be succeeded by the second National Plan of Action for Children which will be streamlined with the proposed National Child Policy in 2007.

129. A Coordinating Council for the Protection of Children was established under Child Act 2001 [Act 611]. The Council is responsible for advising the Minister of Women, Family and Community Development on all aspects of child protection as well as coordinating the resources of various Government departments involved in child protection. It also renders advice on the management and operation of the Child Protection Teams throughout the country. This Council is chaired by the Director General of the Department of Social Welfare and represented by the relevant Government departments, child experts as well as NGOs.

130. In addition, a National Advisory and Consultative Council for Children was established on 1 September 2001. This Council acts as a national focal point for the children's well-being and development. It is responsible to advise the Government on matters relating to policy, direction and programmes for children in line with the CRC. The Council is chaired by the Minister of Women, Family and Community Development with members comprising the relevant Government departments, NGOs and child experts.

### **CHAPTER 4**

#### **DEFINITION OF THE CHILD (Art. 1)**

131. In Malaysia, the definition of a child is governed under the relevant legislations in accordance with their respective purposes. Notwithstanding the various legislations, Malaysia's legislations with regard to the definition of a child in civil and Syariah law is consistent with Article 1 of the CRC with the exception of the Adoption Act of 1952 [Act 253] which defines a child as a person below 21 years of age. The following legislations are of relevance:

- (a) Under the Age of Majority Act 1971 [Act 21], the age of majority is eighteen years.

- (b) The Children and Young Persons (Employment) Act 1966 [Act 350], which governs the appointment of a child and young persons, defines a child as any person who has not completed his or her fourteenth year of age while someone above fourteen but has not completed his or her sixteenth year of age is considered as young person. No child or young person shall be required or permitted to be engaged in any employment other than those specified in the said Act. (Please refer to Chapter 10, paragraphs 22 and 23)
- (c) Under the Law Reform (Marriage and Divorce) Act 1976 [Act 164], the minimum age for marriage is eighteen years. However, the Chief Minister of a particular State may in his discretion grant a license authorising the solemnisation of a marriage of the girl child who is under the age of eighteen years and has completed her sixteenth year.
- (d) The Islamic Family Law Act (Federal Territory) 1984 (IFLA) provides that the minimum age for marriage is eighteen years for male and sixteen years for female. If any person wishes to marry below the minimum age requirement, section 18 (1)(a) provides that an application may be made to a Syariah Judge to obtain permission to solemnise such marriage.
- (e) The Child Act 2001 [Act 611] defines a “child” as a person under the age of eighteen years.
- (f) In relation to criminal proceedings, section 82 of the Penal Code [Act 374] stipulates the minimum age of criminal responsibility is ten years old. A child (a person who has attained the age of ten years and below the age of eighteen) who is alleged to have committed an offence may be arrested with or without a warrant and may be detained for the purpose of investigation under section 117 of the Criminal Procedure Code [Act 593]. When an investigation on a child cannot be completed within the period of twenty four hours, the police officer making the investigation shall transmit immediately to a Magistrate a copy of the entries in the investigation diary relating to the case. The child shall at the same time be produced before the Magistrate who may authorise the detention of the child in such custody as he thinks fit for a term not exceeding fifteen days in whole. The Magistrate authorising the detention shall record his reasons for doing so. The Magistrate also has a responsibility to inquire whether the child has any complaints to make and to record and make an order in relation to the complaint. Section 85 of Act 611 provides for the separation of a child from adults while being detained in a police station.
- (g) Under section 375 of Act 374, it is an offence for a man to have sexual intercourse with a woman under sixteen years of age with or without her consent.
- (h) Under the Syariah law, the liability for criminal act is attributed to the act of a person who has attained *baligh*, of sound mind and of free will. A Muslim child is not held responsible for any criminal act until the child reaches the age of puberty. This is reflected in the provision of the Syariah Criminal Offences (Federal Territories) Act 1997 [Act 559] and the respective states’ legislations pertaining

to Syariah criminal offences which provide that “nothing is an offence which is done by a child who is not *baligh*”. The provision of Act 559 and the respective states’ legislation pertaining to Syariah criminal offences further provides that “*baligh* means having attained the age of puberty according to Islamic law”.

- (i) Generally, under the Syariah law, the sign of puberty for a male is ejaculation of sperm and for a female is the first menses she experiences. In the absence of these signs, puberty of a person will be determined according to his or her age.

Muslim scholars however have different views in determining the appropriate age of puberty. Their views are as follows:

- According to the Hanafiyah, the age of puberty for both male and female is 15.
- According to Imam Abu Hanifah, the age of puberty for male is 18 and for female is 17.
- According to the Malikiyah, the age of puberty for both male and female is 18.
- According to the Syafi`iyah and the Hanabilah, the age of puberty for both male and female is 15.

In Malaysia, *Mazhab Shafie* is the main source of the authoritative applicable principles in the administration of Islamic religion or Islamic Law especially in matters pertaining to *ibadah*. Only if there is no *Shafie* jurist answering the particular legal questions, reference may be made to the authoritative works of other *Sunni* schools of law. *Hukum Syarak* is defined in the Administration of Islamic Law as “*hukum Syarak* according to *Mazhab Shafie* or any one of *Mazhab Maliki, Hanafi or Hanbali*”.

It can be concluded that from the provisions of Act 559 and the respective state legislations on criminal offences, a child’s criminal liability is not determined by the minimum age requirement but is dependent on the attainment of his or her puberty.

Section 2 of the Syariah Criminal Procedure (Federal Territory) Act 1997 [Act 560] provides for the age of youthful offender as “an offender above the age of ten and below the age of sixteen years”. Any Muslim child who is above the age of ten is presumed to have the ability to understand the nature of the act committed but the child lacks the understanding of legal consequences of such act. Thus, the legislation provides for such category of person not to be punished by imprisonment as follows:

“128 (1) When any youthful offender is convicted before any Court of any offence punishable by fine or imprisonment, such Court shall instead of

awarding any term of imprisonment in default of payment of the fine or passing a sentence of imprisonment:

- (i) order such offender to be discharged after due admonition if the Court shall think fit; or
- (ii) order such offender to be delivered to his parent or to his guardian or nearest adult relative or to such other person, as the Court shall designate, on such parent, guardian, relative or other person executing a bond with a surety, as the Court may require, that he will be responsible for the good behaviour of the offender for any period not exceeding twelve months or, without requiring any person to enter into any bond, make an order in respect of such offender ordering him to be of good behaviour for any period not exceeding two years and containing any directions to such offender in the nature of the condition referred to in paragraphs 130(a), (b) and (c)<sup>7</sup> which the Court shall think fit to give.

(2) The Court before which a youthful offender is convicted may, in addition to or instead of punishing such offender in the manner provided in this section, inflict on his parent or guardian a fine not exceeding RM200.00 in any case in which such Court, after summary inquiry, is satisfied that such parent or guardian has, by neglecting to take proper care or otherwise, conducted to the misconduct of such offender:

Provided that no parent or guardian shall be fined without his having had an opportunity of being heard and, if he desires it, of adducing evidence in his defence.”

- (j) Under Act 611, a child below the age of ten years shall not be sent to a probation hostel or an approved school and a child below fourteen years shall not be sent to a Henry Gurney School (an institution under the administration of the Prisons Department). A child under the age of fourteen years shall not be ordered to be imprisoned for any offence or be committed to prison in default of payment of a fine, compensation or cost. A child aged fourteen years or above shall not be ordered to be imprisoned for any offence if he can be suitably dealt with in any other way whether by probation, or fine, or being sent to a place of detention or an approved school, or a Henry Gurney School. The Act 611 also provides that a child below eighteen years who is in need of protection may be taken into temporary custody by the police or Protector until he or she can be brought before the Court for Children for further orders.
- (k) Section 3 of the Essential (Security Cases) Regulations 1975 (ESCAR) provides that where a person is accused of or charged with a security offence, he shall, regardless of his age be dealt with in accordance with the provision of this regulation and the Juvenile Courts Act 1948 [Act 90], shall not apply to such a person. Section 16 of the Juvenile Courts Act [Act 90] prohibits the pronouncement or the recording of the sentence of death on a juvenile. To date

there has only been one case on the issue of the pronouncement of the death sentence on a juvenile which is the case of *Lim Hang Seoh v PP* [1978] 1 MLJ 68. The Federal Court in the said case affirmed the death sentence on the accused who was a boy of the age of 14. He was found guilty of the offence of possession of a pistol and ammunition. However, in this case the King exercised his prerogative power of pardon and commuted the death sentence to a detention in the Henry Gurney School until the juvenile reached the age of 21. As of today there have not been any similar cases to the above. Section 16 of the repealed Juvenile Courts Act 1948 is now contained in section 97 of the Act 611.

- (l) The Evidence Act 1950 [Act 56] provides that the evidence of a child of tender years who does not understand the nature of an oath may be received if in the opinion of the Court he possesses sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth. Where such evidence is admitted on behalf of the prosecution, the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof.
- (m) Under the Syariah Court Evidence (Federal Territories) Act 1997 [Act 561] evidence of a child of tender years who does not understand the nature of an oath may be considered if in the opinion of the Syariah Court he possesses sufficient intelligence to justify the evidence and understands the duty of speaking the truth. This is provided for under section 83(4) of Act 561.
- (n) Generally, a person under the age of eighteen years does not have the capacity to enter into a contract. However, the Contracts Act 1976 [Act 136] provides that no scholarship agreement shall be invalidated on the ground that the scholar entering into such contract is not of the age of majority i.e. below the age of eighteen years.
- (o) It is provided under the Armed Forces Act 1972 [Act 77] that a person below the age of seventeen and a half shall not be appointed as midshipman or cadet officer without the consent of his parents and a recruiting officer shall not enlist any person under the age of seventeen and a half without the written consent of his parents. In actual practice, only persons of the age of eighteen and above are recruited to join the Malaysian Armed Forces.
- (p) The Control of Tobacco Product Regulations 1993 stipulates that the sales of tobacco products to a person under the age of eighteen is an offence and if convicted, shall be liable to a fine not exceeding RM1,000.00.

132. Malaysia takes the view that laws which are not consistent with the definition of the child under Article 1 of the CRC should be reviewed to ensure full compliance with the Convention. Therefore, concerted efforts are taken by the Ministry of Women, Family and Community Development, with the assistance of the Attorney General's Chambers, to address this matter.

## CHAPTER 5 GENERAL PRINCIPLES

### **Non-Discrimination (Art. 2)**

133. Article 8 of the Federal Constitution upholds the principle of non-discrimination and expressly prohibits discrimination against citizens on the grounds of religion, race, descent, gender or place of birth, subject to certain restrictions. Children of the various races, religions and descent are not discriminated against in areas such as education, healthcare services and access to amenities and social facilities.

134. The Child Act 2001 [Act 611] also upholds the principles of non-discrimination. The preamble of Act 611 recognises that every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any other status. Therefore, the principle of non-discrimination is reflected in many activities and programmes run by the Government and NGOs throughout the country.

135. However the principle of non-discrimination as provided under the Federal Constitution is qualified. This qualification is based on the concept of lawful discrimination or reasonable classification which provides that a law must operate alike on all persons under like circumstances. The concept is only allowed on permissible grounds which is provided by the law such as for the protection and advancement of a class of person.

136. Based on this concept, Article 8 (5) of the Federal Constitution, among others, provides that the provision on non-discrimination under Article 8 does not invalidate or prohibit any provision for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsular (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service and Article 153 of the Federal Constitution that provides for special position for Malays and natives of the state of Sabah and Sarawak. These measures are to ensure that the Malays and the natives are able to compete with other races particularly in the economic field and other important and crucial sectors.

### **Best Interest of the Child (Art. 3)**

137. Article 3 (1) of the CRC provides that in all actions concerning children, the best interest of the child shall be a primary consideration. Act 611 upholds the principle of best interest of the child. Act 611 provides the Court for Children with powers to give orders, *inter alia*, to place a child in need of care, protection and rehabilitation in a place of safety or in the custody of a fit person. In determining the order to be made with respect to a child in need of care, protection and rehabilitation, section 30(5), 30(6)(a) and 40(5) of Act 611 specifically provides that the Court for Children shall treat the best interest of a child as the paramount consideration. The criminal procedure adopted by the Court is also designed to provide the child offender with a fair and equitable trial.

138. Other laws enforced in the country also uphold this principle, and they are implemented accordingly to safeguard the best interest of the Malaysian children. In making an order for custody of a child, section 88 of the Law Reform (Marriage and Divorce) Act 1976 [Act 164] provides that the paramount consideration shall be the welfare of the child. Similarly, the Adoption Act 1952 [Act 257] provides that the Court before making an adoption order shall be



satisfied among others, that the order if made will be for the welfare of the child. In making orders under the Guardianship of Infants Act 1961 [Act 351], the Court or Judge shall have primary regard to the welfare of the infant.

139. Other laws such as the Domestic Violence Act 1994 [Act 521], the Childcare Centres Act 1984 [Act 308], the Care Centres Act 1993 [Act 506] and Education Act 1996 [Act 550] mentioned in Chapter 3 of this report are also enacted to ensure the children's right to development, quality care and protection to safeguard the best interest of the child. In ensuring that childcare centres provide the best care for children, these centres must be registered with the Department of Social Welfare. Childcare centres must adhere to the provisions of the Childcare Centres (Institution-based) Regulations 1993 which provides for the minimum standards of service for the benefit of children attending childcare centres. Other measures taken to ensure that the facilities responsible for the care or protection of children to promote development of the child are elaborated in Chapter 8 of this report.

140. In cases involving a Muslim child, the provisions of the IFLA stipulate that the Court always places the welfare of the child as the paramount consideration before making any order. Section 86(2) of IFLA stresses that the custody of an infant must be with the best person and the primary consideration is the welfare of the child. Even though the mother has the primary right for custody (section 81(1) of IFLA) and father has the primary guardianship (section 88(1) of IFLA), both rights of the parents may be terminated if they are found incompetent to take care of their child. Islam places importance to the development of child, physically and mentally.

141. Section 86 of IFLA provides that:

“(1) Notwithstanding section 81, the Court may at any time by order, choose to place a child in the custody of any one of the persons mentioned therein or, where there are exceptional circumstances making it undesirable that the child be entrusted to any one of those persons, the Court may by order, place the child in the custody of any other person or of any association the objects of which include child welfare.”

142. With respect to the rehabilitation of child offenders, some 33,226 children benefited from the various rehabilitation programmes provided by eight Approved Schools known as the *Sekolah Tunas Bakti* nationwide for the period 1990 to 2002. The institutional, preventive and developmental programmes over this period cost a total of RM147.8 million. In 2005, a total of RM11.0 million was allocated for the rehabilitation of 1,398 children in these Approved Schools.

143. Programmes involving job-placements for child offenders are being implemented with the co-operation of the Child Welfare Committees at the district level, reflecting community responsibility and concern for the benefit and welfare of the children. There are presently 110 Child Welfare Committees nationwide with around 2,330 active members whose main function is to ensure that the child offenders are collectively looked after by their parents and competent authorities, NGOs, the private sector and members of local communities during the rehabilitative process. The formation of Child Welfare Committee is provided for in Act 611.

**THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT (Art.6)**

144. The right to life, survival and development of a child are guaranteed under Article 5(1) of the Federal Constitution which provides that “*No person shall be deprived of his life or personal liberty save in accordance with the law*”. This principle is further illustrated in Part XVI of the Penal Code [Act 374], which stipulates that the act of causing miscarriage, injuries to the unborn child, exposure of infants, and concealment of births is an offence.

145. In addition, Act 374 has provisions which cover offences affecting the human body that apply equally to adults and children as victims of such acts. Act 611 further provides for offences regarding ill-treatment, neglect, abandonment or exposure of children to moral danger, children used as prostitutes and beggars, children left without reasonable supervision, and unlawful transfer of possession, custody or control of children.

146. In respect of development of a child, the Education Act 1996 [Act 550] stipulates that every parent is obliged to enrol their child upon attaining the age of six years as a pupil in a primary school and remain in a primary school for the duration of compulsory education. Assistance for child education is provided by the Ministry of Education in the form of scholarships, milk supplementary programmes and school hostels.

147. The right to education has also been given recognition by the Malaysian courts. In the case of *Jakob Renner & others v Scott King, Chairman of Board of Directors of the International School of Kuala Lumpur & Ors* [2000] 5 MLJ 254, the High Court held that financial consideration took a back seat and gave way to disabled children’s basic rights to education. In this case, the plaintiff who suffers from moderate spastic diplegia was not allowed to continue his education on the grounds of his physical handicap. The principle factor in denying the plaintiff to continue his education was because of the financial expenditure that the school would incur in making the school disabled-friendly.

148. Under the Town and Country Planning Act 1976 [Act 172], the development and use of all lands and buildings are regulated and controlled by the local planning authority. All housing developments must take into consideration the concept of a child-friendly and safe environment. The Buildings By-Laws of Local Authorities provide for new buildings to be designed and constructed according to the needs of the disabled.

149. In addition, the Government of Malaysia has taken various measures to guarantee the child’s rights to life, including creating an environment conducive for his or her survival and development. Towards this end, the Government officially launched the Malaysian Child-Friendly Cities Initiative in 1997. Ten strategic actions were formulated under this initiative to be implemented by local authorities as follows:

- (i) accelerate and strengthen local authority action to respect, fulfil and protect the rights of children as ratified by the Government, and in particular, to protect children from neglect, abuse and exploitation;
- (ii) train local authority administrators and managerial personnel to be responsive to the needs and aspirations of the urban children;

- (iii) review and revise, where necessary, the local authority's rules, regulations, by-laws, ordinances and administrative procedures to be in harmony with the purpose and spirit of the Charter;
- (iv) devise and use suitable methods and mechanisms to engage children of higher age cohorts in a regular and continuous manner;
- (v) dialogue with the local administrators on matters which have direct impact on the children's well being;
- (vi) formulate and set in motion a set of criteria to accredit cities and towns as child-friendly and ensure concerted action to help local authorities meet the criteria so adopted;
- (vii) devise and use appropriate methods and administrative mechanisms to harness the commitment, resources and experience of the private sector and of the non-governmental voluntary sector to forge strong and dynamic partnerships with local NGO coalitions, community organisations, citizen's groups and mass media to supplement and fulfil the conditions necessary for our urban areas to be child-friendly;
- (viii) set up social support systems at the community level to help children who need special assistance or protection, such as children without family support, the disabled, abandoned and children addicted to substance abuse;
- (ix) ensure cities and towns, especially public areas, common amenities as well as roads and transport systems are safe for children; and
- (x) activate mechanisms to encourage, recognise and reward children with outstanding talents and abilities, and ensure that children have equal opportunities and easy access to basic urban services such as health, nutrition, water, sanitation and shelter.

150. Under the Malaysian Child-Friendly Cities Initiative, a resource book entitled *Ideas for Action - Making Urban Areas Child-Friendly - A Sourcebook for Community Initiatives in Malaysian Cities* was published in 1998. This book contains ideas, which the Government departments, private sector, parents and community members can implement to make cities more child-friendly.

151. In 2005, there were 32 special schools (28 primary and four secondary) which can accommodate 5,600 disabled children throughout the country. Hostels facilities are provided in 24 of these schools. In addition, there are 700 primary and secondary schools which provide classes and programmes to allow integration of the disabled children into mainstream education. In terms of duration of studies, the children are given two additional years as compared to normal children to complete their studies at primary or secondary level. The Government also provides opportunities for the disabled children to continue their study at the tertiary level.

152. With regard to skills training, there are two rehabilitation institutions under the supervision of the Department of Social Welfare that provide training opportunities in specific areas for people with disabilities. They are the Industrial Training and Rehabilitation Centre in Bangi (which offers courses in ICT, electrical, electronic, sewing and fashion design), *Taman Sinar Harapan* Tampoi, Johor and *Taman Sinar Harapan* Jubli, Johor (which provide vocational training for the mentally retarded boys and girls respectively).

### **RESPECT FOR THE VIEWS OF THE CHILD (Art. 12)**

153. In Malaysia, children are given the opportunity to express their views through programmes organised by the Government. In deciding and determining the policies, programmes or matters pertaining to children, the Malaysian Youth Council for instance, gains views from the children through programmes in collaboration with the 40 affiliates under its administration. Programmes such as seminars and workshops are organised according to the age, theme and group of the children to provide the opportunity to express their views on matters affecting them. Resolutions from the views are then forwarded to the Malaysian Youth Council Board. These resolutions will then be considered by the higher authorities that determine policies or programmes that have an effect on children.

154. Malaysian children are allowed to give their views during seminars, forums, workshops and talk-shows organised by the Government, NGOs and the corporate sector at both national and international levels. An example was their involvement in the seminar "*Understanding the Convention on the Rights of the Child*" in 1996 co-organised by the Government and NGOs. Twelve Malaysian children were also given the opportunity to participate in the United Nations General Assembly Special Session on Children, held in New York on 8 to 10 May 2002. This Session was preceded by the Children Forum where two Malaysian children were represented in the said Forum. In addition, children were invited by the Ministry of Women, Family and Community Development to give their views during a seminar to draft the National Reproductive Health and Social Education Guideline in March 2005.

155. A child is also given the opportunity to be heard in any judicial and administrative proceedings affecting him or her either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules and regulations. This principle is reflected in the following legislations:

- (a) Article 10 (1) of the Federal Constitution provides for freedom of speech and expression as long as it does not jeopardise national security and public order;
- (b) the Evidence Act 1950 [Act 56] provides that the evidence of any child of tender years though not given upon oath, may be received if in the opinion of the Court, the child possesses sufficient intelligence to justify the reception of evidence and understands the duty of speaking the truth. However, if it is given on behalf of the prosecution, the accused shall not be liable to be convicted unless that evidence is corroborated by some other material evidence;
- (c) Part X of Act 611 provides for the criminal procedures to be followed by the Court for Children. It provides for the procedures to be followed regarding bail, the trial, the powers of the Court for Children at the conclusion of the trial and for appeals. Section 90(3) of Act 611 provides that the substance of the alleged

offence must be explained to the child and the Court shall ask the child whether he admits the facts constituting the offence. If the child admits the facts constituting the offence, the Court shall ascertain that the child understands the nature and consequences of his admission. Upon the recording of a finding of guilt by the Court, the child and the child's parent or guardian shall be given an opportunity to mitigate.

Where a child does not admit the facts constituting the offence, the Court shall hear the evidence of the witnesses supporting the offence. Section 90(6) of the Act 611 provides the child with the right to cross-examine each witness at the close of the evidence-in-chief of each of the said witness. If the child is not legally represented, section 90 (7) of Act 611 provides that the child's parent, guardian or any relative or other responsible person may be allowed to assist the child in conducting his defence. Where a *prima facie* case is made out against the child, the Court shall explain to the child the substance of the evidence against him and the child shall be allowed to give evidence upon oath or affirmation or make any statement he desires. The evidence of any witness for the defence shall be heard and where a finding of guilt against the child is recorded at the end of the trial, the child and the child's parent or guardian shall be given the opportunity to mitigate the penalty.

- (d) In matters related to making an order for custody of a child, section 88 of the Law Reform (Marriage and Divorce) Act 1976 [Act 164] provides that the paramount consideration shall be the welfare of the child. The said section provides that where the child is of an age to express an independent opinion, the Court shall have regard to the wishes of the child apart from the wishes of the parents. In matters relating to adoption, the Adoption Act 1952 [Act 257] provides that before making an adoption order, the Court shall among others be satisfied that the order will be for the welfare of the child. For this purpose due consideration shall be given to the wishes of the child, having regard to the age and understanding of the child. Under the Registration of Adoption Act 1952 [Act 253], the child shall appear before the Registrar and shall produce to the Registrar such evidence either oral or documentary that may satisfy the Registrar that the child has been in the care, brought up, maintained and educated by the adoptive parents before an adoption can be registered under the Act.

## CHAPTER 6

### CIVIL RIGHTS AND FREEDOMS

(Art. 7; 8; 13 – 17 and 37 (a))

#### NAME AND NATIONALITY (Art.7)

156. Under the Births and Deaths Registration Act 1957, every birth in the country must be registered with the National Registration Department. Upon registration, the child is given a name.

157. Information on the need to register every birth is provided through the mass media. Medical personnel attending to the birth, family members and friends also play their part in increasing awareness on the need to register birth.

158. A child's right to acquire Malaysian citizenship is stipulated under Part III of the Federal Constitution. All Malaysian children on attaining the age of twelve must apply for an identification card, called *MyKad*, issued by the National Registration Department. Any Malaysian child with a valid birth certificate shall not be refused the issuance of such card.

#### **PRESERVATION OF IDENTITY (Art. 8)**

159. In Malaysia, the rights of the child to preserve his or her identity are well protected by the Government. Malaysian citizenship is the undisputable right of every Malaysian child and the Government is not allowed to deprive a Malaysian child of his or her citizenship and identity, unless he or she has accepted the citizenship of another country.

#### **FREEDOM OF EXPRESSION (Art.13)**

160. Article 10 (1) of the Federal Constitution provides for the freedom of speech and expression as long as it does not jeopardise the national security, public order and morality. This right shall include freedom to seek, receive and impart information and ideas. The provision is clearly in tandem with Article 13 of the CRC.

#### **FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (Art. 14)**

161. Article 11 of the Federal Constitution provides the right of every citizen to profess and practise his or her religion of choice. This is in compliance with the provision under Article 14 of the CRC which stipulates that the State shall respect the right of the child to freedom of thought, conscience and religion and the right and duty of parents to provide direction to the child in exercising this right.

#### **FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY (Art.15)**

162. Article 10 (1) (b) and (c) of the Federal Constitution provides that all Malaysian citizens have the right to assemble peaceably and also have the right to form associations. The rights are clearly extended to children and are consistent with the rights to freedom of association and peaceful assembly as specified under Article 15 of the CRC. Article 19 (2)(b) and (c) of the Federal Constitution provides that the freedom to assemble peaceably and to form association is subjected to the powers of the Parliament to enact laws in the interest of the security of the Federation, public order or morality.

163. In Malaysia, Section 22 of the Societies Act [Act 335] provides that registered societies may accept the admission of a person under twenty-one years of age as a member or subscriber of the society with the exception that if he is over sixteen years of age, they shall not be a member of the committee, or a trustee, secretary, manager or treasurer of the registered society.

164. The age of majority as provided under the Age of Majority Act 1971 [Act 21] is eighteen. However, the minimum age for membership varies in the political parties and NGOs in

Malaysia. Tables 6.1 and 6.2 show the minimum age for a member in political parties and NGOs respectively, based on their constitution.

**Table 6.1: Minimum Membership Age in Political Parties**

Political Party	Minimum Age (Years)
United Malays National Organisation (UMNO)	16
Parti Islam Se-Malaysia (PAS)	16
Democratic Action Party (DAP)	17
Malaysia Indian Congress (MIC)	18
Malaysia Chinese Association (MCA)	18

Source: UMNO, PAS, DAP, MIC and MCA

**Table 6.2: Minimum Membership Age in NGOs**

NGO	Minimum Age (Years)
Muslim Youth Movement of Malaysia (ABIM)	15
Jamaah Islah Malaysia (JIM)  JIM has a <i>Kelab Remaja</i> JIM, which accepts members between the age of 12 to 17 years whilst its <i>Kelab Remaja Islah Malaysia</i> (KARISMA) is open to university students.	18
Sisters in Islam (SIS)	18
Lions Club  Section 3 of the Lions Club's International Constitution, which is applied to its subsidiaries, provides that only persons of legal majority and of good moral character and good reputation in his or her community may be granted membership in any duly authorised Lions Club. Membership shall be by invitation only.	Lions Club has a Leo Club which admits persons from the age of 13 to 18 years old

Source: ABIM, JIM, SIS and Lions Club

165. It is the Ministry of Education's Policy that requires school children to be members of at least one uniform body (such as the Scouts, Girl Guides, the Malaysian Red Crescent Society, Police Cadet, St. John's Ambulance and Fire Brigade Cadet), a club or society (Mathematics Society, Computer Club and Horticulture Club) and take part in a sports activities (such as track and field, netball, badminton and tennis).

#### **PROTECTION OF PRIVACY (Art. 16)**

166. The rights of privacy of an individual is protected by Article 5 (1) of the Federal Constitution which can be interpreted to mean enjoyment of life and freedom of an individual to move and be engaged in any activity which does not contravene with the law. The child's rights to privacy are well protected under the domestic legislation, which forbids the disclosure of confidential and private information by those privy to such information by reason of their profession such as medical records. Information on the health of the child is only given to his or her parents or guardian.

167. Where a child is ordered to give evidence in Court, the Court may decide for the hearing to be held *in camera* to protect the identity of the child, thus, preserving his or her privacy. Children who are victims of abuse and children who are in conflict with the law are protected from all forms of trauma and social stigma that may arise from inappropriate publicity through the media covering the cases. This is provided for under section 15 of the Child Act 2001 which imposes restrictions on any news reports, publications or presentations which may lead to the identification of any child concerned.

168. Even though the Syariah legislations in Malaysia have no specific provisions for juvenile trial to be held *in camera*, section 6 of the Syariah Criminal Procedure (Federal Territories) Act 1997 [Act 560] may be invoked by the Syariah Court for the exclusion of public in certain cases. It provides that a Judge, hearing any matter or proceedings may on special grounds of public policy or expediency in his discretion, exclude the public at any stage of the hearing from the Court but he shall record in every such case at the time on the record of the proceedings the grounds upon which such order is made.

169. Notwithstanding the above, the Syariah legislations allow a trial to be conducted *in camera* to protect the identity of the child and preserve his or her identity for purposes of safeguarding the *maslahah* (benefit or interest) of the child. This is based on the source of Syariah legislation *musalih al mursalah* which is the rule applied to preserve public interest.

#### **ACCESS TO APPROPRIATE INFORMATION (Art.17)**

170. In Malaysia, a child is provided with access to information especially those aimed at enhancing the child's mental, physical, spiritual and moral development unless the information or material is forbidden in accordance to legal, moral, religious and cultural norms. Children are able to have access to information via the internet, mass media and various reading materials. Specific programmes and reading materials for children are also made available taking into account their age and desirability of promoting his or her social, spiritual and moral well-being, physical and mental health. Legislations such as the Communications and Multimedia Act 1998



[Act 588], the Film Censorship Act 2002 [Act 620], the Printing and Presses Act 1984 [Act 301] and the Penal Code [Act 574] ensure that the child is protected from information and material which can be injurious to his or her well-being.

**THE RIGHT NOT TO BE SUBJECTED TO TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (Art. 37(a))**

171. The right not to subject a child to torture or cruel, inhuman or degrading treatment or punishment is recognised in Malaysia. This is clearly illustrated in the following legislations:

- (a) The Penal Code covers offences affecting the human body which applies equally to adults as well as child victims;
- (b) The Criminal Procedure Code renders confessions obtained through coercion, threat, inducement or punishment inadmissible in Court;
- (c) The Domestic Violence Act 1994 [Act 521] provides protection for any member of the family from physical, sexual, emotional and verbal abuse;
- (d) Child Act 2001 [Act 611] provides for offences regarding ill-treatment, neglect, abandonment or exposure of children to moral danger, children used as prostitutes and beggars, children left without reasonable supervision, and unlawful transfer of possession, custody or control of children. This Act further provides that a child under the age of fourteen shall not be ordered to be imprisoned for any offence or be committed to prison in default of payment of a fine, compensation or cost. A child aged fourteen years or above shall not be ordered to be imprisoned if he can be suitably dealt with in any other way.

172. However the Act 611 provides that in the event a child is punished with a sentence of whipping, it can only be imposed on a male child. It shall not be more than ten strokes and is to be carried out using a light cane within the Court for Children's premises in the presence of a parent or guardian of the child if desired by them. In executing the order of whipping, certain safeguards are strictly adhered to:

- (a) before executing the whipping, the child shall be examined by a medical officer to certify that he is in a fit state of health to undergo the whipping;
- (b) the person shall use a light cane with an average force without lifting his hand over his head so that the child's skin is not cut;
- (c) after inflicting a stroke, he shall lift the cane upward and not pull it;
- (d) whipping may be inflicted in any part of the body except the face, head, stomach, chest and private parts;
- (e) the child shall wear clothes; and

- (f) if during the execution of whipping the medical officer certifies that the child is not in a fit state of health to undergo the remainder of the whipping, it shall be finally stopped.

173. Section 97 of Act 611 provides that the death sentence should not be pronounced against a child. (Please refer to Chapter 4, paragraph 1 (k))

## CHAPTER 7

### FAMILY ENVIRONMENT AND ALTERNATIVE CARE (Art. 5; 18, paras. 1-2; 9-11; 19-21; 25; 27, para. 4; and 39)

#### INTRODUCTION

174. Malaysia is blessed with a multi racial society. The majority are the Malays, Chinese, Indians, *Ibans*, *Kadazans* and others who are free to practise different religions, cultures and languages of their own. This unique blend of population potpourri makes Malaysia a unique and interesting country.

175. The role of the family has been recognised as being very crucial in moulding and shaping the future generation. It is generally perceived that family matters are personal and private. However, when families break down, the effects reverberate across society. When a marriage breaks up or a family becomes dysfunctional, there are often social repercussions. Hence, it is necessary for both the Government and the community to advocate the importance of a family to the public. Strong commitment and continued action would enable Malaysian families to withstand the challenges of a modern society.

#### DEFINITION OF FAMILY

176. The Government of Malaysia has always made a consistent and firm stand on the traditional definition of family that is “*a family is formed out of marriage or registration between a man and a woman, and comprises children and extended family members*”. Significant emphasis is placed on the preservation of the family and its values. The Government views that the strengthening of the family institution is vital towards creating responsible citizens to face the challenges arising from rapid economic development and in maintaining stability and harmony within the family.

177. Towards this end, the Ministry of Women, Family and Community Development has taken the initiative to draft a National Family Policy and its Plan of Action. The policy aims to galvanise the commitment and support of all stakeholders and beneficiaries as well as to promote a family first concept as a means to develop and enhance the family institution. Specifically, it hopes to incorporate family well being, based on universal values, in all development programmes for nation building through legislations, programmes, services, facilities and a conducive environment.

178. A family plays an important role in nurturing and developing children to become resourceful and resilient citizens. Taking into consideration the major social challenges affecting

relationships in families, there is a need to provide social support systems to enhance their roles and responsibilities. To strengthen family cohesiveness, the Government has implemented programmes such as Community-Based Rehabilitation (CBR) for the disabled persons, Family System Children's Homes, Child Activity Centres for children and families in 'high risks' areas and Childcare Centres for working parents.

179. Besides financial aid and services, continuous efforts are being undertaken to review the social legislations to protect those abused and victimised. Various family related legislations are under review with the aim of giving more emphasis, among other things, on parental responsibility. The Counsellors Act 1998 [Act 580], for example, helps to ensure that family members get quality counselling from professional and trained counsellors.

180. The Child Act 2001 [Act 611] empowers a Court for Children to order the parents or guardian of a child to attend an interactive workshop to enable them to establish positive relationship and mutual understanding in overcoming their problems towards a harmonious family. Such interactive workshop is carried out by counsellors of the Department of Social Welfare.

181. Counselling is also provided by the National Population and Family Development Board to assist those in need of guidance and advice on issues associated with the interest of the child. In addition, the Department of Women Development provides individual and group counselling for children. Counselling services are offered for related issues such as depression, behavioural issues and social problems related to the child. The National Population and Family Development Board, the Department of Women Development and the Department of Social Welfare also provide counselling for parents on how to cope with the child and to enable parents to understand, communicate and listen to their children effectively.

182. Various programmes, services and activities are conducted by the Government to help families cope with contemporary living. Training and education have been identified as key strategies to equip all members of the family and service providers with the necessary parenting knowledge and skills. Parenting programmes have been given priority in informal education programmes. Moral and social values have been introduced in the education system which highlights the importance of family as the central unit in the country's social development.

183. In this regard, the National Population and Family Development Board has developed a training module called "*Permata Kasih*" for adolescents. This module aims to contribute towards the adolescent's psychological development and the inculcation of positive values. From 1997 until 2005, approximately 3,000 trainers or facilitators from various Government agencies, NGOs and the private sector have been trained, while a total of 82,607 adolescents have attended workshops, talks and seminars.

184. A preventive programme was introduced in 2000 by the National Population and Family Development Board to address issues related to adolescent reproductive health. This programme was initiated in collaboration with the International Council on Management of Population Programmes. The objective of the programme is to institutionalise family life education by developing a core group of peer educators on adolescent reproductive health known as "*My Peer Programme*". Adolescents were trained as peer educators on counselling and education,

communications, adolescent sexuality and reproductive health problems and issues, including HIV/AIDS education. Training programmes were conducted in collaboration with other agencies such as the Ministry of Health, Ministry of Education and the Ministry of Home Affairs. A total of 303 peer educators have been trained from 2000 until 2002.

185. To enhance the former peer programme, two drop-in centres for teenagers known as *kafe@TEEN* were established on a pilot basis in Kuala Lumpur and Butterworth, Penang. A total of 2,250 teenagers have registered at the centres since they were set up in 2005. Among the services provided by *kafe@TEEN* are information and knowledge on adolescent sexuality and reproductive health as well as guidance and other services specifically for adolescents.

186. In order to create strong and resilient families, six guiding principles for the National Family Action Plan have been established. The principles were adapted from the international guiding principles contained in the United Nations International Year of the Family Global Blueprint for Action on Families. The principles are:

- (i) attainment of quality population;
- (ii) role of women in development;
- (iii) encouraging the family to care for the elderly;
- (iv) educating the public on the benefits of family development;
- (v) developing programmes for the survival, protection and development of the children; and
- (vi) encouraging family, community and Government's support for the vulnerable and disadvantaged groups.

#### **PARENTAL GUIDANCE (Art. 5)**

187. The Government of Malaysia recognises that the family has the primary responsibility for human development and enhancement of cultural, moral and social values of children. The general direction of laws and national plans of the country is towards facilitating the establishment of a family and strengthening its foundation. Parental guidance in a majority of Malaysian families evolves around sibling relationships, approved behaviour and manners, time management, speech development and the acquisition of living skills at home. Parental guidance is most often in the form of setting good examples for the children to emulate.

188. A program known as Interactive Workshops is carried out by the counsellors of the Department of Social Welfare to assist parents in the upbringing of their children especially those in conflict with the law. Activities under the Interactive Workshops are family counselling, parenting skills, dynamic group activities, family recreational activities and family functioning assessment.

189. Since its pledge in 1990 at the World Summit for Children, Malaysia has committed to give every child a better life and future. The "*Say Yes for Children*" campaign was launched in

March 2001 where children and adults from all over the country gathered together to speak out on the Ten Imperative Actions that must be undertaken in order to improve the lives of children as part of the international crusade.

190. It is recognised that the best defence against child abuse is the public participation in reporting the cases. Therefore, the Department of Social Welfare has set up a Hotline known as *Teledera* in 1994 with the aim of encouraging members of the public to report child abuse cases directly to the Department for immediate action. Once the public lodges a report, the gazetted protectors will investigate, evaluate and take appropriate actions with the child's best interest in mind. As of December 2005, a total of 4,163 cases of child abuse and domestic violence were reported through the hotline.

191. The National Population and Family Development Board have developed the *Belaian Kasih* Module in 1998 to equip parents with parenting knowledge and skills needed to handle children. The module focuses among others on:

- (i) The physical, social and psychological development of children below twelve years of age;
- (ii) Techniques and skills in harnessing the children's potential; and
- (iii) Safety at home including issues of sexual abuse.

192. The Department of Women Development has also embarked on programmes in co-operation with the Government agencies and NGOs, with the aim to enhance family values. These programmes include legal literacy, para-counsellor training, information and communications technology, literacy courses as well as capacity building and awareness campaigns. In the year 2005, the Department conducted 62 training and capacity building programmes, which benefited 14,155 participants. In addition, the Department of Women Development organised 161 legal literacy programmes from 2001 to 2005 that benefited 38,039 participants.

#### **PARENTAL RESPONSIBILITIES (Art. 18 (paras.1-2))**

193. The rights, duties and responsibilities of parents are provided in various legislations such as the Child Act 2001 [Act 611], Law Reform (Marriage and Divorce) Act 1976 [Act 164], Maintenance Orders (Facilities for Enforcement) Act 1949, Married Women Act 1957, Married Women and Children (Enforcement of Maintenance) Act 1968 [Act 356], Married Women and Children (Maintenance) Act 1950 [Act 263] and Guardianship of Infants Act 1961 [Act 351]. Act 351, for instance, provides for the custody or upbringing of an infant or in the administration of any property belonging to or held in trust for an infant or in the application of income of such property.

194. In relation to disabled children, it is the Government's policy to encourage parents to register their children with the Department of Social Welfare. The registration would help to facilitate the planning and formulation of policies, strategies and programmes that would ensure equal opportunities and full participation of disabled persons in the mainstream development. Up

to December 2005, a total of 170,455 disabled persons have registered with the Department. In the year 2005, the number of newly registered disabled children is 14,780. Awareness programmes are carried out at grassroot levels by related Government departments and NGOs on the importance of registration, namely through Community Based Rehabilitation centres, health clinics and schools.

195. With regard to single parents, the Department of Social Welfare provides financial assistance to enable their children to have access to education. In addition, the Department of Women Development has established fifteen service centres nationwide known as *Rumah Nur*, which provide education, skills training as well as guidance, counselling services and entrepreneurship programmes in collaboration with the Ministry of Entrepreneur and Co-operative Development and NGOs.

### **SEPARATION FROM PARENTS (Art. 9)**

196. It is to be noted that separation against the will of the child does not take place in Malaysia except where the Courts determine through a judicial process that such separation is necessary for the best interest of the child in cases involving abuse, neglect, or in the case of separation or divorce of the parents. On the separation of the parents, the Malaysian Legal System is in compliance with Article 9 of the CRC. In cases of divorce, the Law Reform (Marriage and Divorce) Act 1976 [Act 164] and the Islamic Family Laws of all states in Malaysia provide that the Court may at any time by order place a child in the custody of either father or mother.

197. In deciding on the issue of custody, the Court is obliged to give paramount consideration to the 'best interest' of the child and in this respect the Court shall have regard to the wishes of the parents of the child and to the wishes of the child where he or she is of an age to express an independent opinion. The law provides for a rebuttal presumption that it is for the best interest of a child below the age of seven years to be with his or her mother. However, in deciding whether that presumption applies, the Court adopts the cardinal principle of not disturbing the life of a child by changes of custody. The Court may also impose any conditions to benefit a child as follows:

- (a) provisions for the child to visit a parent deprived of custody or any member of a family of a parent who is dead or has been deprived of custody at such time for such periods, as the Court may consider reasonable;
- (b) give a parent deprived of custody or any member of the family of a parent who is dead or has been deprived of custody the right to access to the child at such times and with such frequency, as the Court may consider reasonable; and
- (c) provisions for the child's welfare in terms of education, health and well being.

198. In Islam, the rule of thumb pertaining to child's custody is the mother is the best person to be given custody of her child. Section 81(1) of Islamic Family Law (Federal Territories) Act 1984 (IFLA) gives priority to the mother but section 83 on "How Right of Custody is Lost" qualifies this right. The right of *hadanah* of a woman is lost:

- (a) by her marriage with a person not related to the child within the prohibited degrees if her custody in such case will affect the welfare of the child but her right to custody will revert if the marriage is dissolved;
- (b) by her gross and open immorality;
- (c) by her changing her residence so as to prevent the father from exercising the necessary supervision over the child, except that a divorced wife may take her own child to her birth-place;
- (d) by her abjuration of Islam; and
- (e) by her neglect of or cruelty to the child.

199. Section 86 of IFLA provides the Court with powers to make order for the custody of a child to any one of other persons where there are exceptional circumstances making it undesirable that the child be entrusted to the child's parents. Section 86, Powers of the Court to make order for custody states that:

- (a) Notwithstanding section 81, the Court may at any time by order choose to place a child in the custody of any one of the persons mentioned therein or, where there are exceptional circumstances making it undesirable that the child be entrusted to any one of those persons, the Court may by order place the child in the custody of any other person or of any association the objects of which include child welfare;
- (b) In deciding whose custody a child should be placed, the paramount consideration shall be the welfare of the child and, subject to that consideration, the Court shall have regard to:
  - (i) the wishes of the parents of the child; and
  - (ii) the wishes of the child, where he or she is of an age to express an independent opinion.
- (c) It shall be a rebuttable presumption that it is for the good of a child during his or her infancy to be with his or her mother, but in deciding whether that presumption applies to the facts of any particular case, the Court shall have regard to the undesirability of disturbing the life of a child by changes of custody.

200. The term "*exceptional circumstances*" used in section 86 of IFLA, as illustrated in numerous cases involving custody of a child, is the circumstances whereby the welfare of the child, morally or physically, would be badly affected should the custody be given to the person entitled to custody under section 81(1) and (3). Among the examples are the father is alcoholic or child abuser, he is incapable to make a living due to mental or physical disability or prolonged unemployment. *Al Imam An Nawawi* wrote in 3<sup>rd</sup> *Juzu'* of *Al Mughni Al Muhtaj*, that "if any of the parents is declared as insane, *kufir*, insolvent, *fasiq* or the mother has remarried, then the right shifted to the other".

201. The practice by the Malaysian Syariah judges in awarding custody to people other than those entitled to custody under section 81(1) and (3) is based on the recommendations made in the reports prepared by the Department of Social Welfare as well as considering the criteria that the person must be a Muslim, of sound mind, of an age that the person is able to bestow on the child the care, love and affection needed by the child, of good conduct from the standpoint of Islamic morality and lives in a place where the child will not be at risk, morally or physically. The person may be a child's foster mother or father who has no blood relation with the child, but is known to have taken good care of the child. In the case of *Zawiyah v Ruslan* (1980) 1 JH (2) 102, the Syariah judge referred to page 94 of *Kifayah al Akhyar* in determining the conditions of an entitled mother. The seven conditions are namely of sound mind, independent, Muslim, piety, trustworthy, unmarried and has a permanent residence.

202. The Child Act 2001 [Act 611] provides for offences regarding ill-treatment, neglect, abandonment or exposure of children to moral danger, children used as prostitutes and beggars, children left without reasonable supervision, and unlawful transfer of possession, custody or control of children. In addition, a child may be separated from his or her parents or guardian who committed such offences. Under the Act, the Court for Children is empowered to order the child in need of care, protection and rehabilitation to be placed in a place of safety. In determining the order to be made the Court for Children shall treat the best interest of the child as the paramount consideration. An opportunity will be given by the Court to the parents and guardian to be heard before the order is made.

203. Where separation results from any action initiated by a State Party because of imprisonment of one or both parents, the Prison Regulations 2000 allows communication and visits between prisoners and their relatives in accordance to the provisions of the Regulations. Thus, the child is not denied the right to visit his or her parents and is able to maintain personal relations and contact with them.

204. It is the policy of the Government to allow any child under three years to be placed with the mother who is serving prison sentence and the Government provides basic necessities for both the mother and child. When the child attains the age of three years, a Medical Officer shall ascertain whether the child can be removed or retained in prison with the mother for an additional year. However, a special authority is needed to retain the child until the age of four years. When a child attains the age of three or four years as the case may be, references will be made to the relatives of the child or to the Department of Social Welfare to ensure the best interests of the child are protected.

#### **FAMILY REUNIFICATION (Art.10)**

205. There is no law that prevents either parent or child to leave the country or enter the country. However, immigration formalities and regulations need to be complied.

#### **ILLICIT TRANSFER AND NON-RETURN (Art.11)**

206. The Government has fulfilled its obligations in preventing and taking remedial action with regard to kidnapping or retention of a child from his or her parents. Part VIII of the Child Act



2001 [Act 611] provides for provisions in relation to unlawful transfer of possession, custody or control of child (section 48), and importation of child by false pretences (section 49).

207. Under Part VII of Act 611, the Protector has the power to examine the child who has entered or been brought into Malaysia and any person who may appear to have the custody and control of such child. Where the Protector has reasonable cause to believe that a child has been brought into Malaysia either after having been transferred for valuable consideration or by fraud, misrepresentation or any false pretence, or has been transferred to the custody or control of any person for valuable consideration either within or outside Malaysia or is being detained against his will by some other than his parent or guardian, the Protector has the power to make an order for the child to be taken out of the custody of the person who has care, custody and control of the child. The child will be placed in a place of safety or with a relative or other fit and proper person until the child attains the age of eighteen years or for any shorter period.

208. It is also a serious offence under the Penal Code [Act 574] to kidnap a person. Sections 359 through 369 make kidnapping and kidnapping for various reasons as offences under the Act 574. The Immigration Act 1959/63 [Act 155] also provides protection for a child from being illegally transferred out of the country. In addition, the Kidnapping Act 1961 [Act 365] provides for the detection and punishment of the offences of abduction, wrongful restraint and wrongful confinement for ransom.

209. With respect to parental abduction, section 52 of Act 611 provides for the offence of taking or sending out a child, whether within or outside Malaysia, without appropriate consent of the person having the lawful custody. If this situation happens, the Court may make a recovery order on an application made by or on behalf of any person who has the lawful custody of the child. The recovery order may:

- (a) Direct any person who is in a position to do so to produce the child on request to any authorised person;
- (b) Authorise the removal of the child by any authorised person;
- (c) Require any person who has information as to the child's whereabouts to disclose that information to the authorised person; or
- (d) Authorise any police officer to enter into any premises specified in the order and search for the child, using reasonable force if necessary.

210. Act 574 distinguishes between kidnapping from Malaysia and kidnapping from lawful guardianship. Section 361 of the Act 574 specifically makes it an offence for whoever to take or entice any minor under fourteen years of age if male, or under sixteen years of age if female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian.

211. In order to protect the child's welfare and interest, the Syariah judge has the power to restrain the taking of a child out of Malaysia by either parent or by other person (*kafil*) having custody of the child. Section 105 of IFLA provides that:

- (a) The Court may on the application of the father or mother of a child:
  - (i) where any matrimonial proceeding is pending; or
  - (ii) where, under any agreement or order of Court, one parent has custody of the child to the exclusion of the other,  
  
issue an injunction restraining the other parent from taking the child out of Malaysia or may give leave for the child to be taken out of Malaysia either unconditionally or subject to such conditions or such undertaking as the Court thinks fit.
- (b) The Court may, on the application of any interested person, issue an injunction restraining any person, other than a person having custody of the child, from taking a child out of Malaysia.
- (c) Failure to comply with an order made under this section shall be punishable as a contempt of Court.

212. In addition to section 105 of IFLA, section 87 of the same Act provides the Court with the power to subject an order of custody to such conditions as the Court thinks fit to impose. One of the conditions the Court may consider is the prohibition on the person given custody from taking the child out of Malaysia.

#### **RECOVERY OF MAINTENANCE FOR THE CHILD (Art. 27, para. 4)**

213. The child's rights to maintenance are well protected in Malaysia. It is to be noted that in custody matters, the financial position of both parents are assessed by the Court to determine the quantum of maintenance for the child.

214. For Muslims, the maintenance of the child is governed by the various Islamic Family Law legislations of the states. Under these laws, it is the duty of the father to maintain his children whether they are in his custody or in the custody of another person. In the case of death of the father, or his whereabouts are not known, the court will determine who should maintain the child. Section 72 of the IFLA states that except where an agreement or order of Court otherwise provides, it shall be the duty of a man to maintain his children, whether they are in his custody or the custody of any other person, either by providing them with such accommodation, clothing, food, medical attention, and education as are reasonable having regard to his means and station in life or by paying the cost thereof.

215. Islamic jurists are unanimous that a child who has no property of his own is entitled to receive maintenance, in the first instance from his father, under the authority of a Quranic verse which means "*The duty of their feeding and clothing according to seemly custom is upon the father of the child*" (Surah Al Baqarah 2: 233). However, this right is subject to two conditions:

- (a) that the child is in need, i.e. indigent and unable to earn a living; and
- (b) that the father has the means to provide maintenance from his capital or income.

216. Inability to earn a living can be a matter of age, physical or mental condition. According to *Sunni*, a child with no property of his own shall lose his right to maintenance by his father on reaching the age at which he can earn a living, even before puberty, but shall retain that right if he cannot work due to illness or handicap. However, the maintenance of a student shall continue after that stage, provided that the course of studies he pursues is religiously acceptable. The son who has reached the age of majority shall also be entitled to maintenance by his father if the son is incapable of earning a living because of chronic disease, mental or a physical handicap and has no private means, or, is of such a social status as to render it impossible to be employed to do menial job.

217. As for the daughter who has no property, the condition of her being in need is fulfilled by the very fact of her gender. Even though she may have the ability to earn her own living, she is not obliged to do so. The duty to maintain her shall pass to her husband once she marries. However, if she later ceases to be maintained, for example, on divorce or because of disobedience to her husband, her father shall be bound, once more, to maintain her. This principle is expressly codified in section 73 the IFLA which states that:

- (a) The Court may at any time order a man to pay maintenance for the benefit of child of his:
  - (i) if he has refused or neglected to provide reasonably for his child;
  - (ii) if he has deserted his wife and the child is in her charge;
  - (iii) during the pendency of any matrimonial proceedings; or
  - (iv) when making or subsequent to the making of an order placing the child in the custody of any other person.
- (b) The Court shall have the corresponding power to order a person liable under *hukum Syarak*, to pay or contribute towards the maintenance of a child where it is satisfied that having regard to his means it is reasonable so to order.
- (c) An order under subsection (a) or (b) above may direct payment to the person having custody or care and control of the child or to the trustee for the child.

218. If a child possesses property, maintenance is not made compulsory upon others. Moreover, maintenance of their necessities will be taken from their own properties because the basis of compulsory maintenance is a necessity (*hajat*). One who possesses a property will not be dependant on other people's property for their life maintenance. This will not be affected even if the father is wealthy and rich.

219. This principle of those who are responsible under the Syariah law is provided in the Federal Territory and respective states Islamic Family Law legislations, which impose the obligation on the father to provide the children's maintenance whether or not those children are under their custody or other people. Nonetheless, this obligation can change and shift on to others who are accountable according to the Syariah law in the event the father to the children is dead or the place of the father is unknown or the father is not capable of maintaining the maintenance. Section 72(2) of IFLA clearly states that:

“Except as aforesaid, it shall be the duty of a person liable under *hukum Syarak* to maintain or contribute to the maintenance of children if their father is dead or his whereabouts are unknown or if and so far as he is unable to maintain them.”

The provision provides that the obligation to maintain the child is imposed on the male relatives, especially on the father’s side and not upon other female relatives even though she is a mother to the child.

220. Both the Syariah and Civil Courts are empowered to order a father to maintain his children in the case of neglect or desertion. The Married Women and Children (Enforcement of Maintenance) Act 1968 [Act 356] provides provisions whereby a child may apply for an order for maintenance against his or her father. The Court may further order the father to make a monthly contribution for the maintenance of such child in proportion to his means and to the needs of the child as the court thinks fit and reasonable.

221. With respect to recovery of maintenance from abroad, the Maintenance Orders (Facilities for Enforcement) Act 1949 [Act 34] facilitates the enforcement of maintenance order made in Malaysia in reciprocating countries.

#### **CHILDREN DEPRIVED OF THEIR FAMILY ENVIRONMENT (Art. 20)**

222. Under Chapter V and VI of the Child Act 2001 [Act 611], the Court for Children is empowered to order a child in need of care, protection and rehabilitation to be placed in the care, custody and control of a foster parent or a relative or a person who is willing and whom the Court for Children considers to be fit and proper person to undertake the care of such child. The Court may also make an order for the child to be placed in a place of safety or a place of refuge.

223. The Department of Social Welfare runs homes for the orphans, needy, abandoned as well as abused and neglected children. Under the Act 611, all Children’s Homes are gazetted as Places of Safety. The Department administers six Children’s Homes throughout the country, each with a capacity of 100 children. These Homes provide substitute care and protection that encourages healthy growth and holistic development of children in a harmonious and safe environment. The duration of stay in the Homes is only for a specified period as determined by the Court for Children until their own families are ready to accept them or until the Social Welfare Officers find suitable foster families for them.

224. Programmes carried out in the Homes are focused on care and protection through counselling and guidance, formal education, tuition, vocational training, religious and moral education, recreational activities, health and medical services.

#### **Family System Children's Home**

225. The Family System Children’s Homes (*Rumah Tunas Harapan*) were introduced to provide proper care, protection and love within a family environment for children who are unable to stay with their natural families due to unavoidable circumstances. These Homes provide an innovative alternative to institutional care by placing them in groups of eight to ten in specially built homes under the care of married couples selected from the community to act as

their foster parents. Thus, the children are given the opportunity to grow up like normal children in a family atmosphere within their own ethnic, cultural and religious practices. This programme also emphasises the importance of the involvement of the Board of Management in the running of the Homes.

226. The Family System Children's Homes have been made possible through partnerships and collaborations with the corporate bodies, state governments and other related agencies namely the National Welfare Foundation, NGOs and the community based organisations. As of 2006 eight Homes, that have 25 house units, are operational with 225 children.

227. Children under this programme are found to be emotionally and socially stable. Many of the children showed progress in their studies, sports and co-curricular activities and have succeeded in their chosen careers.

228. As elaborated in the subsequent topic of "Adoption" the Syariah also permits the taking of a child for the purpose of upbringing and educating the child through the procedure known as *kafalah*.

#### **ADOPTION (Art. 21)**

229. Adoption is allowed in Malaysia, and the legislations pertaining to adoption are aimed to protect the welfare and best interests of the child. Under the Adoption Act 1952 [Act 257], in making the adoption order the Court shall be satisfied that consent from every person that is necessary has been obtained and that they understand the nature and effect of the adoption order. The Court shall also be satisfied that the order, if made, will be for the welfare of the child and that adoption was made pursuant to any payment or reward between the applicant and the parent or guardian or any other persons. In registering a *de facto* adoption under the Registration of Adoption Act 1952 [Act 253], the Registrar may on application of the adoptive parents, register the adoption if he is satisfied by evidence before him from the adoptive parents and the child, that the child has been in the custody, brought up, maintained and educated by the adoptive parents for not less than two years continuously and immediately before the date of the application was made.

230. The Department of Social Welfare monitors cases pertaining to application for fostering before the child is placed with suitable applicants. The Department further supervises the well being of the child as required by the respective laws until the adoption procedure is completed. Formal adoptions are processed and monitored by the Department. However, there are cases of informal adoptions which are arranged between the adoptive parents and natural parents as well as temporary placements with relatives for the care of the children. In the case of the latter, there is no supervision as to the procedure of adoption but the adoptive parent is still obliged under the law to provide care and protection to the child. Various awareness programmes on the rights of a child to care and protection have been implemented by relevant government agencies and NGOs.

231. Likewise, the Syariah law permits the taking of a child for the purpose of upbringing and education. This procedure is known as *kafalah* and under the *hukum Syarak* it is not 'adoption' in the sense as understood under civil law. *Kafalah* is a concept adopted by the provisions of Part VI of IFLA whereby a child in need of protection may be entrusted either by a decision of the

Syariah *Judge* or by the administrative act of the Department of Social Welfare. The Syariah Judge may entrust the child to a public or social institution or to a Muslim family which will care for the child's person (shelter, maintenance, education) and if needed, for the property of the child and when necessary, would receive delegation of guardianship over the child.

232. *Kafalah* is not adoption and creates no effect of 'parent-child' relationship. The child remains the obligation of the biological parent who remains as the legal guardian. *Kafalah* does not make any child to become a family member of the custodian or appointed guardian (*kafil*). The child retains his natural parent's name, not affiliated to the foster father or mother and he is still able to inherit from his biological father or mother. An allowance of RM250.00 per month is allocated by the Department of Social welfare for each child placed under this scheme. Thus far, 121 cases have been recorded by the Department.

### **PERIODIC REVIEW OF PLACEMENT (Art. 25)**

233. The Department of Social Welfare has regularly evaluated the placement of a child who is placed in a place of safety or place of refuge. An order given by the Court for Children placing a child in a place of safety or place of refuge are subject to amendments, verification and revocation by the interested parties. In addition, the Board of Visitors is empowered to reduce the period of detention of a child in a place of refuge.

234. The progress of the child in a place of safety and place of refuge is monitored through the Child Protection (Places of Safety) Regulations 1992 and Women and Girls Protection (Places of Refuge) Rules 1982. Each child has an individual file so that his needs can be monitored with regard to the appropriate intervention. The Client Management System also stipulates the following actions to be taken once a child is placed at the respective homes:

- (a) Every place of safety and refuge is to have medical facilities and sick bay;
- (b) The Director General of Medical Services shall appoint a visiting medical officer for each place of safety and place of refuge;
- (c) The visiting medical officer of the place of safety and place of refuge is responsible to visit the home once a month;
- (d) A nurse is placed at both homes to observe, give medical attention and prepare and maintain a medical card for every child;
- (e) The medical officer shall carry out thorough medical examination on each child on admission, thereafter annually and again shortly before the child leaves the home;
- (f) The medical officer shall carry out weekly inspections on the sanitary and hygienic condition of the home;
- (g) The medical officer shall carry out examination and treatment of the children and also for the members of the staff. The attendants and cooks will have to undergo

necessary medical examinations and to be inoculated to prevent unnecessary infections;

- (h) The medical officer shall keep records in a form and manner approved by the Director General;
- (i) The medical officer shall furnish such reports and certificates as the Director General may require;
- (j) Where in the opinion of the medical officer a child requires treatment in a hospital, arrangements shall be made for the child to be received in a hospital for such period as may be necessary;
- (k) During the period of such stay in the hospital, the child shall be deemed to be under the custody of the Principal;
- (l) Where a surgical operation for a child is necessary and urgent and the consent of the parent or guardian as required by the hospital is unobtainable within the time available, the Principal shall sign the consent for and on behalf of the parent or guardian;
- (m) The staff shall observe the daily health condition of each child with regard to the appearance, general cleanliness, personal hygiene, temperature, skin troubles and any other abnormal conditions detected;
- (n) There shall be in every place of safety and refuge at least one fully equipped first aid box which shall be maintained;
- (o) The duty officer shall receive every child with appropriate documents and medical report;
- (p) The duty officer shall gather information on medical history and health status. For sexual abuse cases, the duty officer shall ensure the child undergoes VD/STD/HIV examination and shall provide such relevant information to the visiting doctors or to the medical officers;
- (q) Disabled children or children who are sick are to be examined by a medical officer to ensure their level of disability and their needs;
- (r) The nurses shall take note of the child's height and weight (ie. to monitor the stages of a child's development);
- (s) The duty officers, nurses and carers shall ensure that every baby and toddler gets proper inoculation from time to time as recommended by the medical officers;

- (t) The duty officers, social welfare officers and the counsellors shall prepare a treatment plan for the child;
- (u) Each child in the home will undergo dental examination and treatment every six months;
- (v) The Board of Visitors shall review the progress of case by evaluating immediate problems faced by the child;
- (w) The duty officer or the Board of Visitors shall recommend placement to foster families or adopted families whichever is appropriate;
- (x) The Principal of the place of safety shall prepare the child progress report quarterly and discuss with an academic or vocational teacher for placement in schools, jobs or training outside. For children who attend school outside the home they are entitled to pocket money;
- (y) The Principal of the place of safety, duty officers, counsellors and Board of Visitors shall discuss the child's progress at the Review and Discharges Panel Meeting according to Part 16 Reviews and Discharges Child Protection (Places of Safety) Regulations 1992 and Women and Girls Protection (Places of Refuge) Rules 1982. Children who are released from homes are also entitled to an allowance of RM200.00;
- (z) The duty officer shall prepare progress report for the case worker;
- (aa) Prior to release, the duty officer, Principal and the Social Welfare Officers shall discuss with the child and the family of the child with regard to the child's progress report on the future plan of the child; and
- (ab) Interactive workshops are also carried out to inculcate positive relationship and understanding between parents and child.

The Government is in the process of reviewing the relevant legislation pertaining to the care, protection and rehabilitation of a child placed in a place of safety or place of refuge.

**ABUSE AND NEGLECT (Art. 19), INCLUDING PHYSICAL AND PSYCHOLOGICAL RECOVERY AND SOCIAL REINTEGRATION (Art. 39)**

235. Under the Penal Code [Act 574], provisions which cover offences affecting the human body apply equally to adults and children as victims of such acts. In addition the provision of the Domestic Violence Act 1994 [Act 521] is also aimed at protecting a child against any form of abuse committed within the household.

236. The Child Act 2001 [Act 611] provides extra protection for children, in which it stipulates for offences regarding ill-treatment, neglect, abandonment or exposure of children to



moral danger, children used as prostitutes and beggars, children left without reasonable supervision, and unlawful transfer of possession, custody or control of children.

237. Under the Act 611, the Court for Children is also empowered to order the child in need of care, protection and rehabilitation to be placed in a place of safety, place of refuge, custody and control of a foster parent or in the care of a person who is willing and whom the Court for Children considers to be fit and proper to undertake the care of such child. The provisions under Part V Chapter 2 and Part VI Chapter 1 provide for the identification, reporting, referral, investigation, treatment and follow-up of the child who is in need of care, protection and rehabilitation. Before issuing the order, the Court for Children is obliged to place paramount consideration to the best interests of the child. An opportunity will also be given to the parents or guardian to be heard before the order is made. 1,242 child abuse cases in 2002 and 1,800 cases in 2005 were reported to the Department of Social Welfare which include neglect, physical, sexual and emotional abuse.

## **CHAPTER 8**

### **BASIC HEALTH AND WELFARE**

**(Art. 6; 18, para. 3; 23; 24; 26; 27, paras. 1-3)**

#### **DISABLED CHILDREN (Art. 23)**

238. The Government of Malaysia has implemented various programmes to accommodate the basic needs of disabled children. The quality of life of children with special needs has markedly improved with the provision of Early Intervention Services at the primary healthcare level. The Programme of Care for Children with Special Needs provides rehabilitation services for children with special needs from birth to eighteen years of age.

239. The awareness and interest in rehabilitation programme was highlighted in 1979 in the Fourth Asian Conference for the Handicapped, followed by the Declaration of the International Year of the Disabled in 1980. Since then, Malaysia has committed to the concept of “total rehabilitation” which entails a multi-disciplinary approach. Rehabilitative services for children with special needs are provided through institutional services and community-based rehabilitation programmes.

240. Presently, there are seven rehabilitation centres which provide custodial, training and rehabilitation programmes for the intellectually disabled children. These centres can accommodate a total of 1,060 trainees. In addition, the Bangi Industrial Training and Rehabilitation Centre for the physically disabled was established in 1999 to provide vocational training and medical rehabilitation. To date, 703 trainees have graduated from the Centre and many have successfully secured employment in the community as well as the open labour market.

#### **Community Based Rehabilitation**

241. Community Based Rehabilitation (CBR) was introduced in 1984 as a strategy within the community for the rehabilitation, equalisation of opportunities and social integration of all persons with disabilities, including children. It is implemented through the combined efforts of

persons and children with disabilities themselves, their families and communities, along with the appropriate health, education, vocational and social services. It aims to reduce the impact of disability and provide the support services for families of persons and children with disabilities.

242. As of 2005, the Department of Social Welfare has established 313 CBR centres programmes throughout the country benefiting 8,453 persons with disabilities. A total of 1,283 teachers have been trained to undertake rehabilitation programmes at the centres, make home visits and facilitate parental involvement. In line with the approach of community participation, the CBR centres are managed by a committee comprising of local community members, families and persons with disabilities themselves. The Government acknowledges the effectiveness of the CBR programmes, thus providing an annual allocation for the worker's allowance, rental of premises as well as a one-off grant for rehabilitation equipment. However, the committee is responsible for the other expenses in line with the community based approach.

243. The CBR programme is a preferred alternative to institutional care since it provides decentralised rehabilitation services and early intervention for persons and children with disabilities in their own community. It helps to ensure the acceptance and social integration of persons with disabilities, including children, as well as providing them the opportunity to develop their abilities and skills to their full potential, leading to a meaningful live. As a result, CBR prevents the separation of persons and children with disabilities from their families and communities and facilitates the evolution of a caring Malaysian society.

#### **HEALTH AND HEALTH SERVICES (Art. 24)**

244. The Government of Malaysia is committed to provide adequate health infrastructure and programmes which are accessible and affordable to all. This has contributed to a steady decline in peri-natal, infant and toddler mortality in the last twenty years. Malaysia has already achieved eleven out of the thirteen Global Mid-Decade Goals on Children.

245. The Government allocated RM9.50 billion for the health sector during the Eighth Malaysia Plan (2001 to 2005) and this figure increased to RM10.28 billion for the Ninth Malaysia Plan (2006 to 2010).

246. The issue of vitamin A deficiency in Malaysia has been addressed effectively by the Government. It is not a public health problem in Malaysia. Iodine Deficiency Diseases are not a nationwide problem in Malaysia, except in some areas in the states of Sarawak and Sabah.

247. With the achievements in health, Malaysia has progressed beyond the child survival issues to provide more concerted efforts towards child protection and development. The implementation of prevention and promotion of health programmes as well as expansion of health facilities was undertaken to widen the coverage and accessibility of curative and rehabilitative health services. In this regard, planning and design works on new hospitals as well as urban and rural health clinics were undertaken as part of the strategy to provide a wider range of preventive and curative services to the general public and to decentralise outpatient clinics to reduce overcrowding in hospitals. In addition, various training programmes were undertaken and further enhanced through the expansion of existing facilities to meet the increasing manpower needs in an expanding health sector.

248. As an integral part of the preventive and promotional health programme, the healthy lifestyle campaign was implemented with the co-operation of various agencies and NGOs. The first phase of the campaign was carried out from 1991 to 1996. It focused on disease prevention themes namely cardiovascular disease (1991), prevention of AIDS and sexually transmitted diseases (1992), food cleanliness (1993), promotion of children health (1994), cancer (1995) and diabetes (1996). The second phase of the campaign (1997 to 2002) stressed on the promotion of healthy lifestyle. For instance, the campaign focused on the promotion of healthy nourishment (1997), exercise and fitness (1998), safety and injury prevention (1999), mental health (2000), healthy family (2001) and healthy environment (2002). A healthy lifestyle campaign with the theme *Be Healthy for Life* was implemented in 2003. This theme was then adopted to be the general campaign for the subsequent years. The campaign focused on four elements, namely healthy eating, exercise and physical fitness, abstinence from smoking and stress management. In addition, HIV/AIDS awareness programmes for youths known as *Program Sihat Tanpa AIDS Untuk Remaja* (PROSTAR) was launched by the Ministry of Health in 1997 to promote a healthy lifestyle and prevent HIV/AIDS infection among youths.

249. The Plan of Action on Nutrition was implemented in 1996, which included the improvement of food quality and safety, breast feeding promotion, as well as promotion of appropriate diet and healthy lifestyle. Subsequently, the National Nutrition Policy was formulated in 2003 to ensure public access to safe and quality food regardless of location as well as ascertain that nutritious food is crucial for optimal growth, development and the health of the family. Nutrition programmes for the prevention and control of nutritional excesses and deficiencies as well as promotion of healthy eating were further enhanced. In this regard, the Food Regulations 1985 was amended in 2004 to include the implementation of mandatory labelling of food content with relevant nutrition information to assist consumers in making informed choices when purchasing food products.

250. In the year 2002, the provision of safe water and proper sanitation was further expanded through the construction of 4,900 gravity-feed water supply systems, 13,400 sanitary wells and 15,600 rain water collection schemes. The Government has taken the necessary measures to prevent and reduce waterborne diseases to improve the health status of the population, especially in the rural areas. The percentage of houses supplied with safe water increased from 93.76 percent in 2002 to 95.24 percent in 2005. However, there was a slight decrease in the percentage of houses with adequate sanitary latrines in the rural population from 98.54 percent to 98.02 percent in 2005 due to the aborigines who preferred to lead the traditional lifestyle in the rural areas. In essence, safe water and proper sanitation has helped to reduce the incidence of waterborne diseases such as cholera from 2,209 cases in 1995 to 1,480 cases in 2005.

251. Access to medical and healthcare services were expanded, upgraded and new programmes introduced during the Eighth Malaysia Plan (2001 to 2005). These services, comprising primary, secondary, tertiary and rehabilitative care, continued to be provided through an extensive network of hospitals as well as health and community clinics. The Government has upgraded and equipped 123 clinics with laboratory and diagnostic imaging facilities as well as the placement of family medicine specialists. During the Eighth Malaysia Plan period, a total of 22 hospitals were built, comprising 14 new and eight replacement hospitals. Meanwhile, new programmes that include screening for specific diseases and risk factors, early intervention and

treatment as well as reducing disability will be implemented during the Ninth Malaysian Plan (2006 to 2010). In this regard, an integrated and comprehensive health risk management programme aimed at early detection of diseases will be implemented. The screening programme for congenital hypothyroidism among newborns will be further expanded. Services for children with special needs will also be expanded and introduced in every district. In addition, Thalassaemia screening will be implemented to ensure early detection of blood disorders.

252. Proactive measures are constantly undertaken to ensure an adequate supply of human resource to support the expansion and delivery of health services. Training capacity in seven public universities and five private medical colleges was expanded to train more doctors, dentists and pharmacists. As a result, the ratio of health personnel to population improved as shown in Table 8.1.

**Table 8.1: Medical Personnel Ratio**

<b>Year</b>	<b>1995</b>	<b>1997</b>	<b>1999</b>	<b>2002</b>	<b>2005</b>
<b>Indicator</b>					
Doctor: population ratio	1: 2,153	1: 1,521	1: 1,465	1: 1,406	1: 1,300
Dentist: population ratio	1: 11,822	1: 11,617	1: 11,897	1: 10,678	1: 9,497
Pharmacist: population ratio	1: 13,461	1: 12,409	1: 9,798	1: 8,673	1: 6,512
Nurse: population ratio	1: 1,224	1: 883	1: 1,086	1: 695	1: 592

*Source: Ministry of Health*

253. The implementation of various programmes led to improvements in the health status of the population especially children. Since 1990, both fertility and mortality rates have declined. The crude birth rate dipped from 27.9 per thousand in 1990 to 23.4 and 19.4 per thousand in 2000 and 2005, respectively. Infant mortality rates dropped from 13.1 per thousand live births in 1990 to 5.7 and 5.1 per thousand live births in 2002 and 2005, respectively.

254. A new legislation known as the Private Healthcare Facilities and Services Act 1998 [Act 586] was introduced to replace the Private Hospitals Act 1971. This Act reinforced the enhanced role of the Ministry of Health as a regulator of facilities and services pertaining to healthcare. Among others, the Act empowers the Ministry of Health to regulate the maintenance of safety, distribution of services, provision of quality care and the charging of affordable rates. In this regard, the private healthcare providers are required to adopt a more caring concept and provide a wider scope of affordable healthcare.

255. Child healthcare service has been provided since 1956 through the rural health programmes. Currently the service is incorporated into the Maternal and Child Health Services, which is provided through all health and community clinics. The main purpose of this service is to provide optimum healthcare to the child from the time he or she is born until the school going age. The Ministry of Health has produced an attendance schedule for a child as shown in Table 8.2.

**Table 8.2: Child Healthcare Attendance Schedule**

Age	Visiting schedule
Birth – 6 months	Every month
6 months – 12 months	Once every 2 months
1 year – 2 years	Once every 3 months
2 years – 4 years	Once every 6 months
4 years – 6 years	Yearly

*Source : Ministry of Health*

*Note: This schedule is only for normal children*

256. Parents are advised to bring their children to the nearest clinic to enable them to obtain these services according to the schedule. Among the services provided are immunisation, normal development assessment, advice on feeding and nutrition, general health assessment and medical treatment.

257. The coverage and scope of the immunisation programme for children aged one year and below was further improved during the Eighth Malaysian Plan (2001 to 2005). Coverage of the Bacille Calmette-Guerin (BCG) immunisation for children below one year in the year 2000 was 99.9 percent and have increased to 100.0 percent in 2005. Immunisation coverage for poliomyelitis (third dose for children below one year) was 95.4 percent in 2000 and it decreased slightly to 94.3 in 2005. Meanwhile, the triple antigen vaccine for diphtheria, tetanus and pertussis coverage has improved from 94.4 percent in 2000 to 99.8 percent in 2005. In an effort to further reduce morbidity and mortality among children against vaccine-preventable diseases, new vaccines were incorporated as part of the child immunisation programme in July 2002, which is provided free in all Government facilities. These included the haemophilus influenza B (HiB) and the combined mumps, measles and rubella (MMR) vaccines. In addition, the National Measles Vaccination Programme implemented in 2004 for children aged 7 to 15 years, achieved coverage of 93.9 percent. MMR immunisation coverage for infants has increased from 86.6 percent in 2002 to 89.9 percent in 2005. These efforts reduced the incidence of vaccine-preventable diseases such as whooping cough and measles while eliminating poliomyelitis. No polio cases were reported in Malaysia since 1993. The last two cases were reported in 1992. In October 2000, the Western Pacific Region, including Malaysia, was declared a polio-free region.

258. Anthropometric data available in Malaysia in recent years to assess the prevalence of Protein Energy Malnutrition has indicated that acute malnutrition is no longer a problem. Since 1990, weight-for-age data of children below five years who have attended Government child health clinics was incorporated into the Health Management Information Systems. In 2005, the percentage of severely underweight children was 0.4 percent for infants below one year of age and 0.8 percent for children aged 1 to 4 years. The proportion of children found to be moderately

underweight was 4.5 percent for infants below one year and 9.3 percent for children aged 1 to 4 years. To reduce the incidence of underweight, the food basket programme is implemented and provided for underweight children from low income families under the purview of the Ministry of Health and supplementary feeding programme for school children from low-income families under the purview of the Ministry of Education. The Department of Social Welfare also provides assistance to families and children in need of financial support.

259. Except for a few studies that have indicated high prevalence rates in isolated parts of Peninsular Malaysia, the problem of endemic goitre does not appear to be a major nutritional problem. However, iodine deficiency diseases have been recognized as a salient health problem in Sabah and Sarawak and in some other states in Peninsular Malaysia. Efforts have been made to reduce the incidence by giving iodised salts and iodinated water in the affected states. Legislation for iodised salt was gazetted in December 1999 and implemented in June 2000. Additional efforts include installation of iodicators in the water supply to schools and longhouses in the areas known to be endemic for iodine deficiency disorders.

260. The rapid pace of socio-economic development and the increasing affluence among Malaysians have resulted in a definite change in the nutritional pattern in the country. Presently, Malaysian young population is faced with another facet of the nutrition problem, namely obesity.

261. Maternal health and the prevention of maternal mortality has received due attention from the Government with the development of comprehensive maternal healthcare programmes which include reproductive health and nutrition services. This is to ensure pregnant women are monitored regularly for early detection and treatment for complications to ensure a satisfactory outcome for both the mother and the newborn. Anaemia during pregnancy still poses a problem and data collected from routine antenatal visits to Government clinics in 2002 showed that 2.8 percent of pregnant mothers were found to have haemoglobin levels of less than 9mg/dl. Reproductive health services focusing on spacing of birth, infertility treatment and counselling will be strengthened in an effort to enhance the well-being and the health of women especially of the reproductive age.

### **SOCIAL SECURITY AND CHILD CARE SERVICES AND FACILITIES (Art. 26 and 18, para. 3)**

262. The Department of Social Welfare maintains a register of welfare-related NGOs and provides them with a yearly grant to assist in programme sustenance. There are 75 child-related NGOs which include social organisations, religious groups and grassroot community organisations. These NGOs provide various services for children who are orphans, from poor families and families with social problems, abandoned or neglected and children who need care and protection. Among the services are care and protection, counselling, academic support, religious teachings, vocational training, social enhancement, sports and recreational activities. In the year 2002, a total number of 4,185 children were placed under the care of these organisations, and this figure decreased to 3,257 in 2005.

### **Childcare Centres and Care Centres**

263. The Government provides assistance to working parents by setting up or encouraging employers in both the public and private sectors to provide childcare facilities. The public sector is encouraged to utilise suitable space within the office complex for childcare while employers in the private sector are eligible for tax rebate if they build childcare centres in the workplace. The Department of National Unity and Integration and the Ministry of Rural and Regional Development have set-up childcare centres throughout the country as part of their community programmes at the grassroot level. In addition, the Department of Social Welfare conducts various training programmes for the operators of childcare centres and for childcare providers.

264. The Childcare Centres Act 1984 [Act 308] and the Care Centres Act 1993 [Act 506] exemplify the highest degree of societal care and Government responsibility in matters related to the children's development. It is mandatory for all childcare centres to be registered with the Department of Social Welfare and adhere to the rules and regulations outlined in the Childcare Centres (Institution-based) Regulations 1993 to ensure minimum standards of services for children attending institutional childcare centres nationwide. The Regulations also stipulate the need for parental involvement in activities to ensure continuity of learning and quality care from the centre to the home and vice versa. Activities at the centre place strong emphasis on local culture and moral values.

265. The Department of Social Welfare conducts monitoring visits and training courses to ensure programmes and activities at the centres are age-appropriate and promote the total development of the child especially in the basic areas of physical, emotional, cognitive and language. The Department has produced a book on guidelines for prospective operators of childcare centres, outlining the procedures to obtain a Certificate of Registration and the basic requirements of the technical agencies involved in giving the approval.

266. The Care Centres Act 1993 [Act 506] ensures the minimum standard of quality care for individuals placed in welfare institutions especially those managed by individuals or NGOs. It covers both day care centres and residential institutions that provide alternative care services with or without fees for children, women, the elderly and people with disabilities. For each of these target groups, a minimum acceptable standard of care is ensured through the issuance of licences only to those who comply with the requirements stipulated in the guidelines which cover areas such as the safety, health and security of the groups involved.

### **Child Protection Teams**

267. One of the provisions of the Child Act 2001 [Act 611] is the establishment of Child Protection Teams to co-ordinate support services at the community level for children in need of care and protection and families in crisis. According to Act 611, the Child Protector functions as the Chairman while other members of the Team include a medical officer, a police officer and community members interested in child welfare. The Child Protection Teams are encouraged to carry out preventive and rehabilitative programmes such as the establishment of Child Activity Centres and Crisis Intervention Centres for children and families in high risk areas. Other activities include educating the local community in advocating a safe environment for the young child.

268. As of 2005, 131 Child Protection Teams have been established throughout Malaysia. These Child Protection Teams have been given training and exposure through conventions, seminars and courses on issues pertaining to child welfare with special focus on working with abused children, affected families and the perpetrators.

### **Child Activity Centres**

269. The Child Act 2001 [Act 611] stipulates that Child Protection Teams are responsible for the setting up of Child Activity Centres. These centres were set up as a proactive action by the Government to provide support services to help families overcome their social problems. Functions of these Child Activity Centres are as follows:

- (i) to organise programmes which will provide care and protection to children at risk of being abused;
- (ii) to provide different activities to cater to the needs of parents and children; and
- (iii) to conduct child development and parenting courses for the community.

270. Besides serving as resource centres, the Child Activity Centres provide counselling and crisis intervention services, educational support services, child development activities, lectures, seminars, workshops on parenting and other family-oriented topics as well as motivational camps for children and youths. As of 2005, 135 Child Activity Centres have been established throughout Malaysia. The activities carried out at the Child Activity Centres have, in some ways, contributed to the prevention of many social ills such as child abuse, child neglect, school dropout, truancy and moral decadence. In addition, it has fostered community relations and the caring spirit by serving as a place where the local community interact, exchange ideas and work together towards a common goal that is, the well-being of the child and family.

### **Students Activities Centres**

271. Students Activities Centres were introduced by the then Ministry of National Unity and Social Development in 1997. These Centres are specifically meant for students who need a place to study before and after school. The main objectives of setting up the centres are:

- (a) to create a young generation that is educated, confident and inculcated with positive social values and a vision for the future;
- (b) to provide a space for children in an effort to prevent them from getting involved with undesirable elements and activities; and
- (c) to provide an avenue and opportunity for increased interaction between students of various ethnic groups and thereby indirectly promote positive neighbourhood spirit among them.

272. There were 17 such centres established throughout the country in 2000. The facilities provided at these centres include mini library, tuition classes (inclusive of religious tuition), computer classes, indoor games, counselling, mediation services and others. These centres are



directly under the auspices of the *Rukun Tetangga* (Neighbourhood Area Committees) where the Youth Committee is a sub-committee under it. Currently, there are more than 3,200 *Rukun Tetangga* establishments throughout the country with more than 1,400 of them having the Youth Committees. For areas where Students Activities Centres have yet to be established, student activities are organised in public centres or at *Rukun Tetangga* centres.

### **Child Welfare Committee**

273. The Child Welfare Committee is one of several mechanisms provided for under the Child Act 2001. It is established at the grassroot level to prevent the involvement of children in undesirable social activities. The functions of a Child Welfare Committee are as follows:

- (a) to encourage community involvement in the prevention of crime and moral decay as well as explain the roles and responsibilities of children;
- (b) to assist the Probation Officer obtain guardianship or foster parents for children having problems with their families;
- (c) to assist the Probation Officer in obtaining training and employment opportunities for children under supervision;
- (d) to assist the Probation Officer in the supervision of children under probation as well as children who need supervision after their release;
- (e) to regularly visit the children under remand and those committed to Probation Hostels to ensure the well being of the child; and
- (f) to advise the Minister on the need for changes in policies or legislation pertaining to the welfare of the child.

274. In the year 2005, there are 110 Child Welfare Committees at the district level with 1,320 members throughout the country. In most cases, many of the members are professionals who can make significant contribution to the well being of the child. Each Child Welfare Committee is given a grant to help the committee to plan and implement programmes and activities such as awareness programmes, seminars, parenting courses, youth camps and motivational programmes. These programmes help to enhance the self-esteem of the child.

275. Since 1986, there has been a move towards improving the outcome of children with special needs. The quality of life of children with special needs has markedly improved with the provision of Early Intervention Services at the primary healthcare level. The Programme of Care for Children with Special Needs provides rehabilitation services for children with special needs from birth to 18 years of age.

276. Section 64 of The Education Act 1966 [Act 550] provides power to the Minister to render assistance, whether financial or otherwise, in respect of pupils or any class to pupils in Government or Government-aided educational institutions. Such assistance may include the granting of bursaries, scholarships, loans or such other assistance; and the provisions of

accommodation, transport, books and medical and dental services for the purpose of enabling the pupils to take full advantage of the educational facilities available to them for the purpose of promoting their health and well-being.

### **Emerging Health Issue**

277. An emerging health issue which has the potential of becoming a major public health problem is HIV/AIDS. The national surveillance data shows that the HIV infection has increased from three cases in 1986 to 6,120 cases in 2005. Whilst there was one AIDS case and one AIDS death reported in 1986, the number of AIDS cases increased to 1,221 with 984 deaths in 2005. Between the year 1986 to 2005, there were a total of 70,559 HIV infection cases, 10,663 AIDS cases and 8,179 AIDS deaths. In facing up the scourge of HIV/AIDS, the Ministry of Health has initiated actions well before the first case of HIV was detected in 1986.

278. An inter-sectoral committee known as National HIV/AIDS Task Force led by the Ministry of Health was formed in 1985 to formulate policies, develop strategic action plans as well as coordinating the HIV/AIDS prevention programmes to control its spread among the population. This includes the Maternal to Child Transmission Programme which was started in 1998 at all Government health facilities to provide free anti-retroviral therapy to all HIV positive pregnant mothers, integrating the management of HIV cases at primary care level through voluntary testing and counselling, encouraging high risk women to go for voluntary screening at public health clinics, and provision of free anti-retroviral therapy to children infected with HIV. Babies born to HIV mothers are given free formula milk for at least the first six months and free treatment for HIV for life. The Ministry of Health also implements various campaigns in co-operation with NGOs. This includes the healthy lifestyle campaigns and AIDS awareness programmes. A special programme called *PROSTAR* has been designed to create awareness and educate the youths about HIV/AIDS. In addition, the Government provides funds to NGOs to organise rehabilitation programmes for HIV positive sufferers.

### **STANDARD OF LIVING (Art. 27, para. 1-3)**

279. The Government of Malaysia has taken the necessary measures to ensure the rights of every child to a standard of living adequate for the child's physical, mental, moral, spiritual and social development.

280. The Nutrition and Health Programme was introduced to provide a balanced diet, healthcare and to enhance the quality of life of students. This programme is a collaborative effort between the Ministry of Health and the Ministry of Education (MOE). Under the Supplementary Food Scheme, free nutritious food is provided to the needy students at more than 5,000 primary schools throughout the country. In 2004, MOE provided milk to 494,700 primary school students under the Milk Scheme Program with the objective to give additional nutritious food to poor students.

281. In addition, the Ministry of Health through its school health services has provided various services which include medical and dental treatment as well as the prevention and control of contagious diseases. The Ministry also provides health services and first aid facilities in schools. This collaborative effort between the Ministry of Health and the MOE was further enhanced

through the School Health Promotion Programme which aims to create awareness about healthcare among the students.

282. The standard of living for the needy children has also been taken care by the Government. Both the Government and NGOs have provided various services for orphans, abandoned, neglected and children who need care and protection as well as children from poor families and families with social problems. Among the services rendered are care and protection, counselling, academic support, religious teachings, vocational training, social enhancement as well as sports and recreational activities.

## **CHAPTER 9**

### **EDUCATION, LEISURE AND CULTURAL ACTIVITIES (Art. 28; 29; 31)**

#### **EDUCATION, INCLUDING VOCATIONAL TRAINING AND GUIDANCE (Art. 28)**

283. Education in Malaysia is within the jurisdiction of the Federal Government and comes under the purview of the Ministry of Education. Education since the 1980s has moved towards the holistic and integrated development of individuals as envisioned in the National Educational Philosophy (NEP). The NEP has been geared towards achieving the nation's vision to produce Malaysian citizens who are balanced, trained, skillful and cherish the national aspiration for unity.

284. Children in Malaysia can enrol in two categories of educational institutions from primary to higher learning, namely public schools, which are provided by the Government and private schools. The Education Act 1996 [Act 550] provides the fundamental basis for curriculum policies in Malaysia. It indicates the specific laws and provisions that give direction to curriculum documents. These regulations are mandatory for all schools. The Act states that the National Education System shall consist of pre-school education, primary education, secondary education, post-secondary education and higher education.

285. In the year 2002, Act 550 was amended to provide compulsory education. In public schools, children are enrolled according to their ages. They are pre-schools for ages 4 to 6 years, primary for ages 6 to 12 years, and secondary for ages 12 to 19 years. As a matter of fact, Malaysia has achieved its Mid-Decade Goals of strengthening primary education. Nevertheless, the national target of 100 percent primary enrolment has yet to be achieved. Table 9.1 shows the public primary school enrolment while Table 9.2 depicts further on the number of public primary schools, teachers and classes according to the type of schools.

**Table 9.1: Public Primary School Enrolment, 1995 to 2005**

<b>Year</b>	<b>1995</b>	<b>2000</b>	<b>2002</b>	<b>2005</b>
Enrolment	2,827,627	2,931,874	2,959,653	3,044,977
Population of Children	2,923,100	3,004,200	3,204,600	3,321,237
% Enrolment	96.73	97.59	92.36	91.69

*Source: Ministry of Education.*

**Table 9.2: Number of Schools, Teachers and Classes in Public Primary Schools by Type of School, 2002 and 2005**

<b>Year</b>	<b>Number of Schools</b>		<b>Number of Teachers</b>		<b>Number of Classes</b>	
	<b>2002</b>	<b>2005</b>	<b>2002</b>	<b>2005</b>	<b>2002</b>	<b>2005</b>
<b>Type of Schools</b>						
National	5,564	5,761	124,205	149,852	71,636	78,445
National Type Chinese	1,285	1,287	28,837	32,978	18,233	18,446
National Type Tamil	527	525	6,040	6,941	4,112	3,867
Special	28	28	514	565	266	288
<b>Total</b>	<b>7,404</b>	<b>7,601</b>	<b>159,596</b>	<b>190,336</b>	<b>94,247</b>	<b>101,046</b>

*Source: Ministry of Education.*

## **AIMS OF EDUCATION (Art. 29)**

286. Education programmes and activities are designed to equip pupils with essential skills and to produce individuals who are intellectually, spiritually, emotionally and physically balanced, as well as functionally literate. It also aims to inculcate and nurture national consciousness by promoting common ideals, values, aspirations and loyalties to foster national unity and national identity, generate manpower for economic and national development as well as to instil desired moral values in pupils for them to contribute effectively towards nation building.

### **Pre-school Education**

287. Pre-school education is provided by the Ministry of Rural and Regional Development, Department of National Unity and Integration, Ministry of Education and the private sector. Approximately 60 percent of pre-school aged children have attended pre-school. The Ministry of Education has designed a pre-school curriculum which is mandatory for all pre-school operators. The curriculum enables the children to acquire basic communication, social and other positive skills in preparation for formal school. As of December 2005, the Ministry of Education catered for 92,303 pre-schoolers while the Ministry of Rural and Regional Development had 6,920 pre-school centres that benefited 213,051 children. The pre-school centres under the Ministry of Rural and Regional Development cater for the children living in rural and resettlement areas, estates and children of the indigenous groups. All these centres are subsidised whilst the teachers are trained by the Government.

288. The Department of National Unity and Integration also runs kindergarten classes. In 2002, the Department operated 1,165 pre-school classes, handling 33,753 children from the urban poor and the multi-ethnic society which increased to 1,500 pre-school classes and 75,250 children respectively in 2005. While the kindergarten classes were run in line with the curriculum and guidelines issued by the Ministry of Education, these classes also organised activities involving parent participation thereby fostering inter-ethnic community relations. Pre-school education is also provided by private operators. There were 3,847 private pre-school institutions with a total enrolment of 285,722 children in year 2005 compared to 2,395 private pre-school institutions and total enrolment of 232,563 children respectively in 2002.

### **Primary Education**

289. Primary education is compulsory in Malaysia. The Education Act 1996 [Act 550] requires that parents, as citizens of Malaysia and residing in Malaysia, to register their children at primary schools upon reaching the age of six years on the first day of the current school year. All schools follow a common curriculum emphasising the acquisition of basic skills, namely reading, writing and arithmetic. The school system also provides holistic development of talents and foster moral and social values.

## Secondary Education

290. Secondary education aims at preparing young Malaysians to face the challenges of adult life and to be progressive, outstanding and productive citizens. All secondary schools follow the Integrated Secondary School Curriculum which is a continuation of the Integrated Primary School Curriculum. It further emphasises on the holistic development of the child, and imparts positive human values to enhance love and loyalty to the country. Tables 9.3 and 9.4 show the number of school, enrolment, teachers and classes in public secondary schools for the year 2002 and 2006.

**Table 9.3: Number of School, Enrolment, Teachers and Classes in Secondary Schools by Sex and Type of School as at 31 January 2002**

Type of Schools	Number of Schools	Number of Enrolment			Number of Teachers			Number of Classes
		Male	Female	Total	Male	Female	Total	
Regular	1,604	947,209	979,257	1,926,466	38,584	69,611	108,195	56,905
Fully Residential	39	12151	10486	2,2637	1,036	1,424	2,460	911
Religious	56	16580	20978	3,7558	1,198	1,708	2,906	1,285
Vocational	4	29	672	701	22	152	174	22
Technical	82	23481	12194	3,5675	3,338	2,837	6,175	1,273
Special Model	4	1186	1379	2,565	99	103	202	103
Sports School	2	568	289	857	73	67	140	46
Special Schools	3	318	310	628	60	79	139	62
<b>Total</b>	<b>1,794</b>	<b>1,001,522</b>	<b>1,025,565</b>	<b>2,027,087</b>	<b>44,410</b>	<b>75,981</b>	<b>120,391</b>	<b>60,607</b>

Source: Ministry of Education.

**Table 9.4: Number of School, Enrolment, Teachers and Classes in Secondary Schools by Sex and Type of School as at 30 June 2006**

Type of Schools	No of Schools	Number of Enrolment			Number of Teachers			Number of Classes
		Male	Female	Total	Male	Female	Total	
Regular	1,812	1,005,193	1,067,131	2,072,324	41,652	7,9821	121,473	62,826
Fully Residential	54	17,606	15,448	33,054	1,309	1,993	3,302	1,241
Religious	55	16,574	22,490	39,064	1,250	1,874	3,124	1,377
Technical	90	46,068	26,770	72,838	3,948	3,651	7,599	2,686
Special Model	11	5,290	6,020	11,310	310	470	780	381
Sports School	2	677	373	1050	78	78	156	54
Special Schools	4	331	268	599	62	102	164	68
<b>Total</b>	<b>2,028</b>	<b>1,085,772</b>	<b>1,132,107</b>	<b>2,217,879</b>	<b>48,609</b>	<b>87,989</b>	<b>136,598</b>	<b>68,633</b>

*Source: Ministry of Education.*

### **Private Education**

291. Private education is provided by the private education institutions. The establishment, management and operation of private education institutions are subject to Act 550 and its Regulations. Education institutions which come under this category offer education at pre-school as well as primary and secondary school levels. Table 9.5 shows the number of registered private schools for the year 2002 through 2005.

**Table 9.5: Registered Private Schools, 2002-2005**

Type of School	Year			
	2002	2003	2004	2005
Kindergarten	NA	13,924	13,337	13,052
Public Religious Schools (SMAR)	NA	205	188	188
Private Primary & Secondary Schools	127	127	138	139
Chinese Independent Schools	60	60	60	60
State Religious Schools (SMAN)	NA	110	120	112
Religious Primary and Secondary Schools	32	32	36	36
International Schools	27	29	31	32
Expatriate Schools	13	14	14	14
MARA	37	31	32	32

Source: Ministry of Education.

### Special Education

292. In line with the Government's aim of creating a caring society, the Education Act 1996 also stipulates education for children and young adults with special needs. It provides them the same educational opportunities as other children. In addition, the Ministry of Education has provisions for vocational courses for children with special needs in Secondary Special Education Vocational Schools.

**Table 9.6: Children Enrolled in Special Education 1999 - 2005**

Type	Year		
	1999	2002	2005
Visually impaired	627	663	719
Hearing impaired	4,012	3,649	3694
Learning difficulties	7,223	10,223	16249
<b>Total</b>	<b>11,862</b>	<b>14,535</b>	<b>20,662</b>

Source: Ministry of Education.



## Sports Schools

293. The primary function of the Sports School is to nurture and develop potential athletes among school children. At present there are two such schools namely Bandar Penawar Sports School, Johor and Bukit Jalil Sports School, Kuala Lumpur. The total enrolment of these schools increased from 857 students in 2002 to 1,050 students in 2005.

294. Pre-University Sports School Programme is also provided to equip future athletes with proper pre-university academic qualification to enable them to pursue Bachelor's Degree Programmes at the Universiti Putra Malaysia and the Universiti Teknologi Malaysia. This pre-university programme is equivalent to the Malaysian Higher Certificate of Education and the Matriculation Programme. The programme spans over four semesters and periodic evaluation is carried out based on the requirements of the universities.

## Gender Equality

295. The Government of Malaysia provides equal opportunities in education for all children, irrespective of gender. The male and female enrolment in public primary and secondary schools for 2002 and 2005 are shown in Table 9.7.

**Table 9.7: Students in Public Primary and Secondary Schools, 2002 and 2005**

Sex \ Level	2002		2005	
	Primary	Secondary	Primary	Secondary
Male	1,526,226	1,001,522	1,612,153	1,037,791
Female	1,444,810	1,025,565	1,525,127	1,035,894
<b>Total</b>	<b>2,971,036</b>	<b>2,027,087</b>	<b>3,137,280</b>	<b>2,073,865</b>

*Source: Ministry of Education*

296. Under the Eighth Malaysia Plan (2001 to 2005), sufficient budgetary allocations were provided for the physical development of educational institutions through various projects. These projects include the building of new school classrooms, upgrading and renovating existing school buildings as well as construction of hostels and staff quarters. Under the Ninth Malaysia Plan (2006 to 2010), the main thrust of education development will be given on pre-school education, strengthening the national schools, improving the teaching profession, raising the standards of education institutions and reducing the gap between rural and urban schools. To achieve that, the Ministry of Education will upgrade all the facilities, infrastructure and buildings under its jurisdiction. Human development in education will also be duly emphasised. Table 9.8 shows the budget allocated to implement various education and training programmes during the Eighth and Ninth Malaysia Plans.

**Table 9.8: Development Budget for Education and Training, 2001-2010**

<b>Programme</b>	<b>8<sup>th</sup> Malaysia Plan Budget (RM billion)</b>	<b>9<sup>th</sup> Malaysia Plan Budget (RM billion)</b>
Education	37.9	40.3
Training	4.5	4.8
<b>Total</b>	<b>42.4</b>	<b>45.1</b>

*Source: Economic Planning Unit*

### **Education for Non-Citizens**

297. Non-citizens are accepted into the Government assisted schools, subject to the approval from the Ministry of Education and availability of places. However, they are free to enrol in any private schools throughout the country.

### **Educational Support Services, Facilities and Special Projects**

298. Educational support services, educational facilities and special projects are an extension of the educational administrative machinery to ensure that the basic aim of providing quality education can be achieved. These are imperatives as Malaysia strives to achieve educational excellence in the new millennium.

### **Scholarships**

299. The Ministry of Education provides scholarships to selected and deserving primary and secondary school students as an incentive to excel in academic. This scholarship known as the Federal Minor Scholarship has benefited 150,000 and 86,030 students in 2001 and 2006 respectively. In addition, 30,000 students were awarded Pre-University Scholarships in 2001 and 26,137 students in 2006. Government agencies, state foundations, Government-linked companies and the corporate sector as listed in Table 9.9 do provide scholarships to enable deserving students to pursue their studies in institutions of higher learning, both local and abroad.

**Table 9.9: Scholarship Award / Education Loan**

Education Level	Agencies
Primary / Secondary School	<ul style="list-style-type: none"> <li>▪ Ministry of Education</li> <li>▪ State Foundations</li> <li>▪ Private Foundations</li> </ul>
Higher Education	<ul style="list-style-type: none"> <li>▪ Ministry of Education</li> <li>▪ National Higher Education Loan Fund Corporation</li> <li>▪ Tunku Abdul Rahman Foundation</li> <li>▪ State Foundations</li> <li>▪ <i>Majlis Amanah Rakyat (MARA)</i></li> <li>▪ Public Service Department</li> <li>▪ Corporate Sector (Petronas, Maybank, Tenaga Nasional, etc.)</li> </ul>

*Source: Ministry of Education.*

### **Educational Loans**

300. Both the Ministry of Education and Ministry of Higher Education provide educational loans through the Matriculation Division and the National Higher Education Loan Fund Corporation respectively. The Matriculation Division, which is responsible for preparing students to meet entry requirements of selected universities, awarded educational loans to 16,188 and 28,810 students for the enrolment session 2002/2003 and 2005/2006 respectively. Meanwhile, the National Higher Education Loan Fund Corporation (PTPTN) which was established in 1997, awarded loans to 83,849 students in 1999 and 71,283 students in 2002. As of 30 September 2006, PTPTN has awarded loans to 139,551 students, amounting to RM3.89 billion.

301. Under the National Higher Education Loan Fund, students in public institutes of higher learning are entitled to a loan up to RM6,500 per annum, while those in private institutions of higher learning can apply a maximum of RM16,000 per annum. As an incentive, students majoring in science and professional courses are given an additional loan of RM500.00 per year. Eligibility of students to such loans is based on the financial ability of the students' family. The educational loan offered by PTPTN is aimed to subsidise part of the education fees as well as the living expenses of the student. Education fees in public institutions of higher learning range from RM1,500 to RM2,500 per semester, subject to the type of course.

### Textbook Loan Scheme

302. The textbook loan scheme, under the Ministry of Education, was first implemented at the national level in 1975. This scheme covers all levels of education from primary to upper secondary. The objective of the scheme is to reduce the financial burden of parents, especially those from the lower income group, and ultimately to ensure access to education for every child. A total of 4,186,145 students benefited from this scheme in 2002 and 3,911,243 students in 2005.

**Table 9.9: Textbook Loan Scheme 2002 and 2005**

Year	Year 2002		Year 2005	
	Primary	Secondary	Primary	Secondary
Number of students who benefited from the scheme	2,542,347	1,643,798	2,374,050	1,537,193
<b>Total</b>	<b>4,186,145</b>		<b>3,911,243</b>	

*Source: Ministry of Education*

### The Nutrition and Health Programme

303. The collaborative efforts between the Ministry of Health and the Ministry of Education enabled the Government to implement appropriate healthcare programmes for the benefit of students. The Supplementary Food Scheme for example, was introduced to provide free nutritious food to the needy students from more than 5,000 primary schools throughout the country. In 2002, a total of RM123.6 million was spent on this programme and the amount spent increased to RM124 million in 2004. In addition, students also received milk under the Milk Scheme, which cost the Government RM16.3 million in 2002 and RM16 million in 2004. The objective of the Milk Scheme is to provide additional nutrition to students, especially the poor.

304. The Ministry of Health, through its school health services provided medical and dental care services as well as the prevention and control of contagious diseases services to school children. This effort was further enhanced through the Health Promotion Programme, aimed to create awareness about healthcare among school children.

305. In 2005, the Government of Malaysia has revised the allocation for food allowance for children placed in the institutions under the Department of Social Welfare and institutions run by the NGOs. The allocation was increased from RM3.90 to RM8.00 per child per day to ensure that the nutritional needs of the children are fulfilled.

### **Counselling and Guidance Service**

306. Every secondary school has a counselling and guidance unit headed by a full time counsellor or guidance teacher. The counselling and guidance services in schools are primarily focused to the students' welfare, career development and motivational courses. Some of the programmes organised are individual counselling, peer counselling, leadership courses, self-resilience and social skills development.

### **Boarding Schools**

307. Boarding schools in the form of day school hostels, central hostels and fully residential school hostels have been set up throughout the country. These facilities have improved and enabled students' access to education, particularly in remote and outlying areas. With the increase in student population, more boarding schools have been built to meet the demand. As of 2005, there are 54 residential schools with a total enrolment of 30,005 students.

308. Hostel facilities are available in Special Education Schools for disabled children. There are four hostels for secondary school students and 19 hostels for primary school students. In 2002, 627 students have been placed in the Government secondary school hostels and 1,565 in primary school hostels. Meanwhile in 2005, the number of students decreased to 568 and 1,500 in secondary school hostels and primary school hostels respectively.

### **Information Technology in Education**

309. In response to the rapid development in the information and communications technology, the Ministry of Education has implemented a wide range of programmes and activities to equip students, teachers and the parents with basic knowledge and skills in computer literacy to enhance their skills and competence.

### **Computer in Education**

310. In this respect, the computer literacy subject is offered to both primary and secondary students. Students in the secondary technical schools are also taught computer applications in designing, manufacturing and programming. Besides developing computer programmes for teaching and learning purposes, schools are encouraged to set up computer clubs as part of the co-curricular activities with the co-operation of the Parent-Teacher Associations and the private sector. In addition, the Ministry of Education has targeted to set up computer laboratories in every school by the end of Ninth Malaysia Plan (2010).

### **Ministry of Education E-Learning Project**

311. Recognising the importance of information and communications technology in national and socio-economic development, the Ministry of Education has initiated the E-Learning Project, aimed at educating and forging closer community-school relationship. This is done by opening school facilities and infrastructure to the community as well as sharing of knowledge, ideas and experience.

### **Smart School**

312. Smart School is one of the seven flagship applications of the Multimedia Super Corridor. It is aimed at improving and reforming the Malaysian school system towards a creative thinking and problem solving culture. The implementation of Smart Schools involves 90 schools comprising nine newly built schools and the upgrading of 81 existing schools. Efforts are undertaken by the Ministry of Education to develop relevant and suitable learning resources as well as software for student-directed learning in four core subjects namely the Malay Language, English Language, Science and Mathematics. Currently, the Ministry of Education is at the initial stage of developing an integrated school management software system. To facilitate the implementation of the smart school concept, a group of teachers were trained in teaching-learning approaches with the use of technology as an enabler. As at 2002, a total of 5,500 teachers had undergone this training programme. In addition, 2,823 principals and headmasters were trained on the concept and administration of a smart school in the year 2005.

### **Environmental Education Project**

313. The Environmental Education Project aims to instill awareness and appreciation about the environment among primary and secondary school students. Students are encouraged to carry out simple but meaningful and interesting activities that contribute towards protecting, promoting and conserving the environment.

### **Tech-Prep Programme**

314. The Tech-Prep approach to learning science and technology is gradually implemented in the technical and vocational schools and in the teaching of science in secondary schools. The Tech-Prep system recognises and respects students with different abilities and styles, and uses the contextual “hands-on” approach to teaching. It helps students understand and relate complex science, mathematics and technical problems to real life situations. The application-oriented approach promotes teamwork and problem solving skills. Courses are designed with the needs of the industry in mind.

### **Education for the Orang Asli Children**

315. The Government of Malaysia recognised the importance of education for the *Orang Asli* children. The Department of *Orang Asli* Affairs has supported most of them in primary and secondary schools. In 2002, there were 22,098 *Orang Asli* students in primary schools and 6,219 in secondary schools and it increased to 26,240 and 8,488 students in 2005 respectively. From 1971 to 2005, 541 *Orang Asli* students have completed their studies at tertiary level.

316. In complementing the services provided by the Ministry of Education, the Department of *Orang Asli* Affairs has launched a pilot project called “Stay With the School Programme”. The main objective of the programme is to encourage *Orang Asli* children to complete their primary education. Among the initiatives undertaken to meet this objective are motivational courses, sports and cultural activities, tuition classes and incentives.

317. The Government renders aid to the *Orang Asli* community to encourage greater participation in pre-school education. The number of pre-schools throughout the country increased from 179 in 2000 to 222 centres in 2006 with 4,906 pupils. In addition, the Ministry of Rural and Regional Development has established childcare centres for children below four years. At present, the Ministry managed to open 14 childcare centres which benefited 186 children. A literacy programme was launched in 1998 to inculcate good reading habits among the *Orang Asli* women and children. The centres under this programme increased from three in 1998 to 30 centres in 2006, which benefited 529 children.

### **LEISURE, RECREATION AND CULTURAL ACTIVITIES (Art.31)**

318. Various youth development programmes were implemented to increase the role and participation of youth in national development. In order to bring youths into the mainstream of national development and promote the practice of healthy and productive lifestyle, the *Rakan Muda* Programme was introduced in 1994. It focused on physical, spiritual, social and intellectual development of youths.

319. Art and cultural activities were also promoted through *the Rakan Seni Budaya* lifestyle programme aimed at inculcating the appreciation of cultural heritage among youths. In this regard, youths were exposed to local arts and culture and given the option to choose activities according to their interest and talents.

320. The Government has carried out a programme known as the National Social Service, specifically designed for upper secondary school leavers. The aim of the programme is to inculcate good moral values, enhance the spirit of patriotism and to prevent school leavers from engaging in crime or immoral activities. The National Social Service includes community services, homestay, educational visits, motivation and self-discipline courses as well as cultural, adventures, sports and recreational activities.

321. Most of major newspapers have special columns for youth and children. For example, the Star Publications had a special column for youth to express their views and ideas. A programme known as BRATS (Bright, Roving, and Annoying Teens) was carried out by Star Publication from 1993 to 2005 to provide an avenue for teenagers between sixteen to nineteen years to learn basic skills in journalism and sensitised to social issues and social work. Workshops on learning journalistic and social skills and activities such as charity work were organised throughout the year during the existence of the programme. Participants also learnt to lobby for their rights in policies pertaining to youth.

322. Children are also given equal attention by the broadcasting bodies. The National Broadcasting Department plays an important role in promoting child-friendly programmes by producing and screening more high quality programmes especially for children. The Department allocated 884 broadcasting hours for children programmes in 2001 which increased to 1,024 hours in 2004 and subsequently to 1,065 hours in 2005. The purpose of such programmes was to disseminate information, educate as well as entertain children.

40. In addition, schools organised co-curriculum programmes, which are regarded as an integral part of the school curriculum. The programmes provide opportunities for students to

interact, develop social skills, encourage team building, comradeship and tolerance as well as inculcate leadership qualities. The three types of co-curricular activities are uniformed bodies, clubs and sports activities.

## **CHAPTER 10**

### **SPECIAL PROTECTION MEASURES (Art. 22; 38; 39; 40; 37 (b)–(d); 32-36)**

#### **CHILDREN IN SITUATIONS OF EMERGENCY**

##### **Refugee Children (Art. 22)**

324. Although the Government of Malaysia has not ratified the Refugee Convention, the Government has always observed the customary international laws in this area. Persons entering Malaysia claiming to be refugees have always been given assistance on humanitarian grounds.

##### **Children in Armed Conflicts (Art. 38), Including Physical and Psychological Recovery and Social Reintegration (Art. 39)**

325. Generally, Malaysia is able to comply fully with its obligation under Article 38 and 39 of the CRC. The Government's domestic and foreign policy has always been to promote peace, stability and neutrality. Chapter 2 of Part II the Armed Forces Act 1972 [Act 77] states that a person below the age of seventeen and a half shall not be appointed as midshipman or cadet officer without the consent of his parents, and a recruiting officer shall not enlist any person under the age of seventeen and a half without the written consent of his parents. In practice, only persons eighteen years and above are recruited to join the Malaysian Armed Forces.

326. Malaysia is also a state party to the Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva Convention (III) Relative to the Treatment of Prisoners of War and Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War. As a party to these Conventions, the Geneva Convention Act 1962 was enacted to enforce the said Conventions.

#### **CHILDREN INVOLVED WITH THE SYSTEM OF ADMINISTRATION OF JUVENILE JUSTICE**

##### **The Administration of Juvenile Justice (Art. 40)**

327. The basic principle provided in Article 40 of the CRC is found in the Federal Constitution, Criminal Procedure Code [Act 593] and the Child Act 2001 [Act 611]. Article 5(1) of the Federal Constitution provides that no person shall be deprived of his life or personal liberty save in accordance with the law. Article 5(4) of the same provides that a person arrested has to be produced before a Magistrate without unreasonable delay and shall not be further detained in custody without the Magistrate's authority. Article 7 of the Federal Constitution provides for protection against retrospective criminal laws and repeated trials which apply to all



persons, adults as well as children. In addition, Article 8 of the Federal Constitution provides for equality before the law.

328. The Penal Code [Act 574] provides that the minimum age of criminal responsibility is ten years old and the act of a child above ten and under twelve years of age is not an offence if the said child has insufficient maturity to understand and judge the nature and consequences of his or her conduct.

329. In Malaysia, a person is presumed innocent until proven guilty. Section 90 of the Child Act 2001 [Act 611] provides for the procedure for the Court for Children to follow when a child is brought before the court for hearing, determining or disposing of any charge against the child. Under this section, the child has the right to be informed promptly of the charge against him or her. It shall be the duty of the Court to explain to the child in simple language suitable to his age, maturity and understanding about the substance of the alleged offence. Then, the Court shall ask the child whether he admits the facts constituting the offence. If the child admits the offence, the Court shall ascertain that the child understands the nature and consequences of his admission, and record a finding of guilt. If the child does not admit the offence, the Court shall then hear the evidence of the witnesses in support thereof. The child has the right to be legally represented for the purposes of preparing and presenting his or her defence.

330. Act 611 provides that where the child is not legally represented, the child's parents or guardian or any relative or responsible person may assist him or her in the case. The child also has the right to examine and re-examine witnesses and to call witnesses on his or her behalf. The decision of the Court for Children can be appealed to a higher judicial body. The provision in the Criminal Procedure Code provides that the child is to be assisted by an interpreter if the child cannot understand or speak the language used in court. Proceedings of the Court for Children are held *in camera*.

#### **Children Deprived of Their Liberty, Including Any Form of Detention, Imprisonment or Placement in Custodial Settings (Art. 37 (b)-(d))**

331. The laws enforced in the country are implemented to safeguard the best interests of the child. Article 5(1) of the Federal Constitution provides that no person shall be deprived of his life or personal liberty save in accordance with law. Article 5(3) of the Federal Constitution provides that where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice. Meanwhile, Article 5(2) of the same provides that where a complaint is made to a High Court or any judge thereof that a person is being unlawfully detained, the Court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the Court and release him.

332. Section 96 of Act 611 provides that a child under the age of fourteen years shall not be ordered to be imprisoned for any offence or be committed to prison in default of payment of a fine, compensation or costs. A child aged fourteen years or above shall not be ordered to be imprisoned for any offence if he or she can be suitably dealt with in any other way whether by probation, or fine, or being sent to a place of detention or an Approved School, or a Henry Gurney School (an institution under the administration of the Prisons Department).

333. Detention to a correctional institution is always the last resort. Under Act 611, a child under the age of ten shall not be sent to a probation hostel or Approved School and a child under the age fourteen shall not be sent to a Henry Gurney School.

334. Act 611 provides protection and rehabilitation of a child offender during the period of detention not exceeding three years in an approved school. The approved school is based on an open system with child-friendly setting.

335. Section 117 of the Criminal Procedure Code [Act 593] provides for the procedure where a person is arrested and detained in custody for purposes of investigation and the investigation cannot be completed within the period of twenty-four hours. If the person happens to be a child, he will be separated from adults. His parents or guardian and probation officer are informed of the arrest. He has the right to maintain contact with his family as long as it does not interfere with police investigation. Where an extension of his arrest is necessary for further investigation, section 117 obligates the police to produce the child arrested before the Magistrate for the extension of his arrest. An investigation diary is forwarded to the Magistrate for his perusal containing information on the arrest, the investigation that has been carried out and reasons for requiring further period of detention. When brought before the Magistrate for purposes of extending the detention period, the Magistrate is duty bound to inquire of any complaints from the child. A legal counsel may also represent the child.

336. Section 85 of Act 611 provides that appropriate arrangements shall be made to prevent a child while being detained in a police station from associating with an adult who is charged with an offence.

### **The Sentencing of Children with Particular Reference to the Prohibition of Capital Punishment and Life Imprisonment (Art. 37 (a))**

337. Act 611 prohibits the death sentence to be pronounced against a child and section 96 of the Act provides for restrictions on order of imprisonment.  
(Please refer to Chapter 4, paragraph 1 (j) and Chapter 10, paragraph 9)

### **Physical and Psychological Recovery and Social Reintegration of the Child (Art. 39)**

338. Approved Schools have been established to provide protection and rehabilitation to child offenders in conflict with the law or beyond control as stipulated in Act 611. As of 2005, there are eight Approved Schools with a total capacity of 1,200 children. Out of these eight schools, six are for boys and two for girls. Detention of a child to an Approved School is by the order of the Court for Children.

339. The programmes in the Approved Schools are geared towards character building, instilling positive attitude and improving their coping skills to facilitate their reintegration into the society. These programmes include counselling, academic, religious or moral education, vocational training, sports and recreation. The children are given special privileges such as home leave, pocket money and outings. The administration of these Schools is guided by Act 611 and the Approved School Regulations 1981.

340. Each Approved School has a Board of Visitors which comprises of not less than seven members. The responsibilities of the Board of Visitors are mainly to supervise and assist the management in the administration of the Schools especially with regard to the child's welfare. Rehabilitation in these institutions is for a period of three years. However, a child may be released before the expiry of his or her rehabilitation period by the Minister or Board of Visitors subject to his or her progress.

341. In addition, there are five other institutions known as Henry Gurney Schools under the administration of the Department of Prisons. Detention in these institutions is for a maximum of three years subject to the child offender not exceeding twenty one years old. The Director General of Prison may reduce the term of detention based on the progress of the child. The rehabilitation programmes cover a wide range of activities from academic and vocational training to spiritual, religious, sports and recreational activities.

342. Probation Hostels are centres for the temporary detention and rehabilitation of child offenders who are in conflict with the law and or beyond control. Admission to these centres is by Court order for a period of not more than twelve months as provided for under Act 611. Children detained in these centres are children who have committed minor offences. These centres provide care, protection and rehabilitation for children under remand, those on transit to Approved Schools and those on Supervision or Probation Order. As of 2005, there are 11 Probation Hostels with a total capacity of 530 children.

## **CHILDREN IN SITUATIONS OF EXPLOITATION, INCLUDING PHYSICAL AND PSYCHOLOGICAL RECOVERY AND SOCIAL REINTEGRATION**

### **Economic Exploitation of Children, Including Child Labour (Art. 32)**

343. A child is protected from economic exploitation, including child labour. The Government of Malaysia upholds the principle that a child should be protected from economic exploitation, performing any work that is likely to be hazardous to his health, or interferes with the child's education, or be harmful to his physical, mental, spiritual, moral or social development.

344. This is in line with Article 1 of the International Labour Organisation Convention No. 138, Minimum Age Convention 1973, which Malaysia ratified on 9 September 1997. The International Labour Organisation Convention sets the minimum age for entry into employment or work at fifteen, or the age of completion of compulsory schooling whichever is higher. Article 2 sets the minimum working age of fourteen years with the view to raise it once the economic circumstances and the development of educational facilities permit the same. It further stipulates as provided in Article 3 that the minimum age of eighteen years is considered suitable for any type of work that is likely to jeopardise matters relating to health, safety and morals of young people. Therefore, in compliance with the spirit of the International Labour Organisation Convention, Malaysian children are subjected to the Contracts Act 1950 [Act 136] which bars any person who has not attained the age of the majority to enter into any valid contract. The Age of Majority Act 1971 [Act 21] provides the age of majority as eighteen years, therefore enabling only persons who are 18 years and above to enter into a valid contract.

345. Section 13 of the Children and Young Persons (Employment) Act 1966 [Act 350] however, specifically states that *"Notwithstanding anything to the contrary contained in the Contracts Act 1950, or the provisions of any other written law, any child or young person shall be competent to enter into a contract of service under this Act otherwise than as employer, and may sue as plaintiff without his next friend or defend any action without a guardian ad-litem, provided that no damages and no indemnity under Section 13 of the Employment Act 1955, shall be recoverable from a child or young person for a breach of any contract of service"*. This provision effectively gives a working child the right to sue his or her employer for wages and or breach of service contract whereas the employer may not sue the child for damages or any breach of contract.

346. The Government of Malaysia has also imposed the minimum age of employment for children. The Children and Young Persons (Employment) Act 1966 [Act 350] defines a child as *"any person who has not completed his fourteenth year of age or of such age as the Yang di-Pertuan Agong may, by notification in the Gazette prescribe, whilst a young person means any person who, not being a child, has not completed his sixteenth year of age"*. Therefore, based on the above-mentioned definition of the child and young persons, this Act is applicable to persons below the age of sixteen years.

347. Section 2 (1) of Act 350 further stipulates that no child or young person shall be, or be required or permitted to be engaged in any employment other than those specified by the Act. Section 2 (2) of the same Act allows the child to be engaged in the following employment:

- (a) employment involving light work suitable to his capacity in any undertaking carried on by his family;
- (b) employment in any public entertainment, in accordance with the terms and conditions of a license granted in that behalf;
- (c) employment requiring him to perform work approved or sponsored by the Federal Government or the Government of any State and carried on in any school, training institution or training vessel; and
- (d) employment as an apprentice under a written apprenticeship contract.

348. Meanwhile section 2 (3) of the Act 350 states that a young person may be engaged in any of the following employment:

- (a) employment as a domestic servant;
- (b) employment in any office, shop (including hotels, bars, restaurants and stalls), godown, factory, workshop, store, boarding house, theatre, cinema, club or association;
- (c) employment in any industrial undertaking suitable to his capacity; and

- (d) employment on any vessel under the personal charge of his parent or guardian.

349. However, section 3 of the Act provides that the Minister may in particular cases, by order, prohibit any child or young person from engaging or being engaged in any of the employment mentioned in section 2 if the Minister is satisfied that having regard to the circumstances, such employment would be detrimental to the interests of the child or young person, as the case may be. In addition, the Act provides for hours of work of children and young persons and penalties for non-compliance with the provisions of the Act. Therefore it is obvious that the principle of the best interest, responsibility for care and protection as well as the quality of care are strongly upheld and widely practised in Malaysia.

### **Drug Abuse (Art. 33)**

350. The Government of Malaysia has taken the appropriate measures which include legislative, administrative, social and educational measures to protect children from the illicit use of narcotic drugs and psychotropic substances.

351. The Dangerous Drugs Act 1952 [Act 234] provides for offences relating to the possession and trafficking of drugs. The Act provides severe punishment to drug offenders. Whilst Act 234 stipulates severe penalties for offences related to the possession and trafficking in drugs, drug dependents are offered treatment and rehabilitation through the Drug Dependents (Treatment and Rehabilitation) Act 1983 [Act 283]. Under section 6 of Act 283, a Magistrate may send a drug dependent (including persons below 21 years) to a drug rehabilitation centre for a period of two years or place him under the supervision of a rehabilitation officer, within the community for a period of not less than two years and not more than three years.

352. Section 27 of Act 283 provides that a minor be segregated from adults. The Child Act 2001 [Act 611] also affords protection for children from exposure to moral danger which includes drug abuse.

353. The Government through its various agencies and in collaboration with NGOs has implemented various prevention programmes to create anti-drug awareness and curb drug abuse. One such programme is the school based 'Student Resilience and Interpersonal Skills Development Education' (STRIDE) curriculum consisting of 24 lessons on anti-drug awareness to be taught in primary 4, 5 and 6 classes. It also includes co-curricular activities. In 2002, 384 primary schools with 147,701 pupils were involved in this programme while in 2005, the figure increased to 281,977 pupils from 517 primary schools. These programmes are aimed at building the students' self-esteem, provide 'coping skills' and resilience to enable them to make the right choice and stay drug free. In addition, an extensive programme of exhibitions, seminars, motivational camps and media campaigns has also been carried out.

**Sexual Exploitation and Sexual Abuse (Art. 34)**

354. The Child Act 2001 [Act 611] is also enforced to prevent sexual abuse and sexual exploitation of the child. Section 43 of Act 611 makes it an offence for any person who sells, procures, harbours, detains and advertises any children for the purpose of prostitution or having sexual intercourse either within or outside Malaysia. Those who are found guilty shall be liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding fifteen years or both. For those who act as intermediary, aiding, abetting or controlling the prostitution of a child shall be liable, upon conviction, to a fine not exceeding RM50,000 and to imprisonment for a term of not less than three years but not more than fifteen years and shall also be punished with whipping of not more than six strokes.

355. Act 611 provides care, protection and rehabilitation for children exposed to various forms of physical, emotional and sexual abuse or exposed to moral danger. A child who is sexually exploited and in need of protection and rehabilitation is placed in a place of refuge not exceeding three years whereas a child who is sexually abused will be given care and protection in a place of safety for a period of three years or until he or she attained the age of eighteen years whichever is shorter. However, the child may be discharged or released not earlier than 12 months subject to the approval of the Court for Children or Board of Visitors, whichever is applicable.

356. Act 611 also provides for the setting up of Child Protection Teams and Child Activity Centres at both state and district levels aimed at mobilising community participation to assist the Department of Social Welfare in implementing prevention programmes and to deal with child abuse cases by co-ordinating locally based services to families and children. Such programmes and activities are targeted towards children at risk or children vulnerable to all forms of abuses and exploitations.

357. Child Activity Centres provide support for children from high-risk areas where the children have a strong possibility to be victims of social ills, including sexual abuse and exploitation. Children in these areas are largely exposed to socially deviant behaviour and need community support in developing and enhancing their coping skills. The Department of Social Welfare handled 15,185 reported cases of child abuse between 1992 and 2005, of which 4,503 cases were brought to the Courts for protection and justice.

358. The Penal Code [Act 574] also contains a provision making incest as an offence. The punishment for incest is imprisonment for a term of not less than six years and not more than twenty years and that the offender shall also be liable for whipping. This provision came into force on 1 August 2002. Apart from incest, sections 354 (provision on the offence of assault or use of force to a person with intent to outrage modesty), 375 (provision on the offence of rape), 376 (provision on the punishment for rape), 377A (provision on the offence of carnal intercourse against the order of nature), 377C (provision on the punishment for committing carnal intercourse against the order of nature without consent) and section 377E (provision on the offence of inciting a child to an act of gross indecency) of Act 574 are relevant in addressing the issue of sexual abuse of children. Sections 372 and 373 of Act 574 (provisions relating to the offence of exploitation of any persons for purposes of prostitution) are relevant in addressing issues related to the sexual exploitation of children.

359. Apart from the above provisions, section 292 of the Act 574 makes it an offence to sell, let to hire, distribute, publicly exhibit, circulate, import, export and advertise obscene books and other obscene materials with the aim to prevent sexual exploitation and abuse of children.

### **SALE, TRAFFICKING AND ABDUCTION (Art. 35)**

360. Malaysia recognises that trafficking in persons, especially women and children, is a serious problem with the increasing involvement of organised criminal groups. Although Malaysian law does not specifically criminalise ‘trafficking in persons’ as defined in the Trafficking Protocol, its laws already criminalise the component elements of the definition. The Child Act 2001 [Act 611], the Penal Code [Act 574] and the Immigration Act 1959/63 [Act 155] address the issues of sale, trafficking and abduction of children.

361. Section 48 of the Child Act 2001 [Act 611] makes it an offence to transfer or confer the possession, custody or control of a child for any valuable consideration. Section 49 of the Act makes the importation of a child by false pretences an offence while section 52 makes it an offence of taking or sending out a child without appropriate consent of the person having lawful custody.

362. Section 55A of the Immigration Act 1959/63 [Act 155] makes it an offence for any person to be involved, directly or indirectly, in conveying to Malaysia in or on any vehicle, vessel or aircraft any person in contravention of the Act. Section 55B makes it an offence to employ one or more persons, other than a citizen or holder of an Entry Permit, who is not in possession of a valid pass. The penalty is a fine of not less than RM10,000 but not more than RM50,000 for each such employee. Section 56(1)(d) of the Act makes it an offence to harbour any person whom that person knows or has reasonable grounds for believing has acted in contravention of the Act. The penalty provided under Section 57 is a fine not exceeding RM10,000 or imprisonment for a term not exceeding five years.

363. Meanwhile section 361 of the Penal Code [Act 574] makes it an offence of kidnapping for any person to entice any minor (a girl under sixteen years old or boy under fourteen years old) or any person of unsound mind out of the keeping of his lawful guardian without the consent of that lawful guardian. In addition section 370 makes it an offence to import, export, remove, buy, sell or dispose of any person as a slave or to accept, receive or detain any person against his will as a slave. Section 371 makes it an offence to habitually import, export, remove, buy, sell, traffic or deal in slaves. Section 372 and 373 stipulate that trafficking a person for purposes of prostitution is an offence.

364. The Kidnapping Act 1961 [Act 365] makes it an offence to abduct or wrongfully confine or wrongfully restrain any person with the intent to hold that person for ransom.

365. The Anti-Money Laundering Act 2001 (AMLA) makes sections 370, 371, 372, 373 and 373A of the Penal Code predicate offences under the Act. This enables the proceeds of such unlawful activity to be dealt with under the Act and subject it to freezing, seizure and forfeiture. Section 4 of the Act makes it an offence to launder such proceeds of unlawful activity. The prescribed penalty is a fine not exceeding RM5 million or imprisonment for a term not exceeding five years or both. AMLA empowers the Central Bank of Malaysia to monitor suspicious

transactions by requiring financial institutions to submit reports on such activities. The Central Bank is also empowered to disseminate this information to enforcement agencies for their further action. These powers may facilitate action by law enforcement agencies against traffickers in persons. Section 29(3) expressly empowers domestic enforcement agencies to co-operate with other enforcement agencies, in and outside Malaysia, with respect to offences under the Act.

366. The actions that may be taken under AMLA include:

- (a) the freezing of dealings in any movable property that is the subject matter of a money-laundering offence that is in the possession, custody or control of a financial institution on the direction of the Public Prosecutor (Section 50);
- (b) the seizure of immovable property that is the subject matter of a money-laundering offence on the direction of the Public Prosecutor (Section 51); and
- (c) the forfeiture of property seized under the Act by the Public Prosecutor under an order of the High Court where there is no prosecution or conviction for a money-laundering offence if the Public Prosecutor is satisfied that such property had been obtained as a result of or in connection with a money-laundering offence (Section 56).

367. Provisions of the Passports Act 1966 [Act 150] also aims at preventing the abduction and trafficking of children.

368. Malaysia has several bilateral and multilateral arrangements to combat transnational crime, including to prevent and suppress trafficking in persons. This covers border and security arrangements with neighbouring countries, the use of INTERPOL and ASEANAPOL, the Agreement on Information Exchange and Establishment of Communication Procedures with the Republic of the Philippines and the Republic of Indonesia which was signed on 7 May 2002 in Kuala Lumpur and the Mutual Assistance in Criminal Matters Treaty Among Like-Minded Association of South-East Asian Nations (ASEAN) Countries. These instruments and arrangements provide for co-operation in criminal matters and border control as well as co-operation in the identification of the offender and victims, sharing information about modus operandi and routes used as well as the training of law enforcement personnel.

369. In relation to regional efforts, Malaysia, as a member country of the ASEAN, is also actively involved in the implementation of the Trafficking in Persons component of the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime. This Plan of Action was adopted at the 2<sup>nd</sup> Annual ASEAN Senior Officials Meeting on Transnational Crime in Kuala Lumpur on 17 May 2002.

370. From the international perspective, Malaysia has signed the Convention against Transnational Organised Crime on 26 September 2002.



### **OTHER FORMS OF EXPLOITATION (Art. 36)**

371. Malaysia is committed to comply with the obligations under Article 36 of the CRC. In matters affecting children, the paramount consideration is the welfare and best interest of the child.

### **CHILDREN BELONGING TO A MINORITY OR AN INDIGENOUS GROUP (Art. 30)**

372. In Malaysia, children belonging to the minority group or the indigenous children have the right to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language. The rights under Part II of the Federal Constitution apply equally to them as to other citizens. The Federal Constitution gives the natives of Sabah and Sarawak special position in respect of education, positions in public service, permits to operate any trade or business on the concept of positive discrimination. Article 161 of the Federal Constitution preserves the right to use English and native languages in the states of Sabah and Sarawak.

373. Section 4 of the Aboriginal Peoples Act 1954 [Act 134] places the responsibility for the general administration, welfare and advancement of *Orang Asli* on the Commissioner of Aboriginal Affairs. He has under his charge the Department of *Orang Asli* Affairs. Matters pertaining to education, medical and health, economic and development, research and planning, resettlement programmes, training, administration, finance, operations and communications of the *Orang Asli* would come under his purview.

## **PART III: CONCLUSION**

### **CHAPTER 11**

#### **CONCLUSION**

374. As a State Party to the Convention on the Rights of the Child, Malaysia has undertaken efforts in ensuring the rights of its children are protected. The Government of Malaysia recognises that a child is the key to the country's survival, development and prosperity. The advancement and participation of the present generation will usher a future generation that is confident, responsible and caring. The Government acknowledges that by virtue of a child's physical, mental and emotional immaturity, he or she is in need and entitled to special protection and assistance in all circumstances regardless of any distinction in race, colour, sex, language, religion, social origin as well as physical, mental or emotional disability.

375. Malaysia has adequate legislative, administrative and policy framework to cater for the protection and needs of the children and the promotion of their physical, mental, intellectual and emotional development. From the legislative framework, the Government has enacted the Child Act 2001 which is a comprehensive legislation for the protection, care and rehabilitation of children. This Act incorporates the core principles of non-discrimination, best interests of the child, the right to life, survival and development as well as respect for the views of the child. In terms of administration of juvenile justice, the Act established the Court for Children, stipulating the procedures before the Court which take into account the mental and emotional maturity of the child. The rule of law and natural justice is upheld in the procedures, guaranteeing among others the right of the child to be heard and the right to a fair hearing before the Court.

376. Administratively, the Government periodically introduces new policies and initiatives that help to enhance the welfare and development of children in line with the principles under the Convention on the Rights of the Child. In addition, Malaysia has made continuous progress towards achieving the targets set by the World Summit for Children. The Government through smart partnerships with the corporate sector, NGOs, the Human Rights Commission of Malaysia as well as the civil society has responded to the needs of children's development in Malaysia by providing various platforms and services to uphold the spirit of the Convention. The Government of Malaysia is committed and will continue its efforts to promote and protect the rights of its children to survival, protection, development and participation.

Endnotes:

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<sup>1</sup> The Court for Children consists of a Magistrate who shall be assisted by two advisers one of whom shall be a woman. It sits for the purpose of hearing, determining or disposing of any charges against a child or exercising any other jurisdiction conferred or to be conferred on the Court for Children by or under Act 611 or by any other written law.

<sup>2</sup> In the States of Sabah and Sarawak the Syariah Subordinate Court shall in exercising its civil jurisdiction, hear and determine all such actions and proceedings as a Syariah High Court is authorised to hear and determine, if the amount or value of the subject-matter is dispute does not exceed three hundred thousand ringgit or is not capable of estimation in terms of moneys (not including claims of *hadhanah* or *harta sepencarian*)

<sup>3</sup> The provisions of the Model Laws have been adopted by the Federal Territories and the respective States with the exception of the State of Kedah which is in the process of doing the same.

<sup>4</sup> “Protector” means the Director General of Social Welfare; the Deputy Director General; a Divisional Director of Social Welfare; Department of Social Welfare; the State Director of Social Welfare of each of the States; any Social Welfare Officer appointed under section 8 of Act 611.

<sup>5</sup> Section 2 of Act 351 provides:

Protector means:

- (a) the Director General of Social Welfare;
- (b) the Deputy Director General of Social Welfare;
- (c) a Divisional Director of Social Welfare, Department of Social Welfare;
- (d) the State Director of Social Welfare of each of the States,

and includes any Social Welfare Officer appointed under any law regulating the appointment of a Protector

<sup>6</sup> refer endnote 5

<sup>7</sup> Section 130 of the Model Law on Syariah Criminal Procedure provides “When any person is required by any Court to execute a bond with sureties, and in such bond the person executing it binds himself to keep the peace or binds himself to be of good behaviour, the Court may require that there be included in such bond one or more of the following conditions, namely:

- (a) a condition that such person shall remain under the supervision of some other person named in the bond during such period as may be therein specified;
- (b) such conditions for securing such supervision as the Court may think it desirable to impose;
- (c) such conditions with respect to residence, employment, associations, abstention from intoxicating liquors or drugs or with respect to any other matter as the Court may think it desirable to impose.”

<sup>8</sup> refer to endnote 4

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