



THE ROLE OF THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC) IN PROTECTING REFUGEE CHILDREN



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ABSTRACT

Article History

Received: 11 September 2019

Revised: 14 October 2019

Accepted: 21 November 2019

Published: 19 December 2019

Keywords

Refugees
Children
CRC.

Malaysia is a party to the Convention on the Rights of the Child (CRC). This paper will explore whether the provisions in the CRC is sufficient in protecting the interest of refugee children in Malaysia due to the fact that Malaysia is not a party to The United Nations Convention on the Status Relating to Refugees 1951. The paper adopts doctrinal analysis as to who are refugees, the current issue surrounding refugees and to identify the problems due to the non - ratification of Malaysia to the 1951 Refugee Convention and to suggest any solutions to resolve the issue in hands. The paper concludes that despite that Malaysia is not a party to the 1951 Refugee Convention, CRC is suffice to protect refugee children in Malaysia as Malaysia already incorporated the articles of CRC in the Child's Act 2001. As there were no reservation on Article 22 of the CRC which touches on the protection accorded to refugee children, it is the contention of the writer that the government are being put in an obligatory position to provides what are necessary to refugee children be it in the form of education, health or the well-being of refugee children that is tantamount to their best interest as a child.

Contribution/ Originality: This study contributes to existing literature by exploring whether the provisions in the CRC is sufficient in protecting the interest of refugee children in Malaysia due to the fact that Malaysia is not a party to the United Nations Convention on the Status Relating to Refugees 1951.

1. INTRODUCTION

The United Nations General Assembly on 20th November 1989 adopted The Convention on the Rights of the Child (The CRC) that recognizes the human rights of children. Children are those who have reached their 18th birthday. The convention was unanimously adopted by State Party as being the sole human rights convention which deals with the rights of individual under the age of 18. As established in the International Law, it is compulsory for the State Parties to confirm that children benefited to any kind of special protection procedures and aid. In addition the convention ensure the children to have proper admission or direct accessibility to any social related services where health care and education is concern; able to assist in the development of the children's personalities or dispositions, abilities and aptitudes to their completest potential; raise in an environment encircled by values of happiness, affection, sympathetic and empathetic; and are cognisant about and partake to attain the rights in an respective, accessible and dynamic way. Before the emergence of CRC, the parents or guardian were the determining factors in deciding what were supposed to be what are the rights of the children and this was even conquered by the government . With the adoption of CRC, it is on the government to look after the interest

together with the children's right without relieving the roles of the immediate families. As such, any legislation, policy and practice involving the rights of children of a State party must comply with CRC. With CRC, children's rights are no longer being placed secondary as they are now recognised as a person as a whole and not related to the rights of the parents or the guardian. In order to enforce CRC, the child rights principles have to be translated into practice. It requires the governments' action and leadership to ensure the enforcement. Basically, there is no specific right or wrong execution procedure. However, the Convention should be the standard yardstick and inspiration for all the government action especially in the process of policy making and legislation to ensure hundred percent adherence with the CRC and in the event of conflict with any domestic law, the CRC takes first priority.

As other treaties that involved human rights, the CRC contains rights which are of interdependent of each other in five areas i.e. political, civil, social, cultural and economic rights. The CRC incorporated the full range of human rights as listed above is the first international instrument which binds its members legally. The convention sets out these rights in its 54 articles and strengthens by its Optional Protocols. It listed down the basic human rights of children. These would touch on their rights for survival, their fullest development, protecting them from any harmful influences, any kind of abuse and exploitation and to allow their participation in family, cultural and social life (Kirsten, 2018).

1.1. *The Convention on the Rights of the Child (CRC)*

The Preamble of the CRC states as follows:

Recall the basic principles of the UN and specific provisions of certain relevant human rights treaties and proclamations.

Reaffirms the fact that children, due to its vulnerability, need special care and protection.

Places special emphasis on the primary caring and protective responsibility of the family.

Reaffirms the need for protection of the children, before and after birth.

Respect for the child cultural values.

The vital role of international co-operation in securing the children's rights.

The CRC comes in a set of guiding principles consisting of four categories of rights which emphasis on the vulnerabilities and special need of children and there are as follows:

1. Non-discrimination.
2. Best interests of the child.
3. The right to life, survival and development.
4. The right to participate.

It is sufficed to state that by ratifying or acceding to the Convention, State Parties are obligated before all international community to give protection and to ensure that the rights of the children are looked into. Therefore, members of the Convention are now obligated in developing and to take all actions and policies with the best interest of the child in mind. The Preamble to the CRC acknowledges the fact that a child needs their well being to be cared for and to be protected and emphasis was put on the family in their growth, support, welfare and well being of the child (Rachel and Peter, 2007). Articles 1 to 41 of the CRC set out the rights of children and the corresponding obligations of governments (State Party) to safeguard these rights. Article 42 requires states to publicise the principles and provisions of the CRC to children, young people, parents and carers, and everyone working with children and young people. The definition given by the CRC on children are those below the age of 18 years, unless in the country the legal age of majority is lower. For Malaysia, a child can be defined differently based to which laws are being referred to such as within the Islamic, criminal or civil laws (Dato and Mohd, 2018).

Table-1. Convention on The Rights of The Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990
<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

| Articles | Summary of contents |
|-------------|---|
| Art 1 | Defines a Child as every human being which has yet to reach his or her 18 birthdays. |
| Art 2 | Prescribes that all rights apply to all child without any excuses. Places the State with an obligatory role in protecting such rights. |
| Art 3 | This Article places the importance of all parties to take into account the "Best Interests of The Child". |
| Art 4 | Puts on the state the responsibility to implement the rights contained under the CRC. |
| Art 5 | This Article places the importance of parental guidance and the Child's capacity to evolve. |
| Art 6 | States the child inherent right to life and the State obligation to ensure the child's survival and development. |
| Art 7 | CRC states that the child shall have the right to a name at birth. Also provides for the child to acquire a nationality. |
| Art 8 | Preservation of identity, which include name, nationality and family. |
| Art 9 | Recognizes the child right to be able to live with his or her parents taking into account any circumstances that goes against the child's best interests. |
| Art 10 | Recognizes the right of the child to be reunited. |
| Art 11 | Places an obligatory responsibility on the State in the prevention and remedial action in any kidnapping or retention of children abroad by a parent or third party. |
| Art 12 | CRC states the rights of the child to be allowed in expressing freely his or her opinion and that opinion to be taken into consideration in any matter or proceeding affecting the said child in concern. |
| Art 13 | Child rights to freedom of expression. |
| Art 14 | Child right to freedom of thought, conscience and religion. |
| Art 15 | The child right to form an association. |
| Art 16 | Deals with the child right to have the right of protection from interference with privacy, family, home and correspondences. |
| Art 17 | Puts the State in obligation to provide accessibility to information from various sources which includes the mass media |
| Art 18 | Responsibility of the parent in raising the child |
| Art 19 | The State responsibility to provide protection for any child from being abused and neglect. |
| Art 20 | The State with responsibility to provide special protection for children deprived of the family environment. |
| Art 21 | Adoption of a child must be only in the best interests of the child. |
| Art 22 | The State's obligation to grant protection to the refugee children. |
| Art 23 | Recognizes the right of disable children for special care, education and training. |
| Art 24 | State's obligation to provide health care services to children. |
| Art 25 | The right of a child placed in an institution (either for care, protection or rehabilitation) for periodic review. |
| Art 26 | The rights of the child to benefit from social security including social insurance. |
| Art 27 | The right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. |
| Art 28 | Recognizes the right of a child for free and compulsory education. |
| Art 29 | The child's education to be directed to the child personality and to the child fullest potential. |
| Art 30 | Provides for the children of minorities or indigenous populations the right to enjoy their own culture, religion and language. |
| Art 31 | Provides for the child right to leisure, play and participation in cultural and artistic activities. |
| Art 32 | Provides for the child's right to be protected from hazardous work (hazard to health, education and development). |
| Art 33 | Provides for the child right to be protected from narcotics or misused of drugs. |
| Art 34 & 35 | Provides for the State's obligation to provide protection for any children from being sexually exploited or from being prostituted, abuse, as well as pornography. |
| Art 36 | Provides for the right of the child to be protected from all forms of exploitation. |
| Art 37 | Provides for the right of a child not to be subjected to torture and deprivation of liberty. |
| Art 38 | Provides for the State's obligation to take all feasible measures to ensure that a child below the age of 15 not to be recruited into the arm forces. |
| Art 39 | Provides for the State to be obligated in ensuring that the child victims of armed conflicts, torture, neglect, maltreatment or exploitation to be given treatment which are appropriate to enable them to recover and ease their social integration. |
| Art 40 | Provides for a child in conflict with the law the right to juvenile justice, including the assistance of legal representations. |
| Art 41 | Provides for the saving clause, that if the State prescribed to a higher standard than the CRC in their domestic law, the higher standard will apply. |
| Art 42-54 | Part II and Part III (Articles 46 to 54) prescribe for matters relating to the implementation and ways to administer the CRC. |

The CRC covers amongst others the right to life, the right to non-discrimination, basic health and welfare, including the rights of disabled children and also covers the rights of refugee children. Malaysia maintains reservation on the following Articles: Art 2 (Non-discrimination), Art 7 (Name and Nationality), Art 14 (Freedom of Thought, Conscience and Religion), Art 28 (1) (a) (Compulsory and Free Education) and Art 37 (Torture and Deprivation of Liberty). Initially Malaysia made its reservation on the definition of Children (Art 1) which is below the age of 18 due to the various definition under its domestic laws as to the meaning of a child. The reservation was withdrawn on 6th July 2010. As a summary The CRC are above.

1.2. Refugees

The original definition of Refugees was provided for in Article 1 (2) of The United Nations Convention on the Status Relating to Refugees 1951 (hereinafter referred to as the 1951 Convention):

“As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

From the above, refugees are those who are no longer having a nationality and due to the non-guarantees of protection from his country to his safety, are now placed himself outside his country and due to fear of being persecuted, now unwilling to return to the said country (Shalini, 2016).

The original refugee convention is not applicable to any other refugees that do not fall in the definition as it clearly has time and geographical limitation (Davies, 2006).

The 1967 Protocol Relating to the Status of Refugees (Protocol Relating to the Status of Refugees) taking into account that the issue of refugees are no longer seasonal due to war but an on-going problem that required attention at the international stage, removed the time limits found in the original definition of refugees.

As of 19th June 2017, the reports by The High Commissioner for The Refugees (UNHCR) states that 22.5 million refugees over half of whom are under the age of 18 had been forced from their home. In total there are 65.6 million people around the world who are being forced from their country of origin (<http://www.unhcr.org/en-us/figures-at-a-glance.html>).

Malaysia has as of end of June 2017, based on the data provided by The High Commissioner for The Refugees (UNHCR) registered a total of 149,100 refugees and asylum-seekers in Malaysia (https://www.unhcr.org.my/About_Us-@-Figures_At_A_Glance.aspx). There are as follows:

- Some 132,100 are from Myanmar, comprising some 61,000 Rohingyas, 38,200 Chins, 9,900 Myanmar Muslims, 4,200 Rakhines & Arakanese, and other ethnicities from Myanmar.
- There are some 17,000 refugees and asylum-seekers from other countries, including some 4,200 Pakistanis, 2,100 Sri Lankans, 2,100 Yemenis, 2,100 Somalis, 1,900 Syrians, 1,400 Iraqis, 1,100 Afghans, 700 Palestinians, and others from other countries.
- Some 67% of refugees and asylum-seekers are men, while 33% are women.
- There are some 38,200 children below the age of 18.

Based on the above data, refugees in Malaysia is an on-going issue which needs to be dealt with efficiently by the government. Due to the non-ratification of the 1951 Convention and as such no legislative or administrative provisions, all activities related to refugees be it on reception, registration, documentation and status determination, there are under the jurisdiction of UNHCR (https://www.unhcr.org.my/About_Us-@-).

1.3. Figures_at_a_Glance.aspx

This paper basically focuses on refugee children in Malaysia. Although Malaysia is not a party to the 1951 Convention and its Protocol which was introduced in 1967, Malaysia is a party to The CRC which was signed and ratified by Malaysia on 17 February 1995 and with it later came The Child's Act 2001.

1.4. The Child's Act 2001

The Purpose of Child Act 2001:

“An Act to consolidate and amend the laws relating to the care, protection and rehabilitation of children and to provide for matters connected there with and incidental there to”.

The Preamble of the Child Act 2001 states as follows:

Recognizes children as a crucial component as well as the key to the survival, development and prosperity of a society.

Recognizes the fact that children due to their physical, mental and emotional immaturity, needs the special safeguards, care and assistance.

Recognizes the role and responsibilities of family in the children care, protection and rehabilitation.

Acknowledges the role of family as the fundamental group in society which provides the natural environment for the growth, support and welfare and well-being of the children.

1.5. Does the Child's Act 2001 Conforms to the Principle of CRC?

Both preambles acknowledge the fact that a child needs not only the care and the protection which they are entitled to but also stress on the family role in their growth, support, welfare and their overall well-being as a child. The preamble to the CRC clearly states the rights of the child as proclaimed in the Universal Declaration of Human Rights and the International Covenants on Human Rights where as the Child Act made no mention at all to the same. Art. 2 of The CRC prescribes that all rights apply to all child without exception and places the State with an obligation to protect such rights. There is no specific provision on non-discrimination in the Child's Act. Such provisions could be found under the Federal Constitution. The Act only caters for the child right for care, protection and rehabilitation (which include child in moral danger, beyond control as well as child involved in crime). Article 3 of The CRC places the importance of all parties to take into account the “Best Interests of The Child” No specific provision on the “Best Interests of The Child” in The Child's Act, but such principle could be gathered from the preamble of the Child's Act.

The fact that there is no reservation is made to Art. 3 of the CRC reaffirm this principle under the Child's Act.

Art. 4 of the CRC puts on the state the responsibility to implement the rights contained under the CRC. There is no specific provision under the Child Act 2001 on the responsibility of the State to implement the Child's Rights. No reservation was made to Art. 4 of the CRC.

Art. 5 of the CRC places the importance of parental guidance and the Child's capacity to evolve. There is no specific provision on this matter under the Child's Act. However the role of parental is present under various parts of the Child's Act, such as Part X and Part XII. Article 6 of the CRC states the child inherent right to life and the State obligation to ensure the child's survival and development. There is no specific provision under the Child Act 2001 on the responsibility of the State to implement the Child's Rights. No reservation was made to Art. 6 of the CRC. Article 7 of the CRC states that the child shall have the right to a name at birth and also provides for the child to acquire a nationality. There is no specific provision under the Child Act 2001 on this matter. Malaysia reserved Article 7. Article 8 of the CRC is on the preservation of identity, which include name, nationality and family. There is no specific provision under the Child Act 2001 on this matter. In relation to a child removed from the family for purposes of providing care and protection for the child, the Act did not specifically conform to this. Article 9 of the CRC recognizes that only if it is incompatible with the interests of the child, the child has the right to live with his parents. Article 10 of the CRC recognizes the right of the child to be reunited. Not specifically

provided for under the Child's Act as custody issues are provided under the various legislations on family law. However Part V of the Child's Act provides for a child who is in need of care and protection. Normally a child would be returned to their parents upon the expiry of the court order.

Article 11 of the CRC places the State with an obligation to prevent and remedy the kidnapping or retention of children abroad by a parent or third party. Part VIII of the Child's Act deals with the issue of trafficking in and abduction of children. The Child's Act also does not provide any provision requiring the conclusion of bilateral or multilateral agreement of the State with other jurisdictions.

Article 12 of the CRC states the rights of the child to express his opinion freely and have that opinion taken into consideration in any matter or proceeding that might affect the child. There is no similar provision on this matter under the Child's Act. There is no reservation on Article 12 of the CRC which could be construed as "recognizing the child's participation" in decision making with regard to issues relating to them.

Article 13 of the CRC concerns with the child rights to freedom of expression whereas Article 14 concerns with the child right to freedom of thought, conscience and religion and Article 15 is on the child right to form an association. "Freedom of expression" and "freedom of thought, conscience and religion" is covered under the Federal Constitution and not under the Child's Act. Malaysia made its reservations on Articles 13, 14 and 15.

Article 16 of the CRC deals with the child's right to have the right of protection from interference with privacy, family, home and correspondences and there are no provisions under the Child Act on this matter. Article 16 was not reserved by the State could be taken as the State's policy to recognize such fact.

Article 17 puts the State in obligation to provide accessibility to information from various sources which includes the mass media. Although there is no provision under the Child's Act on this, local TV stations provide accessibility to such information but whether such information is given in the best interest of the child is debatable.

Article 18 of the CRC provides for the responsibility of the parent in raising the child. The Child's Act in Part V (s. 31 to s. 33) provides for offences in relation to the health and welfare of the children whereas Parts X and XII provides for parental responsibility in relation to child involving in crime.

Article 19 of the CRC provides for the State responsibility to protect the child from abuse and neglect. Article 20 further put the responsibility on the State to provide special protection for children that do not have the enjoyment of what can be obtained from family environment. The Child's Act in Part V (s. 17 to s. 33) provides various provisions with regard to protecting the child from abuses or neglect. The Child's Act in Paragraph 30(1)(e), provides the Court power to place a child under a foster family.

Article 21 of the CRC provides that adoption of a child must be carried out in the best interests of the child only. Adoption in Malaysia is dealt with in various legislation, i.e. the Adoption Act, the Registration of Adoption Act, the Adoption Ordinance Sarawak and Adoption Enactment Sabah. Under all these legislations, adoption must be made in the best interests of the child.

Article 22 of the CRC, provides for the State's obligation to grant protection to the refugee children. As to the issue of refugee there is no provision under the Child's Act which put the State in the same obligation. From the preamble, The Child Act 2001 does not restrict its application to Malaysian only. Due to the none reservation made to Article 22, can be construed as recognition of such right by the Government.

Article 23 of the CRC recognizes the right of disable children for special care, education and training. The Child Act 2001 does not make any distinction with regard to the able child vis-à-vis a disable child. Rights of the disable child is clearly stated under the Persons With Disability Act 2008.

Article 24 of the CRC provides for the State's obligation to provide health care services to children. There is no specific provision on this matter under the Child's Act. However sections 20 to 27 of the Child's Act do provide for the circumstances on which the state may interfere with a family affair when the Child Protector is of the opinion that the child has not been provided with the necessary health care.

Article 25 of the CRC provides for the right of a child placed in an institution (either for care, protection or rehabilitation) for periodic review. Part IX (s. 54 to 80) provides for the establishment of institutions of children for the purposes of providing a child in need of care, protection and rehabilitation.

Article 26 of the CRC provides for the child the right to benefit from social security including social insurance. There is no specific provision under the Child Act with regard to this matter. There is also no reservation made by the Government in relation to this article. The National Social Policy do confirm to article 26 of the CRC.

Article 27 of the CRC stress upon the right of every child to a standard of living which take into account of their physical, mental, spiritual, moral and social development. There is no specific provision in the Child's Act on this matter and no reservation was also made.

Article 28 of the CRC recognizes the right of a child for free and compulsory education whereas Article 29 further provides for the child education to be directed to the child personality and to the child fullest potential. There is no specific provision under the Child 's Act on this matter and in The Education Act 2001 only provides for compulsory education for citizen. Reservation are made on article 28 as schools in Malaysia do enforce minimal fees. Despite its obligations as a State party to the Convention on the Rights of the Child (CRC) , refugees and asylum seekers in Malaysia are not able to enrol in government schools (Malaysia and Indonesia Report). Although Malaysian government spokespeople periodically claim that all children in Malaysia can attend school, documentary requirements effectively bar refugee children from enrolling (Malaysia and Indonesia Report). As a result, various refugee ethnic community groups have established their own Community Learning Centres (CLCs). Community members act as teachers and the CLCs generally receive assistance from UNHCR for the running costs and materials (Malaysia and Indonesia Report).

Article 30 of the CRC provides for the children of minorities or indigenous populations the right to enjoy their own culture, religion and language. No specific provision on this matter under the Child's Act. The Federal Constitution do provides for special assistance to the indigenous groups but not to other minorities who do not fall under the category of Bumi/Native.

Article 31 of the CRC provides for the child right to leisure, play and participation in cultural and artistic activities. Although there is no specific provision under the Child Act which provides such right, children in Malaysia do participate in such activities in schools or even outside of school hours.

Article 32 of the CRC provides for the child right to be protected from hazardous work (hazard to health, education and development). There is no specific provision on this matter under the Child's Act.

Article 33 of the CRC provides for the child right to be protected from narcotics or misused of drugs. There is no specific provision with regard to drug abuse under the Child's Act but a child involving in drugs may be considered as falling under subsection 17(1) or section 46 of the Child's Act 2001.

Articles 34 and 35 of the CRC provides for the State's obligation to protect children being sexually exploited and prostituted, abuse, as well as pornography. Part V (s. 17 to 30), Part VI (s. 38 to 45) and Part VII (s.46 to 47) deal with such issues. On top of this, there are also various provisions under the Penal Code as well as under the Anti Trafficking in Persons Act 2008.

Article 36 of the CRC provides for the right of the child to be protected from exploitation in any forms. Subsection 17(1) of the Child's Act underlines the situations on which the Child Protector can act in order to prevent or stop abuses as well as exploitation (which include begging).

Article 37 of the CRC provides for the right of a child not to be subjected to torture and deprivation of liberty. There is no specific provision under the Child's Act. Reservation is made to Article 37.

Article 38 of the CRC provides for the State's obligation to take all feasible steps in ensuring that a child below the age of 15 not to be recruited into the arm forces. There is no specific provision under the Child's Act 2001 with regard to this matter. However, the Arm Forces Act stipulates that recruitment of a person to the arms forces shall not be less than 16.

Article 39 of the CRC provides for the State's obligation to ensure that the appropriate treatment is made available to any child who is a victims of armed conflicts, torture, neglect, maltreatment or exploitation for the purpose of their recovery and social integration. Part IX (sections 54 to 57) of the Child Act 2001 provides for such establishments.

Article 40 of the CRC provides for a child in conflict with the law the right to juvenile justice, including the assistance of legal representations. Part IV of the Child Act 2001 provides for the establishment of the Court for Children but do not touch on legal aid for the child. Under the Legal Aid Act 1971, Legal Aid, a child in conflict with the law can be assisted.

Article 41 of the CRC provides for the saving clause, that if the State prescribed to a higher standard than the CRC in their domestic law, the higher standard will apply.

Part II (Articles 42 to 45) and Part III (Articles 46 to 54) prescribe for matters relating to the implementation and administration of the CRC.

From the above, to some extent, the Child's Act do conform to the provisions of the CRC although there are also certain provisions which are in contravention of CRC or do not follow the provision of the CRC fully.

1.6. Immigration Act 1959

Due to the non ratification of the Refugees Convention by Malaysia, the term refugee is not incorporated in any domestic law. (The Immigration Act (Act 155) grouped refugee into the category of illegal immigrants which means a person, other than a citizen, who contravenes section 5, 6, 8, 9 or 15 of the Immigration Act 1959/63 or Regulation 39 of The Immigration Regulation 1963.

Refugee adults or children in Malaysia are consider as illegal immigrants by the authorities and are subjected to harsh penalties, detention and deportations under the Immigration Act 1959/63. Since Malaysia did not ratified the Convention 1951 nor the Protocol 1967, there is no provision on refugee children. As Article 22 did not specified what type of protection and assistance are to be given, The Vienna Convention on the law of treaties which provides interpretation principles when interpreting international documents will come into the picture. In the refugee context, protection and assistance envisaged under Article 22 of CRC would inter alia include:

- 1) There be no return of refugees to the country or territory which they had fled that might endangered their life or liberty.
- 2) No penalties on their entrance without any documents into a country of refuge.
- 3) Unaccompanied refugee children should be reunited with their families (Frances, 2018).
- 4) Right to education (Amer, 2005).

The effect of the non-ratification of CRSR, refugees be it adult or children are treated as illegal immigrants and as such subject to the Immigration Act. Section 6(3) of The Immigration Act 1959/1963 provides that upon conviction, a person shall be liable to a fine not exceeding ten thousand Ringgit or to imprisonment for a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes.

2. RESEARCH METHODOLOGY

This research adopts a qualitative type of research methodology as it explores a new area which is complex and in certain areas, yet to be studied upon and thereafter able to comprehend a phenomenon or for the introduction of new theories or laws (Singh, 2015).

This research is purely legal research or doctrinal research as the research is on the legal doctrine and the underlying theory behind the doctrine on issue regarding refugee children. Also known as pure theoretical research, which dwelt heavily on philosophy of law. As the research is for the position in Malaysia, the researcher focused on the law and policies in Malaysia. The researcher explores the areas of where the laws and policies do not go hand in hand with the CRC.

3. SUGGESTION

The position of refugee children in Malaysia on the basis of Malaysia being a party to the Convention on the Rights of The Child (CRC) but not a signatory to the 1951 Convention on The Status Relating to Refugees has put Malaysia in a difficult situation as to the rights and treatment that needs to be accorded to refugees as a whole. Due to the non-ratification, refugees are categorised as illegal immigrants under the Immigration Act. With the involvement of UNHCR, refugees are treated on humanitarian grounds but this does not dissolve the fact that they are not legally recognised.

Based on the Articles of the CRC where either the provisions are incorporated in the Child's Act 2001 or no reservations were made on the Article for example Article 22 on the rights of refugee children, refugee children can be given the same treatment as what are being enjoyed by local citizens.

Before the emergence of CRC, the parents or guardian were the determining factors in deciding what were supposed to be what are the rights of the children and this was even conquered by the government. With the adoption of CRC, it has become the obligation of the government to look after the interest and the rights of children without relieving the roles of the immediate families. As such, any legislation, policy and practice involving the rights of children of a State party must be in tandem with CRC. With CRC, children's right are no longer being placed secondary as they are now recognised as a person as a whole and not related to the rights of the parents or the guardian. In order to enforce CRC, the child rights principle has to be translated into practice. It requires the governments' action and leadership to ensure the enforcement. The Convention should be used as the standard yardstick and inspiration for all the government action especially in the process of policy making and legislation to ensure it doesn't goes contrary to what is being stated in the CRC and in the event of conflict with any domestic law, the CRC takes first priority. This had been emphasize by Article 41 of the CRC which provides for the saving clause, that if the State prescribed to a higher standard than the CRC in their domestic law, the higher standard will apply. As Malaysia do not have any specific legislation as to the treatment accorded to refugees except what has been transcribed by the CRC for refugee children and The Immigration Act which do not make any distinction on the status of refugees but grouped them as illegal immigrants, then the standard that needs to be followed would be the provisions in the CRC on how children (in this case, refugee children) to be treated or what are they are entitled to for their development and well being.

Therefore the CRC is suffice in given the protection to refugee children and Malaysia is obligated in delivering the provisions in the CRC which are not being reserved to refugee children.

4. CONCLUSION

Refugee phenomenon has becomes an issue not only affecting Malaysia but virtually every other countries in the world. This put countries in a state of necessity to implement policies and practices which can accommodate refugees as a host country. Not all countries which accepted refugees has acceded to The 1951 Refugee Convention including Malaysia.

By acceding to The 1951 Refugee Convention, refugees in a country would be recognised legally and be treated based on internationally humanitarian standard. As this has yet to be done by Malaysia, for now, refugee children are being treated only on humanitarian ground without being legally recognised by the Government. With the involvement of UNHCR, affairs of refugees in Malaysia are being looked into to a certain degree but do not have a legal standing in the eyes of the law.

For now, issues concerning refugee children will have to depend on The CRC to ensure that they are being protected and treated fairly. The CRC is sufficient in giving the protection to refugee children as no reservation was made to Article 22 of The CRC which makes it obligatory on the government to provides the necessary assistant and acknowledge the rights of refugee children in living a life that are suitable for the development of a child.

The non-reservation to Article 22 of The CRC shows that the government are committed in its obligation to ensure that the articles of The CRC are being adhere to and to be put in practise and any policies on refugee which automatically affected refugee children must be consistently applied through out every level of implementations.

Funding: This study received no specific financial support.

Competing Interests: The authors declare that they have no competing interests.

Acknowledgement: Both authors contributed equally to the conception and design of the study.

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