

CHILD PROTECTION SYSTEM IN MALAYSIA

An Analysis of the System for Prevention and Response to Abuse, Violence and Exploitation against Children



Ministry of Women,
Family and Community Development



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CHILD PROTECTION SYSTEM IN MALAYSIA



**An Analysis of The System for
Prevention and Response to Abuse,
Violence and Exploitation against Children**

FOREWORD

SECRETARY GENERAL, MINISTRY OF WOMEN, FAMILY AND COMMUNITY DEVELOPMENT



*Ministry of Women,
Family and Community Development*



Children are the nation's most valuable asset and our most precious treasure. They deserve a safe, healthy and conducive environment to grow. This includes protecting children from all forms of abuse, violence, neglect as well as exploitation. Furthermore, the progress of a country depends directly on the well being of its children.

As a state party to the Convention on the Rights of the Child, Malaysia has undertaken efforts in ensuring the rights of its children are protected. The Government of Malaysia recognises that a child is the key to the country's survival, development and prosperity. The advancement and participation of the present generation will usher a future generation that is confident, responsible and caring.

The Child Protection System in Malaysia report which is jointly produced by the Ministry of Women, Family and Community Development and UNICEF is indeed a timely initiative. It provides a thorough assessment of the current child protection policies, procedures, legislation, machineries, services as well as programmes. In addition, the report highlights the strengths and challenges with regard to child protection in Malaysia.

As a way forward, the Ministry of Women, Family and Community Development will collaborate with the relevant stakeholders from the public and private sector, academicians, non-governmental organisations, members of the community as well as UNICEF in reviewing the key recommendations from this report. This will enable all stakeholders to develop a clear continuum of advocacy, prevention, early intervention and protective programmes that comply with international standards relating to child protection.

DATO' SRI DR. NOORUL AINUR MOHD. NUR



FOREWORD

UNICEF REPRESENTATIVE, MALAYSIA



“Child protection” is an idea that is easy to believe in. We all believe children should grow up, happy, healthy, safe – protected. But how does society provide that? Who is responsible for it?

The importance of building child protection systems – is somehow more difficult to convey. Probably because there is no single ‘go-to’ person, place or number. The challenge is that when it comes to ‘child protection’, vulnerable children face a multitude of risks.

As such, responses must address the range of vulnerabilities comprehensively. An approach that focuses on any one issue alone, can result in programmes that are fragmented and that do not reach children in need of protection from a range of abuse, violence, exploitation and neglect.

As a result, there is growing recognition that children’s issues should be addressed holistically by creating a preventive and protective environment through a strengthened child protection system. For such a system to be effective, it needs to be informed by; reliable data, protective legislation and the enforcement of that legislation, training for professionals who come into contact with children, child-friendly court systems, as well as open discussions in the media and civil society about attitudes and behaviours that contribute to violence against children.

In Malaysia, the Government has taken significant steps to improve the child protection system by ratifying the Convention on the Rights of the Child (CRC), which upholds the right of every child to be protected from *“all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”* (Article 19).

Malaysia’s ratification of the Convention paved the way for the Child Act of 2001, a National Child Protection Policy and a Plan of Action. In April 2012, Malaysia acceded to the 2 optional protocols of the CRC; on Sale of Children, Child Prostitution and Child pornography, and Involvement of Children in Armed Conflict. These are significant policy and legislative achievements.

As the first of its kind in Malaysia, this study provides a comprehensive assessment of the child protection system here, focusing on what’s missing and what areas must be strengthened in order to achieve a coordinated and systemic response to the protection of children.

Among the recommendations, the study suggests the design of a comprehensive child and family welfare system that is more family-based, non-adversarial, and prevention oriented. UNICEF is happy to note that some other key recommendations, such as the need for professionalising the Social Work sector are already under active review.

Moving forward, UNICEF reaffirms its continued commitment to work together with the Government, civil society and other partners to strengthen the child protection system in Malaysia, so that every child in this country can have the protection they deserve – and have a right to.

WIVINA BELMONTE

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ABBREVIATIONS AND ACRONYMS

AKPK	Agensi Kaunseling dan Pengurusan Kredit (Credit Counselling and Debt Management Agency)
BKK	Bantuan Kanak-Kanak ('Financial' Assistance for Children)
CID	Criminal Investigation Division
CPT	Child Protection Team (Pasukan Perlindungan Kanak-Kanak)
CRC	Convention on the Rights of the Child
CSFIC	Child Support and Forensic Interview Centre
DPP	Deputy Public Prosecutor
HKL	Hospital Kuala Lumpur
ILKAP	Institut Latihan Kehakiman dan Perundangan (Judicial & Legal Training Institute)
IPO	Interim Protection Order
ISM	Institut Sosial Malaysia (Social Institute of Malaysia)
JKM	Jabatan Kebajikan Masyarakat (Department of Social Welfare)
JKMN	Jabatan Kebajikan Masyarakat Negeri (State Social Welfare Department)
JPW	Jabatan Pembangunan Wanita (Department of Women's Development)
KSU	Secretary General
LPPKN	Lembaga Penduduk dan Pembangunan Keluarga Negara (National Population and Family Development Board)
MAC	Medical Advisory Council
MAPC	Malaysian Association for the Protection of Children
MoH	Ministry of Health
MPV	Mobile Patrol Vehicle
MS ISO	Malaysian Standards
MWFC	Ministry of Women, Family and Community Development
NAM	Non-Aligned Movement
NENA	National Emergency Number Association
NIEW	NAM Institute for the Empowerment of Women
OCPD	Officer-in-Charge of the Police District
OSCC	One Stop Crisis Centre
PAKK	Pusat Aktiviti Kanak-Kanak (Child Activity Centre)
PERNIM	Persatuan Kebajikan Anak HIV/AIDS Nurul Iman Malaysia
PEYATIM	Pertubuhan Kebajikan Anak-Anak Yatim
PPKK	Pasukan Perlindungan Kanak-Kanak (Child Protection Team)
P.S. the Children	Protect and Save the Children
RMP	Royal Malaysian Police (Polis Diraja Malaysia)
SCAN	Suspected Child Abuse and Neglect
SDC	Standards Development Committee
SMS	Short Messaging Service
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia (Human Rights Commission of Malaysia)
UKM	Universiti Kebangsaan Malaysia (National University of Malaysia)
UMMC	University of Malaya Medical Centre
UNICEF	United Nations Children's Fund
USM	Universiti Sains Malaysia

DEFINITIONS

Throughout this report, a number of terms are used to identify the harm that children suffer at the hands of others. Over recent years many different definitions have been ascribed to the terms violence, abuse, neglect, and exploitation. These definitions have typically been proposed by UN agencies and NGOs and share many common features. For the purposes of this report, the comprehensive (yet comprehensible) definitions found in the WHO's World Report on Violence and Health (2002) have been used as the guiding principles.

WHO defines child abuse as "all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment, or commercial or other exploitation resulting in actual or potential harm to the child's health, survival, development, or dignity". Within this broad definition of child abuse, five subtypes are distinguished: physical abuse; sexual abuse; neglect and negligent treatment; emotional abuse; and exploitation.

Physical abuse: Physical abuse of a child is that which results in actual or potential physical harm from an interaction or lack of interaction, which is reasonably within the control of a parent or person in a position of responsibility, power, or trust. There may be single or repeated incidents. Examples of child abuse acts include: slapping, hitting with the hand or an object, punching, kicking, pushing, beating, and pinching.

Child sexual abuse: Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society. This may included the inducement or coercion of a child to engage in

WHAT THE CHILDREN SAID

What is Abuse?

Being kicked, slapped and pinched
(*kena tendang, sepak, lempang, cubit*).

Being pinched very hard, not because
someone finds you irresistible

(*kena cubit kuat-kuat,
bukan sebab geram dengan kita*).

Being punched, whacked, pushed,
(*tumbuk, belasah, kena tolak*),

beaten with a belt (*pukul dengan tali pinggang*),

or to have a chair thrown at you

(*kena baling dengan kerusi*).

* These are children's personal views during interview sessions and it does not reflect the views of the Ministry of Women, Family & Community Development and other related government agencies.

any sexual activity; the use of a child in prostitution or other sexual practices; and the exploitative use of children in pornographic performances and materials.

Neglect & negligent treatment: Neglect and negligent treatment is the deliberate inattention or omission on the part of the caregiver to provide for the development of the child in all spheres: health, education, emotional development, nutrition, shelter, and safe living conditions, in the context of resources reasonably available to the family, and causes, or has a high probability of causing, harm to the child's health or physical, mental, spiritual, moral, or social development. This includes the failure to properly supervise and protect children from harm as much as is feasible.

* It should be noted that, throughout this report, the term neglect is used solely within the boundaries of this definition. 'Neglect' denotes a deliberate inattention or omission, and is not inherently linked to issues of

poverty. On the basis of this interpretation, the vast majority of poor families do not 'neglect' their children. For the purpose of child protection strategic planning and service provision, it is essential to differentiate between the two concepts.

Emotional abuse: Emotional abuse includes the failure to provide a developmentally appropriate, supportive environment, including the availability of a primary attachment figure, so that the child can develop a stable and full range of emotional and social competencies commensurate with her or his personal potential, and in the context of the society in which the child dwells. Acts include restriction of movement, patterns of belittling, denigrating, scape-goating, threatening, scaring, discriminating, ridiculing, or other non-physical forms of hostile treatment or rejection.

Commercial exploitation: of a child refers to use of the child in work or other activities for the benefit of others. This includes, but is not limited to, harmful child labour, child prostitution, and the exploitation of children through pornography. These activities are to the detriment of the child's physical or mental health, education, and moral or social-emotional wellbeing.

Various forms of commercial sexual exploitation of children are further defined under the Optional Protocol the CRC:

Sale of children: means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.

Child prostitution: means the use of a child in sexual activities for remuneration or any other form of consideration.

Child pornography: means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities, or any representation of the sexual parts of a child for primarily sexual purposes.

WHAT THE CHILDREN SAID

What is Abuse?

Being beaten really badly
(*kena pukul teruk-teruk*),
whipped with a hose
(*sebat dengan batang paip*),
to have your head banged on the wall
(*hentak kepala kat dinding*),
to be pushed until your head hits the
corner of something hard
(*kena tolak sampai kena bucu*),
being kicked in the stomach (*sepak kat perut*),
or to have your hair pulled (*kena tarik rambut*).
Taking a cane and smacking the kid
until she or he faints,
taking a hot spoon and placing it on the hands,
taking burnt metal and putting it on
hands and feet, rape,
pouring hot water on the body.

* These are children's personal views during interview sessions and it does not reflect the views of the Ministry of Women, Family & Community Development and other related government agencies.

Services:

Primary prevention initiatives are directed at the community as a whole to strengthen the overall capacity of society in caring for children and keeping them safe. This includes activities directed at changing attitudes and social behaviours through advocacy and awareness campaigns, strengthening parenting skills, promoting the need for alternative forms of discipline rather than physical punishment, and sensitization on the impact of violence against children.

Secondary prevention, or early intervention services are directed at children and families who have been identified as vulnerable or at risk of maltreatment or neglect. Early intervention services target families that are already at risk of engaging in abusive behaviours in order to change those circumstances before they create actual harm to a child. For example, families might seek help for separation, mediating or dealing with disputes, alcohol and/or drug problems, domestic violence, mental health problems, or difficulties in caring for children. Given this range of problems, a variety of actors are required to provide services at the secondary level – both government and civil society organizations.

Tertiary interventions respond to circumstances where a child is at serious risk of or is being abused, exploited, neglected, or harmed in any way. This requires a continuum of interventions, including both voluntary or community-initiated interventions in less serious cases (mediation, counselling and advice giving, community monitoring), as well as mandatory State interventions where children have experienced or are at risk of serious harm (structured supervision and family support services such as parenting programmes, family and individual counselling, and therapeutic treatment programmes; and/or temporary or permanent removal of the child and placement

in alternative care). Decisions regarding the use of compulsory measures are generally made through a formal administrative or court process, based upon the assessment and recommendations of the social welfare authority.

EXECUTIVE SUMMARY

In December 2006, Malaysia submitted its first periodic Country Report to the UN Committee on the Rights of the Child outlining the progress made in implementing the Convention on the Rights of the Child. In its Concluding Observation regarding Malaysia's report, the Committee acknowledged the positive measures that the country has taken to promote children's rights, and to comply with international standards regarding child protection. However, it also highlighted some areas of concern and strongly encouraged the Government of Malaysia to seek technical assistance from UN agencies, including UNICEF, to address these issues. In response to the Committee's recommendations, the Ministry of Women, Family and Community Development sought assistance from UNICEF to undertake a comprehensive study of the child and family welfare system in Malaysia. The objective of the assessment is to evaluate the level of understanding and adherence to child protection principles defined in international and national law and policy; the functioning of government agencies at all levels; the operationalisation of the policy framework; and the relevance of the currently established system to the Malaysian context. Based on the research findings, macro-level recommendations for strengthening the child and family welfare system in Malaysia are provided.

LEGAL AND POLICY

Malaysia has made significant progress in establishing a legal and policy framework for a functioning child protection system: the Child Act 2001, along with the Evidence of Child Witnesses Act, represent important steps in defining and laying the groundwork for the statutory based response for child victims of abuse, neglect and exploitation. This framework has recently been consolidated with the introduction of both a National Policy for Children and National Child Protection Policy. These provide important strategic

directions for implementing the law and welfare services for children.

As with early UK laws governing child and family welfare services, the role of JKM and the Protectors is defined almost exclusively in terms of reactive, rather than preventative measures. Globally, many commonwealth countries have begun to place greater emphasis on working voluntarily with parents to address problems, rather than focusing solely on restrictive or coercive responses once the child has already experienced significant harm. Early intervention is now recognized as a more effective and cost-efficient means of preventing child maltreatment. Although Malaysia enacted the Child Act in 2001, these new principles and practices have yet to be incorporated. Differential classification and treatment of child victims of sexual exploitation and undocumented children remain problematic, as well as the lack of a uniform national adoption law.

STRUCTURES

With the formation of the Ministry of Women, Family and Community Development in 2004, the foundation of an operational and effective child protection system has been laid. The findings of the research demonstrate that with focused leadership and increased investment, Malaysia is ready to move into a new phase in its protection strategy. In order to strengthen existing structures, several key decisions need to be made. Lack of investment in the child protection system has resulted in insufficient allocation of resources to realise the system envisaged under the Child Act. The limited number of trained Child Protectors and broader coordination issues also impede the optimal development of a child protection system. Given the ambitious nature of the National Child Protection Policy and Action Plan, it is all the more important that child welfare and protection is promoted as a distinct sector,

such as education or health. The critical role of LPPKN in providing support to families must be articulated within the protection framework. To complement, enhance, and expand existing service provision, the government and NGO sector need to establish closer working partnerships, which should be regulated and recognised within the system.

SERVICES

The findings reveal that there is currently a gap in understanding between the broad concept of 'protecting children's rights' and 'child protection'. While the promotion of children's rights is an essential component of the broader child welfare agenda, it is nonetheless important to distinguish initiatives of the MWFC that strive to uphold specific rights under Article 19 of the CRC. Respondents in all states acknowledged that the issue of maltreatment, especially sexual abuse, remains taboo. Social and family dynamics are also shifting rapidly and impact the extended family networks that have traditionally ensured the protection of children. While the government is clearly responding by developing a greater public sector childcare system, the findings reveal that a number of challenges remain in ensuring that secondary services are appropriate, accessible and designed to have a sustainable and optimal impact. The emergency response for child victims in Malaysia is one of the most sophisticated in the region, especially in terms of the medical care provided and the emphasis on prosecution of perpetrators. These services are instigated once a child has already been abused or maltreated and, in this sense, the core system remains reactive. As was recognised by all service providers, further effort is required to ensure a fully operational system that is accessible by a wider section of society and guarantees the same standard of care in both rural and urban areas.

RESPONSE PROCESSES

The number of cases brought to the attention of the authorities remains very low and is almost certainly not representative of the actual prevalence of abuse and neglect. A number of factors for this were cited by respondents during the interviews including stigma / shame, the culture of silence within communities, reluctance of extended families to inform authorities, financial reliance on perpetrators and lack of confidence in the authorities. The high incidence of statutory rape reports involving girls under the legal age of consent with young males (who may be under the age of fifteen themselves) is also of concern. Respondents almost unanimously felt that the current law unnecessarily stigmatises, punishes and sometimes criminalises young people who have consensual (albeit underage) sexual relations.

While the majority of cases received by the police are of abuse, neglect and exploitation committed by parents, there are also cases of abuse perpetrated by those with a specific duty to guarantee the care and wellbeing of children, including child care providers, teachers and religious leaders. Abuse perpetrated by those with a 'duty of care' warrants special attention and mechanisms must be put in place to ensure that the vulnerability of children within the formal or informal care system is not exploited.

With regard to children without documents, respondents emphasised that there is no discrimination between a non-Malaysian child and a Malaysian child in need of protection. Nevertheless, while the principle of non-discrimination is stressed by government agencies, strong anecdotal evidence suggests that there are still numerous occasions where neglected or exploited child asylum-seekers, refugees and undocumented children do not get access to the care and medical treatment that they deserve.

Unlike many other countries in the region, Malaysia fortunately does not have a history of institutionalisation of children. Programmes established in recent years have emphasised the importance of caring for children in foster homes and small group homes. However, in the absence of guidelines for making best interest determinations and requirements that children's views to be taken into consideration in decision-making, placement of children is problematic, especially as these tend to be made on a long-term basis and without formal review. Interim care alternatives to institutions, such as temporary shelter or fostering, would provide an opportunity for welfare workers from a range of agencies to work to make the home environment safe, or to find alternative longer-term care solutions.

While the numerous private children's homes are supposed to be regulated and subject to standards, they lack reference to the actual care of children themselves, and there are few procedures for children to have their cases reviewed at regular intervals. The international consensus is that alternatives to institutionalisation, including children's homes, should be sought wherever possible. Emergency shelters for victims of trafficking and sexual exploitation are a welcomed service. However, these should seek to reduce the stigma and isolation that victims feel by ensuring that they do not become long-stay facilities and regularly review whether the stay is in the child's best interest.

The launching of the 'Working Together' document in 2010 will hopefully help to more clearly define and delineate the formal interagency procedures that are now required to support the effective functioning of the system. In order to achieve more effective interagency processes, further commitment is required to: a) create an improved common understanding among partners

of the function of each agency; b) share a common purpose for protecting children; c) ensure sufficient resource allocation to improve joint services; and d) develop and manage an inter-sectoral pool of human resources.

HUMAN RESOURCES

A professional welfare sector, as envisaged under the Child Act, is dependent upon a skilled workforce of social workers and welfare officers. At the present time, the absence of a distinct professional sector is apparent. Mechanisms to ensure minimum national standards of practice need to be further developed to create greater professional accountability to clients (families and children) and foster greater public confidence in the sector.

In general, the study revealed a sense of commitment of Child Protectors to their important role within the protection system. However, the findings across all states reviewed showed that they are significantly compromised in their function due to lack of training and relative inexperience. The majority of police (apart from D11 officers) have not received specific training to recognise the symptoms of abuse, violence, and neglect, nor do they have special criteria for making a rapid assessment of the risk to a child. Targeted, skills-based training is required to strengthen capacity of staff and officers to implement their obligations under the Child Act and the CRC.

KEY RECOMMENDATIONS:

In order to strengthen existing initiatives and modernise its approach to child protection, it is recommended that Malaysia undertake a holistic reform of its child and family welfare system. As a first step, it is recommended that through a wide, consultative process, the MWFCD should develop a national strategic vision for the reform of the child

and family welfare system. While the new Action Plan plots a series of important initiatives, it is necessary to align and prioritise these within a broader framework of sectoral development. In order to adopt some of the recommendations of this report, a conceptual shift is now required towards the development of a professional and distinct child and family welfare sector. In order to achieve this reform, a series of recommended measures are proposed:

1. Design of a comprehensive child and family welfare system:

it is recommended that, as part of this review and reform process, research is undertaken into different international models of welfare systems. This process will enable the government and partners to assess the applicability and relevance of different systems suitable for Malaysia. This should include a thorough review of the options for developing a more family-based, non-adversarial, prevention oriented system.

2. Develop a clear designation of the leadership role of JKM:

in this conceptualisation process, it is important to define the longer-term mandate and authority of the MWFC, and specifically JKM. In order to ensure greater investment in the sector, it is crucial to review the status of the Children's Division. Sectoral reform will require at minimum that a 'department' be created to manage the increasingly sophisticated system.

3. Map out the roles of key partner agencies:

many opportunities for partnership and collaboration are currently under-utilised. In designing a model of the system, all agencies that contribute to primary, secondary, and

tertiary measures should be harnessed within the protective framework and specific mandates, responsibilities, and powers agreed.

4. Develop a clear outline of the structure for managing and implementing child and family welfare service delivery:

from the national, state, and community levels, including clear roles, responsibilities, accountability, and processes for decision-making by government social welfare authorities at each level. Particular attention should be paid to ensuring that services are available in rural and remote areas as well as the larger urban centres.

5. Review policies and procedures for children without documents:

a systems approach to child protection requires that the most vulnerable children (regardless of ethnic or citizenship status) are provided with primary services in health and education to reduce their inherent risk of the worst forms of abuse and exploitation. Rather than categorising children (street-children, child beggars, trafficked / illegal migrants), the system should focus on the source of their vulnerability to prevent the abuse and exploitation occurring in the first place.

6. Professionalisation of social work:

as Malaysia already has a relatively sophisticated statutory framework, the discipline of social work now needs to be professionally recognised. The development of a progressive welfare sector is only viable if staff are trained and qualified in best social work practices.

INTRODUCTION





Background

Over the last decade, the government of Malaysia has exerted significant effort to improve the child protection system. In addition to ratifying the CRC (1995), the government has enacted the Child Act, 2001 (Act 611), and more recently has developed both a national policy and plan of action for protecting children against abuse, neglect and exploitation. Many programmes and initiatives are currently being undertaken at the national and district levels to implement the policy and address priority child protection issues. While these efforts are positive and demonstrate a genuine commitment to improving the protection of children, concerns continue to be raised about the actual implementation and delivery of services. Significant gaps remain in the coordination and institutional arrangements necessary to ensure children's protection. Compared to many other countries in the South-East Asian region, Malaysia has adopted a relatively sophisticated, statutory-based response for responding to victims of abuse; however, targeted resources for proactive and preventative approaches have still to be understood and applied.

Globally, there has been growing recognition of the need to progress beyond issue-specific, responsive programmes towards a more integrated and systems-based approach to preventing and protecting children from all forms of violence, abuse, neglect, and exploitation. Emphasis is increasingly shifting to a more holistic approach encompassing proactive and preventative child and family welfare services, rather than reactive interventions after violence or exploitation has occurred. Rather than an exclusive focus on the child victim, interventions are directed at the whole family, aiming to improve parents' capacities to provide appropriate care and protection, or to provide alternative family-based care for children who cannot live with their own family.

Against this backdrop, UNICEF and MWFCDC have undertaken this assessment to gain a better understanding of the existing child and family welfare system in Malaysia. In order to achieve a balanced picture across Malaysia, a number of sites were selected, namely Kuala Lumpur, Selangor, Sabah, Sarawak, Johor, and Kelantan. While it cannot be claimed that an analysis of these states provides a complete picture, the combined findings do produce significant evidence upon which to base the national level analysis and recommendations.

A child and family welfare system is defined as a system that prevents and responds to all forms of violence, abuse, neglect, and exploitation of children and includes norms (laws, policies, guidelines, standards, and regulations); processes (protocols, referral, and coordination); and structures (institutional arrangements, continuum services, and capacities).

The principal objective of the assessment is to evaluate:

1. The level of understanding and adherence to child protection principles defined in international and national law and policy;
2. The functioning of government agencies at all levels, including the decentralization of child protection structures and the impact on coordination;
3. The operationalisation of the policy framework in the federal territory and five selected states, focusing upon feasibility of implementation in more remote areas; and
4. The relevance of the currently established system to the Malaysian context.

The assessment provides a macro-level baseline of understanding about the role of central government in ensuring that, at the local level:

- Structures or agencies of protection and welfare are in place and have the authority, mandate, and duty to operate as defined by law and policy;
- Joint planning for children is prioritized and inter-sectoral coordination mechanisms are attributed;
- Financial and human resources (including human capacity building) are adequate to support central level policy and programmes;
- Services and programmes are in place to prevent children and families from becoming at risk, as well as to protect children who have experienced violence, abuse, and exploitation.

The report aims to broadly assess whether the current paradigm is effective, efficient, sustainable and relevant to the Malaysian context and circumstances. In doing so, the Malaysian system has been assessed against international standards and best practices in the field of child and family welfare services. The analytical framework for the assessment was guided by the Child Protection Toolkit developed by the UNICEF Regional Office for East Asia and the Pacific, and particularly by the technical guidelines relating to the social welfare system. A checklist of the core components of an effective child and family welfare system against which the Malaysian system was assessed is included in Annex 4. Based on this analysis, detailed recommendations are provided to strengthen the child and family welfare system in Malaysia.

Methodology

The assessment was undertaken by [Child] Frontiers, an international consulting company specialising in child protection. The research team included two international consultants and three national consultants, with support from officers of the MWFC. The process was largely qualitative in nature and included:

- a) **Desk Review** of existing reports, studies, evaluations, and other information pertaining to the child protection system in Malaysia;
- b) **Analysis of Legal and Policy Framework** at the national level, as well as in the selected states;
- c) **Field Research** in the capital city, Kuala Lumpur, and five states: Sabah, Sarawak, Kelantan, Johor, and Selangor. In each location, information was gathered from key informants and other stakeholders through semi-structured interviews and group discussions, and site visits were undertaken to specialised police stations, integrated service centres, and childcare institutions. Group discussions with children employed PRA techniques.

Initially, the research methodology also included plans to conduct group discussions with parents and children who had received protective services. Unfortunately, due to difficulties with logistics and locating appropriate respondents, this aspect of the research could not be completed. However, children's perspectives were obtained through group discussions with children in shelter homes for children who had experienced violence, abuse, and exploitation. A full list of key respondents is provided in Annex 2.

LEGAL AND POLICY FRAMEWORK





Pursuant to the Convention on the Rights of the Child, national laws should guarantee children's right to protection from all forms of violence, abuse, neglect, and exploitation, and reinforce the primary responsibility of parents for the care, protection, and development of children. Legislation should also obligate the State to support families in their child-rearing responsibilities, and in particular provide child welfare authorities with the power to intervene to support and protect children who have experienced violence, abuse, neglect, and exploitation in or outside of their homes.

An effective legal framework for child protection is one that: designates a government agency with clear mandate, authority, and accountability for the management and delivery of child welfare services, including division of responsibility between the national and sub-national levels; stipulates a continuum of prevention, early intervention, and response services to prevent and respond to all forms of child maltreatment; stipulates the standards, criteria, authority, and procedures for making decisions about which interventions are appropriate in individual cases, including the standard for when compulsory protective services may be used; requires that all decisions regarding compulsory protective services, the separation of a child from his/her family, and out-of-home care are made by a designated government authority, subject to judicial review; and includes a binding regulatory framework for compulsory registration, accreditation, monitoring, and inspection of all government and non-government service providers.¹

Overview of the Legal Framework

Malaysia acceded to the CRC with reservations in 1995 and has also ratified other international instruments relating to child protection, including the ILO Minimum Age Convention 138,² and ILO Convention 182 on the Worst Forms of Child Labour.³ However, it has yet to ratify the two Optional Protocols to the CRC⁴ or the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

In recent years, Malaysia has made significant progress towards incorporating the CRC into the national legal and policy framework and in establishing the basic legal framework for child protection. In mid-2009, the government approved a new National Policy and Plan of Action for Children, aimed at ensuring children's rights to survival, protection, development, and participation so they may enjoy the opportunity and space to achieve holistic development in a conducive environment. At the same time, a new National Child Protection Policy and Plan of Action was introduced, providing further guidance with respect to national policy and approach to child protection.

In addition to these new policy documents, the legal framework for child protection services is guided mainly by the Child Act 2001⁵, which governs the care, protection, and rehabilitation of children. In accordance with the CRC, the Child Act defines a

1 "Technical Guide: Social Welfare Systems", in Child Protection Programme Strategy Toolkit, UNICEF East Asia and the Pacific, 2009.

2 Ratified in 1997

3 Ratified in 2000

4 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; Optional Protocol on Children Affected by Armed Conflict.

5 Laws of Malaysia, Act No. 611

child as any person under the age of 18.⁶ The Act governs four main categories of children: **1) children in need of care and protection; 2) children in need of protection and rehabilitation; 3) children “beyond control”; and 4) children in conflict with the law.** The first two categories of children fall within the scope of this assessment, while the latter two are being addressed under a separate study being undertaken jointly by the Ministry of Women, Family and Community Development and UNICEF.

Institutional Arrangements

The Child Act 2001 outlines the main structure, processes and procedures for responding to children in need of care, protection, and rehabilitation. It defines the roles and responsibilities of police, Child Protectors, and the court, stipulates the types of protective interventions and services that should be available, and delineates the process and procedures for responding to individual cases of child maltreatment. It also makes a number of offences against children punishable by law, including offences in relation to physical abuse, sexual abuse, neglect, abandonment, sale, and trafficking in children.

Designation of Authority for Child Protection

Under the Child Act 2001, responsibility for overall management of child protection services has been designated to the Coordinating Council for the Protection of Children. The Council, which is

mandated to meet at least four times per year, is responsible for: advising the Minister on all aspects of child protection; designing a management system for reporting cases of children in need of protection; recommending services that are specifically oriented to meet the needs of persons, children, and families in need of child protection services; coordinating the various resources of government involved with child protection; developing programmes to educate the public in the prevention of child abuse and neglect; and advising on the management, operation, practice, and training of Child Protection Teams. The Council is chaired by the Director General of Social Welfare and includes the Deputy Director General of Social Welfare (Deputy Chair), representatives from the Ministries responsible for child protection, health, human resources, and information, and representatives from the Inspectorate of Police, Attorney General’s Office, Prisons Department, Department of Social Welfare, the social welfare ministries in Sabah and Sarawak, and up to seven other members with appropriate experience, knowledge, and expertise on matters relating to the welfare and development of children.⁷

The Council is tasked with establishing Child Protection Teams throughout Malaysia. The Child Protection Teams are responsible for coordinating locally-based services for families and children who are, or who are suspected of being, in need of protection. The Child Protection Teams are chaired by a “Protector”, or social welfare officer, and also include a medical officer and a senior police officer.⁸ In general, the Child Act grants the Protectors, who are under the management of the Department of Social Welfare (JKM), the authority to receive reports and manage individual cases of child maltreatment.

6 Section 2(1)

7 Child Act, ss. 3 and 4

8 Child Act, s. 7

The new National Child Protection Policy calls for the establishment of an inter-agency task force to coordinate and monitor child protection measures by 2010.

Data Collection and Monitoring

The Child Act calls for the appointment of a Registrar General of Children in Need of Protection. The Registrar General position has yet to be filled but, in principal, will be responsible for maintaining a registry containing details of all cases or suspected cases of children in need of protection.⁹ The register may be used in managing individual cases of child maltreatment, and also for the purposes of research.

The National Child Protection Policy has as one of its key objectives the enhancement of research and development to improve protection for children. In order to achieve this objective, the accompanying Plan of Action outlines the following activities to be implemented in 2010-12: the creation of a child protection research directory; mapping of cases of child victims of neglect, abuse, violence, and exploitation; establishment of a comprehensive child protection database and information system; and information sharing programmes and the dissemination of research findings on child protection.

Approach to Child Protection

The National Policy for Children guarantees all children, including children with disabilities, the right to be protected from any form of neglect, abuse, violence, and exploitation, and to be provided with rehabilitation and integration into the family and society. The National Child Protection Policy states that child protection is an important aspect of national human capital development, and should therefore be given priority. Both documents include specific reference to the need to be guided by the principles of the CRC. The Child Protection Policy outlines seven main objectives with respect to child protection:

- To increase awareness and commitment of various parties of efforts to protect children as a common responsibility;
- To create a safe and child-friendly environment;
- To encourage organisations that deal directly or indirectly with children to formulate their respective child protection policies;
- To protect every child from any form of neglect, abuse, violence, and exploitation;
- To stipulate that only suitable individuals may deal directly with children;
- To enhance support services to address the neglect, abuse, violence, and exploitation of children; and
- To enhance research and development to improve protection for children.

The strategies for achieving these objectives centre on advocacy, prevention, support services, and research and development.

⁹ Child Act, ss. 9, 119

The preamble to the Child Act also recognizes that every child is entitled to protection and assistance without discrimination, and acknowledges that children, by reason of their physical, mental, and emotional immaturity, are in need of special safeguards, care, and assistance to enable them to participate in and contribute positively towards the attainment of the ideals of a civil Malaysian society. However, the Act does not include a statement of guiding principles to be taken into account in the implementation and application of the Act, as is now prevalent in most common law countries.

State responsibility to support parents and prevent childmaltreatment

The preamble to the Child Act recognizes the primary responsibility of the family in caring for and protecting children and acknowledges that they should be afforded assistance to enable them to fully assume their responsibilities as the source of care, support, rehabilitation and development of children. However, it falls short of guaranteeing children the right to grow up in a family environment and not to be separated from their parents unless necessary in the interests of the child. There is no explicit statement of the State's responsibility to support parents in their child-rearing responsibilities, or recognition of this as an important strategy for preventing violence, abuse, neglect, exploitation and parental separation. In general, the government's responsibility with respect to child protection is defined mainly in terms of statutory interventions to protect children who have experienced serious maltreatment, rather than more preventative interventions. There is no clear continuum of primary, secondary and tertiary interventions, and in particular no provision for early intervention strategies such as parent support programs, individual/family therapeutic support, respite care, etc.

WHAT THE CHILDREN SAID

How Can Adults Help Children?

Adults can help a child by taking them to see a doctor, by taking the child to make a police report or by offering the child counseling (*berikan kaunseling kat dia*).

Adults can help by closing down a home if it is abusing children, telling the police, reporting abuse to the Government, sending the child to the Welfare Department.

Adults can support and encourage the child to make a report.

They can ask the child what happened, how the abuse happened, and ask the child to tell the story from the beginning.

They can dig the whole story out of the child. If the police do not believe the adult when they say that the child has been abused, they can speak to the child and see the marks on their body.

* These are children's personal views during interview sessions and it does not reflect the views of the Ministry of Women, Family & Community Development and other related government agencies.

The new National Policy for Children promotes a more holistic and preventative approach to child protection. It states that one of the key strategies for achieving national child protection objectives is to provide support to high-risk families so that the children in these families can enjoy their rights. The accompanying Plan of Action calls for improvements to existing programmes for the placement of children in family-oriented programmes, as well as upgraded support and rehabilitation programmes for high-risk families through children's activity centres and other community organizations. High-risk families are defined as those where parents have a history of in crime, drug abuse, and domestic violence.

The National Child Protection Policy also reinforces the importance of prevention. It calls for advocacy initiatives to cultivate and promote awareness of the importance of protecting children among all segments of society by establishing smart partnerships with the media, NGOs, the private sector, and community organizations. Prevention strategies include the establishment of an early warning mechanism (such as the Amber Alert) for missing children; providing basic knowledge to children to enable them to protect themselves from neglect, abuse, violence, and exploitation, as well as to identify situations that are dangerous to them; and establishing a screening, recognition and training system for those who work directly with children. However, it does not address early intervention or family support services for at-risk children.

State responsibility to intervene to protect children

The Child Act includes a clear mandate for the State to intervene to protect a child who has experienced violence, abuse, neglect, and exploitation. The circumstances that would give rise to a finding that a child is in need of care and protection are clearly defined under the Act, with reference to the degree of harm, or risk of harm, to the child. This includes circumstances where a child: has been or is at substantial risk of being physically injured, emotionally injured, or sexually abused; is neglected; is without proper supervision and falling into bad association; has been abandoned; requires medical treatment that

the parents neglect or refuse to provide; is a victim of an offence committed by his/her parents, or the parents are unable or unwilling to protect the child; is on the street for the purpose of begging or hawking; and where there is conflict between the child and his parent or guardian, such that family relationships are seriously disrupted, thereby causing the child emotional injury.¹⁰

The Act also stipulates the degree of harm required before the State may intervene to protect a child. For example, physical injury requires substantial and observable injury to the child's body as a result of the non-accidental application of force that is evidenced by, amongst other things, a laceration, a contusion, an abrasion, a scar, a fracture or other bone injury, a dislocation, a sprain, etc.¹¹ A child is considered to be emotionally injured if there is substantial and observable impairment of the child's mental or emotional functioning that is evidenced by, among other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression, or delayed development.¹²

The new National Child Protection Policy calls for the establishment of a screening, recognition, and training system for all professionals working directly with children, as well as an integrated reporting system for cases of neglect, abuse, violence, and exploitation. Currently under the Child Act, responsibility for receiving and responding to allegations of child maltreatment lies mainly with the Protectors. The Child Act makes it mandatory for medical practitioners, child care providers and members of a child's family

¹⁰ Child Act, s. 17(1)

¹¹ Child Act, s. 17(1)(a)

¹² Child Act, s. 17(1)(b)

to immediately inform the Protector if they have reasonable grounds to believe that a child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or has been sexually abused.¹³ If a Protector or police officer has reasonable grounds to believe that a child is in need of care and protection, s/he may take a child into temporary custody and arrange for appropriate medical treatment, or direct the parent/guardian to do so. The National Policy for Children calls for the appointment and training of emergency child protectors to enhance these emergency protection measures.

Children taken into temporary custody on an emergency basis must be brought before the Court for Children within 24 hours.¹⁴ The Court may make an interim order regarding the care and custody of the child and adjourn the matter for up to two months to give the Protector the opportunity to prepare a report. The Act does not include any specific provisions with respect to the obligation of the Protector to screen all reported cases of maltreatment, or to undertake child and family focused inquiries and assessments.¹⁵ However, it does state that, in making decisions about whether a child is in need of protection, the Court for Children shall take into account any report prepared by the Protector. The report should contain information as to the child's family background, general conduct, home surrounding, school record, and medical history, as well as a written report of a social welfare officer or registered medical practitioner.¹⁶ The Child Act also gives Protectors and the police broad powers to investigate the commission of "offences" under the Act, including the power to summons people and

take evidence, to conduct searches (with and without warrant) and to remove a child from any place.¹⁷

Decisions with respect to whether a child is in need of care and protection and what action will be taken are made by the Court for Children, which is presided over by a Magistrate.¹⁸ The Act states that, in determining what order to make, the Court for Children shall treat the best interests of the child as the paramount consideration.¹⁹ The child's parent or guardian must be given an opportunity to attend and be heard; however there is no explicit requirement that the child's opinion be sought or taken into consideration.²⁰ While the Act contains detailed provisions regarding child-friendly procedures for conducting criminal trials involving child offenders, there are no similar provisions with respect to Court procedures during child protection hearings.

In terms of the interventions and services that should be provided to children who have experienced violence, abuse and neglect, the Act states that, if the Court finds that a child is in need of care and protection, it may order one of the following interventions²¹ :

- 1) Order the parent or guardian to execute a bond to exercise proper care and guardianship for a specified period;
- 2) Place the child in the custody of a fit and proper person for a specified period;
- 3) Place the child under the supervision of a Protector or some other person for a specified period;

13 Child Act, ss. 27-29

14 Child Act, ss. 18-20

15 Section 38 of the Act specifically requires the Protector to undertake an inquiry whenever a child is taken into custody on suspicion of being in need of care and rehabilitation (i.e. involved in prostitution). However, there is no similar provision regarding children in need of care and protection.

16 Child Act, s. 30(6)

17 Child Act, ss. 109-113

18 Child Act, s. 11

19 Child Act, s. 30(5)

20 Child Act, s. 30(10)

21 Child Act, s. 30

- 4) Place the child in a “place of safety” for a period of three years from the date of the order or until the child attains the age of eighteen years, whichever is the shorter;
- 5) In the case of a child who has no parent or guardian or who has been abandoned, place the child in the care, custody, and control of a foster parent (defined as someone who is not a relative of the child) found to be suitable by the Director General for a period of two years or until s/he attains the age of eighteen years, whichever is shorter, and pending that, place the child in a place of safety.

When making an order, the Court may also impose conditions or give specific directions for the purpose of ensuring the safety and well-being of the child, including: mandating that the parent or guardian and the child attend “interactive workshops;” if the child is placed at a place of safety, that the parent or guardian shall visit the child on a regular basis; or, if the child is in an educational institution, that the parent or guardian consult with the child’s teacher and head teacher or principal once a month. In addition, when making an order placing a child in the custody of a fit and proper person or a place of refuge, the Court may also require the child’s parent or guardian to make a financial contribution, determined with regard to the financial means of the parent.²² Parents who fail to comply with any of these conditions may be convicted and fined by the Court.

While the Act states that any order made must be based on the best interest of the child, it provides limited guidance with respect to the principles or criteria upon which best interest determinations are to be made. There is neither a stated preference for family preservation, nor a requirement that institutionalization be used only as a measure of last resort. The National Child Protection Policy does not provide further guidance on these issues; however, it does call for the expansion and enhancement of counselling, protection and health services for child victims and their families. The National Policy for Children calls for an increase in both the number of places of safety for children in all states, as well the number of foster families providing temporary care for children, without indicating any preference or priority between these two strategies. The Child Act does not include explicit provisions requiring the Protector to monitor all children in need of protection who have been subject to a Court order. However, it does grant Protectors and social welfare officers authority to visit, inspect, and make inquiries with respect to the conditions and circumstances of any child who has been placed in the care of a fit and proper person, or whose parents are subject to an order requiring them to exercise proper care and guardianship.²³ The Act also states that the Court may, on the application of the Protector, a person in charge of a place of safety, or the parent or guardian of a child amend, vary or revoke any order if it is satisfied that to do so is in the best interest of the child, or in cases where circumstances have changed.²⁴

²² Child Act, s. 108

²³ Child Act, s. 114

²⁴ Child Act, s. 30(13)

Children who are victims of commercial sexual exploitation are accorded different treatment under the Act, and are considered to be “in need of protection and rehabilitation” rather than “care and protection”. Children in need of protection and rehabilitation are defined as those who are: induced to perform any sexual act, or are in any physical or social environment which may lead to the performance of such act; live in or frequent any brothel or place of assignation; or are habitually in the company or under the control of brothel-keepers or procurers or persons employed or directly interested in the business carried on in brothels.²⁵ Where a Protector or police officer is satisfied on reasonable grounds that a child meets one of these criteria, the child may be removed and temporarily detained in a place of refuge for up to 24 hours until s/ he can be brought before the Court for Children. The Protector must then conduct an inquiry and submit the report to the Court for Children within a period not exceeding one month. If the Court is satisfied that the child is in need of protection and rehabilitation, it may make one of the following orders:²⁶

- 1) Order the child to be detained in a place of refuge for a period of three years (fixed term, but may be reduced after one year by the Board of Visitors);
- 2) Place the child in the care of a person who the Court considers to be fit and proper (whether a relative or not) for a period of up to three years;
- 3) Require the parent or guardian of the child to execute a bond, with or without sureties, for a period of up to three years, with conditions relating to the proper care and guardianship of the child;

- 4) Place the child under the supervision of a Social Welfare Officer for up to three years, with such conditions as the Court thinks fit.

The Act requires the Court for Children to consider the best interests of the child as paramount, and requires that the child’s parent or guardian be given the opportunity to attend and be heard before any order is made. However, there is no provision requiring the child’s opinion to be sought or taken into consideration, and limited guidance with respect to the principles or criteria upon which best interest determinations are to be made.²⁷

Similarly, children who have been victims of sale or trafficking are also addressed under the Act, but as separate and distinct from children in need of care and protection. As with children exploited through prostitution, child victims of sale and trafficking may be subject to temporary detention in a place of refuge by the Protector or the police. Based on an inquiry report submitted by the Protector, the Court for Children may:

- 1) Order the child to be detained in a place of refuge for up to three years;
- 2) Place the child under the supervision of a Social Welfare Officer for up to three years.²⁸

In 2008, Malaysia introduced a new Anti-Trafficking in Persons Act. The Act includes a section on Care and Protection of Trafficked Victims, which applies equally to adults and children. It is unclear whether the provisions of this new Act take precedent over the similar, but slightly conflicting, provisions under the Child Act. Under the Trafficking Act, social welfare officers may be appointed as Protection Officers,

²⁵ Child Act, s.38

²⁶ Child Act, s. 40

²⁷ Child Act, s. 40(3)

²⁸ Child Act, Article 42

with responsibility for carrying out enquiries, preparing reports for the Court, and ensuring the care, protection and supervision of trafficked persons. Trafficked victims who have been identified / rescued by the police or immigration officials may be taken into custody for up to 24 hours, and subjected to a temporary detention order in a place of refuge for up to 14 days. Malaysians who are found by the Court to be victims of trafficking may be detained in a place of refuge for up to three years. Non-Malaysians are held in a place of refuge for up to three months, after which they are released to the immigration authorities who are required to take all necessary steps to facilitate the victim's return to his/her country of origin without unnecessary delay and with due regard for his/her safety. Apart from the entitlement to medical examination and treatment, the Act does not include any specific provisions with respect to recovery or reintegration services for trafficked victims. However, the National Policy for Children states that child victims of sexual exploitation (including child trafficking, sex tourism, child pornography) must be provided with protection, rehabilitation, and reintegration into society or repatriated to their country of origin. The Plan of Action calls for the establishment of special intervention programmes for child victims of exploitation.

Out of Home Care

The Child Act makes provision for five types of out-of-home care for children in need of protection and/or rehabilitation:

- 1) **Placement in the custody of a "fit and proper person"**: applicable to children in need of protection and child victims of exploitation through prostitution;
- 2) **Foster care**: applicable only to children who have been abandoned or whose parents cannot be located;
- 3) **Adoption**: applicable to children who have been subject to a foster care order and whose parent or guardian have not claimed the child or made an appearance before the order expires;
- 4) **Placement in a place of safety**: for children in need of care and protection; and
- 5) **Detention in a place of refuge**: for children who have been trafficked or exploited through prostitution.

In accordance with international standards, the removal of a child from parental care requires an order from the Court. However, the Act does not indicate a hierarchy or preference between these options, and there are no stipulated principles or criteria for decision-making. All out-of-home care orders are for a defined period of time specified by the Court, and there is no requirement for regular, periodic review of placements, or for measures to be taken to promote family reunification. The presumption is that institutional placements will be for a period of three years, or until the child turns 18. The Act does allow for an order to be varied or revoked on the application of the Protector, a person in charge of a place of safety, or the parent or guardian of a child if the Court is satisfied that to do so is in the best interest of the child, or where circumstances have changed.²⁹ Pursuant to the Child (Places of Safety) Regulations, 2007, each institution must have a Panel of Reviews and Discharges (comprised of the principal and staff of the institution), which must review the progress of each child on a quarterly basis and make recommendations to the social welfare officer concerning the child's discharge.

²⁹ Child Act, s. 1055 Laws of Malaysia, Act No. 611

The Child Act also includes provisions to regulate and monitor children who are informally taken into the care of someone other than their biological parents, including an individual or non-governmental institution. Under the Act, any person (or institution) that takes a child into their care must notify the Protector within one week. The Protector must then make inquiries with respect to the reasons why the child has been taken into care and the caregiver's suitability, and decide whether to allow the care arrangement or return the child to his/her parent or guardian. In doing so, the Act gives the Protector authority to impose terms and conditions on the caregiver. If the caregiver violates any of these conditions, the Protector has the authority to take the child into custody and place him/her with another fit person or in a place of safety until the age of 18 (with no Court order required). The Protector must maintain a register of all such notifications; however the Act does not explicitly obligate the Protector to conduct follow-up monitoring.³⁰

The Child Act itself does not include specific criteria or procedures for the recruitment and selection of "fit and proper persons" or foster parents, and there are no detailed regulations with respect to fostering. However, the Child (Fit and Proper Person) Regulations of 2009 provide guidance with respect to the implementation of orders placing a child in the care of a fit person. The Regulations state that the Court may appoint a person as a fit and proper person if they have the ability to provide a child with proper care, protection and supervision; have not been convicted of any sexual offences or grave crimes; and if the placement of the child in their care is in the best interest of the child, will not result in financial or social difficulties for the person, will not result in injury to the

child, and will not cause any conflict in relation to the custody of the child. Fit persons are required to ensure the development, welfare, health and well-being of the child, to provide for the child's basic needs, education, and health care, and to provide care and protection based on love, affection, and good moral and spiritual values. Local Child Protection Teams must provide material and financial assistance to fit persons in carrying out these responsibilities, as well as guidance and advice. Protectors are responsible for conducting periodic supervision and monitoring of children placed in the care of a fit person at intervals as specified by the Courts, and must maintain a detailed case file on the child. While a child is in the care of a fit and proper person, the child's parents must communicate with the fit person with regard to the development and well-being of the child, and must attend an interactive workshop and any meetings arranged by the Protector with respect to the progress of the child.

Laws and procedures with respect to adoption vary depending on religion and geographical location. There are several laws pertaining to adoption in Malaysia. The Adoption Act 1952 is only applicable to Peninsular Malaysia and does not apply to Muslim children or prospective Muslim adoptive parents.³¹ All Muslims are subject to Syariah law and to the jurisdiction of Syariah courts with respect to family law issues, including care, custody and guardianship of children. Formal adoption is not available for Muslim children, however the Islamic Family Law (Federal Territory) Act 1984 states that, where a man has accepted a child who is not his child as a member of his family, he is duty bound to maintain the child. The child is given the same rights as a natural child and may be entitled to benefit from the parents' property by way of gift.

30 Child Act, ss. 35-37

31 Section 1 and 31

However, the child does not take the family name of his/her adoptive parents, nor is s/he entitled to inherit their property.³²

The Registration of Adoption Act 1952 applies to both Muslims and non-Muslims in Peninsular Malaysia. Under this Act, the adoption is facilitated through registration with the Registration Department and not through a court proceeding as provided under the Adoption Act 1952. Unlike the Adoption Act 1952, the Registration of Adoption Act 1952 does not sever the blood ties of the adoptive child with his or her natural parents. As there is no specific Syariah legislation on adoption (in either the Federal Act or the States Syariah Enactments) in West Malaysia, the Registration of Adoption Act 1952 has enabled Muslims in the Peninsular to register their de facto adoptions without having to go to the Court.

In the state of Sarawak, adoption is governed by the Adoption Ordinance of Sarawak 1958 which applies to both Muslims and non-Muslims. However the Ordinance stipulates that in the case of Muslim adoptions, such adoption is only for the purposes of registration only and such adoption does not sever the blood ties of the adoptive child with his or her natural parents.

In the state of Sabah, adoption for non-Muslims is governed by the Adoption Ordinance of Sabah (No. 23) 1960 while the adoption of Muslim children is now being dealt with under the Syariah Courts Enactment (No. 6) 2004. It is also interesting to note that in the Federal Territory of Labuan (which was formerly part of the State of Sabah before 1984), the governing law in relation to adoption remains the Adoption Ordinance of Sabah 1960 (No.23).

Adoptions under the Adoption Act 1952 require approval of the High Court or Sessions Court. A person who wishes to adopt a child must submit an application to the Court, which appoints a guardian ad litem to conduct an investigation. The guardian ad litem must conduct a full investigation into the circumstances of the child and prospective parents, and is responsible for safeguarding the interests of the child before the Court. A child may only be adopted after s/he has been living with the prospective adoptive parents for at least three months. The consent of both parents is required, with some exceptions, and the Court must be satisfied that they understand the nature and effect of an adoption order.³³ There is no provision requiring the consent of the child, however the Act does state that, before making an adoption order, the Court must be satisfied that the order will be for the welfare of the child, "due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child." The Act prohibits an adoption order being made unless the Court is satisfied that neither the parent nor the applicants have received any payment or other reward in consideration of the adoption, and also prohibits adoption advertising.³⁴ Adoption proceedings are conducted in closed court, and all documents must be kept confidential.³⁵

The Adoption Act does not include specific provisions relating to inter-country adoptions, but states that an adoption order must not be made in favour of any applicant who is not ordinarily resident in Peninsular Malaysia.³⁶ Malaysia has not yet ratified the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption.

32 S. 78

33 s.5. Consent may be dispensed with if the parent has abandoned, neglected, or persistently ill-treated the child, cannot be found, is incapable of giving consent, or unreasonably withholds consent.

34 s. 6, 26

35 s. 10, 25

36 s. 4(3)

With respect to children in institutional care, the Child Act makes provision for the designation of both Places of Safety (for children in need of protection) and Places of Refuge (for children in need of protection and rehabilitation). These institutions may be government, NGO or privately run, but must be registered and gazetted by the Minister of Social Welfare. The Child (Places of Safety) Regulations 2007 govern standards and quality of care, presumably in both government and non-government institutions, but do not include provisions with respect to the procedures for accreditation and registration of non-governmental institutions.

WHAT THE CHILDREN SAID

Punishment vs. Abuse

Punishment is when you are being punished for something, like for not doing your homework. Punishments have reasons (*pengajaran ada sebab*).

Sometimes punishments can turn into abuse... like when the mistake is small, but the beatings are so bad (*kesalahan kecil, tapi pukul teruk*).

Abuse is when cigarette butts are extinguished on you, when hot water is poured over you, you are kicked and slapped and you have your head dipped into water (*celup kepala dalam air*).

* These are children's personal views during interview sessions and it does not reflect the views of the Ministry of Women, Family & Community Development and other related government agencies.

The Child (Places of Safety) Regulations 2007 addresses children's duties and privileges, as well as obligations of the Principal and staff with respect to management, record-keeping and the overall welfare, well-being, and safety of children in institutional care. The Regulations emphasize the importance of providing guidance, love, and affection to children,

and of developing a healthy and positive relationship between the staff and children. They outline the standards that must be met with respect to safety and cleanliness, food, religious observance, education and vocational training, and daily timetable of activities. Children of school-going age are to be encouraged to attend school outside the institution; however in general children are not permitted to leave the institution without permission. Each institution must have a Discipline and Intervention Advisory Committee to deal with breaches of the rules, as well as a Peer Group Panel to mediate any disputes between children, or between children and staff. Corporal and humiliating punishments are explicitly prohibited. Children are entitled to up to 30 days home leave per year to visit their family, and are allowed to receive visits from parents, relatives, and friends "unless circumstances make such visits undesirable."

Monitoring of Places of Safety and Places of Refuge is undertaken by the Director General of JKM, as well as a Board of Visitors³⁷ comprised of the Principal (ex-officio) and seven to 14 other members appointed by the Minister. The Child (Places of Safety) Regulations 2007 requires the Director General or his/her representative to inspect all institutions at least four times per year. The Board of Visitors is required to meet at least four times per year at the institution, and to visit at least twice per month. Board members have the power to inspect the institution at any time, with or without notice. Following each visit, the member must prepare a report for the Board outlining their general observations with respect to the overall management of the institution, the safety, welfare and well-being of the children, the effectiveness of programmes and activities for the children, the cleanliness of the institution, and any problems or complaints from the children. The Board must inform

³⁷ Child Act, s.

JKM officials or the principal of any shortcomings, and may make recommendations for improvement. Boards of Visitors are also responsible for initiating activities, programmes and training for children in the institution, and must establish an amenities fund for this purpose. The fund is financed through gifts, donations, grants, and fund-raising projects.

WHAT THE CHILDREN SAID

Punishment vs. Abuse

Abuse is when you are beaten for no reason, there is no point in the beatings, or you are simply beaten when someone is drunk.

If a child does not do his homework and the parent scolds and beats them, this is not abuse.

Other types of abuse are when you are beaten, strangled (*dicekik*), asked for money, or have your finger cut.

Abuse is also when you are called words like stupid, bastard, dumb, useless, lazy, or told to go and die.

These are bad words that people use, words that can hurt, and this is a type of emotional abuse.

Abuse is when the parent takes the anger from work into the house.

For example, when the father gets angry at work, he comes home and beats the kids.

* These are children's personal views during interview sessions and it does not reflect the views of the Ministry of Women, Family & Community Development and other related government agencies.

Child Victims and the Justice System

Through the operation of the Child Protection Teams, the Child Act 2001 promotes collaboration between

the Protector, police and medical professionals in handling all cases involving child victims. The Act also states that, whenever the police take a child into custody on the grounds that s/he is in need of protection or rehabilitation, they must immediately notify the Protector.

The Criminal Procedure Code does not include any special provisions regarding child victims and witnesses. However, this has been addressed through the introduction of the Evidence of Child Witnesses Act 2007,³⁸ which introduces special measures for Court proceedings involving child witnesses under the age of 16. The Act allows child witnesses to give evidence at trial from behind a screen, via live-link, by video recording, and with the assistance of an intermediary. It also allows a child to be accompanied by an adult when giving testimony. Both the Child Act and the Evidence of Child Witnesses Act include comprehensive provisions prohibiting the publication of any information that might identify a child victim.³⁹ Under the Child Act, any Court that is trying a case involving a child victim of certain crimes may, if it considers the child to be in need of protection, make an order temporarily detaining the child in a place of safety until the trial is completed, or until the child turns 18.⁴⁰ The Act does not include any guidance on the application of this provision, which may, through Court delays, result in lengthy periods of detention for child victims.

The National Plan of Action for Children calls for the expansion of child witness service programmes in each Court, and sets the target of ensuring that 95% of child victims receive legal support by 2010.

³⁸ Laws of Malaysia, Act 676

³⁹ Child Act, s. 15; Evidence of Child Witnesses Act, s. 14

⁴⁰ Child Act, s. 45

Non-Malaysian children and children without documents

The preamble of Malaysia's Child Act 2001 states that: "every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind". In line with this, respondents from all stakeholder agencies underscored the principle of non-discrimination during discussions with the research team. Although Malaysia expresses reservations with respect to Article 2 of the Convention on the Rights of the Child (CRC),⁴¹ the risk of abuse and exploitation to children without documents is well understood. In this regard, the government has always allowed on humanitarian grounds, all those who have been certified as refugees by UNHCR, to temporarily remain in the country until a solution is found to repatriate or resettle them. Nevertheless, the government has no legislative provisions in place dealing with the international protection of refugees.⁴² Although it has acceded to the CRC, none of the articles potentially relevant to refugee and asylum-seeking children in this treaty has been the subject of enabling legislation. Furthermore, no distinction is made in domestic law between refugees and economic migrants; Article 22 of the CRC identifies the role of States Parties to take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee shall receive appropriate protection and humanitarian assistance. This lack of legal status for refugees, including refugee children, makes them particularly vulnerable to sexual exploitation, abuse, and violence. This lack

in protection also hinders reporting, as they fear arrest if they approach the authorities and repercussions if they provide details about the perpetrators. Consequently, the Government may wish to establish a screening process to identify groups with special needs, including asylum-seekers and refugees, and particularly their children, as recommended by the Committee of the CRC.

41 Art. 2.1 states that "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

42 Malaysia is neither a signatory to the 1951 Geneva Convention relating to the Status of Refugees nor its 1967 Protocol.

KEY FINDINGS

Malaysia has made significant progress in establishing the legal framework for child protection services, most recently with the introduction of both a National Policy for Children and National Child Protection Policy. The Child Act 2001 clearly defines the various forms of violence, abuse, and exploitation of children; defines the circumstances and threshold at which the police, Protector and Court are legally required to intervene to protect a child; stipulates the standards, criteria, authority and procedures for identification, reporting, and decision-making with respect to children in need of protection; and, in accordance with the CRC, requires judicial approval of all compulsory protective services, the separation of a child from his/her family, and out-of-home care. In addition, the Evidence of Child Witnesses Act has laid the groundwork for child victims to participate effectively in the criminal proceedings, while at the same time safeguarding their well-being.

The new National Policy for Children recognizes the importance of early intervention and support to high-risk families as a key strategy for preventing violence, abuse, and exploitation of children. However, the Child Act itself is more narrowly focused on compulsory protective interventions aimed at identifying and responding to critical episodes of child abuse and neglect. As with the early UK laws governing child and family welfare services, the role of JKM and the Protectors is defined almost exclusively in terms of reactive, rather than preventative measures, with a focus on mandatory, court-ordered protective interventions to deal with serious cases of maltreatment. All decisions about the care and protection of children are made through an adversarial Court process, with a largely punitive, rather than supportive approach to parents (e.g. imposition of monetary bonds). There is no explicit statement of the State's responsibility to support parents in their child-rearing responsibilities and no provision for voluntary (rather than Court-ordered) supportive social welfare responses to child maltreatment. While the Act outlines procedures for identifying and responding to reports of serious cases of maltreatment, there are no procedures or criteria for identifying and supporting at-risk children, and no clear designation of authority and responsibility for making available a range of voluntary family support services.

Globally, many Commonwealth countries have begun to shift away from this traditional focus on compulsory protective interventions. In the UK, New Zealand, and many U.S, Canadian and Australian jurisdictions, child protection legislation now places more emphasis on working voluntarily with parents to address problems, rather than focusing solely on restrictive or coercive responses once the child has already experienced significant harm. It is now acknowledged that intervening early, when problems first manifest, is a more effective and cost-efficient means of preventing child maltreatment. As such, legislation increasingly includes a continuum of prevention, early intervention, and protective interventions, as well as some form of "differential response". Differential responses provide two different pathways for families to receive child protection services:

- 1) Mandatory investigation in cases where a child has suffered, or is likely to suffer, significant harm (as is the case now in Malaysia); and
- 2) Voluntary assessment and service-oriented response for lower risk families where a family is experiencing severe stresses that are impacting the child's welfare.

In both cases, the key strategy for minimising the risks of child maltreatment is the negotiation of appropriate support services to strengthen families, rather than legalistic court processes directed solely at the child. Parental involvement in decision-making is encouraged through mediation or family group conferences, with more coercive methods, such as securing a Court order, reserved for cases where attempts to negotiate voluntary assistance to families and children have failed or would be inappropriate.

KEY FINDINGS

Although Malaysia amended the Child Act in 2001, it has yet to incorporate these new principles and practices. The Act remains largely victim-centred, rather than family-focused, and there is a relatively limited range of intervention measures available. The different Court orders that are available have not been conceptualised as a continuum of options, with priority given to family-based solutions. Neither the Child Act nor the new National Child Protection Policy include a clear articulation of national principles and overall approach to child protection, and there is no stated preference for family preservation and family-based out-of-home-care, or a statutory expression of the principle of institutionalization as a last resort. While the Child Act requires that consideration be given to the best interest of the child, guidelines have yet to be developed for making best interest determinations, and there is no provision requiring the child's views to be sought and taken into consideration in all decision-making. Orders placing children in institutional care are for lengthy, fixed-term periods of three years and removal from parental custody is presented as a long-term care solution, rather than a temporary measure.

Also of concern is the differential classification and treatment of child victims of sexual exploitation, based on outdated UK notions of children in "moral danger". Under both the Child Act and the new Anti-Trafficking in Persons Act, child victims of sexual exploitation are subject to temporary detention by the police, as well as lengthy periods of deprivation of liberty in places of refuge. There is also no specific reference in the Trafficking Act to the pre-existing child protection provisions of the Child Act, and it is therefore unclear whether the powers and authority of the Protectors and the Court for Children continue to apply to child trafficking victims. While the creation of places of refuge was well-intentioned and aimed at providing children with care and rehabilitation, international standards prohibit the use of any form of compulsory detention against child victims. As with all other children who experience maltreatment, child victims of sexual exploitation should be provided access to a range of supportive interventions. Where out-of-home care is required, emphasis should be on family-based care, or placement in open, residential facilities that replicates a family environment.

Malaysia's Adoption Act is also quite out-dated and could benefit from a review to better reflect the principles of the CRC, and to address the issue of inter-country adoptions. In its Concluding Observations to Malaysia's Initial Country Report under the CRC, the UN Committee on the Rights of the Child expressed concern that adoption laws and proceedings were different for Muslim and non-Muslim children, as well as from State to State. It recommended that the government review the legislative framework for domestic adoption and introduce a uniform national adoption law to regulate the adoption of non-Muslim children in Malaysia.

RECOMMENDATIONS

In order to strengthen the legal framework for child protection services, it is recommended that Malaysia amend the Child Act to:

- **Include a statement of guiding principles that are grounded in the CRC and that includes, at minimum, the principle of non-discrimination, an explicit requirement that the best interest of the child be the primary consideration in all decision-making, the primacy of family preservation and family-based care, and institutionalization as a measure of last resort;**
 - Include a more expansive statement of the powers, duties and responsibilities of JKM that encompasses primary, secondary, and tertiary services;
 - Provide for a more expansive continuum of interventions and services (prevention, early intervention, and tertiary) to prevent and respond to all forms of child maltreatment, with a focus on family strengthening and family preservation;
 - Introduce a differential response system, with mandatory investigation where a child has suffered, or is likely to suffer, significant harm, as well as voluntary service oriented response for lower risk families;
 - Promote a more cooperative approach to care planning and decision-making by introducing family group conferencing as an alternative or pre-cursor to Court proceedings;
 - Require that the views of a child be sought and taken into consideration in all decision-making;
 - Eliminate the distinction between “children in need of protection” and “children in need of protection and rehabilitation,” as well as all provisions allowing child victims of exploitation to be deprived of their liberty;
 - Eliminate the fixed, three-year term for institutional care orders;
 - Require all children in out-of-home care to be subject to regular reviews of their placement at stipulated intervals.
- **Introduce detailed regulations or guidelines under the Child Act regarding:**
 - The process and procedures for identifying, assessing and providing early intervention services to children and families who are at risk;
 - The standards, criteria, and procedures for responding to cases of suspected child maltreatment, including detailed guidance with respect to conducting assessments, developing care plans, and making decisions about which interventions are appropriate in individual cases;

RECOMMENDATIONS

- Compulsory registration, accreditation, monitoring, and inspection of all non-government agencies providing child and family welfare services;
 - Measurable standards and quality of care for all child and family welfare services, particularly family support services, foster care, and institutional care (both government and non-government).
- **Amend the Adoption Act to:**
 - Introduce a uniform national adoption law to regulate the adoption of non-Muslim children in all of Malaysia;
 - Regulate inter-country adoption and stipulate that it be limited to cases where the child cannot be placed in a foster or adoptive family or cannot be cared for in any other suitable manner within the jurisdiction;
 - **Amend the Evidence of Child Witnesses Act to provide protection to all child victims under the age of 18 (rather than the current age of 16).**
 - **Develop an inter-agency protocol for coordination between child welfare authorities, police, health care officials, and other service providers in the handling of all cases of violence, abuse, and exploitation of children.** These protocols should define roles and responsibilities, process and procedures for referral, and information sharing.

STRUCTURES





In order to fulfil its obligations under the CRC to support parents in their child-rearing responsibilities, protect children from all forms of maltreatment, and provide care for children whose families fail in their responsibilities to protect children, the State must have an effective social welfare system in place. An effective social welfare system requires a well-resourced, logically organized, and adequately coordinated child welfare authority with a clear mandate to manage all services to prevent and respond to violence, abuse, and exploitation of children. This should include clear structures, processes, authority, and accountability for management and delivery of child and family welfare services from the national level down through the provincial, district, and sub-district levels. While inter-agency child rights committees, police, health care officials, NGOs, and community members have an important role to play as part of the overall service delivery paradigm, responsibility for management of the system, and for making decisions in individual cases, should rest with the government social welfare authority. To ensure the effective functioning of the system, the State also requires structures for research, data collection and analysis, and independent monitoring.⁴³

Designated Child Protection Authority

National Level

Following the dissolution of the Ministry of National Unity and Social Development in 2004, some of the

ministry's functions were subsequently shifted to the Ministry of Women and Family Development, which assumed the new name of Ministry of Women, Family and Community Development.⁴⁴ Three principal departments and agencies were established under the purview of the Ministry of Women, Family and Community Development for ensuring the development of social policy and services for Malaysian society. Under the ministerial portfolio, there are separate departments for addressing issues related to:

- Women, under the Department of Women's Development (Jabatan Pembangunan Wanita, JPW)
- Family, under the National Population and Family Development Board (Lembaga Penduduk dan Pembangunan Keluarga Negara, LPPKN)
- Social Welfare, under the Department of Social Welfare (Jabatan Kebajikan Masyarakat, JKM)

To complement the work of these agencies, two research centres have been established to review and promote social policy reform:

- Social Institute of Malaysia (Institut Sosial Malaysia, ISM)
- NAM Institute for the Empowerment of Women, NIEW (Institut Pengupayaan Wanita bagi Anggota Pergerakan Negara-Negara Berkecuali)⁴⁵

43 UNICEF East Asia and the Pacific, "Technical Guide: Social Welfare Systems," *Child Protection Program Strategy Toolkit*, 2009.

44 <http://www.lppkn.gov.my>

45 NIEW was officially established in 2006 under the purview of MWFCDD after Malaysia was given the mandate to establish this Institute by the Non-Aligned Movement (NAM) Member Countries.

As a coordinating ministry, the MWFCDC does not have any direct responsibility or structures for service delivery. The primary function of the ministry is to direct social and human development, as well as monitor the implementation of social policy. Mostly recently, the MWFCDC has played a central role in developing policies relating to broad child welfare provision, as well as those related to specific child protection issues. The Ministry has been responsible for the recent national plans of action on children and on child protection. Through its Policy Division, the Ministry is able to set the agenda for children on a number of welfare, including the Ministries of Health and Education, as well as agencies under the purview of the Ministry of Home Affairs. The MWFCDC also works with the National Registration Department, which has direct responsibility for issues of child registration and documentation, with the Immigration Department on issues related to child trafficking, and the Prisons Department on issues related to child offenders. This formal collaboration, while not underscored by specific inter-agency agreements, is demonstrated in the strategic planning of the new Child Protection Policy.

a) Department of Social Welfare

The Department of Social Welfare (JKM)⁴⁶ was established under the new Ministry of Women, Family and Community Development and currently has a total of approximately 6,900 staff. The Department has eleven divisions and an overall mandate to carry out responsibilities of the central government in the areas of social welfare, empowerment, social security, and social rehabilitation. Although the headquarters does not have a direct role in service

delivery, it has key oversight responsibilities for: welfare policy formulation; establishing minimum standards for services; registration and accreditation of social welfare services; promoting inter-agency collaboration; administering outreach, assistance, and social welfare support as necessary; and controlling resource mobilisation and distribution.

The responsibilities of JKM extend to ensuring social protection and care for a broad range of citizens, including: the elderly, the disabled, those living in poverty, children and families, and particular socially marginalised ethnic groups, including indigenous peoples. There is also a section responsible for disaster preparation and response, as well as specialised projects to promote community development.

b) Children's Division

The Children's Division, located within the JKM headquarters in Kuala Lumpur, is the designated section to promote the welfare of children in Malaysia. With a total staff of twenty-four, the division is separated into three units:⁴⁷

1. **Protection:** responsible for child protection programs including: the Child Activity Centres (PAKK) and Child Protection Teams (PPKK); adoption initiatives; and registration and monitoring of the government's thirty-six children's homes and institutions.
2. **Rehabilitation:** responsible for the welfare, placement and rehabilitation of children in conflict with the law.

⁴⁶ The origins of the Department of Social Welfare can be traced to 1946, when it was set up to handle various issues in the aftermath of the Second World War. It has since been managed under various ministries, and its roles and functions have expanded to cover many new areas, making it a leading Government agency that plays a vital role in social and community development today.

⁴⁷ This study has focused upon the work of the first of these, the Protection Unit. A recent study undertaken by UNICEF and the MWFCDC has focused on the work of the Rehabilitation Unit, although many staff have overlapping roles and duties, especially outside of the main headquarters.

3. **Development:** responsible for the roll-out of community care and early education centres; vocational training for children under the care and protection of JKM; and supporting children's activities and events.

This central-level agency now has little role in service delivery, with its main responsibilities being: policy formulation; establishing minimum standards for services, registration and accreditation of social welfare services; promoting inter-agency collaboration; administering outreach, assistance and social welfare support as necessary; and controlling resource mobilisation and distribution. It does promote and fund various programmes for children, and the central agency can assign state offices to undertake certain tasks.

Within the Protection Unit, four designated officers are responsible for developing and monitoring the selected activities and programmes.

The Children's Division is mandated under the Child Act to establish and manage the 'Coordinating Council for the Protection of Children'. This body acts in an advisory capacity to the Minister of Women, Family and Community Development and is chaired by the Director General of JKM. The purpose of this council is to debate and recommend new initiatives and services for protecting children as well as ensuring the operations of the PPKK. Although the council is mandated to meet every quarter, in reality, meetings are convened about twice a year. It was stated by respondents that the designated members from line-ministries change often and the primary stability comes from the seven external specialist members

from academia and NGOs. There are currently three sub-committees focused on 1) research, 2) training and 3) advocacy, but the status and priorities of these sub-committees was not well known.

State Level

a) Children's Division

In every state, there is a State Social Welfare Department (Jabatan Kebajikan Masyarakat Negeri - JKMN) designated as the single agency responsible for the social welfare of the most vulnerable populations. Each state has a dedicated Children's Division mandated to implement central level policy directives for the well-being of children: the Division is responsible for poor children, children with disabilities, juvenile offenders, as well as children in institutions, nurseries, and childcare centres. In addition, there are specific responsibilities for managing all aspects of prevention and response to violence, abuse, and exploitation of children. There is no responsibility for the development of policy and procedures at this level; rather the Division receives implementation directives and guidance from the central level.

JKM manages a range of institutions in each state. These may be broadly categorised under three groups – (i) children's institutions, (ii) institutions for persons with disabilities, and (iii) family institutions and institutions for senior citizens. The Children's Division in each state is responsible for the regulation and licensing of children's institutions, centres, and shelters within the state.

The Child Protectors at the state level have largely administrative roles and are responsible for key inter-agency coordination; policy dissemination and promotion; funding allocation and management; and reporting. They have a very limited service delivery role. The exception is in Kuala Lumpur, where all Child Protectors are based at the State Headquarters, rather than in different districts of the city. At this office there are twelve officers dealing with abuse cases, of which seven have been gazetted.

In Sabah, there are seven officers within the Children's Unit (not Division). Of these, two are Grade S41, two S27, and three S17. There are twenty-three gazetted Protectors in the state, but this is insufficient, especially for such a large state. In Sarawak, one officer stated that she had 11,000sq/km of territory to cover. At the State level in Kelantan, the Division of Children is headed by a Senior Assistant Director (Grade S44) who is assisted by the Senior Assistant Social Welfare Officer (Grade S32) and two Social/Community Development Assistants (Grade S17). Twelve of the twenty-five officers gazetted as Child Protectors in the state of Kelantan work as full-time Protectors in the ten districts. The structure is similar at the Johor State JKM office with the exception that there are two Senior Assistant Social Welfare Officers (Grade S32). There are currently 45 gazetted Child Protectors in the eight (original) districts of Johor.⁴⁸ The Senior Assistant Directors and the Senior Assistant Social Welfare Officers are all gazetted as Protectors, as well as Probation Officers.

b) District and Sub-District level

At the district level, each JKM office has approximately three to five staff responsible for all populations of vulnerable people. These officers may be designated as Child Protectors, but have a much wider mandate and responsibilities for the delivery of social welfare services, as well as addressing other social and community issues. In district offices nationwide, officers are in fact gazetted as both Child Protectors as well as Probation Officers, while in the state of Kelantan, six Protectors have now been gazetted under the Anti-Trafficking in Persons Act 2007. The remaining Protectors in the state are due to be gazetted under this Act in the near future.

Overall, JKM's role in prevention and response services is quite limited. While JKM staff in all states recognise their general mandate to protect children, this has not been fully translated into a role that is viable or sustainable. In all departments, the human resources, structures, and accountability mechanisms available to manage the required prevention and response services provided by district-level social welfare authorities, or by other agencies or community-based organisations, are limited.

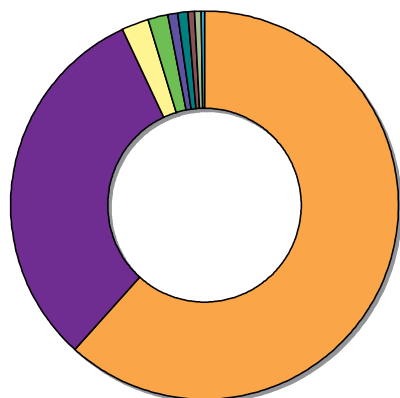
Budget for Children's Services

The basic budgetary information provided below does not allow for a full review or analysis of financial allocation to the Children's Division for the delivery of specific children's services⁴⁹. The budget provided is, however, revealing in a number of ways:

⁴⁸ Two new districts have been established, for a current total of ten in the State.

⁴⁹ This includes the budget for all services, including nursery based care, protection measures and services for children and young people in conflict with the law.

Budget Allocation for Children's Services (2009)



■ Institutional Management	■ Juvenile Welfare Committees
■ Child Protection Teams	■ Sports & Recreational Materials
■ Community Child Care Centres	■ Children's Institution Brass-band Competition
■ Training, Advocacy, Meetings	■ Witness Support Services
■ New Community Child Care Centres	■ Sabah Shelter for Undocumented Children

NO	ITEMS	BUDGET
1	Institutional Management (Protection & Rehabilitation Centres)	RM 47,012,300
2	Child Protection Teams	RM 2,227,000
3	Community Child Care Centre (Annual grant)	RM 1,664,000
4	Training, advocacy, meetings, etc.	RM 950,000
5	Juvenile Welfare Committees	RM 565,000
6	Brass-band Competition of JKM Children Institutions	RM 350,000
TOTAL:		RM 52,768,300
Budget:		
7	One-off 2009	
	· Sports & recreational instruments for children	RM 500,000
	· Witness Support Service	RM 200,000
	· Shelter for undocumented children in Sabah	RM 40,000
8	Launching grant for 10 new Community Child Care Centres	RM 640,000
GENERAL TOTAL BUDGET 2009 (Children Division):		RM 54,148,300

ADDITIONAL STIMULUS PACKAGE BUDGET FOR CHILDREN'S SERVICES

NO	ITEMS	BUDGET
1	Enhancement of 139 Child Protection Teams	RM 17,000,000
2	Upgrading facilities for 35 children institutions (physical development and facility improvement)	RM 14,062,000
Budget Allocated for:		
	· 11 Children Homes: (RM6,073,510.00)	
	· 19 Rehabilitation centres (Sekolah Tunas Bakti, Taman Seri Puteri and Asrama Akhlak or Probation Hostel): RM7,988,595.00	
Total Stimulus Package		RM 31,062,000

Firstly, the budget appears to show that, of all funds available in 2009, over 71.6% was allocated for the management and improvement of facilities, homes and institutions for children. Many of these facilities are for young offenders, so the actual available amount for those in need of protection against abusive families or exploitation is probably a much reduced proportion of this total. It does, however, reveal that the emphasis on services to reduce the risk of abuse to children (such as PAKK, PPKK and care centres) remains secondary.

Secondly, there is no clear differentiation in the budget lines (as presented) between those services for children in need of special protection from abuse, neglect and exploitation, and those children who are in conflict with the law.

Thirdly, as mentioned elsewhere in this report, it is essential in a budget to differentiate between protective measures and participatory activities for children. Events for the annual Children's Day, drawing and brass-band competitions are not within the statutory framework of child protection and need to be considered separately. However, given that the budget allocation for core components of the protection system such as the PAKK and PPKK remain relatively under-funded, and at times non-operational, it is strongly recommended that the considerable 'participation / activity' funds are re-allocated to mainstream protection services.

Other Structures

National Population and Family Development Board (LPPKN)

Originally known as the National Family Planning Board, which was established in 1966 primarily to organize and implement a nationwide family planning programme, LPPKN has evolved into a leading Malaysian agency with a core mandate to promote family development and wellbeing. Its principal objective is to develop a "quality population" through the strengthening of the family institution and through preparing families to cope with and adjust to changes in the socioeconomic environment. This is in accordance with Vision 2020,⁵⁰ which aims at balancing economic growth and human development through the establishment of a caring society and culture in which the welfare of the people will revolve around a strong and resilient family system. It is also in line with the 8th Malaysia Plan (2001-2005), which recognizes the family unit as forming the basis for social stability and building a caring society, stating that:

"Emphasis will continue to be given to strengthen the family unit. Efforts will continue to be undertaken to equip families to face the challenges arising from rapid economic development as well as ensuring stability and harmony within the family unit. In addition, the family development programme will continue to be implemented to ensure that families and society in general are resilient."⁵¹

⁵⁰ Vision 2020, which aims at balancing economic growth and human development, was introduced during the tabling of the Sixth Malaysia Plan in 1991. It is expected to gear Malaysia towards achieving developed country status by 2020.

⁵¹ 8th Malaysia Plan (2001-2005), Chapter.1, Art.55.

LPPKN promotes family-friendly policies to policy makers and planners and works with international organizations, government agencies, NGOs and institutions of higher learning. The agency has seven divisions and its policies and organisational framework are organised along its three central program focuses:⁵²

- i) population;
- ii) reproductive health;
- iii) family development.

The agency maintains offices in all the thirteen states and two Federal Territories in the country. It implements and coordinates various programmes and activities and provides clinical and counselling⁵³ services for specific target groups. It is also involved in advocacy, education, training and research in various areas under the three central programme focuses. The programs and activities are carried out through its centres and clinics in the states and districts. Various family development modules⁵⁴ have been developed and implemented to enhance knowledge and skills in parenting and family development.

Earlier this decade, the pilot “Kompleks Kesejahteraan Keluarga”⁵⁵ project was set up in Shah Alam in the state of Selangor as a one-stop family service centre of excellence.⁵⁶ Two more centres, one in Seremban, Negeri Sembilan and Anak Bukit, Kedah have been established since then. The “Kompleks” works with the State Executive Committee responsible for women

and family issues and implements programmes through the development of course modules,⁵⁷ training, and advocacy activities that enhance knowledge and skills in parenting and family development. A Family Centre that provides counselling services as well as therapeutic programs and parenting courses will be operating in the Selayang district of Kuala Lumpur. By the first quarter of 2010, fifteen one-stop family centres are planned be established in all states. LPPKN also runs the LPPKN Resource Centre, established in 1967 as the National Family Planning Library. The Library was upgraded into a specialized resource centre in 2004 and now runs along the themes of the three central focus areas.

While undeniably a leader in many aspects of family development, there is still enormous potential for the agency to harness its expertise and maximize its efforts in primary and secondary prevention activities with regard to child abuse. This should be especially meaningful, given that it is currently already involved in advocacy and counselling for children and the family.

Royal Malaysian Police

Established in 2007,⁵⁸ the Sexual Crime and Children Division (D11) of the Criminal Investigation Division (CID) is responsible for the investigation of sexual assault and domestic violence perpetrated against

52 Changes in the agency’s policies and organizational framework were made in the 1990s in support of the Programme of Action of the 1994 International Conference on Population and Development (ICPD). The existing population programmes were then revised along the three thematic areas of priority – population, reproductive health, and family development.

53 Counselling services include family planning counselling, marriage and family counselling, psychosexual counselling, counselling for youth and children and group counselling.

54 The complex provides reproductive health services and maintains rooms for private counseling on marriage, family and youth issues, family psychosocial development, as well as offers tele-counseling services.

55 Formerly known as the “Kompleks KASIH Keluarga”.

56 The complex has a gynaecology check-up centre and maintains rooms for private counseling on family planning, youth problems, sexual abuse, family care, etc. and also offers tele-counseling services.

57 A prominent example is the “e-KASIH Package”, which comes under “Family Development” and includes modules on preparation for marriage and enrichment of family, fatherhood, parenting of young children, parenting of adolescents, adolescent development, and the SMARTSTART Guide for newlyweds.

58 This was established as a result of the recommendations of the ‘Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police’ (2005). A further recommendation to create separate divisions for women and children was not enacted.

women and children. Formally under D9(b),⁵⁹ this newly constituted division has a total of twenty-seven officers and civilian staff based at the headquarters in Bukit Aman. The division operates under MS ISO⁶⁰ standards and is formally audited and monitored annually to ensure compliance with international obligations. It is noteworthy that the D11 was involved in the investigations of the recent controversial case involving sexual exploitation of the Penan girls in Sarawak. It also provided technical support to the Special Task Force set up by the Ministry of Women, Family and Community Development to assist in the investigations.⁶¹

At headquarters level, the division is divided into three specialised units, each staffed by approximately three officers:

1. Children's Unit, incorporating the work of the Child Protection Unit;⁶²
2. Domestic Violence Unit, incorporating the Victim Care Centre; and
3. Sexual Crimes Unit

The main functions of the police officers, the majority of whom are women, are to: rescue victims and support them to access a place of safety; investigate all reported cases of child abuse and neglect; and take statements and prepare evidence for the Deputy Public Prosecutor (DPP). In relation to the protection

of children, the police are mandated through the Child Act to work in collaboration with other principal actors, including JKM and the medical profession. The Act will be supported through the implementation of a new document, 'Working Together' (2009).⁶³ This document provides interagency protocols and procedures, and outlines the flow of responsibility and actions of each mandated actor. Since the RMP is an MS ISO-certified agency, the D11 is subject to annual monitoring. In addition, D11 has its own public complaints mechanism whereby victims and their families are able to express their dissatisfaction at investigation and interviewing processes.

Apart from in Kuala Lumpur (where the D11 contingent is centralised), all district stations (balai) in every state are supposed to have a D11 officer. The exception to this is in Kuala Lumpur, where the contingent is centralized with all officers based at the Kuala Lumpur Police Headquarters. Here there is a staff of forty-seven (including administrative staff), while outside the capital, the D11 operations are considerably reduced. In Sabah, for example, there are four D11 officers based in the state capital headquarters, while in Sarawak there are eight officers. The principal role of officers of the state-level contingent is to coordinate and support officers in the districts. While recognizing that the D11 is still relatively new in the districts, many posts remain unfilled. For example, in Sarawak only the eight districts with the largest urban centres currently have specialized officers. Especially in Sabah and Sarawak, this results in huge geographical regions

59 The Special Investigation Division

60 MS ISO or Malaysian Standards are developed by Standards Development Committees (SDCs) within the Malaysian Standards Development System and approved in accordance with the Standards of Malaysia Act 1996 (Act 549). The ISO/IEC Guide 59 – Code of good practice for standardization and Annex 3 to the WTO/TBT Agreement act as guiding principles in the development of Malaysian Standards.

61 The Star: Friday, 11th Sept 2009 <http://thestar.com.my/news/story.asp?file=/2009/9/11/nation/4696488&sec=nation>

62 The mandate of D11 has recently been extended to include responsibility for missing children under the age of 15, formerly under the Public Affairs Division of the Management Department, RMP.

63 Developed by JKM, but not available / not gazetted at the time of writing.

that are not covered by D11. In some districts, male officers have had to be assigned to support female victims of violence and abuse.

Inter-Agency Coordination

At the time of writing, the Working Together document mentioned above was not gazetted. This document is expected to clearly define the mandated roles of different agencies within the child protection system. As will be discussed at some length throughout this document, the three principal agencies (JKM, RMP and the SCAN Teams) currently responding to cases of abuse, exploitation, and neglect have sought to continuously improve their coordination since the introduction of the Child Act. This partnership, enshrined in the legislation, will significantly benefit from more formalised coordination processes and greater accountability among agencies.

From a broader perspective, an indication of the intentions of the Working Together document may be found in the new National Child Protection Action Plan. This Plan describes a very comprehensive range of stakeholders charged with ensuring implementation of protection activities for the 2009-2015 period. It is encouraging that, in the coming years, many actors will receive sensitisation and training to build their capacity to play an integral role in the wider protection system. On the other hand, a degree of caution should be exercised when implementing the array of activities proposed in the Plan: child protection efforts should not be considered to be a broad multi-agency effort. Although the Plan does not yet specify the exact contribution or envisioned role of each named agency,

it will be essential to clearly define the leadership and coordination role of the MWFCD among supporting partners. Indeed, as the system becomes a more refined and systemic professional sector, so the coordination and oversight role of the lead mandated agency, JKM, increases. As in the health and education sectors, not all actions are undertaken through multi-ministry dialogue and consultation. Indeed, the role of the MWFCD, and especially JKM, should be to bring others within the fold of its own vision and strategic planning.

Independent Monitoring

At the present time there is a lack of independent social auditing of services, especially in relation to care standards. All auditing is currently conducted by JKM officers; this process is not appropriate or sustainable on a number of levels. Firstly, auditing should be conducted by an independent commission or board to ensure transparency of process. While JKM must of course maintain its own internal monitoring and evaluation mechanisms regarding its programmes, it is important that the system also be open to wider independent assessment. This is in no way to suggest impropriety in current operations, but it is recommended that an independent body be established to review, for example, operations within shelters and care homes, as well as audit staffing and resource matters.

Secondly, auditing is currently conducted by social welfare officers from headquarters. This results in these few staff being distracted from their other activities. Additionally, it is not feasible for one or two

officers to be assigned responsibility for the oversight and regular inspection of thirty-six government institutions.

Similarly, at the present time in Malaysia, there is no official independent enquiry mechanism or commission to review individual cases. There have been a number of high profile cases in recent years that have demanded a review of policy, but no public enquiry has been initiated.

It is nevertheless noteworthy that in exercising its power as stated under Section 4(2)(d) of SUHAKAM Act 1999 (Act 597),⁶⁴ the Human Rights Commission of Malaysia (SUHAKAM) makes visits to JKM centres and homes in response to complaints about conditions at the institutions and allegations of rights infringements. Although JKM institutions do not fall directly under the jurisdiction of SUHAKAM, the Commission would still carry out visits on an ad-hoc basis on an average of two to three times a year to ensure conformity with requirements, even if no complaints are received. JKM has been lauded for good cooperation with SUHAKAM in coordinating these visits.

⁶⁴ SUHAKAM also visits facilities run by the Immigration Department, the Prisons Department and the Royal Malaysian Police to assess and ascertain conditions, as well as to observe whether the human rights requirements as prescribed by the UN Standard Minimum Rules are adhered to.

KEY FINDINGS

Given that the Ministry of Women, Family and Community Development was only formed in 2004, it is a credit to the Government of Malaysia that so much progress has been made in a relatively short time. Indeed, the foundation of an operational and effective child protection system has been laid, and the findings of the research demonstrate that with focused leadership and increased investment, Malaysia is ready – after five years – to move into a new phase in its protection strategy. However, the research also indicated that in order to strengthen existing structures, several key decisions need to be made.

At the present time, respondents across all agencies consistently stated that the responsibility for child welfare and protection issues lies with JKM. It is encouraging that there is an identified central agency responsible for the coordination and oversight of both policy and service development. This role, however, comes with significant responsibilities and expectations: at times, the demands of the role have caused frustration among JKM departments and staff, and have generated tension with governmental and NGO partners.

The findings reveal that the tensions are primarily caused by the lack of investment in the welfare sector, and more specifically in the child protection system. The resources available to the Children's Division are insufficient to realise the system envisaged under the Child Act, and the professional investment in the SCAN Teams and the D11 units is all the more apparent by contrast. There are too few trained Child Protectors within the current system to respond to the increasing numbers of cases they have to deal with and as the general public becomes more aware of their duty to report child abuse and neglect, the burden of responsibility on protectors will intensify. These Protectors are responsible for children in many different circumstances and are unable to specialise in any key area. This factor is especially acute in the districts, most notably in the more remote areas of East Malaysia.

While some of the structural challenges are underpinned by the lack of investment, there are broader coordination issues that impede the optimal development of a child protection system. It is anticipated that the Working Together document will define operational and accountability relations between the core response agencies, but in moving towards an effective prevention strategy, it will be necessary to engage new partners as envisioned within the Action Plan. The Plan outlines the commitment to inter-agency participation in protecting children. This should not be interpreted as devolution or dilution of responsibility, but rather highlights the future leadership and coordination role of the MWFC, particularly JKM. Given the ambitious nature of the Plan, it is all the more important that child welfare and protection is promoted as a distinct sector, such as education or health.

The current system is largely focused on a statutory response for victims of abuse and neglect; within a future system, greater emphasis will likely be given to preventative strategies, in line with current global thinking. The welfare of children is inherently connected to the well-being of their families so the critical role of LPPKN must be articulated within the protection framework. While there currently is a working relationship between LPPKN and JKM, through which LPPKN refers cases of child abuse and neglect to JKM for further action, within the current structure, JKM and LPPKN do not harmonise their visioning and planning processes in a way that maximises the natural linkages of their programmes. Social attitudes and behaviour (especially within the family) are essential components of a prevention and identification system.

In many countries of the region, civil society organisations have forged the way in the child protection sector. As a result, efforts in this sector are often perceived as being 'voluntary' in nature. Given the relative absence of child welfare NGOs in Malaysia, the role of the State is heightened in terms of assuming its responsibility in line with the CRC. At present, while there are a number of specialist civil society organisations working for the welfare and protection of children across the country, these agencies are not yet working within the fold of the child protection system. Indeed, some agencies have very few linkages to the statutory system and are providing services in isolation of government structures. To complement, enhance, and expand existing service provision, the government and NGO sectors need to establish closer working partnerships, which should be regulated and recognised within the system.

RECOMMENDATIONS

In order to ensure achievement of the social development envisioned in the 'Vision 2020' strategy, as well as the key recommendations of the Committee on the Rights of the Child, some key restructuring will be required:

- **In line with the common call across all states, the establishment of a 'Children's Department' is recommended.** Discussions have been continuing at the highest level of the Ministry on this matter for a number of years; however, if the ambitious activities of the National Child Protection Action Plan are to be realised, the current status of 'Division' will need to be revised and expanded. Given the limited investment in human and financial resources in the current structure of the Children's Division, there is little opportunity to meet projections and ambitions of the Action Plan. The establishment of a new department would signal government commitment to the fulfilment to its social agenda, and would enable the necessary scaling up of operations on the ground.
- **Design and map a long-term vision for the child and family welfare system in Malaysia, focusing especially on the child protection component.** This vision will provide the approach, direction, and goal of the future system. Such a mapping exercise will define how the activities detailed in the new Action Plan contribute to this wider vision. For example, in designing the vision, it will be possible to identify the priority given and resources allocated to the prevention of abuse as opposed to the response system. This exercise will also enable the Ministry to outline the structure for managing and implementing child and family welfare service delivery at the state, district, and sub-district level.
- **In conjunction with the above, develop clear roles, responsibilities, and processes within the system for those agencies not mandated within the Child Act.** For example, the role of LPPKN, NGOs, and other sectors (such as the Ministry of Education and Department of Orang Asli Affairs) within the overall service delivery paradigm should be clearly articulated, with a regulatory and oversight role for the new Children's Department or existing Children's Division.
- **Revive the Coordinating Council for the Protection of Children.** This body should act as the overarching mechanism for ensuring that all stakeholders, including those at the highest level, are not only informed about progress and challenges in ensuring child welfare, but also for responding to new emerging trends.
- **Establish an independent mechanism for monitoring the implementation of children's welfare services in Malaysia.** This position / body would be responsible for reviewing implementation of standards of care and for ensuring appropriate regulation of services for children. This body would also be able to receive individual complaints from children within the care system.

SERVICES





Under the CRC, the State has responsibility to prevent violence, neglect, and exploitation of children, as well as to provide appropriate care and protection to children without parental care, or who have experienced abuse and exploitation. Child maltreatment is a complex issue; it is rarely simply an isolated incident or occurrence and generally involves a continuum of actions, behaviours, and experiences. Typically, maltreatment occurs within a progression, involving escalating levels of violence and cumulative effects of emotional abuse or increasing harm caused by persistent neglect. It is a symptom of complex human problems and relationships and as such cannot be addressed with simplistic responses. Therefore, in order to fulfil their obligations under the CRC, State parties must have in place a continuum of child protection services designed to promote children's wellbeing and protection,⁶⁵ while enhancing the capacity of families to fulfil their responsibilities. This should generally include primary prevention initiatives directed at the community as a whole to strengthen the overall capacity of society in caring for children and keeping them safe; secondary prevention, or early intervention services, directed at children and tertiary interventions to respond to circumstances where a child is at serious risk of or is being abused, exploited, neglected, or harmed in any way.

The systematic implementation of this continuum of services requires both pro-active and reactive approaches, with clear processes, procedures, and services for: 1) identifying and providing appropriate support to vulnerable children and families; and 2) reporting, assessment, intervention planning, and case management for children who have experienced maltreatment. In most countries, States seek out

partnerships with civil society to support service delivery, however overall responsibility for ensuring access to and quality of services, rests with the government child welfare authority.⁶⁶

Primary Prevention

A recent study⁶⁷ conducted across Malaysia indicated a high level of awareness among the public on child sexual abuse and neglect in general. However, awareness levels vary from state to state. Awareness is highest on sexual and physical abuse, followed by emotional abuse and neglect. 77.5% of the respondents said they were aware of the rise in child sex abuse cases in Malaysia. The study concluded that this reflected the actual situation in the country. However, 21.6% of the respondents did not agree that there was a rising trend in abuse and neglect. As regards prevention efforts, 87.9% felt that the initiatives taken by the Government to deal with the issue were inadequate.

Generally, the groups of children interviewed were familiar with issues of abuse, having either heard it being discussed, knowing friends who have experienced abuse or having experienced it themselves. The majority of the children interviewed could articulate what constitutes abuse and neglect and provided examples of abuse, some of which were violent, saying that they have heard of this happening or know of friends who have been abused. There was a general acceptance of physical punishment by the children interviewed, many of whom differentiated this from their understanding of abuse. Children

⁶⁵ 'Child protection' here does not mean the protection and promotion of children's rights generally, but is specifically focused on the protection of children from abuse, exploitation, neglect, and violence.

⁶⁶ UNICEF East Asia and the Pacific, "Technical Guide: Social Welfare Systems," *Child Protection Program Strategy Toolkit*, 2009.

⁶⁷ An Overview and Public Perspectives of Child Abuse in Malaysia – Ministry of Health, Universiti Teknologi MARA & UNICEF, 2008.

explained that abuse is when they are beaten by adults without any reason, while punishment is when they are beaten for disobeying their parents or for not doing the household chores.

Awareness Raising Programmes

The process of changing public attitudes towards child welfare issues requires a comprehensive and sustained strategy. In the absence of a national coordinated effort, many well-intentioned local efforts may not be having an optimal impact. There are no comprehensive, focused national or state level strategies for the prevention of violence, abuse, and exploitation of children through, for example, systematic programmes on parenting skills or targeted communication for attitudinal and behaviour change.

However, efforts have been made across different agencies, albeit on a somewhat ad hoc basis, to build public awareness on the issues of violence, neglect, and abuse of children. For example, every D11 contingent has a dedicated and trained Police Liaison Officer, responsible (among other tasks) for organising public forums, conducting seminars in schools, and distributing pamphlets and flyers. One of the goals of these efforts is to inform young people about laws pertaining to sexual activities: many cases reported to the police are consensual sexual relations that are nonetheless defined as statutory offences under the Penal Code. Many young people, especially boys, are not aware that they commit a crime by engaging in sexual activity with their underage partners.

The Officer-in-Charge of the Police District (OCPD) is also responsible for ensuring that community

awareness raising activities are undertaken. These are usually organized in partnership with the Head of the Village or with the Village Committee, and take place through road shows, exhibitions, and events in schools. During these activities, the community police sensitise young people and adults on a wide range of issues including drug use, violence and abuse, and traffic offences. Police officers interviewed stated that they felt that negative concerns about the police had been significantly allayed through the Rakan Cop⁶⁸ short messaging service (SMS) service. Designed as a partnership between the police and the public, the service enables crimes to be reported, including cases of abuse, violence, neglect, and abandonment.

While the rare article or interview with NGOs on child abuse may occasionally appear in the print media, there has been little precedent regarding the use of radio or television for child abuse prevention advocacy. It was suggested that the general public is not able to access important information regarding child sexual abuse issues due to restrictive national broadcasting guidelines that discourage open discussion of sex and sexuality over the airwaves. It is therefore noteworthy that, at the invitation of a local private radio station, the children's agency P.S. the Children has appeared six times during regular broadcasts to speak on children's issues in recent months, in which three of the broadcasts were focused on different aspects of child sexual abuse. The agency also broadcasts brief statements on a radio channel to remind the public that they have a responsibility to act when children are being maltreated in their community. Feedback indicated favourable response from the public. Stakeholders may therefore wish to consider advocacy possibilities through the broadcast media in future.

68 'Rakan Cop' is the Malaysian Community Police Service (meaning 'Friends of Cops'), launched in Kuala Lumpur in 2005. No specific data was gathered in this study on the usage of the SMS programme to report violence and abuse against children.

KEY FINDINGS

Primary prevention initiatives and activities are central to a strong child protection system. The principal purpose of a system should always be to prevent the abuse and neglect of children, rather than 'cure' victims who have already suffered. This is of course an ethical approach, but would also reduce the burden of responding to victims for the limited number of Child Protectors. As will be demonstrated throughout this chapter, the emphasis currently placed on primary prevention is not proportionate to the significant response efforts for child victims; however, it is acknowledged that the new Action Plan outlines a series of key prevention measures that – when implemented in the coming years – would significantly realign the current emphasis. These measures are welcomed.

The findings reveal a number of key issues to be addressed:

1. There is currently a gap in understanding between the broad concept of 'protecting children's rights' and 'child protection'. While the promotion of children's rights is an essential component of the broader child welfare agenda, it is nonetheless important to distinguish initiatives of the MWFCDC that strive to uphold specific rights under Article 19 of the CRC. Training and sensitisation on generic child rights should be tailored to create a platform for more concrete dialogue around key protection issues. Respondents stated that there has already been considerable investment in training on child rights, but that the agenda must now move towards more concrete action. A good example of putting 'rights into action' was found in Sabah where mobile registration of children is taking place under the purview of the Chief Judge of the state. It was recognised that Malaysian children who were not registered at birth due to inaccessibility of registration offices were unable to access basic education and health services. It is well understood that non-registration creates lack of opportunity and, consequently, vulnerability to exploitative situations, especially for indigenous populations. This is a positive example where the right to identity and registration has had a direct bearing on the protection of children. It is recommended that programmes to promote children's rights, as defined in the Action Plan, be coordinated and targeted to resolve specific protection issues.
2. Respondents in all states acknowledged that the issue of maltreatment, especially sexual abuse, remains a taboo subject. As in many countries of the region, it is culturally inappropriate to openly discuss and debate sexual abuse, despite the findings of the recent study by the Ministry of Health revealing a high degree of knowledge about the related issues. In addition to this reluctance to engage in open dialogue on abuse issues, it was frequently stated that the family remains a private realm. In essence, it remains culturally inappropriate to interfere in the lifestyles of neighbours and community members. This philosophy, though perhaps changing in today's society, remains prevalent; this is a significant impediment to the reporting of suspected or actual child abuse cases. As part of the Action Plan, it will be essential to adopt a bolder national program of sensitisation to overcome the 'culture of silence'.
3. Current processes for informing the general public about child protection and welfare issues tend to be ad hoc. While JKM has a budget for training, many respondents stated that discussion on child welfare issues usually takes place at events for societies and committees, which are inaccessible to the general public. Undoubtedly, these talks and seminars reach influential people, but comprehensive primary prevention initiatives require a more sustained strategy in order to result in changes in societal attitudes and behaviour.
4. As the research conducted by the Ministry of Health reveals, access to information on the issue of child abuse and neglect is not uniform across states. The more remote areas tend to rely on radio for information and awareness, but due to broadcasting restrictions, it is unlikely that information on these topics reaches these locations. It is important that future national campaigns on child protection issues are made accessible to them.

Secondary Prevention – Early Intervention Services

Telephone Hotlines

In 2007, the government established a national telephone hotline, Talian Nur. This one-stop crisis hotline was designed to respond to children and families in difficulty. It is currently operated by 27 tele-counselors, twenty-four hours per day. Child Protectors are mandated to respond within one hour of a report. There is, at least in the KL office, a triage system for determining which calls require the most urgent attention; however, all calls must be responded to and a protector often has to drop other work to make a site visit, whether or not such action is really warranted as priority. However, many of the cases do involve reports from the public about children that are begging or loitering, or who have been neglected or abandoned. On average, approximately four to five cases of child abuse are reported and dealt with per week. All cases are reported to the Director of Children's Division and a weekly meeting is held within JKM (central level) to discuss the follow up of cases. A report is then submitted to the KSU.

Most of the children interviewed identified 999 as the police number that they know to call if they are ever in trouble. They stated that 999 is the common number that most children would be aware of. The majority of the children interviewed did not know that there is a special Talian Nur hotline to call for abused children.

At the time of writing, discussions are currently being held to establish ChildLine Malaysia. In a significantly different approach, ChildLine will be integrated under the National Public Safety Council's mandate to refine

the scope of existing operations for emergency response services such as fire, ambulance, and police. The service will follow strict international standards and the NENA approved 'Guidelines for Handling Calls Regarding Missing and Exploited Children'. There are currently three operations centres that will pilot the new service in Kuala Lumpur, Melaka, and Sarawak. Calls to the 999 number will be screened by trained professionals and referred to appropriate services. For example, if the report involves actual or immediate risk of abuse, violence, or exploitation, the nearest police patrol would be dispatched to respond. However, if the report is deemed to be non-urgent, the call will be transferred to tele-counsellors or the relevant JKM department for further action.

Children's Activity Centres (Pusat Aktiviti Kanak-Kanak)

The PAKK were established under the Child Act 2001 to provide support for children at risk in their communities. There are currently 139 centres around the country, many in areas where children are at risk of parental neglect. For example, a well known PAKK is the Nur Salaam Centre based in the Chow Kit area of Kuala Lumpur, a location known for high levels of poverty and prostitution.

Typically, local communities request JKM to fund the establishment and management of a new PAKK. Funding provided may be as much as RM54,000. This amount includes all management costs (rent, electricity, salaries, and programmes), along with a supplementary allowance of RM21,000 for equipment, furniture and educational facilities. Under the new government stimulus package of 2009, an extra RM15m was allocated for the promotion

and effectiveness of the PAKK. This new, one-off allocation has enabled the recruitment to all PAKK of a specialised facilitator, trained in a four-day JKM orientation workshop, to support the existing staff.

Although the PAKK are considered to be a mechanism for ensuring the protection of children, their actual role in the system has not been maximised. As the name would suggest, these centres are essentially designed for play, leisure, education, and other activities: children may be able to take computer lessons, have support with their schoolwork, learn cooking and household skills, play games and watch television, and receive religious instruction. Some staff members are assigned to take children on day trips and educational excursions, including visits to workplaces. While some PAKK welcome as many as fifty children per day, others may only receive two or three regular visitors to the centre. Some of the PAKK are able to offer discussion groups with parents on parenting skills and these appear to be well attended, with up to seventy participants in one group in Sarawak. However, there remain very few cases of abuse and neglect being identified or reported through the PAKK. Similar scenarios were observed in one PAKK in Johor⁶⁹ and in another in Kelantan. Although various family programmes exist, the administrators of the centres admitted that more could be done, especially in the areas of awareness-raising on child abuse and its prevention, as well as sensitisation, which has not been broached so far.

Throughout Malaysia there has been public concern about the 'latch-key kid' phenomenon: i.e. when parents are obliged to work full time and are not present when their children return home from school. There is a fear that children loitering in shopping malls and on the streets are vulnerable to abusers and exploiters,

but the primary concern seems to be that these unsupervised children are likely to become involved in petty crime and delinquency. In response to this, LPPKN has launched a Kafe@TEEN drop-in activity centre designed for young people aged between 13-24, offering a range of skills building programs and services to enhance life skills. Teen educators are trained to facilitate programmes, activities and counselling related to reproductive health. Kafe@TEEN is designed to provide a safe space for young people to interact and discuss school-related work or other relevant issues during 'teen chat' and 'teen talk' programmes, as well as while reading, utilizing internet facilities and participating in indoor activities. The educators also conduct workshops in local schools. These drop-in activity centres have been established in three locations – in Pantai Dalam in Kuala Lumpur, at the LPPKN building in the Kuala Lumpur city centre, and in Butterworth in the state of Penang. In addition to this, the Child Care Centre at the LPPKN building in Kuala Lumpur has been established to help working parents having difficulty providing care for their children while they are at work.

Child Protection Teams (Pasukan Perlindungan Kanak-Kanak - PPKK)

Each district has a Child Protection Team (PPKK) established by the Coordinating Council for the Protection of Children as stipulated in Section 7(1) of the Child Act 2001. In principle, the Child Protection Team helps to: coordinate locally-based services for children and families; organize awareness-raising campaigns; and monitor child protection activities and concerns related to children in the particular district. A major proactive programme undertaken by the Child Protection Teams is the establishment of the Child

⁶⁹ The PAKK has been involved in prevention programmes in schools on drug and substance abuse and a preteen programme on building identities and self-esteem, but so far there has been nothing on awareness-raising on child abuse.

Activity Centres (Pusat Aktiviti Kanak-Kanak or PAKK), as defined in the Child Act. The PPKK also work on individual cases, but the types of cases are very broad and include custody arrangements, religious and cultural disputes, issues related to undocumented and migrant children, as well as cases of abuse and neglect. The PPKK receives a budget of RM17,000 per year from the central government, which is supplemented by state-level and NGO funding. Each PPKK has an independent bank account and considerable autonomy for deciding the programmes it will manage.

In addition to the three mandatory members stipulated by the Child Act (i.e. a Protector⁷⁰ appointed by the Coordinating Council for the Protection of Children, a doctor, and a senior police officer), it is common to have a representative from agencies such as the Education Department, the State Religious Department, and the Labour Department, as well as medical social workers and local prominent persons⁷¹ as members of the team. Together, they form the Committee of the PPKK. These members provide their views, guidance, and recommendations, and assist the Chairperson of the PPKK in the execution of its tasks and programmes.

Community Care Centre (Taska Kommuniti)

Under the government's 'Early Childhood Care and Development Program', JKM is responsible for the establishment of care centres for children under four years. These centres are designed to enable working parents to leave their children in a safe and educational environment during the daytime. To date, JKM funds thirty-six centres around the country. Under the scheme, JKM provides both a launch and

operational grant (up to RM 55,000 per year) to NGOs that set up the centres. Additional grants of RM 180 are available for each child attending the centre, for children from families with a monthly income below RM2000 in urban areas, or RM1500 in rural areas. The government also provides 10% tax deductions to child care centres open in the public or provided by employers in private workplaces.

Financial Assistance for Children

There are a number of current initiatives underway to ensure social protection for the poorest and most vulnerable families and children in Malaysia. While poverty is not the principal factor that creates vulnerability to abuse, neglect, and exploitation, it is a contributing element. The Government of Malaysia has in recent years scaled up its efforts to ensure that all families, but especially those in need of special financial assistance, receive social protection support. While this study did not include a full review of all social protection measures available, several particularly important initiatives are acknowledged, including:

1. **Bantuan Kanak-Kanak (BKK):** the provision by JKM of financial assistance for the purchase of school uniforms, transportation, examination fees, and glasses for school-going children of families with incomes below the poverty threshold. This reduces the financial burden on families with school-going children. This amount was increased in 2008 to RM100/month per child, up to a maximum of RM450/family, even if the number of children in the household exceeds four;

70 In practice, the Protector is the District Social Welfare Officer (*Pegawai Kebajikan Masyarakat Daerah*), who chairs the Child Protection Team and is responsible for its budget and finances, as well as ensuring that activities and programmes are in line with the Child Act 2001.

71 They may include retired teachers and police personnel, village chiefs as well as representatives from the Local Council and the Fire Department.

2. **TASKA Kommuniti (Community Based Child Care Centre):** a subsidy of RM180 per child is given to parents whose income is below RM2,000 per month in urban areas and RM1,200 per month in rural areas;
3. **Elaun Anak Pelihara (Fostering Allowance):** JKM has recently introduced these fostering allowances to encourage the participation of the public in caring for orphans and children unable to live with their families. The foster family is given RM250 per month for each child, with a maximum of RM500 for a family.

In 2010, LPPKN, in conjunction with the Credit Counselling and Debt Management Agency (AKPK), will introduce a 'Smart Spending Programme' to support and counsel families on judicious household budgeting. The inability of families to budget was considered by a majority of respondents to be a significant cause of family conflict, divorce, and child neglect.

Family Strengthening and Mediation

Recognising the importance of the family unit for social cohesion and for ensuring the well-being of children, a number of interesting initiatives have been undertaken in recent years. These initiatives are in large part due to the increasing rates of divorce among couples in Malaysia and a concern that the family unit is less solid than in previous times.

Since 2006, LPPKN has been running the SMARTSTART Premarital Course for couples engaged to be married and couples that have been married less than five years. LPPKN has developed a standardised two-day course that covers topics

including financial management, parenting skills, gender expectations, and marital responsibilities. Local associations (religious or secular) and NGOs can apply to LPPKN to receive training to run the courses. LPPKN then provides special funding to cover venue and food costs. Each couple is required to pay RM50 to participate. Approximately 80 courses have been conducted each year, with each course including up to 20 couples. Although the uptake of these courses remains high, there has been no independent evaluation of their impact.

WHAT THE CHILDREN SAID

The Importance of Family

If children are given a choice,
they will choose to stay in a safe space
*(kalau budak boleh pilih, dia akan pilih
untuk duduk tempat yang selamat).*

But most times, even if it is unsafe,
children will choose to stay with families
because they are scared to lose them
(takut hilang keluarga).

Children can be afraid of new or
different environments
(takut suasana yang baru dan berbeza).

Children are more willing to be abused
than to be far away from their families
*(budak lebih rela didera dari berjauhan
dengan keluarga).*

* These are children's personal views during interview sessions and it does not reflect the views of the Ministry of Women, Family & Community Development and other related government agencies.

LPPKN also manages a number of other programmes to introduce new concepts in parenting. For example, the 'Family Life-Cycle Programme' is a short course focusing on development of appropriate techniques for parenting both young children and adolescents.

Although these courses are designed to be interactive, they admit up to seventy people per session. A similar programme is being piloted among Orang Asli groups. In 2006, LPPKN introduced the 'Parenting at Work Programme', a one day course that is conducted in the workplace. The aim of the course is to support dual career families to manage competing work and family demands. Fathers are especially encouraged to participate to these courses. In recognition of the changing dynamics of the family, especially related to increasing numbers of working mothers and migration to the cities and ageing population, talks on the role of grandparents as secondary caregivers and enhancing intergenerational solidarity will be included in the family development program in 2010.

Children interviewed said that families are the most important aspect of their lives: because they love their parents, children often want to stay with their family no matter what has happened. They also said that some children prefer to stay with their family because they hope that they will be able to change the attitudes of their parents. Some said that children would want to stay with their families and endure the abuse because they cannot bear to be apart from their families. Also, in most cases of abuse, only one parent who is the abuser, so the child will want to remain with the other parent.

Family Centres

Recognizing that the family environment is central to health and wellbeing, LPPKN is planning to look into the possibility of repositioning its current fifty-three clinics. It is anticipated that these clinics may be re-branded as Family Centres in parallel with the establishment of "Kompleks Kesejahteraan Keluarga".⁷² These clinics

provide support to new mothers in clinics as well as through home visits. These visits may take place with JKM officers if there are broader welfare needs. This initiative is being carried out with the participation of relevant NGOs, invited to run some of the programmes (including the "e-Kasih package") and to manage centres for marginalised families.

WHAT THE CHILDREN SAID

The Importance of Family

Sometimes both parents are not abusive,
so children want to stay with their
non-abusive parent.

Sometimes it is not the parents who are abusers,
but the brother or other relatives.

Some children will want to stay with the family
because they love their parents,
no matter what has happened.

And some children will prefer to stay with
their family because they hope that
they may be able to
change the attitudes of their parents.

Parents are important to kids,
they are God's gifts.

* These are children's personal views during interview sessions and it does not reflect the views of the Ministry of Women, Family & Community Development and other related government agencies.

Tertiary Intervention and Protective Services

Tertiary services correspond to those mechanisms, processes, and services that must come into play when a child has suffered, or is at risk of suffering, abuse, violence, and exploitation. Within the last decade and largely as a result of the duties created under the Child Act 2001, a number of key services for children have been established. The development of services

⁷² See Section 3.2: Other Structures – LPPKN.

KEY FINDINGS

Social and family dynamics are shifting rapidly, not least due to the expansion of urban areas and the demands of new working patterns. According to respondents, the extended family networks that ensured children were well cared for are now less robust. This means that government responsibilities and interventions must adapt to meet the evolving protective environment for children. The government is clearly responding by developing a greater public sector childcare system, especially in urban areas, and by creating accessible community services for vulnerable families and children. However, the findings reveal that there remain a number of challenges in ensuring that secondary services (targeting specific at-risk groups) are appropriate and accessible and designed to have a sustainable and optimal impact. For example:

1. There has been a noticeable shift in policy and resources towards strengthening the role of the family as the 'first line of defence' for children, especially with regards to providing childcare and financial support the poorest and most marginalised sections of society. The increased level of Bantuan Kanak-Kanak funds provided in 2008 to school-going children is a good example of the Government's commitment to ensuring that children do not drop out of school due to family financial constraints. However, the challenge will be to ensure that other measures, such as the Community Care Centres (Taska Kommuniti), can be scaled up to become national programmes, and are accessible to a greater number of families. This programme remains dependent upon the action of local communities (as with the PAKK) to instigate and manage these services. It is acknowledged that community mobilisation creates a solid and sustainable platform for service provision, but (presuming the model is shown to be effective) resources for national roll-out will be required, as well as greater monitoring and standardisation within a regulatory framework. Similarly, the various programs managed by LPPKN to promote family harmony could be a valuable means to ensure safe families and good parenting. However, these remain relatively localised and dependent upon the NGOs to whom the activities are outsourced. Again, it is advantageous to be working in partnership with NGOs for the implementation of these programmes, but a formal impact assessment has yet to be undertaken. This evaluation process would determine the potential to offer the programmes to a much wider segment of society.
2. An essential component of a secondary prevention strategy must be the development of identification (or detection) systems for families and children at risk. The PAKK, located in deprived areas, were designed as a core service for monitoring and protecting children at risk. However, the study revealed that while the PAKK are undoubtedly a helpful and enjoyable resource for many children, their function has still to be fully harnessed to the wider protection system. The centres visited, with the exception of Nur Salaam (which deals with serious protection issues of street homelessness and prostitution), many of the centres are largely recreational. While centres are able to provide a safe recreational space for children after school, they are not necessarily capturing children at risk of significant harm. Although some centres organise activities for children to address risk-taking behaviours such as drug / substance abuse and HIV/AIDS awareness, the centres have only a very indirect focus on child abuse prevention and sensitization. Until the recent new resource allocation for a facilitator (until the end of 2009), there has been a general lack of permanent staff to manage the centres effectively. Many rely on volunteers; because there has been no formal training for the majority of staff (apart from the new facilitators) on detection of abuse and neglect, it is not surprising that suspected cases are seldom reported to JKM through the PAKK.

KEY FINDINGS

3. A number of new initiatives are planned to enhance the identification of families in crisis and the reporting of suspected or actual cases of abuse and neglect. Firstly, the Government is supporting the introduction of the new ChildLine Malaysia, managed by a consortium of NGO and private sector partners. Secondly, plans are underway to develop an Amber Alert system for missing children. These are both valuable initiatives; however, according to respondents, they are being conceptualised as individual projects rather than as part of a wider system. In essence, the operational details of the telephone hotline per se are being negotiated without sufficient attention to the actual protective systems that will support it. Both telephone hotlines and alert systems are progressive mechanisms but these require a sophisticated and well-resourced response structure in order to be effective and sustainable. These systems require considerable on-going funding and, given the other recommendations in this report, it is questionable whether expensive and advanced identification systems are a main priority at the current time.
4. The findings revealed that the Child Protection Teams (PPKK) were functioning in a reasonably coordinated way in some areas. However, the potential afforded by these teams to ensure the protection of children has not reached its optimum. In terms of the management of the teams, Child Protectors almost unanimously stated that they do not feel in a position to lead the PPKK. Firstly, many Child Protectors do not have the requisite capacity, experience, or time to design and implement projects. This means that they are often hurriedly trying to spend their allocated budget without a proper strategic plan. Secondly, the police and doctors are perceived as more senior to the Protectors, both professionally and often in terms of age. The Protectors stated that they do not feel comfortable making demands for more active participation within the team. In most cases, the police and medical doctors have been assigned to the PPKK, in addition to their other tasks. This nomination process has meant that the team cooperation is very variable and the work inevitably falls to the Protector. Thirdly, there is a noticeable lack of skills and experience among the teams on child protection issues. This is largely due to the limited resource allocation for training of PPKK members, but the result has been that many of the activities undertaken are recreational and educational activities for children – albeit for disadvantaged children such as those living in care or remand homes. Given that the budget for the activities of the PPKK is finite, it is important that clear guidance be provided to the teams to ensure that their core mandate to prevent abuse is fulfilled.
5. In relation to the above, the study revealed a broad definition of child protection at times. A number of respondents stated that their activities were ‘preventative’ on the basis that they build the life skills and socialisation of children: these included outings to the zoo, visits to the cinema, and camping trips. These are enjoyable activities for children and do provide opportunities to learn and explore childhood, allowing children who might otherwise be excluded from enjoying normal childhood experiences (such as those living in children’s homes) to experience leisure activities. However, a distinction must be drawn between organising ‘participation’ activities and planning ‘protection’ programmes, not least because the events in which children participate are often taken from the budget for child protection.

shows considerable commitment and represents a major step towards a statutory based system for protecting children who have suffered abuse, neglect, and exploitation, or who are at risk of significant harm. However, there remain a number of key weaknesses in the existing system and in the approach to future development. As will be demonstrated, the current services (as established under the Child Act) focus efforts on emergency intervention when a child has already been abused or neglected, rather than considering the long-term care needs of a child and other children in the household.

This chapter discusses the welfare and protection services themselves, while Chapter 5 will review the interagency processes for responding to victims.

Care Homes and Institutions

JKM is responsible for the establishment and management of children's homes, including those for children in conflict with the law, children beyond parental control,⁷³ as well as orphans, abandoned children, and victims of abuse and neglect.⁷⁴ There are also other homes for children in need of protection and for underage girls who have been threatened or intimidated for the purpose of prostitution. All children's homes are gazetted as "safe homes" under the Child Act 2001. However, there is an increasing recognition within the government homes that many of these are understaffed.

JKM also supports 'Rumah Tunas Harapan', a family-based care provision for orphans, neglected, and poor children. Couples wishing to foster children can register and, after being approved by JKM, may take up to ten children into their family home. JKM assesses the financial situation of these foster parents. There

is a maximum total allowance of RM1,000 per month available for foster families.

WHAT THE CHILDREN SAID

Some homes are a good place to live and some are not.

The good homes will provide food, clothes, a place to sleep and ensure the children are not abused.

Some homes are bad because the food is bad and the home administrators don't care.

* These are children's personal views during interview sessions and it does not reflect the views of the Ministry of Women, Family & Community Development and other related government agencies.

It is noteworthy that in Johor, there is a children's protection home run as a partnership between the Johor State Government, JUITA (the Johor Association of State Assemblymen's Wives), and a private sector organization (Kumpulan Prasarana Rakyat Sdn. Bhd.). The Home takes in children of 12 years and younger (under Temporary and Permanent Orders) who are in difficult circumstances, irrespective of ethnic and religious identity, including those who have suffered abuse and neglect.

In addition to homes run by the JKM, many private institutions are supported financially by the government, such as the Pertubuhan Kebajikan Anak-Anak Yatim (Peyatim), managed by the Muslim Association of Malaysia. Others are affiliated to, or are run by, faith-based organisations such as Shelter Homes, Good Shepherd, Pure Life, and PERNIM. The procedures for obtaining a licence to establish a home are not onerous, but are subject to review and approval by JKM, the local health services, and the fire department. The majority of these homes tend to be urban-based, which means that children from rural areas either do not gain access or are unable to maintain solid connections with their families.

73 Including the Sekolah Tunas Bakti (Approved Schools) and several Probation Hostels (such as the Asrama Bukit Senyum and Asrama Sentosa).

74 Rumah Kanak-Kanak in various states.

Standards for use in children's centres run by NGOs are being developed by DSW are scheduled for publication in 2010. UNICEF has played a key role in working with DSW to develop and implement these standards, which are generally consistent with the new UN guidelines on care for children without parental care. While the standards will apply to NGO units, DSW has stated that they should also form the basis of care in Government centres. The extent to which these standards will be successful in improving care remains less certain, as they will need to become mandatory and should apply to all places where children are cared for outside of a family environment. Monitoring of the standards, once in place, will also represent an important challenge.

Although most of the children interviewed had not heard of NGOs, there was a general perception of homes for children as safe places for children who have been abused. While children interviewed recognized that in certain situations it may be necessary for them to be temporarily cared for outside of their family, the majority also stated that regardless of any potential situation of abuse or harm, all children prefer to be cared for in a home environment and remain with their family. A group of boys from Serendah said that they would prefer to go home to their families – even though that is where the abuse took place, because they felt that they would have more freedom there.

While there are various JKM homes in every state, these institutions do not always fulfil needs that arise. For example, Kelantan does not have any institutions for children under the age of 18 and in need of protection. In cases of need, children from 13 to 18 years old are sent to JKM institutions in Arau in the neighbouring state of Perlis, or to Kuantan in Pahang

state. In Johor, children under a Temporary Order are placed in any of the three JKM protection institutions in the state,⁷⁵ if they are not sent home or to stay with a fit person. However, those under a Permanent Order or Judgement are sent to institutions in neighbouring states.⁷⁶ Child Protectors are therefore required to travel to institutions in neighbouring states for visits and monitoring purposes; they are also required to accompany the children to and from institutions in the neighbouring states whenever there is a court hearing. Feedback shows that this is extremely time-consuming, disruptive, and exhausting, especially when protectors are required to be present at the court with the child by 9.00am.

Emergency Medical Services

Concerns about the perceived numbers of children coming into hospitals with non-accidental injuries led to the initiation of a research project at the Universiti Kebangsaan Malaysia (National University of Malaysia or more commonly known as "UKM") in 1985. The outcome of the research revealed the need for a more systematic review of child injury cases. This led to the establishment of informal procedures of cooperation within medical units (paediatricians, gynaecologists, accident and emergency personnel, forensic pathologists, and psychiatrists) at the Kuala Lumpur Hospital (HKL). At the same time, collaboration was forged between JKM and the Royal Malaysian Police for investigation of cases of suspected intentional or negligent child injury. With this, the first SCAN Team⁷⁷ informally came into being in 1985.

However, it was not until high profile cases of serious and fatal child abuse were publicised in the early

75 Johor Bahru Protection Centre for Children (under 12 years - both sexes); Taman Sinar Harapan Tampoi (girls above 12 years); Taman Sinar Harapan Jubilee (boys above 12 years).

76 Rumah Kanak-Kanak Tengku Ampuan Fatimah, Kuantan, Pahang (boys and girls under 12 years); Rumah Budak Laki-laki Durian Daun, Melaka (boys 12 – 18 years); Rumah Kanak-Kanak Rembau, Negeri Sembilan (girls 12 – 18 years).

77 Suspected Case of Abuse and Neglect Team

1990s that the SCAN Team was formally established. Although the Team was officially institutionalised in policy in 1994, it was not until the adoption of the five-year National Social Policy in 2003 that the policy was reactivated and implemented nationwide within the National Plan of Action for Children.

The increasing numbers of reported cases of women and child abuse in the early 1990s also prompted hospital authorities to be more vigilant. In 1991, the Child Protection Act was passed in Malaysia, making it mandatory for medical officers to report suspected or confirmed cases of child abuse. There was clearly a need for a more comprehensive approach in terms of assistance, which requires not only the involvement of medical personnel, but also that of counsellors, social workers, legal aid providers, and the police.

In 1993, the first OSCC⁷⁸ was set up at the Accident and Emergency Department of the Kuala Lumpur Hospital as part of the hospital's centralised inter-agency support system providing victims (including children) of sexual abuse, domestic violence, rape, and sodomy who seek help access to comprehensive treatment and services at one centralized location. It serves to identify victims and diagnose the required medical treatment and care, provide temporary protection, counselling and emotional support, and also assists the victim in lodging a police report. OSCC medical personnel handle victims of abuse and violence immediately once a case is reported, following which the case is referred to the SCAN Team.

The objective of this comprehensive treatment and assistance is to minimise the trauma experienced by a victim who, in past practices, would have to move from unit to unit for examination and then to the police station to lodge a report before returning to the

hospital for treatment. Over one hundred OSCCs have been established in government hospitals nationwide since 1996.

i. One-Stop Crisis Centre (OSCC)

The first OSCCs were set up independently to address the increasing number of cases of women and child abuse in the beginning of the 1990s. They were set up as part of the Accident and Emergency Department of hospitals (or its equivalent) and are usually coordinated by a medical officer or an official of the Department. While the OSCC is not always an actual physical space as originally conceived (incorporating an interview room, specialised examination room, family room, etc.), the services are now largely present in all major hospitals. This has meant that women and children are accorded a greater level of privacy and have time to rest and recover while making the decision of whether to return home. In one hospital, a room has been set up within the Emergency Department for use as the OSCC with space for interviews and beds but an attached bathroom/toilet has yet to be added. This was recommended by the coordinator, as it would make the OSCC more child/victim-friendly.

OSCC personnel are medical officers and other hospital personnel and assistants on duty at the Accident and Emergency Departments on any given day. In general, there are no specially designated OSCC staff and there are seldom committees or bodies that directly oversee its work. The OSCC is said to have a 'flat management hierarchy' and the Coordinator reports directly to the Head of Accident and Emergency Department. In some urban centres, NGOs provide active support to the OSCC by being "on-call" or maintaining a hotline to provide counselling, emotional support, and assistance where needed.

Officials interviewed described the OSCC as being “fluid in nature” and generally without a formal structure. Consequently, there are overlaps in the roles of the OSCC and the SCAN Teams in some cases and the boundaries between them tend to become blurred. A more structured and formalized OSCC was among the recommendations given by hospital staff. It is noteworthy that there is now an officer within the Ministry of Health responsible for the coordination and development of OSCC within the country.

ii. SCAN (Suspected Child Abuse and Neglect) Team

The SCAN Team is widely understood as a ‘mechanism’ within hospitals comprised of a multi-disciplinary group of professionals from various medical fields, namely paediatricians, obstetricians and gynaecologists, psychiatrists, forensic pathologists, as well as (hospital) medical social workers. The SCAN Teams work with or may also include representatives from JKM, the police and other Government agencies. Some SCAN Teams include a representative from the Ministry of Education, while others include or work very closely with the *Jabatan Islam Negeri* (State Department of Islam), the Government Legal Aid Bureau, and the National Registration Office.

In practice, composition of the SCAN Teams is not strictly uniform across hospitals. They depend upon the level the hospital is assigned, recognising that not all hospitals have the same access to resource persons. Consequently, there is a strict guidance for referral to a ‘higher level hospital’ when faced with cases that are severe and the service of certain medical professionals is not available. Nevertheless, all Scan Teams work along similar principles and a

full team consisting of the above-mentioned medical professionals would generally be in place in all urban and metropolitan hospitals.

Discussions with members of SCAN Teams reveal that the structures of the teams are often not formalised and some teams do not report directly to any overarching authority. However, by convention, the Paediatrics Unit is in charge of the SCAN Team and the Head of the Paediatric Unit is often the Head of the SCAN Team. In general, the SCAN Teams indirectly maintain links with the Ministry of Health as well as with the Ministry of Women, Family and Community Development through the Social Welfare Department. It is noteworthy that the University of Malaya Medical Centre (UMMC,⁷⁹ formerly known as the University Hospital) SCAN Team, which was set up in the early 1990s, is considered a formal structure under the umbrella of the Medical Advisory Council (MAC)⁸⁰ of UMMC to which it reports. The SCAN Team at UMMC is made up of eight personnel - two paediatricians, two doctors from the Obstetrics and Gynaecology Department, a child psychiatrist, and three medical social workers. Together with the hospital legal affairs officer and representatives from the Pathology Department as well as those from the nursing staff, these eight SCAN Team members form the multidisciplinary Child Protection Committee, which looks at policies, processes, guidelines, and issues.⁸¹ The SCAN Team also works very closely with agencies such as JKM and the police.

Although some SCAN Teams may have a relatively formal structure, they and the OSCC are not considered to be units or departments in their own right. There is therefore no specifically allocated budget for them. Funding for the SCAN Team comes from the

79 It is also noteworthy that the UMMC is a teaching hospital under the purview of the Ministry of Higher Education and not the Ministry of Health.

80 The MAC is a body that oversees the administration of the hospital; it reports to the Board governing the Medical Faculty.

81 The origins of this committee may be traced back to 1978 when a Child Protection Team was first established at the then University Hospital. The Child Protection Team was formalised as a multidisciplinary Child Protection Committee under the Medical Advisory Council in 1988-89.

normal/routine hospital budget of the departments involved (mainly the Paediatrics Unit), while the OSCC expenditure comes under the budget of the Accident and Emergency Department.

All SCAN employees are full-time hospital employees and are not paid an extra allowance to be in the team. If there are any special programmes to be organised or any specific needs, requests are made to the hospital for funding. Respondents from the SCAN Teams and OSCC interviewed reported no current funding problems.

Child Protection Unit

The Child Protection Unit (CPU),⁸² established in 2001 and operational in 2003, is a key initiative of the Royal Malaysian Police to ensure that perpetrators of crimes against children are brought to justice. Concerned that child victims and witnesses were unable or unwilling to provide an initial statement or to testify in a court of law, the CPU was designed to provide a safe and child-friendly environment for children to provide testimony of the (alleged) crime against them.⁸³ Previously, evidence provided by a child through witness-protection schemes was often deemed inadmissible in court; however, in order to secure witness cooperation, a series of measures have been instituted with the introduction of the Child Witness Evidence Act, 2007. For example, it is now admissible for a child to identify an alleged perpetrator from behind a one-way mirror, rather than having to physically touch their abuser

in an identification parade. A document, 'Standard Operational Procedures' to facilitate implementation of the Child Witness Evidence Act, is currently being drafted.

To date, the CPU⁸⁴ has only been established in Kuala Lumpur, Penang, and Johor Bahru.⁸⁵ The CPU in the capital is located in a secluded bungalow and receives the majority of cases, although referrals are now split with the CPU in Penang and Johor. In Kuala Lumpur, as many as 367 cases have been recorded in the CPU in one year alone (2005). According to priorities identified, several more CPU are expected to be set up by the end of 2010 and the Central Strategy Plan of the Royal Malaysian Police is to ensure that a CPU is established in every Contingent Headquarters within five years.⁸⁶ As a temporary measure, contingent offices without a CPU will refer their cases to that of the nearest zone, if need be, as there should be one to cover them regionally.

Originally planned as a multi-disciplinary operation incorporating a team of medical staff and welfare workers,⁸⁷ the CPU operation today is essentially focused on recording the testimony of abused children on camera. However, the CPU works in conjunction with civilian counsellors, who are able to provide ongoing support to children and their families. To date, 126 officers from D11 have been trained to conduct specialised interviews, including practical application assessments.⁸⁸ At the CPU, trained officers are dressed in civilian clothes and have made great effort to provide a space that is homely and comfortable for

82 The name of the CPU may be changed to reflect more accurately its emerging role. It may be renamed the 'Child Support and Forensic Interview Centre' (CSFIC) in 2010.

83 Victims may be too traumatized to provide a statement in a local police station and may feel unsafe facing the perpetrator in a subsequent trial.

84 In Kelantan and Terengganu, the buildings for housing the CPU have been designated and the CPU is expected to be in operation in the very near future, once the necessary equipment has been installed. In Sabah and Sarawak, the buildings for housing the CPU have been identified but not approved despite applications having been submitted two years ago.

85 Respectively categorized as the Northern, Central, and Southern Zones.

86 To be modeled on the KL CPU.

87 No forensic medical examination may be carried out at the CPU.

88 Based upon international standards included in the 'PEACE' model for witness protection and interview.

children. There is a designated room for play, enabling officers to put the child at ease before and during the recording of the witness statement.

Although primarily focused on the collection of evidence from child victims of sexual abuse, the CPU is also used to elicit the testimonies of child witnesses of serious crimes, including murder and domestic violence. Children admissible under this scheme must be aged 16 and below, and judges may still require children to appear in court to provide evidence at their discretion. However, at least in major cities, the police and JKM have collaborated on the establishment of Child Support Courts. In these courts, screens or partitioning is now provided for child witnesses appearing in court, contributing to a sense of safety and confidence during questioning.

KEY FINDINGS

The services described above represent the evolution of a professional and statutory based service provision for child victims of abuse, neglect, and exploitation. The study revealed that the emergency response for children is now one of the most sophisticated in the region, especially in terms of the medical care provided and the emphasis on prosecution of perpetrators. As discussed in previous chapters, these services are instigated once a child has already been abused or maltreated and, in this sense, the core system remains reactive. These important medico-legal services are increasingly based upon international best practices and standards, and the emphasis on training of staff is noticeable. As was recognised by all service providers, there remain a number of challenges to ensure a fully operational system that is accessible by a wider section of society and that guarantees the same standard of care in both rural and urban areas.

1. **Children's Homes and Institutions:** Fortunately, unlike many other countries in the region, Malaysia does not have a history of institutionalisation of children. There are few large-scale children's homes and the programmes established in recent years have tended to emphasise the importance of caring for children in foster homes and small group homes. However, the range of family and community-based supervision and support services for children in need of care and protection are currently quite limited, resulting in an over-reliance on institutional placements to ensure children's safety. Tertiary services are primarily aimed at substitutive care, rather than family strengthening and family preservation. There are some noteworthy findings regarding children who are assessed as unable to live with their own families:

The alternative care options for Child Protectors are limited. While some children are clearly sent to reside with a fit person, the courts tend to either send a child to institutional care or back home. Orders placing children in institutional care are for lengthy, fixed-term periods of three years, and removal from parental custody is presented as a long-term care solution, rather than a temporary measure. Interim care options, such as temporary shelter or fostering, would provide an opportunity for welfare workers from a range of agencies to work to make the home environment safe, or to find alternative longer-term care solutions for the child.

Many children are brought by parents or referred by government agencies to NGO shelter homes and there is now a plethora of private children's homes. These homes are regulated and subject to standards. However, these standards principally refer to the physical requirements of the building, as well as staffing requirements. There is little explicit reference to the actual care of children themselves, or the right to have their cases reviewed at regular intervals. The commitment contained in the Action Plan to ensure adequate screening and mandatory training for all staff (regardless of whether the home is state or privately run) is welcomed, but monitoring processes also need to be developed to ensure that the quality of care is maintained.

The interviews revealed a concern about the tendency to outsource the construction and management of children's homes as part of the drive towards greater 'corporate social responsibility' (CSR). While it is recognised that the corporate sector can play a role in the development of social services for children, it is critical that this involvement be solicited in line with the government's strategic direction. The international consensus is that alternatives to institutionalisation, including children's homes, should be sought wherever possible. Traditionally, the private sector tends towards a welfare / charity based approach, in contrast to the government's current rights based approach, one that stresses the right of a child to a family life. As has been well documented in neighbouring countries, the supply of private children's homes has only led to greater demand and unnecessary separation of children from their families. In line with its vision of raising children in healthy families (biological or otherwise), Malaysia should continue working towards creating community-based options for children.

Although not confirmed by data, a number of NGO shelters stated that JKM does not have a register of all the children staying in their homes. The monitoring of private children's homes must be better regulated and will require the establishment of an independent section or body to undertake the role. It is not feasible or appropriate for JKM officers to be assuming this function.

KEY FINDINGS

Emergency shelters for victims of trafficking and sexual exploitation are a welcomed service. However, these should seek to reduce the stigma and isolation that victims feel by ensuring that they do not become long-stay facilities. In addition, as with any other child, the stay must be in the child's best interest. For example, if the child requires physical safety, there should be a full risk assessment and case review, and court orders should take into consideration a full range of out-of-home options, assuming the child cannot return home.

Recognising that there are many vulnerable children spending time or living on the streets in Kota Kinabalu, JKM is involved in an initiative with the Federal Special Task Force, where about seventy children are currently placed under temporary protection at the *Rumah Merah Shelter* in Sabah. These children are placed for a minimum of six months after which time they are usually returned to their parents. JKM caters to their basic health needs and offers a basic (3R) education programme, as well as life-skills activities for these children. With the cooperation of the National Registration Department, JKM assists undocumented Malaysian children in obtaining protection at the Rumah Merah Shelter in Sabah. It also assists in tracing the families of local and foreign street children in the shelter and in applying for 'dependent passes' for them wherever possible to facilitate formal schooling. Citing the policy of "continuous improvement", the construction of a bigger facility, the *Rumah Ehsan*, is nearing completion. This new complex will accommodate as many as two hundred children, albeit with better facilities and services. This will include the appointment of qualified teachers by the Education Department to conduct classes in a more formal setting for the children. While the problems of 'street children' in Sabah are especially acute, the building of such a large facility, however, seems to run contrary to the stated goal of developing community and family based alternatives for vulnerable children. Caution should be exercised to ensure that a two-tier care system, one for Malaysian children and one for undocumented, foreign, and street-children, is not established. It is a concern that the new facility will be closed and secure, contrary to the ideals of rehabilitation and reintegration within the community. It is essential that the new protection facility, which is a closed, secure facility and not appropriate for care and protection, does not become a long-stay or detention institution, but rather reflects the individual best interests and needs of the children. It should apply rigorous admission procedures and care standards, as well as regular and independent monitoring.

2. **The SCAN Teams and OSCC** have become central components of the existing child protection system. In the provinces visited, and especially in Kuala Lumpur, the services provided are relatively sophisticated and well formulated. It is apparent that significant effort has been made to standardise and regulate procedures based upon well-documented international practices. The services provided ensure that children who are suspected of having been abused are identified and treated accordingly. Unfortunately, given the reluctance of the general public to report cases, it is likely that only the most severe cases are being brought to the attention of the emergency medical services. The services provided are usually based in urban centres and the more remote communities in East Malaysia would not be able to access these services. As mentioned, the SCAN Teams and OSCC remain hospital-based; however, there exists a network of community-based clinics that – with more investment in training and greater resourcing – provide an opportunity for enhanced early detection of families in crisis and of individual children at risk of abuse and neglect. Primary healthcare providers, nurses, and clinic staff should receive accredited and standardised inservice training on the symptoms of abuse so that their mandate could be formally brought within the child protection system.
3. **The Child Protection Unit** is a progressive initiative of the RMP. Once again, significant investment has been made in developing standards and regulations based upon international best practices. The service visited in Kuala Lumpur demonstrated the commitment of the RMP to ensuring that perpetrators of offences against children are brought to justice, sending a clear message that abuse and neglect of children will result in punishment. It is encouraging that more CPUs are planned to guarantee better access for children across Malaysia.

RECOMMENDATIONS

The findings above demonstrate the progress that the various government departments have made over recent years in the formulation and implementation of a functioning system. While many of the component parts work relatively well, it is nonetheless recommended that:

- **Promoting Social Behaviour Change:** it is recommended that a more comprehensive, sustained strategy be developed at the national and subnational levels to promote changes in public attitudes towards child welfare and protection issues. Rather than socialising laws and policies, it is recommended that emphasis be placed on promoting action-oriented measures to reinforce the importance of family-based care, and to introduce a more structured and standardised approach to parenting skills education through agencies such as LPPKN. These strategies should be universal and reach all communities.
- **Develop A Continuum of Services:** rather than the current reactive, medicolegal approach, it is recommended that child and family welfare services be redesigned to deliver a continuum of prevention and response services for children who are at risk, or have experienced, violence, abuse, and exploitation. In particular, the protection role of the PAKK, PPKK as well as educational and health departments need to be made more explicit, especially regarding the identification of risk and initial response. The continuum should include a wider range of intervention, depending on the nature of the maltreatment and individual circumstances of the child and his/her family, including both voluntary community measures such as family mediation, as well more formal, compulsory protective interventions when the risk is assessed to be significant.
- **Services For All Children:** those children without documentation (regardless of ethnicity or citizenship) remain considerably more vulnerable to abuse, neglect and exploitation. Their families are less likely to report cases either due to physical access to services or because they are unwilling to reveal themselves. The lack of primary support for these families has increased the risk of neglect, vagrancy and exploitation, and explains in particular the numerous streetchildren and child beggars in some states. Strategies to enable access to birth registration, primary healthcare and education must be found to significantly reduce the long-term tension and vulnerability these populations face.
- **Increase The Number of Out-of-Home Care Options:** while current efforts are create more options for children within smaller group homes, this policy needs to be elaborated and the same principles applied to all children living in Malaysia. This policy should include the revision of actual care standards with greater monitoring of those provisions.

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RESPONSE PROCESSES





This chapter focuses on the procedures and protocols for responding to suspected or confirmed cases of abuse, neglect, and exploitation. While JKM has the lead responsibility for coordinating the response process, a range of partner agencies must assume their mandated roles, ensuring that the child is safe from harm, provided with appropriate care and support, and that due judicial process is initiated to ensure that perpetrators are prosecuted. These processes involve different agencies within the system and require clear and regulated procedures for action and decision-making at each stage of the response.

Disclosure and Reporting

It was not within the scope of this study to assess the prevalence of child abuse and neglect in Malaysia. However, a number of agencies including JKM, the RMP, and the Ministry of Health do gather, record, and compile their own statistics on a monthly and annual basis. The National Child Protection Action Plan commits to the creation of an integrated reporting system by 2010. Although the scope and nature of this important initiative is not yet clear, an integrated and centralized data recording system to capture all cases of reported abuse and neglect would certainly enable the MWFCDC to better estimate the true prevalence of abuse. This is a necessary step to ensure that adequate human and financial resources are planned and allocated to the child welfare sector.

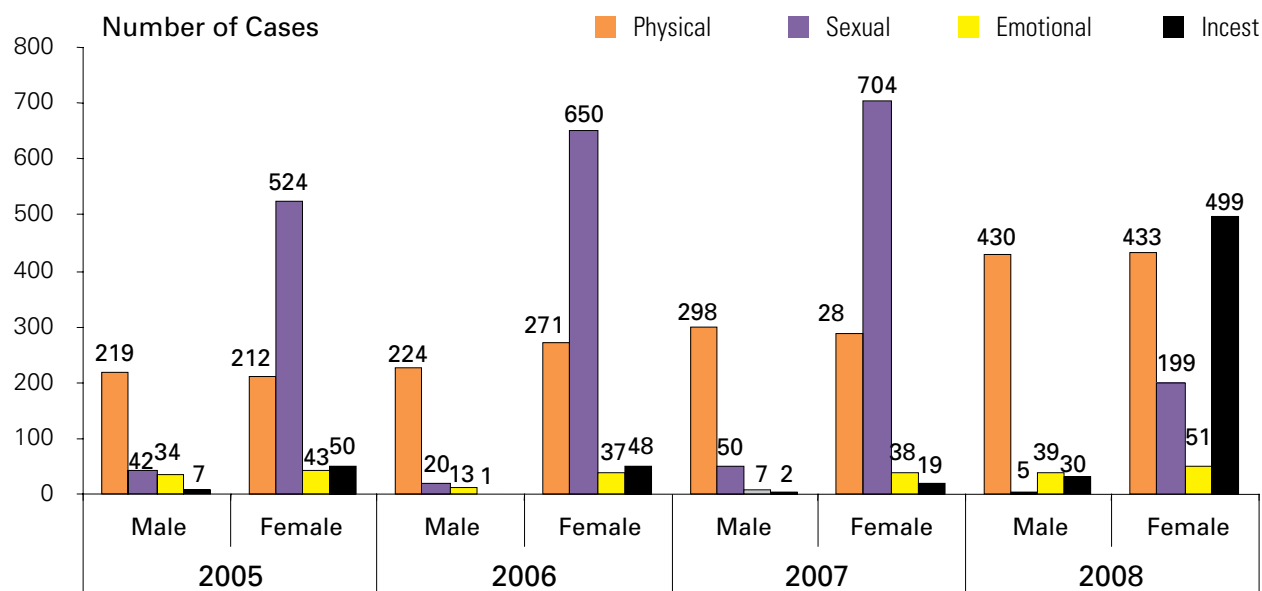
Statistics from JKM (Table 1, below) show a rising trend in reported child abuse cases in Malaysia in the past few years. There were a total of 1,170 reported cases of child abuse in 2005, 1,264 cases in 2006, 1,406 cases in 2007, and 1,236 cases in 2008. Between

2005 and 2008, there was a 9.3% increase in reported child abuse cases. Year-on-year between 2005 and 2007, there was an increase of approximately 11% annually. However, the numbers went down by 170 cases between 2007 and 2008. The most often used channel for reporting abuse is the RMP followed by the Talian Nur Hotline and JKM.⁸⁹

The statistics also show that the reported incidence of sexual abuse of girls considerably exceeds that of boys, culminating in a high of 704 cases in 2007 and decreasing to 199 cases in 2008. However, the incidence of physical abuse and emotional abuse of boys and girls do not exhibit such large differences. Although JKM (as well as the SCAN Teams and the Royal Malaysian Police) now regularly compiles statistics of abuse and neglect cases, the numbers of cases brought to the attention of the authorities remains very low. Respondents from all three of these core agencies were of the opinion that a significant proportion of abuse incidents remain unreported. There are a number of factors that might inhibit reporting: as discussed above, respondents particularly noted that there remains a general culture of silence on child abuse and neglect. On a positive side, respondents did state that the small percentage increases in reporting patterns over the past few years could be attributed to a heightened awareness of the public of their reporting responsibilities.

Children interviewed generally held adults in high regard and felt that any adult would be able to help them if they needed to report a problem. The majority of the children interviewed felt that adults would believe them when they disclose abuse. They said that they could also show the marks and scars from the abuse as proof.

89 An Overview and Public Perspectives of Child Abuse in Malaysia – Ministry of Health, Universiti Teknologi MARA & UNICEF, 2008

Table 1: Categories of child abuse according to gender, 2005 - 2008

Source: JKM (2009), 2005 - 2008

Table 2: Child abuse and neglect according to ethnic group 2006 - 2008

Ethnic Group	2006			2007			2008		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Malay	437	941	1,378	532	1,074	1,606	647	1315	1,962
Chinese	61	158	219	92	156	248	121	178	299
Indian	97	151	248	127	191	318	188	253	441
Peribumi (Peninsula)	0	1	1	2	3	5	4	8	12
Peribumi (Sabah)	3	1	4	13	8	21	3	6	9
Peribumi (Sarawak)	9	93	102	4	12	16	4	12	16
Others	26	21	47	36	29	65	18	23	41
Total	633	1,366	1,999	806	1,473	2,279	985	1,795	2,780

Source: JKM (2009), 2006 - 2008

Table 2 (above) provides the statistics on reported child abuse and neglect cases according to ethnic groups in Malaysia between 2006 and 2008. The total number of reported cases for all ethnic groups increased 39% between 2006 and 2008 (equivalent to a total 781 cases). The incidence of child abuse and neglect among Malay children was disproportionately high compared with the data for other ethnic groups, accounting for 70.6% or 1,962 reported cases in 2008. This is an increase of 356 cases over the previous year's figure. The representation of Malay girls is also approximately double that of Malay boys, but this is largely due to the interpretation of statutory rape (see above). Overall, an increasing trend is observed for all three main ethnic groups over the three-year period.

KEY FINDINGS

1. Reporting Patterns

The number of cases brought to the attention of the authorities remains very low and is almost certainly not representative of the actual prevalence of abuse and neglect. A number of factors for this were cited by respondents during the interviews:

- a) **Stigma / shame:** there remains considerable shame attached to the issue of child maltreatment, especially when sexual abuse is concerned. Families are reluctant to report due to the shame that would be brought upon the family within the community. This may be particularly acute in traditionally tight-knit, rural communities.
- b) **Community privacy:** there remains a clear culture of silence within communities. This stems from the prevalent notion that the family is a private realm. While knowledge about abuse may be increasingly, reporting patterns reflect little change. People do not consider it their 'business' to inform the authorities about suspected abuse by neighbours.
- c) **Family:** it was stated that if extended family is aware of the situation, they would attempt to resolve the problems within the family and would be reluctant to inform the authorities. There appeared to be processes for sanctioning other family members and respondents stated that, in many cases, other family members will assume the informal guardianship (though sometimes permanent) of neglected children.
- d) **Financial:** other family members, especially mothers, are likely to turn a blind eye to abuse being perpetrated in their own homes due to the reliance on the perpetrator, perhaps the sole breadwinner within the household.
- e) **Confidence in the authorities:** throughout the interviews it became clear that the general public is reluctant to report abuse and neglect because they do not understand the implications of becoming involved, i.e. they fear that reporting the case may result in a worse situation for the child involved. There was a genuine concern that children would simply be taken from their families and placed in government welfare homes.

2. Statutory Rape of Children

A significant majority of cases that are reported to the D11 section of the Royal Malaysian Police involve the alleged rape of girls under the age of fifteen, the legal age of consent to sexual relations. Available data of the D11 contingent in Kuala Lumpur shows that the majority of reports of sexual assault concern the rape of underage Malay girls. However, it is important to qualify this data by explaining that many of these rape cases are subsequently discovered to have been consensual sexual intercourse between boyfriends and girlfriends. As the statutory age for rape is fifteen years under the Penal Code, many young males (who may be under the age of fifteen themselves) commit rape within these legal definitions. However, respondents across the country almost unanimously felt that the current law unnecessarily stigmatises, punishes, and sometimes criminalises boys. Although most boys will be bonded on police bail, there are reported cases of boys being suspended from school after the community becomes aware of the rape charge.

KEY FINDINGS

According to respondents, parents will often report a rape once they discover that their daughter is pregnant. This may compel the young man involved to take responsibility for his actions, perhaps by marrying the girl, or may be used to punish him. In the majority of cases, prosecution cannot be pursued, as the forensic evidence is 'cold'. However, respondents stated that parents may request JKM to place their daughters in a special Sekolah Tunas Bakti for children 'beyond control'. Magistrates and Child Protectors confirmed that they reluctantly agree to such placements for the protection of the girl. They stated that they feared the girl may be expelled from the family home and risked exploitation on the streets. They felt powerless to impose any other protection measures or sanctions against the parents.

3. While the majority of cases received by the police are of abuse, neglect, and exploitation (e.g. forcing a child to beg) committed by parents, they have also investigated many cases of abuse perpetrated by those with a specific duty to guarantee the care and wellbeing of children. Some of those 'responsible adults' who have been prosecuted include child care providers, teachers, and religious leaders. There have been a number of cases where children in institutions, including those staying in dormitories within religious institutions, have filed complaints to the police authorities. Abuse perpetrated by those with a 'duty of care' warrants special attention and mechanisms must be put in place to ensure that the vulnerability of children within the formal or informal care system is not exploited.
4. With regard to children without documents, all respondents emphasised that there is no discrimination between a non-Malaysian child and a Malaysian child in need of protection. Both would receive similar care and treatment according to need. Nevertheless, while the principle of non-discrimination is stressed by government agencies, anecdotal evidence shows that there are still numerous occasions where neglected or exploited child asylum-seekers, refugees and undocumented children do not get access to the care and medical treatment that they deserve. In some cases, hospital authorities were known to have reported these children to the Immigration Department as "illegals", which results in further negative consequences for them.

Risk Assessment and Referral

Risk Assessment

The process of assessing the risk of abuse or neglect to a child in the home environment is a critical element of the protection response. This assessment is often perceived as a reactive measure, i.e. to assess whether a child has actually been abused. However, the assessment should also act as a trigger for broader exploration of the family and home environment. In this sense, the risk assessment should also be viewed as a measure to prevent potential abuse in the future: this is an opportunity to review whether suspicions of abuse are well-founded and to put in place a range of preventative measures to support the family before actual risk of abuse and/or neglect occurs.

WHAT THE CHILDREN SAID

How Can Police Help Children?

By arresting the guilty party
(*tangkap orang yang bersalah*).

By temporarily looking after the child,
sending them to the hospital for a checkup
and providing counseling.

By cooperating with neighbours or
people around the child
to get the full story and start an investigation.

* These are children's personal views during interview sessions and it does not reflect the views of the Ministry of Women, Family & Community Development and other related government agencies.

Following an allegation or disclosure of abuse or neglect, and in accordance with the Child Act, the JKM Child Protector will make a home visit. At this time, the protector may conduct a physical examination of the child to look for evidence of bruising or scarring. Any allegation of sexual abuse will initiate an immediate referral to the nearest OSCC (or at least to the nearest paediatric department). Child Protectors

currently have no standard procedures in place for conducting an assessment of the risk to the child, and no checklist or criteria upon which to make a decision about the level of harm posed to the child. Instead, the Child Protectors are required to use their own intuition and experience to judge the situation.

Most reports of alleged abuse and neglect are reported to the twenty-four hour district police operations centre. Information is immediately channelled to the Mobile Patrol Vehicle (MPV). These patrol officers will attend the scene and, if indeed there is a concern about the safety and welfare of a child, will request an Investigation Officer to attend, along with a support team of forensic specialists and a photographer to identify and collect evidence from the home. At that time, family or household members will be questioned, as will the individual making the report. The police have no specific criteria for assessment of risk, nor guidance on definitions or what constitutes abuse and exploitation. Most officers are not trained to recognize the signs and symptoms of abuse and neglect. As a result, the MPV or D11 officers may not make an appropriate assessment and may decide not to use their powers to remove the perpetrator from the child's environment.

Referral Procedures

If the allegation is of sexual abuse, the child is immediately taken to the OSCC at the nearest hospital by either a Child Protector or the police for a medical and forensic examination. However, if the injury is old or if the case does not require immediate medical attention, a statement will be taken from the victim either in the home, or more often at the local police station (*balai*). If the child is traumatized or is in immediate physical danger, s/he will be transferred to the CPU or admitted to the paediatric ward.

WHAT THE CHILDREN SAID

How Can Police Help Children?

By giving the child time to talk, calm down & collect her thoughts
(*tenangkan fikiran*).

Conducting interviews on a one-on-one basis, so the child will not feel afraid, shy and uncomfortable.

By taking them to welfare homes or orphanages and telling them that the child is being abused.

By putting the father in a lock up or sending him for rehabilitation.

By advising the father not to beat their child anymore.

* These are children's personal views during interview sessions and it does not reflect the views of the Ministry of Women, Family & Community Development and other related government agencies.

If the police officer judges the reported case to be serious and genuine, they have the option to remove the alleged perpetrator from the home and make an application for remand into custody. All allegations of sexual abuse and violence are automatically referred for further investigation: additionally, all sexual crimes are considered to be 'seizable', meaning that the police have the powers to seize the alleged perpetrator. The police can therefore detain the alleged perpetrator for twenty-four hours and apply for a S117 court order under the Criminal Procedure Code. This court order allows police to detain the alleged perpetrator for a maximum of seven days without charge.

However, officers stated (and NGOs confirmed) that if they knew of an alternative safe place for the child to go, they might instead take the child at risk to a local NGO home or arrange placement with relatives. If the officers were satisfied that the child was now physically safe, they would not necessarily notify JKM. In terms of children's perceptions of police response

to situations of abuse, all of the children interviewed felt that the police treat abused children with care. They said that the police talk nicely, give them money and food, make them feel relaxed, investigate, and look at their bodies for evidence. They also believed that the police would put people who harmed children in jail and said that the police will take the time to talk to them because the police view abuse cases as important.

Once a referral has been made to the Child Protector, their principal role is to find a safe place for the child to stay and to refer the case to the court as soon as possible, at minimum within 24 hours. Time is of essence for a Child Protector to gather comprehensive information about an incident that has precipitated a referral, as well as critically assess the level of risk to the child. The general response received from Protectors across the states, however, was that they are "overstretched" and that this impedes their ability to work effectively when a case is referred to them. A senior JKM official described the system as one in which everyone has to 'multi-task' adding that, as a result, "things become even more difficult as everything has to be in line with the Child Act 2001, and all this is affecting the quality of service delivery". This comment reflects the finding that the Child Act is being interpreted very literally regarding assessment and referrals. In the absence of assessment criteria and procedural guidance for referrals, Child Protectors simply follow the legal requirement: they are not in a strong position to interpret the spirit of the law or prioritise the urgency of particular cases.

KEY FINDINGS

1. Child Protectors

In general, the study revealed a sense of commitment of Child Protectors to their important role within the protection system. However, the findings across all states reviewed showed that they are significantly compromised in their function for a number of reasons:

Firstly, many Child Protectors remain untrained at this time. Despite new procedures in place to accelerate the training process, it is not reasonable or appropriate to require untrained officers - many of whom are very young and relatively new to the sector - to assess the level of risk posed to a child. While these more junior protectors stated that their colleagues, including senior level management within JKM, were accessible for joint review of serious cases, they nonetheless feel isolated when making decisions that could, in extreme cases, have 'life or death' consequences for a child. Some stated that, without further guidance, they did not even feel experienced enough to judge the boundary between excessive discipline and physical abuse. It is also of serious concern that these Child Protectors undertake physical examination of the child despite having had no (or very little) training on identification of the symptoms of abuse and neglect. The lack of specific training on detection of abuse has resulted in protectors focusing the core of their assessment on environmental factors such as the physical state of the house and the income of parents, rather than the functionality of the family unit and household relationships, including the propensity or risk of an abusive and unsafe environment for children.

Secondly, perhaps given their relative inexperience, Child Protectors frequently stated that they do not possess the requisite personal and communication skills to make home visits and assessments. These skills are required to enhance their confidence to discuss sensitive issues with families and explain, for example, why the child will be removed from the home. Without proper training for this key social work task, Child Protectors feel unsafe when they are called to make a home visit in response to an allegation of abuse or neglect. Words that protectors used to describe the process of working in potentially volatile situations, especially when unaccompanied by the police, include: afraid; stressed; depressed; unprotected; vulnerable; defenceless; and unsupervised.

Child Protectors stated that they have not received sufficient training to implement the provisions of the Child Act. Training received has not been skills-based and they often find themselves unsure of their duties and powers to act in a child's best interests. This evidently places an onerous burden of responsibility on the protectors, who regularly feel uncertain as to whether they have made an appropriate decision regarding a child's immediate safety and long-term wellbeing.

Child Protectors noted that they are regularly undermined in their role by senior authorities and individuals. According to respondents, undue pressure is sometimes placed on protectors to make recommendations in their assessment reports that they consider not to be in the child's best interests. This scenario appears to be most common in cases of custody dispute; however, protectors cited occasions where abuse cases have been 'compromised' and not prosecuted due to such external influence.

2. Police

It is a concern that the police (apart from D11 officers) have not received specific training to recognise the symptoms of abuse, violence, and neglect, nor have they criteria for making a rapid assessment of the risk to a child. They currently have considerable powers to interview and remove an alleged perpetrator from the home, and while it is necessary to exercise these powers with considerable caution, officers nonetheless do have this option to make the home environment safe for the child. While data was not available to indicate percentages of removals of alleged perpetrators, respondents stated that the incidence was very low, with officers preferring to remove the child instead. It is also of considerable concern that officers would make arrangements for a child to be placed (perhaps permanently and without a court order) in a home for children without informing JKM.

Emergency Medical Response

Due to the relatively informal set-up of the OSCC and the fact that some hospitals do not have specially designated rooms for this, OSCC practices are necessarily adapted to conditions of each specific hospital. Most SCAN Teams do not have a formal structure either, although they tend to be more formally organised in comparison to the OSCC. In practice, OSCC personnel work very closely with the SCAN Team.

Both the OSCC and SCAN teams operate on a 24-hour basis. If a child is brought in after office hours and input is required from specific SCAN Team specialists who are not available, this will be addressed the following day during office hours. If there is a special urgency, the specific medical officer will be asked to come in. Children normally receive consultation and treatment separately from adults.

A child is usually brought to the Emergency Department by their parent(s) but can also be brought by the police, a Social Welfare officer, a neighbour, a school teacher, or even a village elder depending on circumstances. In order to facilitate treatment and assistance according to the urgency of the case, Emergency Departments have introduced the Zoning Concept based on the principles of triage (screening). The sequence of assistance provided after a child is brought to the Emergency Department may be summarized as follows:

- A child brought to the Accident and Emergency Department will first go through triage and then be directed to the respective areas/zones based upon the Zoning Concept.
- After triage, if there is suspicion of sexual abuse, the child is accompanied by a staff directly to the OSCC (in the Green Zone) without registration. Registration is done by either the accompanying staff or another officer from the Department.
- Medical officers on call at the Emergency Department/OSCC will attend to the case. In some hospitals, there may be a paediatrician on call at the OSCC. A general medical examination (which includes obtaining the medical history and background of the child) will first be conducted.
- A thorough medical examination would normally follow to confirm that sexual abuse has taken place and determine the extent of abuse. This is routine in some hospitals. However, in reference to Provision 21b of the Child Act 2001 (which mentions authorisation by the police or Child Protector), many medical officers refuse to conduct this examination unless a prior police report has been lodged.
- Physical abuse cases are mostly dealt with at the OSCC level and, if not considered severe, the child or family might be referred to a counsellor, psychologist, or medical social worker and later discharged. The police are notified if there is suspicion of sexual abuse or if there is severe violence.

- If the case is referred to the police, medical officers at the OSCC may alert the police officer at the 'police beat' in the Emergency Department and lodge a report. However, anecdotal evidence indicates that medical officers will often request the parent or the person accompanying the child to make the police report. In the case of rape cases, the medical officer or the parent/person accompanying the child is required to contact the police station in or nearest the district where the rape took place and request an investigating officer to go to the hospital to make a report.
- An official hospital report will be issued after all the required medical examination has been conducted and a copy of the report will be given to the police. Otherwise, the police will formally request a copy if the case is subject to police investigation. A copy of the preliminary oral statement will be made available to them pending issuance of the formal report.
- In principle, it is the duty of the OSCC medical officer to refer children's cases to the SCAN Team (and the medical social workers). A paediatrician is always on call to attend to children's cases and in many metropolitan hospitals, an officer from the Obstetrics and Gynaecology Department and a child psychiatrist are also on call.
- In practice, a large number of children brought in are admitted because admission enables immediate attention and provides additional safety/protection for the child while an investigation is carried out. It also facilitates interviews to be conducted with the child in a setting that is more conducive than a police station environment.
- Children are normally warded at the Paediatric Ward for between 48 and 72 hours, unless an alternative safe place is identified. However, there are known cases of children being warded for up to two weeks or longer because the parent or family members could not be contacted or traced. In cases where the perpetrator is a family member, siblings at risk are allowed to temporarily stay in special rooms at the Paediatric Ward if they have no place to go.

Child abuse cases are sometimes identified through the children's ward in the Paediatric Department and not through triage. In one teaching hospital, it is a requirement for children who are not warded to be examined by the paediatrician on call before they go home. Difficulty arises when a child is brought in but the issue of abuse is not raised. It thus depends upon the capacity of the medical officer to identify if abuse has occurred. To avoid the risk of sending a possible child victim home, a paediatric emergency service was

Medical social workers are professional social workers and in some hospitals, they are represented on the SCAN Team. In others, they work closely with the SCAN Team, especially with the paediatricians, as well as with OSCC personnel, but are part of neither. They report to the Head of the Medical Social Work Department in the hospital. In general, their role is to support and provide aid for patients (adults and children) and families in difficulty.

Unlike JKM Child Protectors, medical social workers are not gazetted as protectors and therefore do not have the same responsibilities under the Child Act.⁹⁰ In all suspected cases of abuse or violence, medical social workers inform JKM Child Protectors, as obligated under the Child Act. In situations where JKM is already aware of the case, the medical social workers will consult the Child Protectors for background information. Their duties sometimes replicate those of JKM protectors and it is routine for medical social

workers to make family visits (including meeting with the alleged perpetrator), consult with the police, and visit the child victim's teachers to gather background information and arrange resettlement in school. If required, they will accompany the child victim to court, sometimes along with a JKM protector. The medical social workers provide their assessment and recommendations, as well as the opinions of the child, to JKM protectors.

KEY FINDINGS

Significant advances have been made in the hospital-based provision for child victims. The procedures in place are quite rigorous and, with the introduction in 2009 of the manual for SCAN Team and OSCC operations, the provisions and procedures will be further elaborated and tightened.

While this is generally welcomed by both the OSCC and SCAN Team personnel, respondents highlighted two specific areas that require clarification. The first concerns the medical examination of a child at the OSCC to confirm that sexual abuse has taken place and to determine the extent of abuse. Citing Section 21b of the Child Act, medical officers in many hospitals have been known to refuse to conduct this examination unless a prior police report has been lodged. While some respondents, including senior medical officers, felt that such an examination should be conducted on a "needs basis" (as practiced by one hospital); others felt that it would be unethical to proceed without a prior police report.

The second revolves around the person responsible for lodging the police report – should this be the medical officer attending to the child or the parent/accompanying person? While some respondents considered this to be the responsibility of the medical officer examining the child, citing Section 27 (Duty of medical officer or practitioner) of the Child Act, discussions on the subject led to no formal conclusion. An explanation for this given by several respondents was that medical practitioners may not willing to be involved in the ensuring process, or are "afraid to be involved" because of lack of experience.

Working in collaboration under these types of circumstances requires excellent coordination and timing is critical. However, these have been described as "grey areas" which require further guidance and clarification. Respondents suggested launching written guidelines to specify the roles and responsibilities of all OSCC and SCAN Team personnel in accordance with the Child Act.

⁹⁰ Given the similarity of roles, respondents almost unanimously recommended that medical social workers be gazetted as Child Protectors; this would entitle them to receive the same training as protectors, as well as bring them in line within the primary child protection framework.

Criminal Investigation and Prosecution

The role of the police is, from the outset, very much focused upon the investigation of the case. Having taken statements from the alleged perpetrator, witnesses (usually family members), as well as the child concerned, the investigating officer (IO) then prepares a file of evidence for review by D5 (Prosecution and Law Division). If the case is considered viable, it is then submitted to the Deputy Public Prosecutor of the local Office of the Attorney General.

While urban areas have excellent coverage for responding to reports of abuse against children, remote areas (most notably in East Malaysia) remain greatly underserved, especially in terms of the number of trained D11 personnel available to conduct specialised investigations. This means that investigation and prosecution is often impossible: for example, by the time a police officer is able to respond, much of the DNA evidence will have become unusable or has been erased. In addition, it was noted with some frustration that in very remote and inaccessible regions, it may simply be impossible to locate the various parties (victim, witnesses, perpetrator) to the alleged crime, and that this may be deliberate. Given that Malaysia is culturally diverse, the wide range of languages and dialects also potentially makes investigating cases difficult, especially in Sabah and Sarawak. However, the D11 has purposefully tried to ensure that a cross sample of languages are spoken by division staff and that this is appropriate for different regions.

Respondents from D11 across the country stated that while it is generally well resourced, there remains a lack

of logistical capacity, which has affected its capacity to investigate reported cases of abuse, especially in remote areas. For example, there is a shortage of suitable vehicles able to penetrate the remote areas of East Malaysia, as well as inadequate space in existing buildings for creating specialised interview rooms for women and children. Many contingents still do not have facilities for interviewing child victims and general office space has to be used. Efforts are being undertaken in Kuala Lumpur to identify a suitable building to accommodate a specialised interview room, play therapy, and counselling room. This new facility will have separate sections for victims and alleged perpetrators so that they do not risk coming into contact at the station.

In more than one interview with adult respondents there was a suggestion that police face difficulties in charging perpetrators of alleged crimes committed on children under the age of approximately six years. Despite the fact that the CPU team has interviewed very young children, there seems to be a perception within the broader police force that children under this age are incapable of remembering sufficient detail or providing a solid narrative for their statement. Clearly, if the allegation is of a non-dismissible nature, the police have a responsibility to investigate regardless of the child's age, leaving the DPP to decide whether there is sufficient evidence to bring a case to court. That said, it was reported that due to lack of specific training on the Child Act, DPPs tend to be unfamiliar with the child protection system and demand unreasonably high levels of evidence to agree to go to trial in abuse cases against children. This is a worrying trend and there needs to be recognition that children's evidence has to be sought and used in different ways.

All criminal cases with a maximum penalty of twenty years or over are heard in a Sessions Court. Cases involving children as witness are held in closed session with only the children's parents/guardian in attendance. In Sarawak, there is one DPP for each district court, but they are not necessarily trained on abuse and domestic crimes. There was a particular concern raised that due to the limited number of DPPs in such a huge geographical area, that if the DPP happened to be away, cases cannot be pursued in a timely manner. They are then often dropped, as witnesses and authorities become discouraged with the system.

Protective Interventions

Decisions with respect to whether a child is in need of care and protection, and what interventions are required, are made by the Court. Until the enactment of the Child Act 2001, children's cases were dealt with through the Juvenile Courts. As the name suggests, these courts were designed to deal with offences committed by young people. The new Courts for Children preside over both civil and criminal cases (except those punishable by death) in a closed courtroom. In Kuala Lumpur, the dedicated court operates from Monday to Friday, whereas in other states the children's court does not operate every day; rather, sessions are held weekly, every two weeks or even monthly in some areas. While there may not be a need for such a specialised court every day in less populated settings, it was stated that interim protection orders are then often considered in open court or postponed until the next convening of the children's court.

The court for children is presided over by a magistrate, who is supported in decision-making by Court Advisors. It is recognised that many of the magistrates are inexperienced and untrained in either social work (especially 'best-interest determination') or in children's law (specifically the Child Act). In an effort to address this issue, the Chief Registrar's Office recently imposed a new administrative policy that new and young officers are not to be posted as magistrates. New officers are sent to Institut Latihan Kehakiman and Perundangan (ILKAP) and participate in internal courses organized by the Chief Registrar Office in order to further enhance their knowledge. The magistrates' lack of experience is also balanced by the participation of Court Advisors, many of whom are retiree teachers and former civil servants, some from welfare services. These advisors are trained under the Legal and Advocacy Division of the Ministry, but most of the advisors are not social workers.⁹¹

In Kuala Lumpur, the magistrate is appointed to work exclusively on children's cases. While the majority of cases still deal with juvenile crime, the new courts increasingly deal with cases of abandonment, neglect, abuse, and custody issues. Under the Child Act, Protectors must bring a child in need of care and protection to the court within twenty-four hours of the time the child is taken into temporary custody. The magistrate will usually direct that the child be taken to an interim place of safety or placed into the care of a 'fit and proper' person until a formal investigation can be conducted and a report presented to the court. At the second formal hearing, the magistrate and two court advisors will agree a course of action based upon the provisions of Article 30 of the Child Act.

91 MWFCF, supported by UNICEF, recently published a Guide for Court Advisors.

In principle, recommendations for referral to a children's home are always made by the Child Protector. Presuming that the magistrate agrees with the recommendation, the court will order that the child be sent to a home, but it is the protector who actually decides which particular home. If a Protector recommends a 'fit person' to care for the child, s/he will be required to investigate the suitability of the person, as outlined in the Child Act. While this fit person is not necessarily related to the child, typically they would be from the same family or community, thereby allowing the child a degree of social and educational continuity. If approved, the fit person receives an allowance from JKM for fostering the child.

Case Management

Case management is an important process for ensuring that abused and neglected children have an assigned person (or small team) from the leading welfare agency to ensure that they receive the long-term care and support they require. Given that the Malaysian approach to child protection is essentially statutory based, it is important that a Child Protector be given the responsibility to ensure that: on-going risk assessments are made; appropriate services are provided; short and medium care plans are developed; and cases are regularly reviewed and closed as appropriate. At the present time, protocols and procedures for case management have not been fully elaborated or formalised. While the Head of Children's Division at the state level may appoint a particular protector to a case, it seems that case managers tend to be assigned on the basis of who takes the initial report. This does not create a balanced or planned caseload.

Due to the lack of guidance and procedures, as well as the number of cases to follow up, Child Protectors stated that they are usually working in 'crisis mode', responding to new cases without having the opportunity to manage other ongoing children's cases. There is no substantive long-term planning undertaken, apart from short-term measures proposed during SCAN Team meetings and informal discussions with supervisors. When asked about the scope of their case management role, the majority of Child Protectors stated that they consider the case to be no longer their responsibility once a court order has been made. While this is understandable given the many other functions they have, Child Protectors must maintain oversight of a child's situation and keep active case files. It is especially important to establish processes for continuing assessment of the family environment and levels of risk, as well as planning longer-term care needs of children. Respondents from other services, especially those involved in the healthcare services, felt that cases are often closed too early by protectors. For example, either due to lack of experience and skills in case management or limited resources, Child Protectors may return a child to an unsafe home environment despite the available evidence and advice of the paediatric consultant.

On the other hand, it is also of genuine concern that many children are placed in homes for three years on an initial protection order, yet little concrete work with the family is undertaken during the interim period. It is essential that all possibilities are explored for reintegrating the child as soon as possible within that period or for finding solutions outside of institutional care. Visits to homes for children revealed that staff do create basic plans for children in their care, which is a positive step, although these plans tend to be limited to the routine day-to-day activities of the child rather than a medium and/or long term vision for their care.

It is critical that basic case management (under the auspices of JKM) and care planning are maintained while any child is in the care of the state or while protection concerns persist.

Children interviewed viewed service providers generally in terms of the police and the welfare officers (Pegawai Jabatan Kebajikan). The police were described as “who you go to make a report about abuse”, while a welfare officer will “look after you

when you are placed in a home”. All of the children interviewed said that they are protected and cared for by the service providers. Some said that welfare officers treat them like their own children and can help them to forget their past. In cases of abuse, children interviewed said that counselling is important for an abused child, but that this does not necessarily have to be undertaken by professionals, this could also be a family member who can talk to the child and provide advice.

KEY FINDINGS

The Court for Children represents a significant step forward in ensuring justice and safety for children; however, a number of concerns were repeatedly raised during the interviews. The main concern noted was that many magistrates appointed to work in the children’s courts are recently graduated lawyers, who are relatively young and inexperienced. While those individual magistrates interviewed demonstrated genuine commitment to ensuring justice for children at risk, they have often received only basic training on children’s law through ILKAP. While the Child Act requires that consideration be given to the best interest of the child, guidelines have yet to be developed for making best interest determinations and there is no provision requiring the child’s views to be sought and taken into consideration in all decision-making. There is no standardised training to enable magistrates to make an assessment of risk to the child or to make a judgement through a process of ‘best-interest determination’. Instead, they often rely upon their own common sense and opinion. The magistrates themselves stated that they do not always feel equipped to make the very important, life-changing decisions that are required of them. Furthermore, magistrates do not always feel confident about the information provided by the Child Protectors and fear that their decisions are not made on a solid evidential basis. For example, reports presented to the court often focus on an assessment of the living environment of the child’s home (level of poverty, number of bedrooms, the neighbourhood) rather than specific assessment of risk to the child(ren) of the household. Child Protectors and magistrates admit to erring on the side of caution when making their decisions, recommending institutionalisation as the ‘first resort’ rather than the ‘last resort’.

Magistrates and other respondents also raised concern about the frequency of sending children and young people into institutional care. It was explained that both Protectors and magistrates – in the absence of risk assessment training and guidance – feel more reassured when a child is physically away from potential harm in the family. Although official figures were not analysed, it was stated that many cases involve girls who are considered to be beyond control. Many of these girls are unmarried, pregnant teenagers. Parents may request the court to take their daughters into care, although it was stated that many parents use the court to threaten or punish the girls. While JKM officers recognise that these girls are not in need of protection per se, the Protectors prefer to act with caution lest the parents do eventually banish the girl from the family home. In Kuala Lumpur, the magistrate, on the advice of the Protectors, will usually refer the girl to the special home for pregnant teenagers. There are currently discussions underway on ways to introduce study of children’s law as a mandatory subject for all trainee lawyers. This initiative would be welcomed. The new administrative policy recently imposed by the Chief Registrar’s Office barring new and young officers from being posted as magistrates and providing capacity building courses to ensure they develop practical experience and Senior Assistant Registrars to further enhance their knowledge is also helpful.

Record Keeping

A core component of a statutory based child protection system is a centralised database of children's cases. This is important because such recording facilitates case management and tracking of the intervention from the point of initial reporting through to closure of a case. There is currently no centrally run information management system at either the national or state level. The senior position (Level S52) of Registrar General of Children in Need of Protection, as defined under the Child Act,⁹² who is responsible for establishing and maintaining a registry of all children in need of protection, has yet to be appointed. It is nevertheless encouraging to note that the National Child Protection Plan of Action contains provision for the design and implementation of a new database system in 2010.

Each state JKM office maintains a simple electronic record of all cases where children have become subject of a court order. Basic files are maintained containing the details of the incident, the child's background information, and the assessment conducted by the Child Protector. However, these tend not to be 'active', in that they are not used as the principal tool for on-going review and assessment. The records are not sophisticated enough to capture intra-familial relationships and patterns of protection concerns and, for example, are not able to provide an immediate link to other children living in the same household who might already be receiving JKM services. Each month, state offices provide JKM with an electronic copy of the names of children and details of all new cases. This information is used to compile the annual statistics on child abuse and neglect, but is not used as a case management tool or to review outcomes for children.

The Ministry of Health has no specialised database for recording cases and maintaining files. Cases of child abuse and neglect are recorded in the same system as other patient files, although these medical files are maintained indefinitely and available should they be required. In Kuala Lumpur, an informal "at risk" register is also available for cross-referencing purposes at the hospital, although in many other hospitals, such facilities for cross-referencing are not available. At one teaching hospital, cases identified as SCAN-cases are specially tagged, recorded, and handled with a higher security brief, with special permission required from the SCAN team for access to the files. In another hospital, specific reports or concerns about child abuse cases are maintained in the 'Medico-Legal Section' of the hospital Records Department. These files are stored indefinitely within the legal department of the hospital and are available should they be needed in court proceedings at a later time. Although private clinics are equally duty bound to report cases to public authorities, there was a concern that they do not record and report cases unless the case is serious. In addition, abusive parents may take children to different medical services to avoid detection, knowing that the databases of cases are not compatible for cross-referencing purposes.

⁹² Child Act 2001, Article 9.

KEY FINDINGS

The current recording systems have developed gradually throughout all the core child protection services. However, the new integrated database planned by the MWFCD will need to ensure that the system goes beyond the compilation of statistics, but is designed as an active registry of child protection cases. A key barrier to this process to date seems to be the preoccupation with confidentiality. While this issue is very important, it must not become so rigid that wider child protection concerns are jeopardised. Each agency currently maintains some form of confidential records using birth registration numbers, but without the ability to cross-reference cases, the full picture of risk and vulnerability for particular children and families cannot be captured. For example, one child within the household may be captured on one database, another child on another. If these records remain unlinked, a realistic appraisal of the risk cannot be determined. Of course, in order to ethically operate a database system and to ensure required levels of confidentiality, a series of strict regulations and protocols will be need to be established between participating agencies.

Monitoring

Concern was expressed by magistrates that the process of monitoring the welfare of children following a court order is insufficient. Magistrates stated that they might make important decisions about the placement of a child, whether in a welfare home for three years or into the care of a fit person until the child reaches adulthood, but that these cases are rarely brought back to the court for review. Similarly, when children have been placed with a fit person, the court rarely hears applications for adoption of the child. From discussions with Child Protectors, it is apparent that there are insufficient resources to monitor and review children's cases on a continuing basis.

Respondents stated that the bonds placed upon parents and guardians under Article 30 of the Child Act were generally appropriate for cases of neglect, but that the monitoring and enforcement of those bonds is still lacking. It was mentioned by both protectors and magistrates that they felt children are being returned to unsafe and unmonitored homes – until the next time abuse or violence occurred.

Interagency Cooperation

The Child Act has had a significant impact on the way agencies now cooperate. In particular, the core agencies of JKM, RMP, and the Ministry of Health have very specific mandates to collaborate among themselves, most notably during the response to a child in crisis. This type of effective interagency cooperation is essential for the smooth functioning of a child protection system. While overall interagency cooperation may be considered relatively good, this is not consistent around the country. In Kuala Lumpur, for example, all three core agencies were generally very positive about the nature of the working relationships that have been forged on the past decade. However, without formal or written protocols for agency cooperation, responsibilities, and duties,⁹³ many respondents stated that the level of cooperation has been based on both professional and personal relationships built over considerable time. One hospital official stated that:

"In working with different agencies, one experiences a wide range of positive and negative experiences; relationships tend to be better when people are more familiar with each other. Previous positive experiences of cooperation also help".

⁹³ It should be noted that the interagency document 'Working Together' will be launched in 2010, but the draft was not available for comment in this report.

While it is helpful to have good personal relationships with individuals in other agencies, it is nonetheless critical to establish agreed protocols and procedures for interagency coordination. In the absence of these, the system remains over-reliant upon the relationships of a few individuals and is essentially fragile. In more rural settings, relationships between the three core agencies appeared less robust, not least due to resource restrictions. In Sabah and Sarawak, there are considerable restrictions in maintaining effective working relationships with partners, due principally to the number of vacant positions, as well as lack of training for junior doctors and new police recruits who tend to be sent to rural and remote areas.

There are a number of practical issues between the three core agencies that need to be resolved to ensure optimal efficiency and effectiveness. These problems arise because each agency maintains considerable autonomy over its own policies and processes, some of which compromise the effectiveness of interagency processes. For example, in several locations, the police claimed that it can take weeks (or even months) to receive the medical report from the SCAN Team. This causes considerable delay in the preparation of the Investigating Paper and meant that witnesses and victims became reluctant to cooperate with the investigation. Similarly, frustration was cited by the OSCC with their inability to make contact with the on-call Child Protector after office hours and weekends. This has meant that medical social workers of the respective hospitals have had to attend to the case, despite not being gazetted under the Child Act.

A further issue concerns the police beat at the OSCC / Emergency Departments of hospitals, where officers stationed there have been reported to be uncooperative or absent for long periods when a medical officer or a parent tries to lodge a report. Furthermore, the

police beat is said to only accept reports lodged on petty crimes and physical abuse. For cases of sexual abuse or rape, the medical officer, the parent or the accompanying person is required to contact the police station closest to the scene of crime to request for an investigating officer to be sent to the hospital. If this is not possible, a trip will have to be made to the police station with the victim. Respondents generally felt that, even if the role of the hospital beat officer is limited, there should at minimum be measures to facilitate making the report.

The study revealed some good examples of interagency relationships that have been purposefully pursued to streamline services. For example, hospitals like the UMMC, which comes under the purview of the Ministry of Higher Education, have developed and maintain a strong working relationship with the Ministry of Health; they are all part of the medical fraternity and enjoy good inter-hospital relationships and communication within the outlying districts. In the same context, UMMC also maintains informal relations with the Malaysian Association for the Protection of Children (MAPC) and involves members from different institutions when they organise training programs, conferences, and other related events.

Another example of progressive inter-agency working is exemplified in the committee established by a hospital in Kota Bharu. The hospital teams up with the SCAN/OSCC Teams of a neighbouring teaching hospital to bring external agencies⁹⁴ together for consultation. An interagency meeting is jointly organised by the two hospitals twice a year to discuss cooperation, standardisation of procedures, management of cases, and other related issues. Representatives of the committee also meet every two months to discuss the follow up of specific cases selected by the OSCC coordinator of the initiating hospital.

94 JKM, the police, the National Registration Office, the Ministry of Education, the State Islamic Department, and the Legal Aid Bureau.

KEY FINDINGS

The launching of the 'Working Together' document in 2010 is very timely. It is anticipated by all respondents that this document will clearly define and delineate the formal interagency procedures that are now required to support the effective functioning of the system. This will reduce the dependence upon personal relationships and will introduce greater accountability for the shared responsibilities to protect children. While each agency has adopted its own measures and working procedures, the challenge is now to create greater flexibility for joint collaboration.

In order to achieve more effective interagency processes, there will also need to be further commitment to:

- a) Creating an improved common understanding among partners of the function of each agency. It is clear that, at times, agency staff have unfounded or unrealistic expectations of the role and scope of other agencies. For example, there is little understanding among partner agencies, including NGOs of the significant resource limitations of JKM.
- b) Sharing of a common purpose for protecting children. It is evident that staff of each agency still tend to see their role in isolation of the overall system. While it is important that each agency has clear boundaries to their function within the system, it is also important to understand the inter-connectedness of that role and the contribution of each agency to the wider system. For example, respondents stated that following the emergency response, each agency retreated into its own role with little understanding of the on-going interventions of partner agencies. It was noted that, on occasion, police investigations have revealed serious concerns about the safety of children within a family, only to find that the Child Protector has already sent the child back home. Again, a formal process of case management and care planning would create greater and more effective interagency cooperation based upon jointly agreed actions.
- c) Ensuring sufficient resource allocation to improve joint services. Certain urban hospitals are overstretched, with as many as more than 40 new cases coming through the SCAN Team per month. Consequently, it is possible only to discuss and review the most serious existing cases and new cases at the multi-agency meetings. This causes stress among partners due to the fact that many cases go unattended in these multi-agency processes. Given that the number of cases handled by OSCC is on the increase, some respondents suggested that JKM may wish to look into the feasibility of setting-up a special OSCC Unit within JKM to enable better collaboration and communication with OSCC personnel, as well as with the medical social workers.
- d) Managing the process of rotation. While senior medical staff tend to stay longer in one post, other agencies rotate and promote junior officers more frequently. This has caused a great strain on working relationships: there is little consistency of information and new staff members are not always inducted well enough to effectively contribute to the processes in a meaningful way.

RECOMMENDATIONS

In order to bring greater efficiency and effectiveness to some of the interagency processes for preventing and responding to child abuse, neglect and exploitation, it is recommended that a series of measures be put in place:

- **Risk assessment and case management:** a fundamental and comprehensive review needs to be undertaken for the standardisation of processes and procedures, as well as the development of guidance and criteria, for reporting, risk assessment, intervention planning, and case management. Decision-making regarding what interventions are required to provide for a child's care and protection should be made by qualified representatives from JKM, as the designated and accountable government agency responsible for the protection of children. Similarly, all decisions regarding the removal of a child from the care of his/her parents and placement in kinship care, foster care, or a childcare institution should be made and/or approved by JKM - and subject to judicial review by trained and qualified magistrates.
- **Increased inter-agency coordination:** under the leadership of JKM, review the internal procedures of different agencies to create greater cohesion of response. While each agency might have their own specific procedures, these need to be harmonised to create greater standardisation and accountability among agencies.
- **Development of a database of cases:** in line with current plans, develop a simple yet centralised database for the management of child abuse and neglect cases. While each agency will need to maintain their own records, a single system will enable social work managers to prioritise workloads and to cross-refer children living with families at risk.
- **Develop clearer guidance and develop professional standards for all actors:** while there have been evident advancements in the tertiary response to children's situations, there remains a serious concern that the actual needs of children – in the final instance – are not being met. Because the legal system is largely an adversarial one, it is essential that those with responsibility for making decisions about the child's future are appropriately qualified to judge what is in a child's best interests. Many officers and magistrates are trained in the provisions of the law, but now need specialist training on 'best interest determination', as well as best practices for risk assessment.

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HUMAN RESOURCES





A child and family welfare system is a series of inter-linking processes and services, each requiring its own set of skills and competencies.

As the approach to planning and implementation of services becomes increasingly systems-based, it is important that staff across government departments and non-governmental agencies have clearly defined roles and responsibilities within that system, as well as the necessary capacity to carry out their functions. In Malaysia, the child protection sector is relatively new and has not been allocated the resources required for a radical and complete professionalization of the sector.

However, the role of the state in protecting children is increasingly recognised: without the broad range of civil society and non-governmental agencies that bolster the service delivery sector in many neighbouring countries, it is essential that Malaysia develop the capacity of its welfare staff to ensure that the existing laws and policies for the protection of children are implemented in a standardised and professional manner. A child and family welfare system will be comprised of numerous professionals from different disciplines and sectors, including social workers / welfare officers, psychologists, medical and health staff, law enforcement personnel, and court officers. In Malaysia today, there are already many competent, dedicated, and well-trained professionals acting to protect children and support families, but there are also fundamental concerns that need to be addressed for the system to be solid.

It is beyond the scope of this study to analyse the institution of social work in a comprehensive way. Rather, the aim of this section is to provide information about the overall roles and functions of those involved in welfare and protection provision for children and families. With this basic information, it is possible to comment on the existing capacity for the management and provision of services.

Social Work and Training Courses

During the 1960s and 1970s, there was a cadre of professionally trained social workers in Malaysia, many of them trained in foreign universities. During the 1970s, Universiti Sains Malaysia (USM) established diploma courses in Social Work Administration, accredited by the International Federation of Social Work. During the 1990s, the Malaysian Association of Professional Social Workers was active in promoting social work education, but until today the vision and future development of social work has not been clearly articulated and the approach remains largely welfare based.

At the present time, this perception of social work as a voluntary or community endeavour is also reflected in the provision of resources to child and family welfare services. Although there are currently seven higher education institutions offering social work degrees throughout Malaysia, there are a number of well recognised concerns about the type of education and mentoring that students receive, as well as the kinds of skills that graduates have to take into the workplace. There remains a very task-focused approach to social work practice and this is especially evident in the approach of the Child Protectors, who – lacking specialist skills – tend to follow the set provisions of the Child Act. The current review of social work practice is therefore a very welcome development for a number of reasons.

Within the private and public Malaysian universities offering social work courses today, there is no standardised curriculum and no universal standards. According to former social workers, the courses offered are highly theoretical and procedural and require more

emphasis on skills-based training for direct client work. Additionally, in Malaysia the retention rate of trained social workers within the profession currently appears very low.

It was stated that a greater proportion of medical social workers have been trained in social work than have the Child Protectors; however their role is often crisis-driven and short-term. They are only responsible for dealing with children and families during their stay in the hospital, and given that many violence and abuse cases are dealt with on an out-patient basis, the intervention tends to be minimal, perhaps involving a simple referral to JKM in the more severe abuse cases. There has been discussion of the possibility of instituting more medical social workers in community clinics where, using their specialist training, they would be able to detect and prevent abuse and neglect at an earlier stage.

Between 1985 and 1998, JKM had its own internal training division, with capacity to conduct as many as 130 courses per year. All social welfare officers participated in a one-month course led by professional social workers. However, this training division has now been incorporated within the new 'Institut Sosial Malaysia' (ISM), the social research and training department of the MWFCD. This has meant that JKM has less authority over the training budget and the types of training accessible to its officers. This is unfortunate, given that after the enactment of the Child Act in 2001, three hundred new Child Protectors, counsellors, and probation officer positions were established, each requiring specialist pre-service training. In fact, the new arrangement has added an extra burden to the workload of existing Children's Division staff, as they are now often called to deliver the training themselves at the ISM. Plans are also underway within DSW to

further develop social work competencies from 2010 with UNICEF support.

At the current time, under the JPA scheme, all new JKM recruits are required to undergo a three-month intensive training programme. This new course is designed to teach case management and procedures for working with children and families. However, across all states it was found that a number of welfare officers working as Child Protectors, with all the inherent duties and powers of this position, have not been gazetted. Rather, they have tended to receive ad hoc – if substantial – courses on particular issues relating to their work. For example, most protectors and child carers have received specialist training on, for example: basic childcare; child rights; the Child Act and Anti-trafficking Bill; and monitoring of nurseries and care centres.

Child Protectors

Professional social workers, imbued with specialist skills to identify and respond (according to policy, procedure, and care standards) to child protection concerns are an essential component of a child and family welfare system. They require both the professional mandate and requisite powers to make important decisions in a child's life. This authority, of course, must be accompanied by a duty to protect. Social workers must therefore have a clear description of their role and, most importantly, the practical skills to undertake it.

Under the Child Act 2001, the principal mandate for guaranteeing the wellbeing and safety of children is assigned to the Child Protectors. In order to be

gazetted as a Child Protector, new officers must be ranked at level S27, an entry level that does not require a graduate qualification but rather a diploma. Of the Child Protectors interviewed, two thirds held only a diploma or high school certificate, with the other third holding university degrees. Very few of these degrees had a professional relevance to social welfare. Many officers had diplomas or degrees in business administration, tourism, and marketing.

A new standard has been adopted for entry into the service, based upon fourteen categories including educational achievement, personality, and aptitude. Ironically, it was stated that many degree educated social workers may not be admitted based on the requirements of this broad-based assessment, despite having received the professional skills training necessary to work with vulnerable people. Of all the Child Protectors interviewed (over fifty in total) only two had a degree in social work.

Within state-level JKM offices, there may be as many as fifteen gazetted Child Protectors. However, throughout all district offices, there are between only one and four of these social welfare officers actually working in the capacity of Child Protector within the Children's Division. In many districts, these functioning Child Protectors have dual responsibilities to work with both victims of abuse and with juvenile offenders. Based upon simple surveys conducted during the research, Child Protectors reported that they spend approximately:

- ✓ 40% of their time working on juvenile justice cases;
- ✓ 30% of the time on broad child welfare cases, including adoption, disabled children;

- ✓ 10% of their time on child abuse and neglect;
- ✓ 20% of their time is for administrative purposes, with roughly 5-10% of the time spent on generating reports and statistics that are usually a result of requests from the federal office.

Child Protectors have multiple roles and responsibilities. Several interviewees stated that, when having to respond to abandoned newborns, they were literally left 'holding the baby'. In these situations, Child Protectors may have to physically care for the child during that day and ensure that they are taken to court where an order can be made.

Police

While it is recognised that the D11 is a relatively new unit, considerable gaps remaining in the training of Investigating Officers. All officers are supposed to attend a specialized training, but with the capacity to send only a couple of officers per year, many officers receive shorter courses on investigation and recording. Some of the officers were very young and indicated that, because they had not received the full training programme, they sometimes did not feel confident or safe conducting investigations in the homes of alleged perpetrators. Because course availability is limited, many start work with no training. Indeed, some had been in position for over three years and still not been trained. Of the five officers interviewed in Sarawak, none had received the standard training on investigating sexual crimes.

KEY FINDINGS

A number of key findings have already been highlighted in this report regarding the role of Child Protectors, but it is important to reiterate that:

1. A professional welfare sector, as envisaged under the Child Act, is dependent upon a skilled workforce of social workers and welfare officers. These officers need to have the requisite training and skills to carry out their legal mandate in a professional and regulated manner. At the present time, the absence of a distinct professional sector is apparent. While immediate changes to raise the level of Child Protectors to an S41 position would be welcomed, this would not sufficiently address the long-term needs of the sector.
2. Many Child Protectors state themselves that they are under-skilled to confidently work with families and children at risk, especially when it comes to case assessment and management. These ‘people-skills’ are not easily learned through short courses, but rather require a prolonged process of education, practicum, mentoring, and supervision.
3. Mechanisms to ensure minimum national standards of practice need to be further developed. This would create greater professional accountability to clients (families and children) and foster greater public confidence in the sector. It is of concern that more trained social workers are not retained within the sector.

It was suggested that many of those who do remain tend towards private sector work (notably as counsellors in medical practices) or work in hospitals such as the Institut Jantung Negara. In these settings they remain outside mainstream social services and often focus on counselling and advisory work.

Within the welfare and policing sectors especially, the rotation system is problematic. While it is important that government officers learn a broad range of skills, this system prevents specialization in any particular field. Among both D11 officers and Child Protectors interviewed, many were rotated before they had completed their specialist training. It was recommended by D11 officers, for example, that closer links should be forged between the ‘Services and Posting Section’ of the Human Resources Department and the Police Training Branch to ensure that officers who have received specialist training remain within the division long enough to actually put their new skills into practice.

The proliferation of sensitisation workshops does not address the underlying challenge of creating a strong, specialised, and professionalised sector. There was an overwhelming request from respondents in the Police Department and the OSCC for targeted, skillsbased training to strengthen their capacity to implement their obligations under the Child Act and the CRC. It was recognised that the training should move away from a focus on basic ‘sensitisation’ and ‘awareness’ of legal aspects, towards more practical, professional, skills-based courses for implementing the law, including: risk assessment, case management, and working with traumatised victims.

RECOMMENDATIONS

In order to address the issues raised in the findings above, a series of recommendations are proposed. These establish long-term objectives for building the skills and capacity of social workers, as well as for enhancing the status of the profession.

- 1) **Conduct a thorough review of the status of social work:** in order to raise the profile of social work, it is recommended that a full professional accreditation or licensing classification be established. With this accreditation, social workers would be bound by greater professional standards and a code of ethics, and will have prescribed statutory duties and powers under which to operate.
- 2) **Examine the social work curriculum:** as the child protection framework increasingly recognises the complex obligations and authority of the State, the training provided to social workers must reflect their new responsibilities. Graduates should be provided with the opportunity to specialise in specific fields of social work, such as child protection. This new level of sophistication would involve greater focus on skills-based social work practice.
- 3) **In the interim period, consider re-alignment of the current JKM staff** in accordance with the broader development of the child protection system. While numbers of staff remain low, there is limited possibility for restructuring. However, it is suggested that a core team of senior specialist staff, with a sole function to deal with abuse and neglect of children, be created in each state. Job descriptions would be developed to recognise this role in line with the provisions of the Child Act. Intensive skills based training would be provided to these specialists.
- 4) **Broaden the mandates of other agencies** to play a greater role within the child protection sector, ensuring that comprehensive, standardised and skillsbased training is developed for all.

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CONCLUSIONS





In recent years, Malaysia has made significant progress in the prevention of and response to violence, abuse, neglect, and exploitation of children. Child protection issues are now more widely debated at the national level and awareness has been increased among the general public about these sensitive issues. Across different ministries and agencies, there have been numerous initiatives to strengthen the role of families to ensure a caring and protective home-life for their children, thereby reducing the incidence of abuse and neglect. These initiatives all represent important components of child and family welfare services, but have yet to be conceptualised and integrated into a comprehensive system for preventing and responding to all forms of violence, abuse, and exploitation of children.

To date, progress has been most pronounced in the development of integrated medico-legal services for responding to reported cases of violence, abuse, and exploitation. Through the establishment of specialised police unit, the D11, and comprehensive hospital-based services (OSCC and SCAN Teams), child victims of the most serious forms of violence, sexual abuse, and trafficking now have access to medical care, psycho-social support, legal advice, and child-sensitive investigative procedures.

However, as the relatively low number of reported cases reveals, it is probable that only the most acute cases of violence, abuse, and exploitation are coming to the attention of the authorities. While the medico-legal services have been significantly developed and standardised, there is a concern that the current system focuses almost exclusively upon response to victims, rather than on primary prevention and identification of children and families at risk. The result has been that staff and officers across all agencies are reacting to children in crisis, many of whom need a highly

professional and specialist response. The hospital intervention model is focused almost exclusively on the child victim, and there remains limited capacity and resources to provide follow-up care after this initial response. While policing procedures for investigation and prosecution of crimes perpetrated against children have been bolstered with the introduction of the D11 and CPUs, gaps remain in financial resources and professional skills for the long term care planning and recovery of child victims. Despite their commitment, at the present time neither the welfare officers nor the courts are able to consistently provide for continued assessment of, and provision of support to, families and children at risk.

A comprehensive child and family welfare system requires the development of a clear continuum of prevention, early intervention, and response services aimed at building the capacity of parents to care for their children and for an appropriate State response when children have experienced abuse and neglect. Accomplishing this effectively requires the designation of a single key government authority with structures, processes, authority, and accountability for management and delivery of child and family welfare services. While JKM is mandated in this role, it has not yet been resourced adequately to fulfil its obligations under the Child Act. Significantly more investment must be made in the development of the child and family sector, with an emphasis on the professional development of staff. This will require a fundamental review of the practice of social work in Malaysia.

While the child protection system requires the overall management of a lead agency, JKM, the roles and mandates of other ministries and departments also require further conceptualisation and agreement. Although there are currently coordination mechanisms in place, there is little common understanding of the role

of other agencies, nor perhaps a coherent vision for the overall system. For example, the role of LPPKN is not yet envisaged within the context of primary prevention, and the important role of NGOs – as essential service providers – has not been shaped. Creating a common, long-term vision of a functioning system is a key step for plotting the roles and responsibilities of different partner agencies and ensuring that a more pro-active, family-centred model is adopted.

Throughout this report, the especially vulnerable situation of undocumented, migrant and refugee children has been mentioned. While all agencies stated that these children are able to access protection services, anecdotal evidence collected on the ground suggests that families do not feel safe or sufficiently empowered to report crimes committed against children in their communities. This means that abuse and neglect are more likely to be dealt with impunity, further heightening the risk of child exploitation: begging, trafficking, sexual exploitation, and child labour. A progressive system of care should ensure that the most vulnerable children, regardless of ethnic or citizenship status, are also the most protected.

The Government of Malaysia is to be commended for the continuing efforts being made to ensure the protection of all children; indeed, within the past decade a number of fundamental steps have been taken to develop a sustainable framework of action. This report recognises those achievements. At the same time, current provision has reached the limits of its capacity to be effective, especially given the resources available to the leading agency, JKM. Renewed efforts are now required in order to take Malaysia into a next phase in developing a more professionalised child and family welfare sector.

Throughout this report, a series of recommendations have been proposed to address specific issues within the existing protection system. In general, these have provided 'micro' components for reform. To conclude, a short set of 'macro' recommendations are proposed for a longer-term conceptualisation of the system:

CORE RECOMMENDATIONS

Development of national strategic vision for the reform of the child and family welfare system: through a wide, consultative process, the MWFCD should develop a long-term strategic vision. While the new Action Plan plots a series of important initiatives, it is necessary to align and prioritise these within a broader framework of sectoral development. In order to adopt some of the recommendations of this report, a conceptual shift is now required towards the development of a professional and distinct child and family welfare sector. In order to achieve this reform, a series of recommended measures are proposed:

1. **Design of a comprehensive child and family welfare system:** it is recommended that, as part of this review and reform process, research is undertaken into different international models of welfare systems. This process will enable the government and partners to assess the applicability and relevance of different systems suitable for Malaysia. This should include a thorough review of the options for developing a more family based, non-adversarial, prevention-oriented system.
2. **Develop a clear designation of the leadership role of JKM:** in this conceptualisation process, it is important to define the longer-term mandate and authority of the MWFCD, and specifically JKM. In order to ensure greater investment in the sector, it is crucial to review the status of the Children's Division. Sectoral reform will require at minimum that a 'department' be created to manage the increasingly sophisticated system.
3. **Map out the roles of key partner agencies:** many opportunities for partnership and collaboration are currently under-utilised. In designing a model of the system, all agencies that contribute to primary, secondary, and tertiary measures should be harnessed within the protective framework and specific mandates, responsibilities, and powers agreed.
4. **Develop a clear outline of the structure for managing and implementing child and family welfare service delivery:** from the national, state, and community levels, including clear roles, responsibilities, accountability, and processes for decision-making by government social welfare authorities at each level. Particular attention should be paid to ensuring that services are available in rural and remote areas as well as the larger urban centres.
5. **Review policies and procedures for children without documents:** a systems approach to child protection requires that the most vulnerable children (regardless of ethnic or citizenship status) are provided with primary services in health and education to reduce their inherent risk of the worst forms of abuse and exploitation. Rather than categorising children (street-children, child beggars, trafficked / illegal migrants), the system should focus on the source of their vulnerability to prevent the abuse and exploitation occurring in the first place.
6. **Professionalization of social work:** as Malaysia already has a relatively sophisticated statutory framework, the discipline of social work now needs to be professionally recognised. The development of a progressive welfare sector is only viable if staff are trained and qualified in best social work practices.

KEY

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ANNEXES

ANNEX 1: CHILD AND FAMILY WELFARE SYSTEM CHECKLIST

A. NORMS	
A.1: LEGAL FRAMEWORK FOR CHILD AND FAMILY WELFARE	
A national child protection law has been enacted to establish the framework for the provision of child and family welfare services, with detailed guidance provided, as necessary, through a national child protection policy and/or subsidiary legislation (rules, regulations, decrees).	
National laws clearly define parental roles and responsibilities, including legal limitations on the ability of parents to voluntarily give up their parental responsibilities.	
National laws clearly articulate the State's obligation to support parents in their child-rearing responsibilities, to protect children from all forms of maltreatment, and to provide special protection and assistance to children who have experienced maltreatment.	
A.2: INSTITUTIONAL ARRANGEMENTS	
A single national child protection agency is designated with responsibility for overseeing child and family welfare services, including clear authority and obligation to provide compulsory child protective services.	
Duties and powers of the child protection agency with respect to the provision of primary, secondary, and tertiary child and family welfare services are clearly defined, with clear provisions for designation of authority from national to sub-national level.	
Regulations and standards have been developed for child and family welfare services (primary, secondary, and tertiary) that are applicable to all service providers.	
Legal provisions are in place regarding registration, accreditation (compulsory), and inspection of any service provider offering services to families and children.	
Specific provisions are required explaining the type of services that can be contracted out and the modalities for doing so.	
Independent supervisory and monitoring bodies for child protection are designated and given a clearly defined mandate.	
There are provisions for regular statistical reports, analysis, and research to be conducted on national child protection and family welfare. This includes a regularly updated research agenda.	
Budgeting and financing for child and family welfare services are clearly articulated.	

A.3: APPROACHES

A.3: APPROACHES	
Abuse, neglect, and exploitation are clearly defined.	
Guiding principles for child and family welfare services are stipulated, which include at the minimum: the best interests of the child, non-discrimination, universality of the welfare system, and family preservation.	
The types of essential services to be delivered to children and families (primary, secondary, and tertiary level interventions) are clearly defined, as are procedures and criteria for applying those interventions.	
Clear procedures and lines of accountability are stipulated for identification, assessment, and intervention planning, including reporting requirements, emergency interventions, and child and family assessments.	
Inter-agency guidelines are in place to define the specific roles and responsibilities of different agencies (including social welfare services, health professionals, police, Courts and legal practitioners, civil society, private service providers, and professionals); reporting, referral, and case management mechanisms and practice; and procedures for management and sharing of information.	
An authority (the Court or local level National Child Protection Agency) has been designated to make decisions regarding compulsory protective services through a formal administrative or court process.	
Explicit criteria and procedures are in place for making decisions about child protective services based on an individualized assessment of the child and his/her family. Legislation explicitly requires that the views of the child and their family be taken into account during the development of care and protection plans, as well as in all decisions taken.	
The best interest of the child is the paramount consideration in any decision affecting the child. Clear national guidelines for best interest determinations should be available.	
Authority to make decisions about child removal and out-of-home care is designated to a qualified authority and subject to judicial review. This 'gate-keeping' function should be carried out by a recognized authority not involved in provision of alternative care services.	
There is a logical progression between the aims and approaches of primary, secondary, and tertiary level interventions (policy continuum).	
Policies and operations are child-centred and family (and community) focused; with a solution focused, strength-based approach.	
The approach is not exclusively forensic (based on prosecution and forensic medical examination), with equal emphasis placed on therapeutic processes of prevention, care, and protection.	

A.4: SPECIFIC PROVISIONS

Legislation defines out-of-home care options to include, at the minimum, foster care, kinship care, guardianship, adoption, and institutional care. Family-based care in its different forms is the explicit priority, with institutional care used only in exceptional cases, for short-term situations.	
There is a specific policy and standards of service for all forms of out-of-home care.	
All children placed in out-of-home care have the right to maintain contact with their parents, unless this is determined to be contrary to their best interests, and are subject to a regular review of their placement.	
A competent authority is designated to authorize adoptions and the law stipulates grounds and procedures for doing so. Inter-country adoption is limited to cases where the child cannot be placed in a foster or adoptive family or cannot be cared for in any other suitable manner within the jurisdiction.	
Improper financial gain from inter-country adoption is prohibited by law and appropriately sanctioned.	
Provisions are in place regarding child protection practice in emergency situations, such as disaster situations affecting entire communities.	
Criminal procedure laws/guidelines include measures to protect the rights and interests of child victims and witnesses at all stages of the judicial process and to reduce trauma and secondary victimization.	
The law protects all child victims of exploitation from prosecution and involuntary detention.	

B. STRUCTURES

B.1: DESIGNATED CHILD PROTECTION AGENCY

There is an agency exclusively dedicated to child and family welfare, with a coherent organizational chart, able to guarantee analysis; policy development (formulation of the overall national child protection policy); formulation of procedures and guidelines; child protective services development, organization, management, and monitoring; and relations with other actors.	
The agency has internal well-defined responsibilities and roles reflecting the mandate to prevent and respond to child protection issues.	
The agency has child-centred and family focused guidelines, protocols, and standards in place at the national level that clearly articulate a solution strength based approach. This includes the way services work and interact with families, timing, engagement, relationships, tools, and approaches recommended.	
The agency has designated practitioners at all administrative levels (national, regional, and local levels) to carry out statutory child protective services and coordinate preventative and out-of-home services.	
The agency has a clear authority and obligation to provide statutory child protective services and adequate professional officials (social workers and psychologists) and resources (budget and transportation) at the local level.	

B.2: OTHER STRUCTURES	
There are structures for ensuring coordination of policy, procedures, and guidelines; services development, organization, management, and monitoring; as well as of primary, secondary, and tertiary-level interventions.	
There are statistical and research offices dedicated to conducting child and family welfare research, either within the mandated National Child Protection Agency or contracted out, on a long-term basis.	
There are independent monitoring and supervisory bodies for child protection.	
There is a complaint mechanism accessible to children and their families that is independent from service providers. The complaint mechanism could be linked to independent monitoring bodies.	
C. SERVICES	
C.1: PRIMARY LEVEL	
Communities are mobilized to conduct primary level activities aimed at supporting parenting, family life, and general child wellbeing, as well as provide basic support to families and children who are experiencing stress or are at risk of maltreatment.	
Community programmes and services are in place to support children and adolescents, particularly children at social risk or in conflict with the law. Examples include peer and adult mentoring programmes, drop-in-centres, recreational programmes targeting children at-risk, and life skills programmes.	
Standard systematic primary level prevention programmes are carried out by health and education professionals or para-professionals.	
The public is widely familiarized with the national legal framework and professionals working with children are aware of its requirements and responsibilities.	
Information is widely disseminated on available services.	
C.2: SECONDARY LEVEL – FAMILY SUPPORT AND EARLY INTERVENTION	
There are processes and procedures in place that allow service providers to monitor child and family welfare conditions over time and identify families and children with additional needs.	
Holistic family and community assessment is accessible at the local level for families and children identified as being at-risk.	
A range of family support services are available at the local level.	
Family mediation (for situations of violence, dispute, separation, and divorce) is accessible at local level.	
Family legal advice is accessible at the local level to address general family issues or disputes based on family law.	
Intensive parenting and child protection skill support is accessible at the local level.	

Individual and family therapeutic support (such as for alcohol, drugs, and anger management issues) is accessible at the local level.	
Referral to other services (economic support, housing, and social benefits) is accessible at the local level.	
Procedures for the restoration of children into families and monitoring are accessible at the local level.	
Temporary and emergency care arrangements (day care, respite care, and safe homes) are available at the sub district or district level.	
Specialized outreach services available for hard to reach children, including street-based children, child labourers, domestic workers, and children without identity papers.	
C.3: TERTIARY LEVEL – SPECIALIZED INTERVENTIONS	
There is a designated service and officials to receive reports of child maltreatment (violence, abuse, and exploitation) including, where possible, a free national centralized Hotline for child protection specific case reporting that is connected to the National Child Protection Agency.	
An Inter-agency Protocol is in place regarding reporting mechanisms and practice, detailing who should report, when, how, and to whom.	
A coordination and referral mechanism is in place to ensure that child victims who come to the attention of the police receive appropriate social welfare services.	
Inter-agency processes are in place for sharing and managing information on child protection cases explaining what information should be collected and who has access to information. Information management should be on a need to know basis, incorporating confidentiality and information sharing modalities.	
There are designated and mandated professionally trained officials who carry out post-report child and family assessments.	
There are designated and mandated professionally trained officials who develop (in collaboration with families and children) care and protection plans.	
Explicit criteria and procedures for making decisions about child protective services are established based on an individualized assessment of the child and his/her family.	
A competent and mandated authority (a Court or the local level National Child Protection Agency) makes decisions on the care and protection plan, activation, change, and closure (including removal from family).	
There is a coherent ladder of responsibilities concerning decisions for Government agencies and civil society organizations, including community networks.	
A qualified authority (not the alternative care provider) makes all decisions about child removal and out-of-home care based on a full assessment of the child's best interest.	
The focus in all decision-making should aim at striking a balance between family preservation and the best interests of the child principles.	

Permanency planning is a key goal: due regard is given to the importance of ensuring a stable home and consistent caregiver for the child.	
Any case with a care and protection plan is followed by a qualified and recognized case worker or case manager from the National Child Protection Agency, which maintains responsibility for the case until its closure.	
Care and protection plans, through the contribution of different support services, aim at: reconnecting the child with family members, friends, and community members; normalizing daily life; and building on and encouraging the child's and family's resilience.	
The agency promotes integrated and child-friendly services for child victims and their families through a coordination and referral system involving the health, education, and justice sectors, as well as civil society organizations.	
There are designated and mandated officials who refer clients to necessary family support and out-of-home care services according to the care and protection plan.	
There are child and victim-sensitive medical and counselling services available.	
Any reported case, and subsequent decisions, is recorded and the information is maintained in a national database.	
There are objective child sensitive forensic medical examination services available.	
There are long-term psychological counselling services (continuing through the care and protection plan, involving both the child and their family) available.	
Legal advice to families and children is available about options and legal provisions on child protection.	
Family support services are provided in conjunction with care and protection plans (regardless of whether the child is still with the family or is placed in out-of-home care).	
There is a clear link and continuum of services between the family support and out-of-home care services.	
C.4: TERTIARY LEVEL – OUT-OF-HOME CARE	
Mechanisms (and services) are in place to support kinship care as the first option for out-of-home care.	
There is a national foster family care programme.	
There is a dedicated structure in charge of monitoring and ensuring compliance of foster family care services with policies guidelines, standards, and regulations	
There is a national registry of all foster families and perspective foster families.	
There is a national institutional care programme (identified in the policies as a very last resort).	
Institutional care services are able to serve the national needs through government or accredited civil society organizations or service providers.	

There is dedicated structure in charge of monitoring institutional care services and ensuring compliance with policies guidelines, standards, and regulations.	
There is a national registry of all institutions taking care of children.	
There is a national adoption (in-country and inter-country) programme.	
There is a dedicated structure in charge of monitoring adoption services and ensuring compliance with policies, guidelines, standards, and regulations.	
There is a national registry of all adoption agencies.	
Adoption services are active in all provinces through government or accredited civil society organizations or service providers.	
All adoption cases are recorded in single files and feed into a national database.	
Mechanisms are in place to appoint a guardian for all trafficked, unaccompanied, and paperless children who come to the attention of authorities.	
Drop-in-centres and out-reach programmes are available for hard to reach children, including street-children, child labourers, domestic workers, and children without papers.	
Safe homes, shelters, transit centres, and other forms of short-term care are available for children at the local level (government or civil society organizations) while more durable solutions are being assessed.	
Family tracing and reintegration services are available for children who have been separated from their families and wish to return (such as street children, trafficked, and exploited children).	
C.5: CHILD AND FAMILY WELFARE SERVICES AND JUSTICE SYSTEM	
Social workers are present and support child victims at all stages of the criminal proceedings (during the police interview, evidence collection, and court hearing).	
A victim/witness support programme is in place to familiarize children with the court process and provide support at all stages of the proceedings.	
Responsible authorities and services are identified to provide support and supervision to children under the age of criminal responsibility who have committed an offence.	
C.6: CHILD AND FAMILY WELFARE SERVICES IN EMERGENCIES	
Measures are in place to ensure that children recruited or involved in hostilities are demobilized or otherwise released from service.	
Services are in place to promptly identify unaccompanied and separated children, or children in very vulnerable families.	
Emergency support services for families are in place covering all affected communities.	
Tracing and reunification services are in place covering all communities.	

Emergency foster family care services are in place covering all affected communities.	
A central authority maintains a database of active child protection cases.	
Children are provided appropriate assistance for their physical and psychological recovery, as well as their social reintegration where necessary.	
D. CAPACITIES	
Teachers, law enforcement personnel, health care professionals, and child care workers have the knowledge, skills, and motivation to identify and report suspected incidents violence, abuse, exploitation, or neglect.	
Social work is recognized as a profession with a training and accreditation process and ethical code for social work professionals and para-professionals.	
Professional and para-professional social workers and civil society service providers receive recurrent specialist training on child protection and family systems, child and family welfare system functioning, as well as mechanisms and tools.	
Social welfare services to children and families are staffed with qualified social workers, or trained para-professionals in absence of national qualifications.	
All professionals involved in the child protection system (social workers, lawyers, doctors, and police) are regularly trained on the functioning of the system processes and tools.	
There are officially recognized training curricula (or training guidelines) for protection related issues that emphasize systemic approaches and the links between the training topic and the rest of the child and family welfare system.	

ANNEX 2: INTERVIEWS AND RESPONDENTS

Category	Description	Method*	Total Respondents
Central Authorities & Policy Stakeholders	Ministry of Women, Family and Community Development		
	Department of Social Welfare		
	- Federal level	SSI	3
	- State level (Heads)	SSI	4
	Royal Malaysia Police - Federal level	SSI	3
	Hospitals (Heads of Departments)	SSI	3
	Human Rights Commission	SSI	1
	Academics	SSI	2
National Child Rights NGOs		SSI	8
		GD	6
Category	Description	Method*	Total Respondents
Front-line service providers	Police	GD	24
	Magistrate, Court for Children	SSI	1
	Child Protectors	GD	43
	Child Welfare/Protection Committees	GD	8
	Directors of Institutions	SSI	3
	Staff of JKM Institutions	SSI	3
	SCAN Teams/OSCC	GD	6
	International Agencies	GD	2
	Staff of Child Activity Centres	GD	4
Category	Description	Method	Total Respondents
Children in Social Welfare/Government and NGO Care Homes		GD	Approximately 100

*SSI= Semi-Structured Interview, GD =Group Discussion

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