



CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY IN
MALAYSIA: MEASURES, RIGHTS, PROCEDURE, PARTICIPATION

National Report for AIMJF's Comparative and Collaborative Research.

Niños por debajo de la edad de responsabilidad penal en Malasia: medidas, derechos,
procedimiento, participación

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

Enfants n'ayant pas atteint l'âge de la responsabilité pénale en Malaisie: mesures, droits,
procédure, participation

Rapport national pour la recherche comparative et collaborative de l'AIMJF

OFFICE OF THE CHIEF REGISTRAR OF THE FEDERAL COURT OF
MALAYSIA ¹

Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on children below the age of criminal responsibility. The article explains the applicable measures and the procedure adopted, the child's rights and his or her participation in the Protective and Justice System in Malaysia.

¹ Malaysia is a country with dual legal jurisdictions. The Malaysian civil/ secular body of law exists parallel to Syariah law which is applicable to Muslims in matters relating to family law and religious observance. The matters which may fall under the Syariah jurisdiction are outlined in List II of the Ninth Schedule of the Federal Constitution. Accordingly, the following feedback prepared is limited to only the civil/ secular jurisdiction in Malaysia. As such, Syariah law may outline different substantive and procedural laws and regulations applicable to children in conflict with Islamic law.

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Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre niños por debajo de la edad de responsabilidad penal. El artículo explica las medidas aplicables, el procedimiento adoptado, los derechos del niño y su participación en el sistema de protección y de justicia en Malasia.

Résumé : Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur les enfants n'ayant pas atteint l'âge de la responsabilité pénale. L'article explique les mesures passibles d'application et la procédure adoptée, les droits des enfants et leur participation dans le système de protection et de justice en Malaisie.

Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of measures, procedure, rights and participation of children below the minimum age of criminal responsibility.

This national report is based on a questionnaire prepared by AIMJF.

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QUESTIONNAIRE:

1. general information

1.1. What is the minimum age of criminal responsibility in your country (the age of criminal responsibility is the age below which a child is deemed incapable of having committed a criminal offence, it can also be referred as age of accountability, age of responsibility, and age of liability for children and it is different of the age when a person becomes an adult)?

The minimum age of criminal responsibility in Malaysia is defined by sections 82 and 83 of the Penal Code which provide as follows:

“Section 82

Nothing is an offence which is done by a child under ten years of age

Section 83

Nothing is an offence which is done by a child above ten years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion”.

Under the above provisions;

(a) children under 10 years old are irrebuttably presumed doli incapax. That is, they are incapable of committing a crime and therefore face no criminal liability;

(b) between 10 years and under 12 years old, children may be held criminally responsible only if the prosecution proves that the child has “attained sufficient maturity of understanding” to appreciate the nature and consequences of their actions. Therefore, they are presumed doli incapax, however such presumption is rebuttable; and

(c) children aged 12 years old and above are generally considered capable of criminal responsibility under ordinary legal standards.

Additionally, section 113 of the Evidence Act 1950 stipulates that it shall be an irrebuttable presumption of law that a boy under the age of 13 years is incapable of committing rape.

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1.2. Is there more than one minimum age of criminal responsibility? Which one? Is it possible to apply the 'doli incapax rule' in your country (possibility of demonstration that the child is sufficiently mature and capable to understand that the behavior was an offense and therefore could be criminally responsible)?

As mentioned in the paragraph above, there is more than one minimum age of criminal responsibility.

Section 82 of the Penal Code, establishes an absolute presumption of incapacity for children under the age of 10 and no evidence may rebut this presumption. They are unable to be held criminally responsible under any circumstance.

Section 83 of the Penal Code on the other hand, establishes a presumption of incapacity for children between the ages of 10 and 12, however, such presumption is rebuttable.

Children aged 12 years and older are considered to have full criminal responsibility, though proceedings may still take place in the Court for Children until they attain the age of majority (18 years old).

It is worthy of note that even though criminally responsible, section 96 of the Child Act 2001 [Act 611] stipulates that children between the ages of 12 and 14 cannot be imprisoned for any offence.

2. age assessment

2.1. In case of application of the 'doli incapax rule', how is this assessment made? Is there a specific methodology for this evaluation? A protocol on how to evaluate? Who assesses the child? Is the child heard in this procedure? Does the child have legal assistance in this situation? Is it possible for the child to challenge the conclusions of this assessment?

Types of Assessment

Under section 83 of the Penal Code, the application of the doli incapax rule for children aged 10 to under 12 years involves a legal and evidentiary assessment to determine whether the child possessed sufficient maturity to understand the nature and wrongfulness of the act at the time it was committed.

There is no codified, standardised protocol or detailed methodology for such assessment. Who Assesses the Child and How Assessments are Made?





The prosecution bears the burden of proof to rebut the presumption of incapacity by presenting evidence of the child's maturity and understanding at the time of the offence. The prosecution has the burden of arguing that the child had:

- (a) sufficient maturity and understanding; and
- (b) was able to judge the nature and consequence of the action at the time the offence was committed.

To do so, the prosecution must establish that the child knew the act was seriously wrong, not merely naughty or mischievous. Types of evidence may include psychological or psychiatric evaluations, statements or confessions from the child, witness testimony (from parents, teachers, social workers), expert evidence on child development and other forms of careful recording of evidence to show that the child showed awareness of the wrongdoing.

In these circumstances, courts may also request assessments from clinical psychologists or psychiatrists and/or a social report from the Department of Social Welfare (“DSW”). These professionals may apply international or clinical tools to evaluate cognitive maturity, moral reasoning, understanding of right and wrong and capacity to participate in proceedings.

The assessment of maturity is conducted on a subjective and case-by-case basis whereby the court makes a subjective assessment during a special hearing under section 6A of the Evidence of Child Witness Act 2007 [Act 676]. The court in doing so may make inquires on:

- (a) the nature and seriousness of the offence;
- (b) the child’s conduct;
- (c) statements made by the child in interviews with the court;
- (d) the child’s education and family background; and
- (e) any expert evidence, such as psychological or psychiatric evaluations.

Courts may also look at evidence of the child’s maturity, background, education and mental state.

Is the Child Heard During This Procedure?

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During the assessment, the child has the right to be heard in accordance with Act 611 and the Convention on the Rights of the Child. The child may give testimony in court, either directly or through child-sensitive procedures (e.g., via video link or intermediary). In such circumstances, the court must ensure the child's views are obtained in an age appropriate and non-intimidating manner.

Access to Legal Aid

In cases such as these, children have the right to legal assistance through a lawyer/ guardian ad litem or legal representative.

Further, under Act 611, a child in criminal proceedings has the right to legal representation. If the family cannot afford a lawyer, the court can assign counsel through the National Legal Aid Foundation (YBGK), the Legal Aid Department or the Court Assigned Counsel Scheme, depending on the crime the child is charged with.

In certain circumstances, the Legal Aid Act 1971 [Act 26] may apply. Under section 10 and the Second Schedule of Act 26, the Legal Aid Department provides legal aid in—

- (a) all criminal proceedings in which the accused and a child charged with any offence not being represented by counsel pleads guilty to the charge and wishes to make a plea in mitigation in respect of the charge;
- (b) criminal proceedings against a child in the Court for Children under the Act 611; and
- (c) criminal proceedings under the Minor Offences Act 1955.

Therefore, if there is a necessity to assess the age of the child during trial, the Legal Aid Department will provide legal aid to represent the child if the child becomes an aided person in line with Act 26.

Furthermore, section 90 of Act 611 provides that in cases where a child is not legally represented, the court must allow the child's parent, guardian, relative or other responsible person to assist the child in conducting their defence. If the child is not legally represented or assisted, the court may assist an unrepresented child in putting forward their defence, in particular, instead of asking questions by way of cross-examination, the child may be permitted to make assertions. The court may put to the child such questions as may be necessary in order to bring out, or explain anything in, the assertions of the child, and then put to the witness such questions as the Court thinks necessary on behalf of the child.

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Challenging a Decision

Section 95 of Act 611 stipulates that the Public Prosecutor or any child or his parent/ guardian may appeal to the High Court against any order or finding of the Court for Children if they are aggrieved or dissatisfied by the finding. Hence, the child (via their lawyer) may challenge the findings of the prosecution or any expert assessment. They may present alternative expert opinions or request a second opinion. Cross-examination of expert witnesses is also permitted in court. If a decision on the matter is made and the child still wishes to challenge it, they may also file an appeal or file for a review of the decision.

2.2. In case of necessity of age assessment (due to a lack of birth registration), how is this assessment made? Is there a procedure? Is the child heard in this procedure? Does the child have legal assistance in this situation? Is it possible for the child to challenge the conclusions of this assessment?

In case of age assessment of children, especially when there is no birth certificate or proof of identification such as a MyKid card (for example: cases involving undocumented children, refugees, asylum seekers or stateless children), the assessment is made through a medical age assessment. This can include:

- (a) Physical examinations such as those of dental eruption, secondary sexual characteristics, and height and weight comparisons;
- (b) Bone examinations including X-Rays; and
- (c) Dental maturity analysis.

In most cases, police refer the child to be assessed by medical officers from government hospitals and the medical officers issue a report certifying the estimated age range of the child.

While there is no formal procedure for assessment, agencies such as the DSW, the National Registration Department and the courts use guidelines or regulations set up by relevant agencies.

If this age assessment is required in a criminal proceeding, section 16 of Act 611 applies. The section provides that if the Court for Children is in doubt to the exact age of the person who is alleged to have committed the offence, the Court for Children shall declare the persons age. This declaration is made based on the certificate of the medical

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officer given in evidence. This age as declared by the Court is deemed to be the true age of the person unless the contrary is proved.

Per Act 611 and the Convention on the Rights of the Child, the child has the right to be heard in such proceedings. The child also has the right to be represented by a lawyer, especially if it involves criminal prosecution or detention.

As mentioned in the paragraph above, if the child is unable to obtain a lawyer, then the Act 26 may apply. Therefore, if there is a necessity to assess the age of the child during trial, the Legal Aid Department will provide legal aid to represent the child if the child becomes an aided person in line with Act 26.

Further, under the same section 16 of Act 611, the child may challenge the age assessment decision by presenting supporting evidence for the appeal if dissatisfied.

3. police intervention

3.1. In case a child under the minimum age of criminal responsibility commits an act considered as a crime, is he/she brought to a police station? Is it mandatory to do so? If not, in which situations is it necessary to be brought to the police station?

If a child under the minimum age of criminal responsibility (under 10 years old) commits an act that would be considered a crime if committed by someone older, the child cannot be held criminally liable under section 82 of the Penal Code.

As such, there is no legal obligation to bring a child under 10 to a police station as a suspect. This so as they cannot be arrested, charged, or tried. However, a child may still be taken to the station for identification, protection or for assessment purposes, but not as a criminal suspect. A child may also be brought to a police station under section 17 of Act 611 as a child in need of care and protection.

The child may be brought in by the police or by/with parents/guardians if the incident is serious (i.e., involving injury, property loss, or public concern), in order to document the incident, prepare a social report and refer the matter to social welfare authorities.

Generally, in cases which involve children under the age of 10 years:

- There is no arrest or charge;
- Police may open an Inquiry Paper or No Offence Disclosed report for record keeping or further referral;

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- Referral to the Department of Social Welfare is common for a family background check, social intervention and rehabilitation support (if needed);
- Parents or guardians are typically involved immediately; and
- Welfare proceedings may be initiated under the Act 611 if the child is at risk of harm and/or is living in a neglectful or criminal environment.

A child under 10 may be brought to a police station in exceptional cases, such as:

- The act caused serious harm or death - to assist in understanding facts; not to arrest;
- In circumstances involving public safety concerns or media attention - to ensure protective action and that the child is supervised;
- There is no guardian/parent present at the scene – the police would have temporary protective custody over the child until the Department of Social Welfare (“DSW”) or the parents arrive;
- To safeguard the child (e.g., from self-harm or abuse) – this is done as a part of child protection, not criminal investigation.

In all these cases, the child must not be treated like a suspect, handcuffed, or detained. Child-sensitive procedures under Act 611 and relevant police standard operating procedures apply.

In sum, children under the age of 10 years who commit acts that would be crimes are not mandatorily brought to a police station. If they are, it is for welfare, safety or documentation purposes only, never for criminal processing. The focus shifts from prosecution to protection, assessment, and social intervention, usually involving the DSW and the family.

3.2. In case the child is brought to the police station, what is expected from the police to do? What are the legal guarantees for the child in this context? Is it possible, in any circumstance, that the child be imprisoned, even for a very short time? In this case, how long is it possible for the child to be deprived of liberty?

As mentioned above, if a child under 10 years old is brought to a police station, it is not for the purpose of arrest, detention or prosecution. Instead, the police are expected to treat the child as a vulnerable individual in need of protection, in line with Act 611, the Penal Code, and relevant police Standard Operating Procedures.

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Upon receiving a child under 10 years old at the police station, police officers are expected to ensure the child's safety and well-being, notify a parent/guardian without delay, notify the DSW to ensure the child's welfare/ protection, document the incident and refer the case for welfare action. Police are also expected to obtain basic information in the presence of a DSW Officer.

Police immediately remove the child from any danger, avoid placing the child in a lock up or cell area and ensure the child is not handcuffed or treated as a criminal suspect. The child will also be separated from adult offenders. The child may be interviewed in a child sensitive manner at a Child Interview Centre ("CIC") and only if necessary, with a trained officer or psychologist present.

To note, children under 10 years old cannot be imprisoned or detained under criminal law. Police lock-ups, remand or juvenile detention are prohibited. Under Section 19 of Act 611, a child may be temporarily deprived of liberty, but only under strict welfare protection grounds, such as the child is at risk of significant harm (abuse, neglect, abandonment) and when there is no safe adult to care for the child. In such cases,

- the child may be placed in a Place of Safety (not a prison or lock-up); • this must be authorized by a Magistrate or the Court for Children within 24 hours; and
- the maximum duration that a child can be in such Place of Safety is one month, extendable only by court order upon further review.

4. measures

4.1. In case a child below the minimum age of criminal responsibility has committed an act considered as a crime, is it possible to impose any kind of measure? Which one?

In circumstances where a child under the age of 10 years old commits an act generally considered a crime, criminal prosecution or penal sanctions are not applicable. Even so, it is acknowledged that children under the age of 10 may still engage in behaviour that is socially or morally harmful, disruptive or dangerous (either to themselves or others). Hence, the law allows for welfare-based protective measures, not punishment, to be imposed under Act 611. These measures may include referring the child to the DSW and/or conducting counselling sessions and intervention programmes.

If, however the child committed the act on school premises, and such act would be considered a minor criminal offence, the child may be subject to disciplinary action by the school authorities. If the child has committed what would be considered a

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serious criminal offence on school grounds, then the school reports the matter to the police for their further action.

In circumstances where the child is at risk of harm, abuse, neglect, or exploitation, the police or a social welfare officer may bring the child before a Court for Children. Under section 30 of Act 611, the Court may place the child in a place of safety (not prison) for care and supervision and assign temporary foster care or institutional care.

In such circumstances, the Court may place the child under the supervision of a welfare officer or probation officer. This includes family-based rehabilitation or regular monitoring, especially if family circumstances contributed to the child's behaviour.

Under section 19 of Act 611, a Protector who has taken a child into temporary custody has the legal obligation of ensuring the child's health and welfare. As such the DSW may also refer the child for psychological counselling, rehabilitation or behavioural programmes, and parenting or family intervention services. If necessary, the child may also be referred to a medical officer for treatment, particularly if abuse, neglect or trauma is suspected.

In more extreme cases, under section 30(1)(c) of Act 611, the Court may further assign custody of the child to a trusted adult (a relative or foster care) if the parents are unfit to care for the child to further ensure the child's safety and well-being.

4.2. Is it possible to impose an out-of-home placement (such as alternative care, in institution or foster family; in health facilities, for instance)? in which circumstances? For how long?

Children may undergo out-of-home placement in line with Act 611 if the circumstances require it, having regard to the best interests of the child. Circumstances in which children may be placed in out-of-home are stipulated in section 17 of Act 611.

Other examples of provisions under Act 611 that concern out-of-home placement are as follows:

- Section 30 – Orders by the Children's Court for care and protection;
- Section 31 – Powers to place a child under supervision;
- Section 41 – Orders for placement under the care of a "fit and proper person";
- Section 34–36 – Foster care and institutional care by the Social Welfare Department; and

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- Section 76 – Temporary placement for children in need of medical or psychological treatment.

The duration of placement must always be:

- justified, not presumed;
- proportionate to the child’s needs;
- reviewed periodically by the Court or welfare officer; and
- ended when the child’s situation improves or a better solution becomes available.

In any case, due process under Act 611 must always be observed. This includes allowing the parents/ guardians of the child to be first be given meaningful opportunities to attend proceedings and offer perspective.

Some examples of places where children may be placed include government run shelters and non-governmental organisation run shelters such as Rumah Kanak-Kanak, Taman Sinar Harapan and Rumah Perlindungan Kanak-Kanak.

5. procedure

5.1. *Who imposes such measures?*

The Court for Children is the authority able to impose such protective out-of-home placement orders. According to section 11 of Act 611, the Court is presided over by a Magistrate and is advised by two lay advisors appointed by the Minister, one of whom must be a woman.

The Court may impose protective out-of-home placement orders, however, these are based on recommendations by the DSW and sometimes follow initial involvement from the police or magistrates in emergency situations. The entire process is grounded in the best interests of the child and is non-punitive. All measures taken are aimed at protection, care and rehabilitation.

At the same time, if the Ministry of Health (“MOH”) suspects a child needs care and protection, the child is referred to a “Protector” (Social Welfare Officer or Police Officer) as part of the One Stop Crisis Centre (“OSCC”) procedure for a multi-disciplinary team assessment and subsequently placed at a temporary placement/ shelter under the Social Welfare Department. Based on medical assessment, with the Protector's agreement and in the child's best interest, the child may be admitted to a hospital ward for medical treatment if necessary.

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In such cases, where a child requires medical assistance including for mental health or developmental support, the child will receive in-patient treatment for proper history, clinical examination, and relevant investigation. Such cases require inter-agency collaboration with an emphasis on the child's welfare, health, and rights. The duration of admission depends on clinical conditions, social considerations, and fulfilling the requirements of other relevant agencies, among others.

MOH facilities will form a multidisciplinary group of specialists, including clinical psychologists, counsellors, or medical social worker officers, depending on the needs, to provide a comprehensive medical report and assessment. Outpatient care may be provided subsequent to the initial admission if deemed necessary.

5.2. Is there a legal procedure for the determination of these measures? What is the nature of these procedures? Can you describe it shortly?

As Act 611 is the primary law focused on the well-being of children considering their immaturity, all procedures and processes must be in line with the provisions of Act 611, specifically those provided for under sections 17-30 and section 46. It is worthy of note here that the Court for Children is a quasi-inquisitorial forum, not one that is strictly adversarial, as it prioritises child welfare above legal fault or punitive outcomes. Processes are generally oriented at evaluating the child's circumstances to craft a tailored protective response in the best interests of the child. Further, all rights afforded to children as will be explained below in paragraph 7 are ensured.

Additionally, various regulations, guidelines and standard operating procedures have been established to support the implementation of Act 611 particularly when actions need to be carried out by agencies such as the DSW or the police.

It is to be noted that both in and outside the courtroom, children are not treated as offenders in these cases but as children in need of care, protection or rehabilitation.

5.3. Is it possible to adopt alternative resolution mechanisms in these situations, such as mediation or restorative justice?

While not formally codified, alternative resolution mechanisms such as mediation and restorative justice are possible and increasingly practiced for children below the age of criminal responsibility, especially under the supervision of the DSW, Civil Society Organisations or community-based child protection bodies. These mechanisms are aligned with Malaysia's commitments under the UN Convention on the Rights of the Child and national policies promoting child-friendly justice.





The Ministry of Women, Family and Community Development in particular encourages the application of alternative dispute resolution mechanisms for continuing education, restoring good behaviour, preventing repetition of actions and restoring family relationships.

6. assessment

6.1. Is there any kind of assessment of the child for the imposition of such measures (on vulnerabilities, risk, rights violations)? Who assesses the child? Is there a protocol or guideline on how to assess the child? Can you please share it?

An assessment of the child must be conducted (regardless of the age of the child), prior to the imposition of any justice, rehabilitation measures or interventions including, out-of-home placement (such as institutional care or foster care), supervision orders and protection interventions. These processes are firmly anchored in Act 611.

These assessments are typically carried out by Social Welfare Officers designated as Protectors. In cases involving children at risk of offending or involved in misconduct, Probation Officers may conduct the assessment instead. Medical officers, psychologists or psychiatrists may also be tasked with assessments in specific cases where trauma, abuse or developmental issues are suspected.

If in a primary healthcare setting, if a child is suspected to be in need of care and protection, the child concerned is referred to the corresponding or nearest hospital Accident and Emergency Department or the OSCC for further assessment and management. Clinical assessments, including physical and mental health, are conducted by medical officers or specialists in government hospitals.

Multidisciplinary teams may also be formed (including teachers, police officers and welfare officers) to conduct such assessments, especially under the Child Protection Team (“CPT”) framework under Section 7 of Act 611.

Additionally, sections 19 and 20 of Act 611 authorises the DSW to assess whether a child is “in need of protection.” At the same time, sections 30 and 31 of the Act allows the Court for Children to order the preparation of a Social Welfare report before deciding on care, supervision or placement orders.

In this regard, any and all assessments are carried out in accordance with the information requirements stipulated under Act 611. Probation Officers, if involved, also follow established standard operating procedures in managing cases involving children

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in conflict with the law. At all times, the primary consideration is the best interests of the child.

7. legal and procedural guarantees

7.1. What are the rights of the child in this procedure (legal and procedural guarantees)?

In such circumstances, children under the age of criminal responsibility have the right to protection from prosecution under section 82 of the Penal Code. Further, in line with Act 611 and the Convention on the Rights of the Child (“CRC”), they have the:

- (a) right to protection from discrimination (Section 2, Act 611 and Article 2, CRC);
- (b) right to express views and be heard (Section 5 and 11, Act 611 and Article 12, CRC);
- (c) right to a fair and child-friendly process (Sections 11, 15, and 83-97, Act 611 and Article 40, CRC);
- (d) right to legal representation (Article 5, Federal Constitution and Article 40(2)(b)(ii), CRC);
- (e) right to care in an appropriate environment (Section 30, Act 611 and Articles 20 and 27, CRC); and
- (f) right to privacy and protection of identity (Section 12 and 15, Act 611). Children are also afforded the following rights:
 - (a) right to be free from detention;
 - (b) right to reunification;
 - (c) right to protection from harm during proceedings;
 - (d) right to information;
 - (e) right to a prompt and effective remedy;
 - (f) right to be treated in accordance with their best interests; and
 - (g) rights in juvenile justice.

7.2. Does the child have the right to refuse any of these measures? Or to challenge in court any of these measures?

Generally, children may not simply refuse a protective or rehabilitative order outright. This so as the intervention is ordered in the best interests of the child.

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Nonetheless, Act 611 provides safeguards to ensure that the child's voice and their best interests are represented and protected. In particular, the child's views must be heard and considered especially if the child is mature enough to express them.

Further, children (and their parents/ guardians) ultimately have the right to refuse or challenge protective by filing an appeal/ review of the decision. However, as children are generally not considered to have full legal capacity as legal capacity is attained upon reaching the age of majority (18 years old), they must do so via legal representation or their parents/ guardians. Children may also submit a report to the Human Rights Commission of Malaysia ("SUHAKAM").

7.3. What happens if the child does not fulfill the obligations inherent to these measures?

If a child fails to comply with a court-ordered measure, next steps could include:

- (a) a review of the original order;
- (b) modification of the order; or
- (c) issuance of a new order or additional order.

No punitive action is taken against children who do not fulfil the obligations inherent to these measures. Any measures taken remain focused on protection of the child and their best interests.

8. the role of the justice system

8.1. Is it possible in your country that the justice system gets involved in these situations? In which situation (vg. to impose the measure or to review it, in case of resistance by the child or his/her family, or to impose some child protection order)? For what purpose? Which branch of the justice system is involved (youth court, family court, child protection court, criminal court...)?

In Malaysia, the justice system is generally directly involved in cases where children are in conflict with the law. This is because Act 611 was established, among other reasons, to acknowledge that a child, due to their immaturity, requires protection, care, and special assistance to enable them to contribute positively towards the development of an exemplary civil society.

The Malaysian Judiciary in particular plays a fundamental role in addressing children in conflict with the law and children in need of protection. The branches of court involved are generally the Court for Children which is presided over by a Magistrate, and the High Court in cases of appeals or judicial reviews.

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Furthermore, a review of Act 611 was carried out in 2016 to ensure that protection, care, and special assistance are effectively provided to a child, with a family-based care approach being recognised as the most appropriate for the child. The processes involving any child (even those above the minimum age of criminal responsibility) have also been improved to ensure that a child who commits a criminal offence is afforded their rights in accordance with the Convention on the Rights of the Child (CRC).

The purpose of reviewing the legal provisions were to:

- (a) legally protect the rights and welfare of children;
- (b) balance the rights of the child with the role of parents/guardians/agencies;
- (c) empower the court to issue protection or intervention orders;
- (d) serve as a check and balance mechanism on the actions of the DSW or other related agencies (including the Royal Malaysia Police, National Anti-Drugs Agency, Ministry of Education, Ministry of Health) in managing cases involving children and crime; and
- (e) prevent violations of children's fundamental rights through fair and lawful processes.

This review has further strengthened and made clear the roles of the individual agencies in the justice system in cases involving children.

8.2. In case of involvement of the justice system, can you briefly describe the procedure?

All management of a child in conflict with the law must comply with the procedures established in Act 611, particularly those under sections 17-30 and 46-47 of Act 611.

8.3. What are the rights of the child in this procedure? Does the child have the right to legal assistance? The right to appeal against any kind of decision?

In addition to the rights mentioned in paragraph 7.1 above, language used during the entire process must be simple and appropriate to the child's age, maturity and level of understanding. Children also have the right to appeal or file any judicial review of a decision made by the Court for Children via their legal counsel.

9. assistance or support

9.1. Besides the measures imposed to children, are there other kind of assistance available on a voluntary basis (social, psychological, medical)?

There are several other forms of assistance provided to children in conflict with the law. These forms of support target social, psychological, medical, educational, and

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emotional rehabilitation aspects to ensure a comprehensive recovery for the child. Forms of support provided include:

- psychological support and counselling;
- medical assistance and health rehabilitation;
- alternative education support; and
- economic aid and basic necessities.

Aside from the above, there are various types of support available for children on a voluntary basis without requiring a court order, which include social support such as counselling, family support, foster care and temporary shelters.

MOH facilities provide free or subsidised treatment for children, including paediatric and mental health services. This also extends to specialist services like child psychiatry, therapy, and rehabilitation in public hospitals.

Additionally, the MyMinda mental health screening is offered via the MySejahtera app, serving as an accessible platform for adolescents to check their mental well-being early and facilitate the early identification of psychological distress.

Furthermore, mental health helplines like Talian HEAL 15555, provided through the National Centre of Excellence for Mental Health (“NCEMH”), offer emotional support and psycho-educational therapy. These services aim to help children grow in a safe and healthy environment and is accessible to any family requiring support.

10. child participation

10.1. Is the child heard in this procedure? By whom? At which stage of the procedure?

Children are granted the right to be heard in every process and procedure that concerns them, be it inside or outside the courtroom. This right does not only extend to the legal procedures but to the required medical procedures as well. Children, together with parents, legal guardians or Protectors are involved in the decision-making process of treatment.

Examples of instances where children are heard include the assessments on whether a child needs care and protection under section 18 of Act 611 and the preparation of a Social Report under section 40 of Act 611. Both of which include interviews with the child as part of the process.

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10.2. Is the child heard more than once in this procedure? How many times?

There is no fixed limit to the number of times a child is heard, it depends on the duration and complexity of the case and any changes in circumstances.

10.3. Is there a protocol or guideline on how to hear the child in this situation? Can you please share it?

The Ministry of Women, Family and Community Development and the DSW have established guidelines for managing cases involving children in conflict with the law. Some elements of the guideline include:

- (a) ensuring the child's welfare;
- (b) having separate and joint interviews with the child and then the parent(s)/ guardian(s) of the child;
- (c) conducting assessments and screenings to identify the level of the child's tendency to commit acts considered offences;
- (d) identifying the main issues that led to the child's involvement in crime; and
- (e) informing the child and parent(s)/ guardian(s) of the types of orders that the court may impose under Act 611.

In the context of medical treatment provided during interventions and assessments, as individuals under the age of 18 years old lack the legal capacity to provide valid consent for medical treatment, the primary responsibility for decision-making regarding the treatment of the child rests with their parents or legal guardian. Consent from either parent is typically sufficient, as both parents generally share responsibility for their child's welfare under the Law Reform (Marriage & Divorce) Act 1976.

11. legal implications

11.1. Is there any record of legal infringement committed by children below the age of criminal responsibility? When the child reaches the age of criminal responsibility, are these records taken into consideration?

As children under the minimum age of criminal responsibility cannot be convicted of an offence, the child cannot be registered under the Criminals and Undesirable Persons Registration Act 1969 [Act 7].

Children aged 10-17 years who are convicted by the Court for Children have their crimes recorded in the Royal Malaysia Police's internal system. They are not

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however automatically registered under Act 7. This means that children in general do not have criminal records.

To note, registration under Act 7 is generally focused towards adult offenders or those involved in serious crimes.

Nonetheless, any medical record that has medico-legal implication will be kept until the case is concluded. Generally, files with medico-legal implication, shall be retained for a minimum period that extends seven (7) years after they reach the age of majority. Since the age of majority in Malaysia is 18 years old, this means records should be kept until the individual reaches at least 25 years old.

11.2. In case of damages, what kind of rights and remedies does the victim have regarding the child and the family? Besides financial reparation, does the victim have the possibility to have a say on the measures applied to the child?

If such damage was caused by a child under the age of criminal responsibility, no criminal liability may be placed upon the child. Nonetheless, the victims/ injured parties may consider civil legal action against the parent(s) or guardian(s) of the child to recoup damages.

Additionally, the victim may express their views through a Victim Impact Statement (“VIS”) which the court will take into consideration in deciding on any matters concerning the child. This VIS does not however have the authority to influence or oppose the rehabilitative measures applied to the child. The Malaysian justice system prioritizes the child’s rehabilitation, while ensuring that victims are acknowledged and protected throughout the process.

12. reforms in progress

12.1. Are there ongoing reforms on this subject?

In line with current needs, Malaysia has acted through;

- (a) amendments to Act 611; and
- (b) ensuring that the Court for Children is child-friendly.

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