

THE JUVENILE JUSTICE SYSTEM IN MALAYSIA

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I. BACKGROUND

Every day, throughout the world, children come into conflict with law enforcement officials because they are alleged or accused of having committed a criminal offence. How these children are handled can have a profound impact on their future prospects, and may be determinative of whether they grow up to become productive citizens or fall into a life of crime. For this reason, the Convention on the Rights of the Child (CRC) requires States parties to develop specialized responses for dealing with children in conflict with the law that take into account their young age and are aimed at promoting their reintegration and development as productive citizens.

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 CRC. 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 juvenile justice. However, it also highlighted some areas of concern with respect to the handling of children in conflict with the law 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 juvenile justice system. The objectives of the study are to: a) present an overview of the nature and extent of juvenile offending in Malaysia; and b) take stock of current practices and identify opportunities to apply innovative new approaches based on international best practices. The study includes an analysis of the legal and normative framework for juvenile justice; the government structures, processes and procedures for responding to child offending; and the measures and services available to promote children's rehabilitation and prevent reoffending.

In broad terms the study considered:

- The nature and extent of and trends in youth offending in Malaysia;
- National laws, policies and standards pertaining to children in conflict with the law at all stages of the criminal justice process;
- The structures, processes and procedures in place to put these laws into practice; and
- Programmes and services to support children in conflict with the law, including institution-based rehabilitation programmes, as well as community-based alternatives.

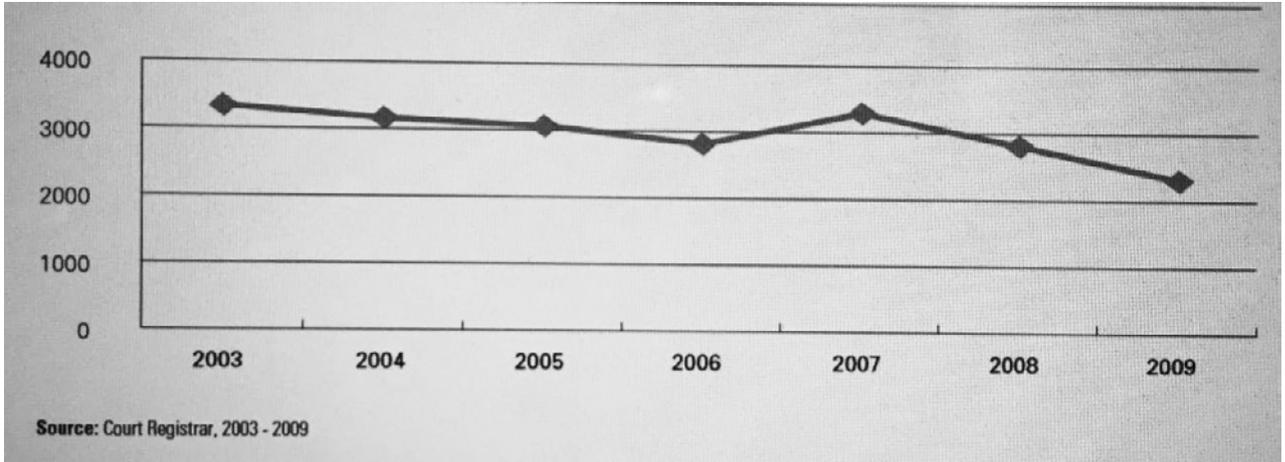
II. NATURE AND EXTENT OF JUVENILE OFFENDING

Malaysia has a fairly young population, with 60 percent of its population below 30 years of age. The general perception amongst stakeholders is that child offending has increased in recent years and that the types of crimes that children are committing have become more serious. However, assessing patterns of offending is difficult due to gaps in data collection and inconsistencies in statistics collected by the different

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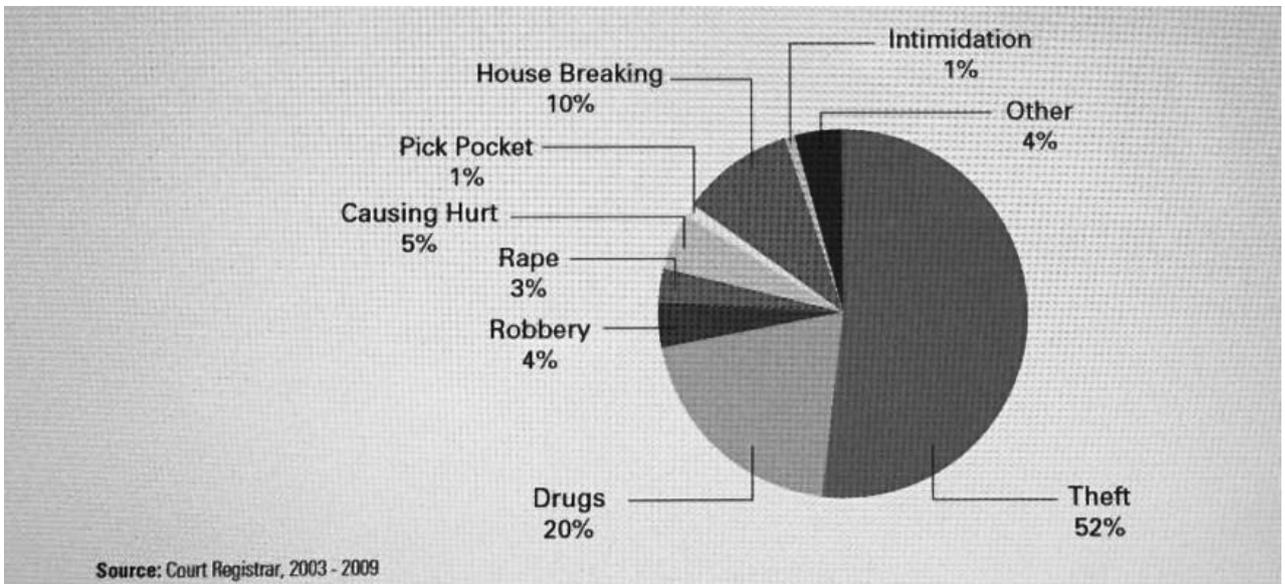
agencies. It is also difficult to measure the extent to which changes in child crime statistics reflect an actual change in rates of child offending, or merely changes in policing and data collection practices.

Picture 1: Number of Children's Cases Registered with the Court (2003 - 2009)



Data from the Court reveals that the majority of children convicted by the court have committed petty crimes such as theft, rather than crimes of violence. The percentage of children who have committed violent crimes such as rape and causing harm is very low.

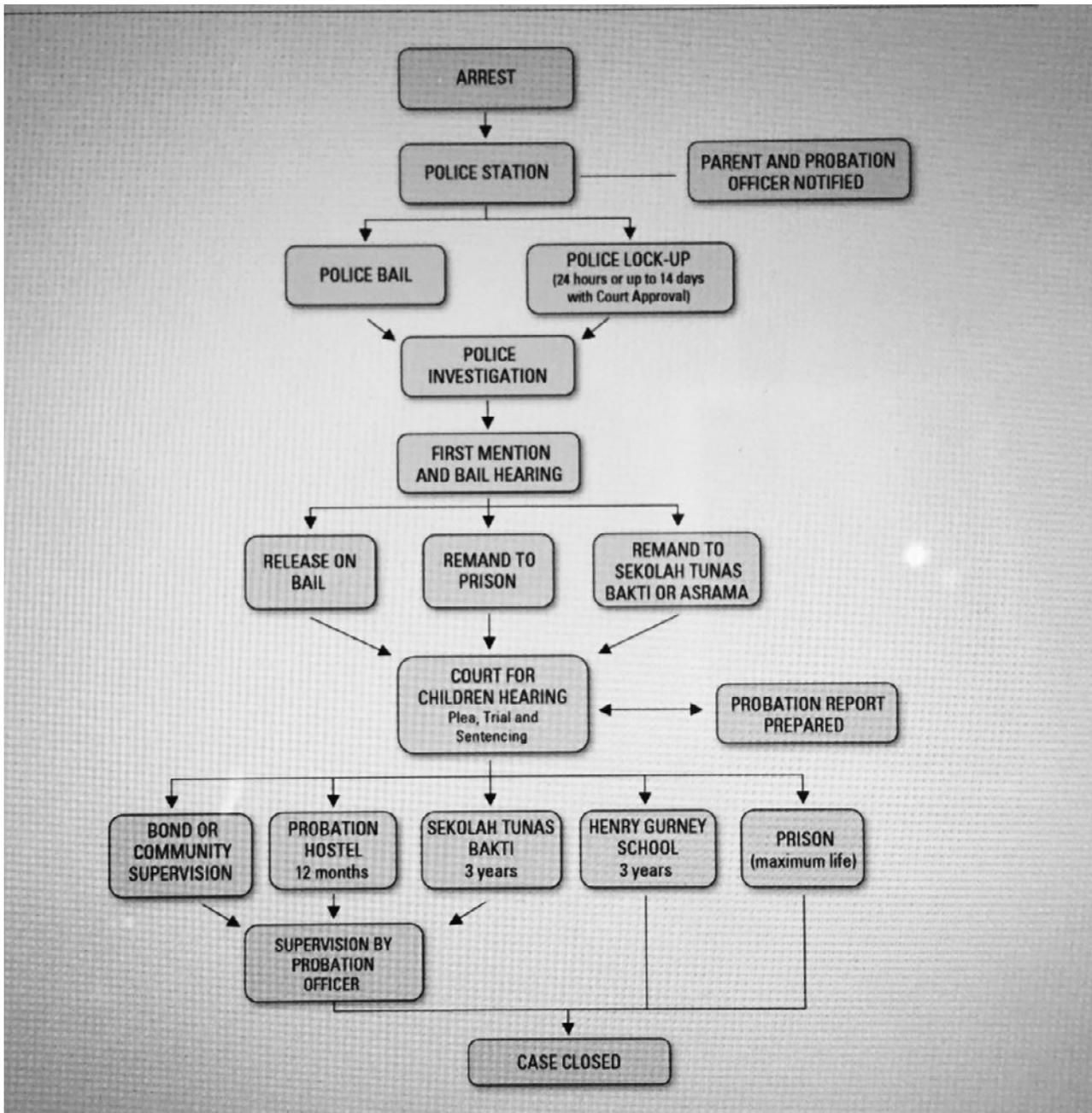
Picture 2: Percentage of Children Convicted by the Court, by Type of Offence (2003 - 2009)



III. THE JUVENILE JUSTICE SYSTEM: LAWS, STRUCTURES AND PROCESSES

The principal act governing the handling of children in conflict with the law is the Child Act 20017, which came into force in August 2002. This Act consolidated three former Acts: the Juvenile Courts Act 1947; the Child Protection Act 1999; and the Women and Girls' Protection Act 1973. The current Child 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. This study focuses mainly on the fourth category, i.e. children in conflict with the law, with some reference to children beyond control. The other categories of children are being addressed under a separate study of the child protection system being undertaken jointly by the Ministry of Women, Family and Community Development and UNICEF.

Picture 3: General Process for Handling a Child in Conflict with the Law:



The Child Act outlines the main structure, processes and procedures for responding to children who commit criminal offences. Part X of the Act stipulates special procedures for arrest, bail or remand, trial, and sentencing of children, as well as defines the roles and responsibilities of police, probation officers, the Court for Children, and various institutions handling child offenders. Pursuant to section 83(1) of the Act, a child who is arrested, detained and tried for any offence (subject to certain specified limitations) must be handled in accordance with the provisions of the Child Act, rather than the normal procedures applicable to adults. The special procedures under the Child Act modify and take precedent over any written laws relating to procedures for arrest, detention and trial. However, where the Child Act does not address a specific issue, then reference may be made to the standard procedures under the Criminal Procedure Code. The above chart (Picture 3) presents the general process for handling a child in conflict with the law. Each stage of the process is discussed in more detail in the section below.

IV. MALAYSIAN LAWS AND POLICIES

The definition section of the Child Act 2001 states that a “child” means a person under the age of eighteen years and, in relation to criminal proceedings, means a person who has attained the age of criminal responsibility as prescribed in section 82 of the Penal Code. The Penal Code states that children under the age of 10 years are not criminally responsible for their actions. It also includes a *doli incapax* provision, which states that any act of a child who is above 10 and less than 12 years of age is not an offence if the child has insufficient maturity to understand and judge the nature and consequences of his/her conduct. Where the Court for Children is in doubt as to the age of the child, an opinion should be sought from a medical officer.

In general, the special protections for child offenders under the Child Act apply to all child offenders under the age of 18, with some exceptions:

- Children who turn 18 while the proceedings are ongoing: If a child turns 18 while the proceedings are ongoing, the Court for Children must continue to hear the case. However, it is up to the discretion of the Court whether it applies the special sentencing provisions available for children under the Child Act or imposes an adult term of imprisonment.
- Children who are only formally charged after they turn 18: If a child commits an offence while under 18 but turn 18 before being formally charged, then the trial is heard by the regular adult criminal courts. The court may choose to apply the special sentencing provisions available for children under the Child Act or impose an adult term of imprisonment.
- Children charged with adults: If a child commits a crime together with an adult, the trial will be heard in the adult criminal court, rather than the Court for Children. However, the Court must “exercise in respect of the child all the powers which may be exercised under this Act by a Court for Children” and must consider a probation report before sentencing the child.
- Children charged with very serious crimes: The Court for Children does not have jurisdiction over children charged with an offence punishable with death (murder, certain terrorism offences, hostage taking, waging war, mutiny, kidnapping in order to murder, gang robbery with murder, drug trafficking). However, while the Child Act does not state so explicitly, the special protection for children relating to procedures for arrest, detention, trial, and sentencing should still apply equally, regardless of whether the case is before the High Court rather than the Court for Children.

The Child Act also includes provisions for certain status offences, including being “beyond control” and being subject to, or at risk of, sexual exploitation (“moral danger”). Although not classified as offenders, these children are nonetheless subject to similar treatment as children who commit crimes, including temporary detention and the possibility of being deprived of their liberty in a social welfare institution for up to three years. For child victims of sexual exploitation, the law states that the maximum duration a child may be sent to an institution is three years and allows for a reduction in the period of detention by the Board of Visitors. However, the period for detaining “beyond control” children in an Approved School is not specified, nor is it clear whether they may be entitled to early release by the Board of Visitors. As

such, there is no clear statutory direction with respect to how long children classified as beyond control can be detained in an Approved School and whether they are entitled to the same process of periodic review and early release as child offenders.

V. CONCLUSION

Many Malaysian academics and policy-makers have begun to highlight the need to move towards internationally recognised practices such as restorative justice and diversion, particularly for children committing minor offences. Stakeholders from all agencies who participated in the study were generally quite frank and concerned about the shortcomings in existing approaches and eager to learn from international models and best practices. Support for reform was high across all relevant agencies, including amongst the police, magistrates, probation officers, lawyers, and institutional staff.