

# CHILDREN HAVE RIGHTS, TOO

Children's rights is not at odds with  
culture and religion, writes  
**SHAZEERA AHMAD ZAWAWI**

And not everybody who attended the workshops felt that human rights in general or CRC in particular is a Western product that is incompatible with the local customs and religious teachings.

In fact, quite a number of them were of the view that better understanding of the CRC will greatly benefit teachers and students.

From the views submitted, three common negative views voiced by the Islamic teachers were:

1. The CRC is incompatible with local customs and syariah. Furthermore, syariah law is already a complete system that can guide the Muslims; hence there is no need to adopt human rights principles as part of our way of life.

2. The CRC only focuses on children and ignores the rights and authority of parents or guardians in the life of the child.

3. The CRC allows too much freedom for children and there is a concern that children may

not be able to exercise their freedom wisely due to their immaturity.

To address these common perspectives, let us look at the CRC provisions and also Suhakam's hands-on experiences with children themselves.

It is also important to note that in examining the so-called "controversial articles" in the convention, the exercise must not be done in isolation of the legislative history of the convention and also historical facts that lead to the creation of the convention.

This is because it is important for the debate on CRC compatibility with local norms, customs and religious practices to be kept alive and informed by various arguments and substantial resources from time to time.

This will ensure that the Convention will stay relevant.

Is the CRC really incompatible with local custom and syariah law?

One of the common issues raised is on freedom of thought, conscience and religion contained in Article 14 of the Convention.

For example, some of the participants who attended the workshop were quick to draw the conclusion that Article 14 contravenes syariah principles.

According to syariah law, it is a crime for a Muslim to leave his or her religion (apostasy) and the sentence for such crime, is as agreed by many Islamic jurists, is death.

The problem with such contention is the allegation was made without having thoroughly read the Article.

Article 14 lists conditions that must be observed by parents and the state in exercising the right.

It is also important to understand the background on how the provision was enacted in order to understand the challenges of creating universal standards amid diverse national values and practices.

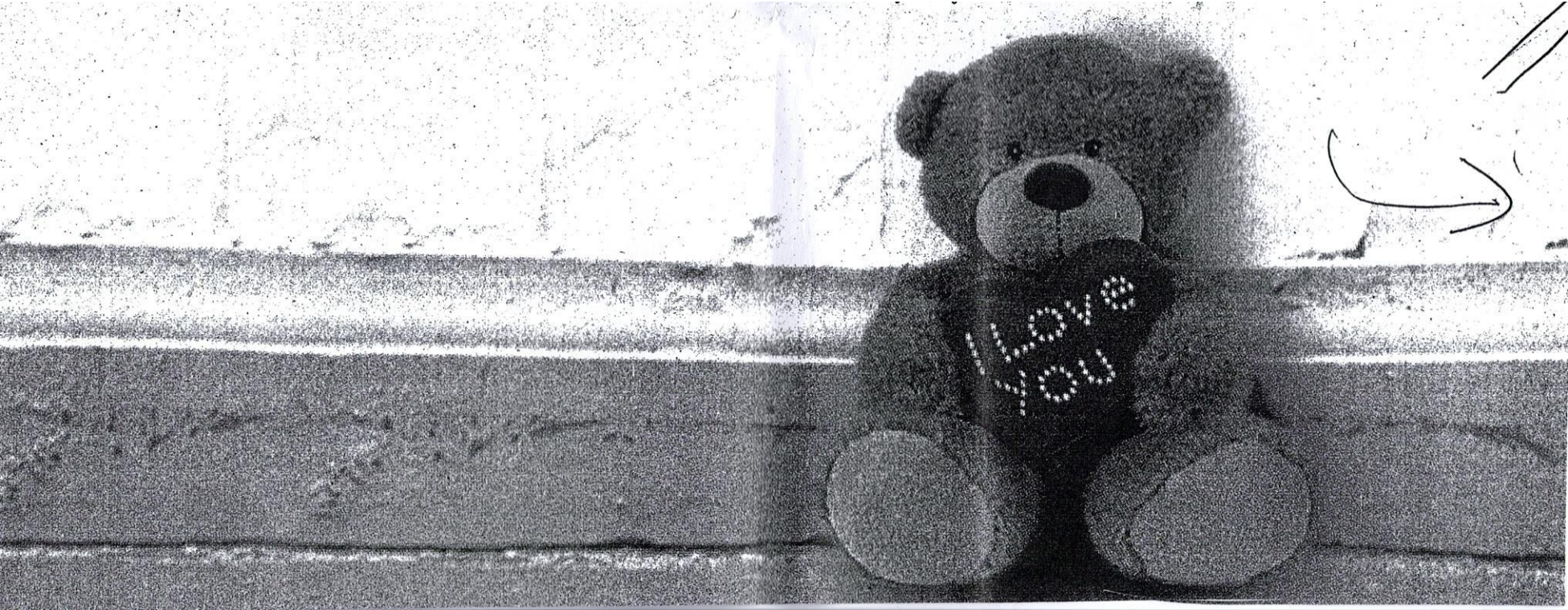
On the first factor, freedom of thought, conscience and religion is not an absolute but a qualified right.

Clause (2) of the Article states the role of parents to provide guidance to the child in the exercise of his or her right. In dispensing their role, parents must do so in a manner consistent with his or her evolving capacities.

In addition, the right under Article 14 may be subject to legal limitations in view of protecting public safety, order, health, morals or the fundamental freedoms or rights of others.

These conditions suggest that a child's right to exercise his or her religion should be supported by proper guidance from his or her parents and can be subject to limitations in law if it falls within any of the categories stipulated by Clause (3) of the Article.

Furthermore, it is important to realise that although Article



14 was not the most difficult article to work on (Article 1 on the definition of a child was the most contentious), it was still not easy for the Working Group on Drafting of the CRC to reconcile on what should be the content of this particular provision.

According to the *travaux preparatoires* (official records of the negotiations which help clarify the intentions of a treaty) of the CRC, the country representatives involved in the drafting were divided on what should be incorporated into the final version of Article 14.

Multiple drafts were prepared to seek a better compromise and consensus among the countries.

Some argued that in approaching the question of freedom of thought, conscience and religion under Article 14, the Working Group should not set a lower standard or depart from the existing human rights instruments.

Others were of the opinion that the Article should incorporate alternative formulations which consider countries that are not in the position of giving a child a freedom to choose his or her own religion.

Countries such as Bangladesh, Morocco, Algeria, Egypt and Tunisia which were part of the Working Group were actively providing inputs on the position of Islamic law and customs in approaching the question of freedom of religion.

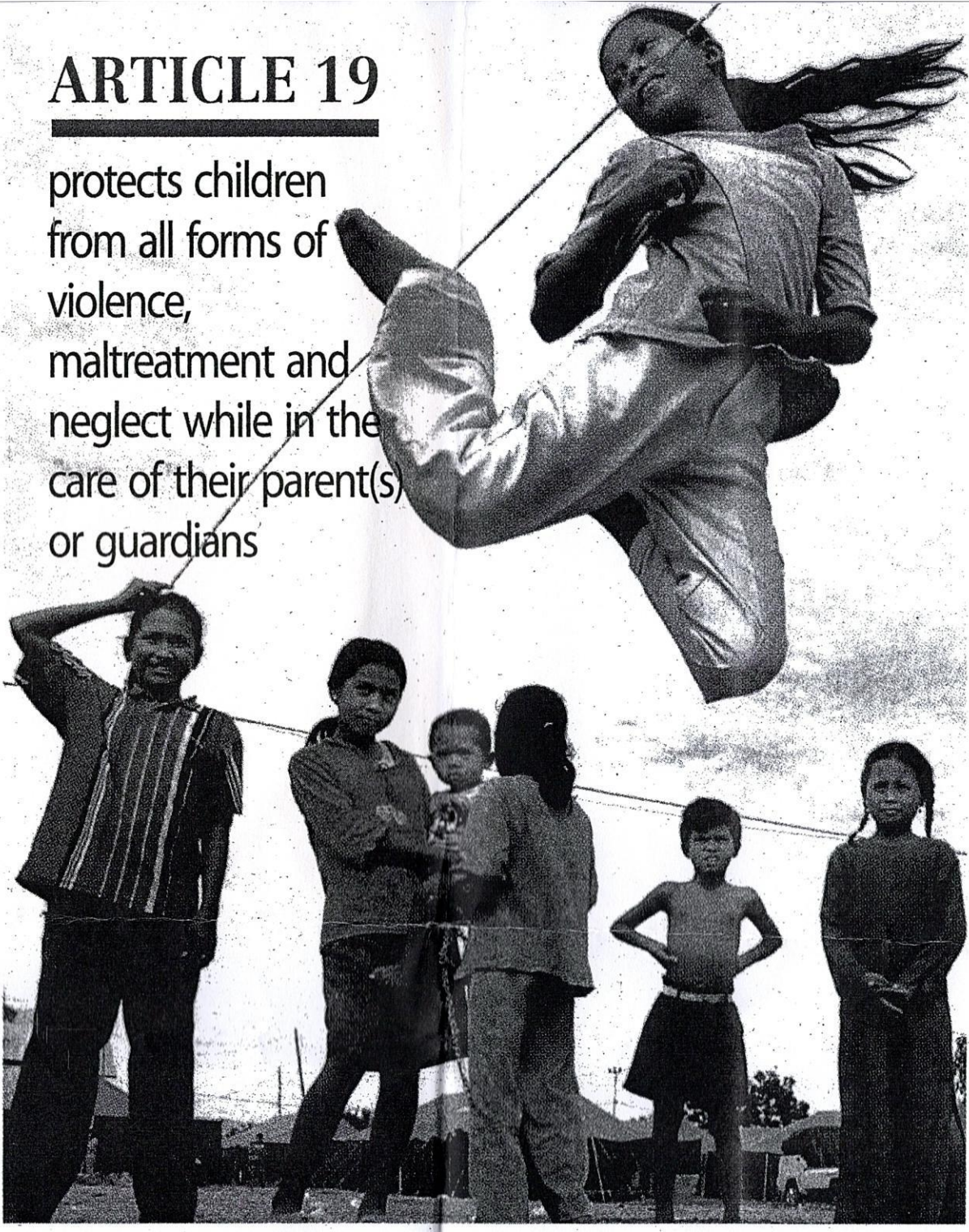
The final version of the Article reflects the difficult process of formulating a universally acceptable human rights document.

Hence, to simply dismiss Article 14 as a provision that is insensitive to Islamic law and customs is unwarranted.

In fact, the current Malaysian situation manifests how the question of freedom of religion of children has not been put to rest yet either by the public or the state, for example in cases where

# ARTICLE 19

protects children from all forms of violence, maltreatment and neglect while in the care of their parent(s) or guardians



SUHAKAM will be hosting the 13th annual meeting of the Asia Pacific Forum of National Human Rights Institutions in Kuala Lumpur on July 28-31. The meeting brings together APF members, other national human rights institutions, UN agencies, national governments, NGOs and donor groups to discuss critical human rights issues facing the region.

THE Convention on the Rights of the Child is one of the most widely ratified international treaties since it was adopted by the United Nations General Assembly in November 1989.

The convention has since been ratified by 193 countries but not USA and Somalia.

Malaysia ratified the Convention in 1995 with seven reservations made to Article 2, 7, 13, 14, 15, 28 (1) (a) and 37.

These articles deal with diverse issues affecting a child's rights such as non-discrimination, right to a name and nationality, freedom of expression, conscience, thought and religion, compulsory and free education for all children and the right to be protected from torture and deprivation of liberty.

the children were converted by one of his or her parents such as in the case of Chang Ah Mee or Shamala Sathiyaseelan.

In fact, Article 14 should be a point of reference for the state to create adequate and appropriate mechanisms to safeguard children whose right to exercise his or her religion, conscience and belief are hindered by his or her parents' marital problems or conflict.

Other important Articles that reflect on how the CRC recognises Islamic practices are Articles 20 and 21.

Article 20 is about the right of a child to special institutional care and protection in the event that the child is temporarily or permanently deprived from his or her family environment.

Clause 3 of Article 20 has included *kafalah* (guarantee) of Islamic law as one form of care recognised by the Article.

Article 21, on the other hand, provides for a child's right to adoption.

According to Adam Lopatka, the

chairman/rapporteur of the Working Group on a Draft Convention on CRC:

"Unexpectedly for some members of the Working Group, there were serious difficulties in reaching common agreement on the content of Article 21 concerning adoption.

"Delegates of states with an Islamic culture had problems accepting the proposed text because adoption is not recognised in those countries."

The way in which Article 21 was phrased signifies the convention's flexibility in addressing the difficulties of some states with Islamic culture to accept the adoption system.

Not only do these three articles reflect how the drafting process of the CRC accommodated national differences during the process, it also reflects the political, economic and social realities of the countries involved.

In short, being a document aimed for universal acceptance

does not prevent the CRC from addressing and embracing the local social and cultural peculiarities found in many countries.

One of the common questions posed by the participants who attended the CRC workshop was, "We only talk about children's rights, what about our rights on our children?"

There are two aspects that need to be clarified here.

One, there is no such thing as Convention on Parental Rights or Teachers's Rights because parents and teachers are regarded as adults whose rights are stipulated under the Universal Declaration of Human Rights, International Covenant on Civil Political Rights, International Covenant on Economic Social and Cultural Rights or being women, the Convention on the Elimination of All Forms of Discrimination Against Women (Cedaw).

Children, on the other hand, are vulnerable to societal threats such

as underage labour, human trafficking, and are by many cultural or community practices not as rights holders but mere objects of protection or property of the family.

The very first movement to establish international standards in child protection was in fact related to attempts of dealing with the problems of children who are stateless and victims of wars, children who are trafficked as slaves, and also children who are labourers in horrible working conditions.

Hence, the primary objective of establishing CRC is embedded in the efforts of the states and civil societies to address the devastating realities that children have to endure in the early 20th century.

This, however, does not mean the CRC neglects the role and responsibilities of parents to their children. The CRC contains articles that directly deal with parental

□ CONTINUED NEXT PAGE



## □ FROM PREVIOUS PAGE

roles and responsibilities, and there are also articles that touch on the role of parents to assist their children in the exercise of these rights under the CRC.

One example would be Article 5 that provides for parental guidance that is consistent with the evolving capacities of their children.

Article 5 asserts that:

“State parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.”

Article 5 not only recognises the role of parents to provide guidance and direction to children but also members of the extended family and community.

In fact, there are other articles that deal with parental responsibilities and family care such as Article 9 and 10.

In addition, Articles 19 and 20 provide protection for children from family settings or conditions that pose threat to themselves.

Article 19 protects children from all forms of violence, maltreatment and neglect while in the care of their parent(s) or guardians while Article 20 provides that special protection and assistance must be given to children who cannot be allowed to remain in their family environment.

Parental roles in support of children exercising their rights can be found in Article 14 (2) where parents are expected to provide guidance to children in the exercise of his or her freedom of thought, conscience and religion.

Furthermore, Article 27 (2) reiterates the roles of parents

or others responsible to secure their child's right to a “standard of living that is adequate for the child's physical, mental, spiritual, moral and social development”.

These examples dismiss the misconception that CRC is not “parents-friendly”.

Most importantly, the role and responsibilities of parents or others on the children spelt out in the Convention are directed towards ensuring that a child is being given proper guidance, direction and support in the exercise or realisation of his or her rights.

Another common fear on letting children exercise their rights is that they might not be mature enough to handle it.

Concerns were raised at the workshop in the Northern zone that educating children on their rights might incite them to abuse these rights such as getting involved in illegal rallies or causing chaos in school.

Such fear shows how they are still trapped in the old thinking that “children are only to be seen and not to be heard”.

Suhakam, on the other hand, had experienced positive impacts resulting from its partnership with talented young people.

In 2004, Suhakam conducted a Training of Young Trainers involving young people aged 15 to 17 as part of its effort to recruit peer facilitators for its upcoming human rights camp for children.

Suhakam was able to identify potential trainers who had been contributing a lot not only to the execution of the human rights camp but also on the content and framework of the programme.

Thanks to the active contribution of the young trainers, who made the content and framework of the camp child-friendly, the human rights camp was able to capture the attention of the schoolchildren who participated.

The CRC Workshops for religious teachers reaffirmed how the mindset of the society



at large on a child's rights are still based on social, cultural and religious stereotypes and rooted in the misconception that children are not rights holders.

Culture and religion are the biggest influence that shapes society's view, hence, stakeholders should take the initiative to steer public discourses and engage society on the issues of religious and cultural predicaments that affect the realisation of children's rights in order to:

1. Eradicate practices or perceptions that threaten a child's

well being, and

2. To harmonise human rights principles with positive religious or cultural values as a way to erase the constant animosity and prejudice that affect the reconciliation of both.

Revisiting one of the opinions made by the participant of the CRC workshop, it is fully accepted that the syariah system is holistic and comprehensive though the mechanism of implementation might not be able to translate the system into effective practice.

The understanding and

realisation of child rights can be a tool to improve the delivery and implementation of our children's needs and rights as prescribed by the syariah law.

■ Shazeera Ahmad Zawawi is the human rights education and promotions officer with Suhakam. Visit [http://www.unicef.org/knowyourrights/know\\_crc.html](http://www.unicef.org/knowyourrights/know_crc.html) for more information.

■ Read the full version in NST Online