



i-Aware
**International Association for Women's Advocacy and
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INTRODUCTION

International Association for Women's Advocacy and Rights Malaysia is an established national organization registered with the Malaysian Registry Society PPM-030-10-29092020, focusing on issues of human rights, and prioritizing women and children globally, according to Islamic perspectives. i-Aware aims to educate the Malaysian community on women's and children's rights, as well as our role in upholding those rights. As a new association, i-Aware has participated in many national and international platforms in advocating the rights of women

This is the first time i-Aware is participating in the UPR process. Although there are many voices speaking on the rights of women and children, we feel that some things are still being overlooked. Therefore, it is impertinent to have more voices to advocate for the rights of women and children.

For this review cycle, we touch on children's rights, focusing on their rights when entangled in criminal court procedures. i-Aware believes that this matter has not been looked at seriously, even though there are many complaints lodged on this issue. Children who are involved in criminal cases deserve the right to be protected especially in public. Therefore, this report aims to shed some light on this matter in the hopes of new laws and policies will be drafted for better protection of the children.

RIGHTS OF CHILDREN, LAW AND POLICY

1. Privacy, safety and reassurance of accused child during the court trial

One of the objectives of law is to preserve the dignity of an individual including the protection of privacy.¹ Regardless of whether a person is innocent or accused of a criminal act, his dignity should be intact and protected especially in public. In the context of children, a child's privacy needs to be protected in any manner. Article 1 of the **Cairo Declaration on Human Rights in Islam (CDHRI)** prohibits discrimination on any grounds and mandates the protection of children.² Therefore,

regardless of the situation, vulnerable groups such as children are to be prioritized and to be protected for their rights and privacy.

Malaysia has ratified the Convention on the Rights of Children (CRC) and enacted a specific law, the Child's Act 2001 (Amendment 2016).³ Children are considered vulnerable in society and should be protected either as witnesses or as parties to a court case.

i) Disclosure of the child's full name in court cases

In the situation of a child is being charged in civil court, the court officer would display the name of the child accused on the court's notice board, along with the names of those involved in other cases. Consequently, the accused child's identity is made known to the public, and this is an infringement of the child's right to privacy and safety. There have been some cases in Perak and Kedah where the name of the child accused was displayed on the court notice board (refer to Appendix C). This is a violation of the child's privacy and that of his or her family. This situation may also create prejudice against the child accused and towards his or her family.

Section 15 of the Child Act 2001,³ relating to restrictions on media reporting and publication does not impose a responsibility on the prison and police officer to protect the child's privacy and safety. This provision may not give a complete protection towards the children and might cause trauma and scare the children.

ii) Treatment of the accused child when brought to the court

There have been cases where a child accused had to wear the orange detention-uniform for the accused and be brought by police openly to court. In addition, the accused child had to wait with other accused while waiting for his or her case to be called by the court (refer to Appendix C). This has exposed the accused child's identity to the public and the media. This gives the media chances to take photos or videos of the accused child and published the child's picture on various platforms.

According to the Convention on the Rights of the Child:⁴

Article 3 - *States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety.*

Safety must be given to children by all, including law enforcement, courts and the public to ensure that children could live in a safe environment.

Recommendation:

1. Strictly enforce Section 15 Child's Act 2001 to protect the identity of any child involved in a court case from being revealed to the public.
2. Protect the identity of the child entangled in criminal procedures by using acronyms.
3. Protect any child's identity and privacy by all means.
4. Implement specific and better policy to protect the accused child so that his or her privacy is not being exposed and used by unauthorized parties, including the court officers.

5. Amend the Criminal Procedure Code and the Child Act to afford better protection for the accused child.
6. Ensure that a designated room for any child and accompanying family members is available at all courts.

2. Rehabilitation Schools for children are not available in all states

Children who were found guilty of a criminal offence is either placed in a rehabilitation school or at Henry Gurney School. This will separate the child from his or her family. Only few states in Malaysia participate in providing rehabilitation school (named *Sekolah Tunas Bakti*) for the children, whereas Kelantan and Kedah provide no rehabilitation school. Therefore, if a child is found guilty in the state of Kelantan or Kedah, the child would then be sent to a rehabilitation school elsewhere, like in Terengganu or Penang, which is maybe about 200-300 km away from his or her home (refer to Appendix C). Poor families who cannot afford to travel frequently and could not visit their child often. This will impact the child's relationship with his or her family and the psychological development of the child.

Articles 9 and 18 of the Convention on the Rights of the Child state:⁵

Article 9

1. State Parties shall ensure that a child shall not be separated from his or her parents against their will, except when such separation is necessary for the best interest of the child.

3. State Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Article 18

States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.

Recommendation:

1. Build a rehabilitation centre for juvenile offenders in every state.
2. Establish sufficient rehabilitation schools at all states.

¹ Muhammad Adil Khan Afridi. 2016. Maqasid Al-Shari'ah and Preservation of Basic Rights Under the Theme "Islam and its Perspectives on Global & Local Contemporary Challenges". Journal of Education and Social Sciences, Vol. 4.

² Organization of Islamic Cooperation. Cairo Declaration of Human Rights in Islam, 2021. https://www.oic-oci.org/upload/pages/conventions/en/CDHRI_2021_ENG.pdf

³ National Laws on Labour, Social Security and Related Human Rights (NATLEX), CHILD ACT No. 611, 2001 (Section 15), <https://www.ilo.org/dyn/natlex/docs/WEBTEXT/65516/65279/E01MYS01.htm>

⁴ Convention on the Rights of the Child, Part I, Article 3 (3), Page 2. <https://www.ohchr.org/sites/default/files/crc.pdf>

⁵ Convention on the Rights of the Child, Part I, Article 9, Page 3.
<https://www.ohchr.org/sites/default/files/crc.pdf>