

CHILD RIGHTS AND ENFORCEMENT AGENCY POWERS, 18 SEP 2013

The on-going debate over the rights of a child to have his/her parent informed or present while the child is being questioned or interviewed by the police raises a fundamental question of how the Malaysian government sees its commitment towards the rights of children.

It is acknowledged that the police will, on many occasions have to question children be they witnesses, victims or as children in conflict with the law. However, the vulnerability of children to police questioning or interrogation needs to be acknowledged and understood. A child's dependency, lack of maturity, susceptibility to pressure and inability to assert his/her rights fully (given the existing power differential between a police officer and a child) must be taken into account.

Of additional concern is the nature of police questioning which takes place and whether or not police officers are sufficiently sensitive and skilled in interviewing children in a manner which ensures the best interests of the child. If the interests and rights of children are not highlighted, they will simply be overlooked or worse still, abused. A badly conducted interview or interrogation can traumatize a child.

The Malaysian government ratified the United Nations Convention of the Rights of the Child (CRC) in 1995 to uphold its commitment to the protection and welfare of children. Being a signatory to the CRC, the Malaysian Government has a duty to ensure that domestic laws and policies affecting and impacting on children are in line with the CRC. The Preamble of the Child Act 2001 acknowledges that a child, by reason of his physical, mental and emotional immaturity is in need of special safeguards, care and assistance, and is entitled to protection in all circumstances. Article 3 Para 1 of the CRC states that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

So what does "the best interests of the child" mean? The General Comment (GC) 14 from the UN Committee on the Rights of the Child states that the best interests of the child encompasses a substantive right, a fundamental legal principle and a rule of procedure. It also states that the full application of the concept of the child's best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity. GC14 provides an important framework for assessing and determining the child's best interests and is an expectation of States parties. As a signatory to CRC the Malaysian government has both a moral and state duty to implement this obligation of ensuring the best interests of the child as a paramount consideration.

Hence, when the police or any enforcement agency questions or interrogates children, what is important is that the rights of children, whatever their status (victims, witnesses or suspects), are protected. This would require that:

- a) parents or guardians or a child protector be properly notified and/or be present when a child is questioned.
- b) The protective nature of Section 113 of the Child Act 2001 which in effect requires the notification of an adult before a child is brought for questioning, be implemented in all investigations involving children.
- c) enforcement agency officers be properly trained in child interviewing techniques.
- d) a CRC-compliant standard operating procedure on interviewing children be developed and implemented.

Above and beyond this is a need for a consciousness of child rights to be nurtured in all agencies dealing with children and be integral in all policy and actions involving children. The year 2015 will mark the 20th year of Malaysia being a signatory to CRC. The Malaysian government should use the opportunity the current debate has created to set a standard of good practice where the rights of children are concerned and their best interests taken into consideration.

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