



大会

Distr.
GENERAL

A/HRC/11/NI/2
29 May 2009

CHINESE
Original: ENGLISH

人权理事会
第十一届会议
议程项目 3

增进和保护所有人权、公民、政治、经济、
社会和文化权利，包括发展权

马来西亚国家人权委员会* 提交的资料

秘书处的说明

人权理事会秘书处谨转交马来西亚国家人权委员会提交的来文，** 按照理事会第 5/1 号决议附件载列的议事规则第 7(b)条转载如下。该条规定，国家人权机构的参与要根据人权委员会议定的安排和惯例，包括 2005 年 4 月 20 日第 2005/74 号决议进行。

* 具有增进和保护人权国家机构国际协调委员会赋予的“A类”认可地位的国家人权机构。

** 作为附件，仅以原文印发。

ANNEX

Response of the Human Rights Commission of Malaysia (SUHAKAM) to report of Special Rapporteur on Rights to Education

INTRODUCTION

SUHAKAM would like to express its gratitude to the Special Rapporteur on the Right to Education, Mr. Vernor Muniz Villalobos on his visit to Malaysia in February 2007, his meeting with the Commission and thereafter, for his comprehensive report on the status of right to education in Malaysia.

SUHAKAM views the report with great interest especially the observations and recommendations made to further enhance the status of education in Malaysia.

ISSUES OF CONCERN

Obligation under Convention on the Rights of the Child (CRC)

SUHAKAM has voiced its concern over the Government's reservation to Article 2 and 28(a) of the CRC that stipulates the principle of non-discrimination in the realization and implementation of all the rights under the Convention as well as free and compulsory education. Due to its concern, SUHAKAM has recommended for the withdrawal of the reservations to the Government based on the following reasons:

Article 2: Non-Discrimination¹

SUHAKAM recognizes that one of the reasons for the Government's reservation on this particular Article is due to the special measures that the Government needs to introduce in order to assist disadvantaged groups of children. For example financial assistance is given to children of low income group from rural and depressed urban areas. Articles 8(1) and 12(1) of the Federal Constitution also embody the principle of non-discrimination with the emphasis that everyone is equal before the law. SUHAKAM is fully aware that the application of the principle of non-discrimination does not require identical treatment for everyone. Therefore, it accepts the need for States to inculcate special measures for the elevation of the marginalised groups of children to ensure that their rights and well being are safeguarded. Since Article 2 permits special measures, such as the ones implemented by the government, there is little justification for Malaysia to maintain a reservation to Article 2 of the CRC.

Article 28(a): Free and Compulsory Education²

Despite the announcement by the Government to abolish school fee charges, other form of implied charges such as fee for using sports facilities, extra-curricular activities, examinations, insurance, usage of laboratory, personal files, report card, badges and name tags are still in place. Since the imposition of these hidden fees impedes on the opportunities of some children to receive education due to poverty, SUHAKAM is of the view that there is a need for Government

¹ SUHAKAM Report on the Roundtable Discussion on the Reservation to CRC, 2008.

² Ibid.

to review and monitor the imposition of these hidden fees at the school levels and to ensure that education provided for all children is truly free and affordable. Therefore, SUHAKAM recommends the withdrawal of reservation on Article 28(a) in order to strengthen Government's commitment in providing free and compulsory education for all children.

Need for Reform to Cater to Needs of the Disadvantaged

The Special Rapporteur referred to prevalence of dropouts in the school system despite the encouraging enrolment rates at the primary level of schooling. SUHAKAM is aware that the Ministry of Education (MoE) is mounting special efforts to address the problem of dropouts and to ensure that the system is more relevant.

Apart from the challenges faced by vulnerable groups e.g. indigenous community and persons with disabilities, a school system which focuses on academic excellence based on performance in examinations contributed to the problem in enrolment and dropouts among students. Such a system should be reviewed and SUHAKAM welcomes the announcement made by the Minister of Education on 26 September 2008³ that a new curriculum will be introduced at the primary school level in 2010 to make it more holistic and less examination oriented.

SUHAKAM also appreciates the effort made by the MoE to introduce a more student-friendly syllabus and special curriculum modules for *Orang Asli* (indigenous) children. Such effort should be made extensive and teachers are given special training to be more responsive to the special need and sensitivity of the *Orang Asli* community.

Accessibility

(i) Indigenous Children

Children from indigenous community and children with disabilities would contribute to the figure on enrolment and dropouts mentioned by the Special Rapporteur. SUHAKAM's work with the indigenous community proves that not all indigenous children are enrolled in school.⁴ Furthermore, in May 2007, SUHAKAM conducted a survey among indigenous people in Malaysia and found some key challenges on the issue of education:

Orang Asli in Peninsular Malaysia

- *Orang Asli* living in the remote areas encounters problems with access to school due to lack of access roads for vehicles, unreliable transport or no transport at all. It is regrettable this problem still occurred despite the financial aid provided by the Government for transportation.
- There is little incentive to attend school because parents and children perceive that education does not help to alleviate poverty, given that some children who have completed secondary school are unemployed. Attendance is still at about 50% despite the fact that the schools are available in the village areas.

³ The Star dated 26 September 2008

⁴ SUHAKAM is currently working on a status report on right to education among *Orang Asli*

- Quite often girls marry at a young age and in some cases, before they complete primary school.
- Uniform and shoes provided by the government for the school are of poor quality and only available in limited sizes.

Penan Community

- Penan children who do not have identification documents (such as birth certificates) are not eligible for financial assistance, free uniforms and text book. Most children do not have birth certificates for reasons rooted in poverty and inaccessibility of registration offices due to distance and lack of transportation.
- The Penan would like to have schools nearer their homes so that children, especially young ones, do not have to stay in hostels. Parents are reluctant to send children to hostels as they want to nurture and bond with their children.
- Lack of job opportunities for youth who have completed secondary school reduces their motivation to study. In addition, unemployed youths who returned to their village after living in the urban city for a while, become social misfits. They find it hard to readjust to life – and earning a livelihood in their village.

(ii) Children with Disabilities (CWD)

The enrolment or placement of CWD in schools is affected because of social prejudice and the reluctance of schools to accept them due to their fear that having these children in their school will affect the school's overall academic performance. In addition, the lack of trained teachers to handle CWD, disabled-friendly public infrastructure, transportation and facilities in schools also impedes on the CWD's mobility and accessibility to school.

Malaysia has enacted the Persons with Disabilities Act 2008⁵ and became signatory to the Convention on the Rights of Persons with Disabilities on 8 April 2008⁶. Section 28 of the Persons with Disabilities Act and Article 24 of the Convention have given due recognition on the right to education for PWD. Therefore, SUHAKAM urges the Government to:

- i. take the necessary steps to ensure CWD's accessibility to education;
- ii. implement the recommendation made by SUHAKAM in its report 'Roundtable Discussion on Education for Children with Disabilities' in 2004; and
- iii. ratify the Convention without further delay.

⁵ The Act was gazetted on 24 January 2008.

⁶ However, Malaysia has not ratified the treaty although the Government has repeatedly reiterated its commitment towards ratifying the document.

(iii) Children of Refugees, Asylum-Seeker, and Undocumented Migrant Workers

SUHAKAM is deeply concerned about the right to education among children of refugees, asylum seekers and undocumented migrant workers. Though the Commission and various quarters have urged the Government to provide education for this group of children, Malaysia remains non-committal on this issue. The Government does not recognise refugees and asylum seekers as it fears that any form of recognition would increase the influx of this group of people to Malaysia. Malaysia is a non-signatory to any Convention relating to refugees and asylum seekers. It has also placed a reservation on Article 28 of the CRC. As Malaysia is a signatory to the Declaration on Education for All, SUHAKAM urges the Government of Malaysia to provide some form basic education to these children.

Acceptability

(i) Languages of Instruction

The policy of teaching Science and Mathematics in English has been a contentious issue since its implementation six years ago. The issue has flared up tremendously recently when more than 5,000 people demonstrated on the street of Kuala Lumpur protesting against this policy being used in the school system. SUHAKAM feels that the Government particularly the agencies concerned should have consulted the various stakeholders especially the teachers when drawing up the policy. SUHAKAM was made to understand that lack of consultations with teachers and parents have contributed to the opposition against the policy. The Government needs to make a judicious decision soon on this matter.

With regard to the issues facing Chinese and Tamil medium schools, SUHAKAM understands that the MoE is taking steps to alleviate the problems within the context of the policy governing these schools. SUHAKAM urges the MoE to prioritise assistance to schools in rural areas that are in dire need of repair and/ or equipment.

(ii) Corporal Punishment

Schools in Malaysia are still in favour of caning as they perceive this to be the most effective way of disciplining students. Lately there have been calls to implement caning as punishment for female students by some Parents Teachers Association (PTA), school administrators and teachers union. SUHAKAM does not condone caning. However, since it is permitted by the MoE, SUHAKAM urges for caning to be carried out in accordance with the stipulated regulations and procedures. Caning should not be intended to inflict physical or mental harm and the child's human dignity should not be degraded in any way. In addition, SUHAKAM also appeals to the MoE to seek alternative ways to instil discipline among the students that is rehabilitative and rights-based.

Adaptability

(i) Human Rights Education

SUHAKAM would like to record its appreciation to the MoE for their continuous collaboration with the Commission in the promotion and protection of human rights among the school community.

This year, SUHAKAM has embarked on a programme called ‘Human Rights Best Practice in Schools.’ This is done in collaboration with the MoE as an extension of the World Programme for Human Rights Education Plan of Action (Phase 1, 2005-2007)⁷. This is an effort to encourage human rights values and practice in every aspect of school life. It also aims at developing and strengthening human rights culture on a longer term whereby Malaysian children could grow to be intellectually, spiritually, emotionally and physically balanced adults, capable of contributing to the harmony and betterment of the society. This is very much in tune with what is recommended in the Special Rapporteur’s report.

(ii) Teacher Training

To further support and strengthen human rights education in school, this year, SUHAKAM has begun its training programme for teacher trainers. Recently, a Training of Trainers (ToT) training workshop for senior lecturers from all the teacher training institutions was held in Kuala Lumpur. Hopefully with the collaboration of the Teacher Training Division of the MoE, this training can be replicated/ extended at the level of the training institutes. SUHAKAM recognises that teacher trainers and trainees are important links in trying to acculturate human rights in the school system.

Higher Education

(i) Legal Framework: University and University College Act 1971 (UUCA)

The Special Rapporteur has pointed out various limitations imposed by the UUCA on the university students. In short, the UUCA has curbed the academic freedom of students, lecturers and the staffs of higher learning institutions in the country.

In 2008, the Government, as promised, made several amendments to the UUCA. With the amendment, students are now allowed to be members of, or to be involved with the activities of, any society, organization or body that is not political in nature. However, permission to associate with such organizations is subject to approval from the university authorities.⁸ SUHAKAM is particularly concerned that the amended Act remains silent on the issue of freedom of expression which is pivotal to the exercise of academic freedom on campus.

(ii) Campus Election

SUHAKAM continues to receive complaints from university students on alleged malpractice by the university authorities during campus elections. Also various conditions were put in place for students to be eligible candidates, and restrictions imposed on the campaigning process. To date, SUHAKAM is still denied access to observe the running of campus elections.

⁷ World Programme for Human Rights Education Plan of Action (Phase 1, 2005-2007) was adopted by all Member-States of the UN General Assembly on July 14, 2005.

⁸ Section 15 of the UUCA.

CONCLUSION

SUHAKAM is of the view that the Special Rapporteur's Report has covered the pertinent issues on the right to education in Malaysia. It fully endorsed the suggestion for the formulation of a National Strategy for Human Rights Education.

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