

ALTERNATIVE CARE FOR CHILDREN WITHOUT PRIMARY CAREGIVERS IN TSUNAMI-AFFECTED COUNTRIES

Indonesia, Malaysia, Myanmar and Thailand

July 2006



ALTERNATIVE CARE FOR CHILDREN WITHOUT PRIMARY CAREGIVERS IN TSUNAMI-AFFECTED COUNTRIES

Indonesia, Malaysia, Myanmar and Thailand

July 2006

Copyright UNICEF East Asia and Pacific Regional Office, 2006

UNICEF EAPRO
19 Phra Athit Road
Bangkok 10200
Thailand

E-mail: eapro@unicef.org

Cover photo: @UNICEF/Thailand/Youkonton R.
Any part of this publication may be freely reproduced with the appropriate acknowledgement.

Printed in Thailand

ISBN: 974-685-073-3

ACKNOWLEDGEMENTS

We would like to extend our deep appreciation to everyone who has been kind and gracious in supporting our efforts to complete this project in such a short time.

The UNICEF country offices in the four countries covered by this project assisted to make our country visits fruitful by facilitating arrangements with government offices, non-government organizations and faith-based organizations to interview people, visit residential facilities and access reference materials, publications and other secondary sources of data.

We very much appreciate also their thoughtful critiques, ideas, comments and suggestions, which have enriched the reports. Specifically we wish to thank Jasmina Byrne (Child Protection Officer), UNICEF Indonesia; Gaye Phillips (Representative), and Nono Sumarsono (Child Protection Officer), UNICEF Malaysia; Anne-Claire Dufay (Chief, Child Protection Section), Natalie McCauley (Child Project Officer), Khin Thiri Win (Assistant Project Officer) and Yin Tin Han (Assistant Administrative Officer), UNICEF Myanmar; and Amanda Bissex (Child Protection Officer), UNICEF Thailand, and Piyanart Supaphon, at the library of UNICEF's East Asia and Pacific Regional Office.

Individuals, agencies and organizations who provided help in the four countries include the following:

In Malaysia: Dato Shamsiah Binti Abdul Rahman (Director-General, Department of Social Welfare) and departmental officials including Nur Ammie (Chief, Children's Division), Inau Edin Nom (Chief, Socio-Economy and Assistance Division), Norani Hashim (Chief, Community Development Division) and Atika Zainal (Manager, Kompleks Penyayang Bakti). Help was also provided by Goh Chee Leong (Director, Centre for Psychology, HELP University College of Kuala Lumpur), Aggy Hooi (Psychological Counsellor, Protect and Save the Children Association of Selangor and Kuala Lumpur), Ho Yock Lin (Empower) and James Nayagam (Executive Director, Shelter Homes, Kuala Lumpur).

In Myanmar: The Department of Social Welfare's Sit Myaing (Director-General), Myint Thein (Director, International Relations), Aung Tun Khaing (Deputy Director-General) Aye Win, (Director), Sein Win (Deputy Director) and the Department of Health's Yuzana Kyin (Assistant Director and Head of Medical Social Work). Help was also provided by representatives of local and international NGOs, among others.

In Indonesia: Pudji Hastuti (Director-General for Social Rehabilitation), Makmur Sunusi (Director of Child Welfare Services, Department of Social Affairs) and Enny Sastranegara at UNICEF's Jakarta office.

In Thailand: Sanphasit Koompraphant (Director, Centre for the Protection of Children).

In the Philippines: Cecelia Ochoa (Save the Children US's Field Office) and Steve Muncy (Executive Director, Community and Family Service International).

Thanks are due also to Faye Balanon, whose unexpected presence at a time of crisis lent valuable assistance and support to all of us, and Myla Macaraeg, whose commitment and hard work helped to make the data and reports easily readable.

Our special thanks to Sawon Hong, Regional Advisor for Child Protection and Elizabeth P. de Castro, Project Officer for Psychosocial Support of UNICEF EAPRO, for their guidance, patience and continuing support throughout the project.

Lastly, we acknowledge the support and encouragement of the International Social Service Philippines.

Research Team:

Wilhelmina B. Dacanay

Lourdes G. Balanon

Ma. Lyra T. del Castillo

Marilyn F. Manuel

CONTENTS

Acknowledgements	3
List of acronyms	7
Executive summary	8
1. Introduction and background	10
2. Scope, methodology and limitations	11
3. The conceptual framework	13
3.1 Ecological model	13
3.2 Continuum of child welfare services	14
3.3 Alternative care	15
4. International and regional policy framework	17
4.1 International instruments	17
4.2 Regional instruments	20
5. Findings	21
5.1 Policy context	21
5.2 The situation of children in tsunami-affected countries	23
5.3 Programmes and services for alternative care	24
5.4 Networking	30
5.5 Advocacy and social mobilization	31
6. Models of good practice	32
6.1 Family support programmes (Malaysia)	32
6.2 Family/cottage care (Malaysia, Myanmar and Indonesia)	33
6.3 Foster care (Thailand)	34
6.4 Resource mobilization strategy (Malaysia)	34
7. Challenges and recommendations	35
7.1 A continuum of services	35
7.2 Quality care	35
7.3 Advocacy and promotion of children's rights	37
8. Conclusions	38
Glossary	39
References	40
Appendices: Country Reports	43
Appendix 1: Indonesia	44
Appendix 2: Malaysia	46
Appendix 3: Myanmar	62
Appendix 4: Thailand	82

LIST OF ACRONYMS

ASEAN	Association of South-East Asian Nations
CRC	Convention on the Rights of the Child
DEPSOS	Department of Social Affairs
DSW	Department of Social Welfare
EAPRO	East Asia and Pacific Regional Office
IFRC	International Federation of the Red Cross and Red Crescent Societies
ILO	International Labour Organization
MDG	Millenium Development Goals
MSDHS	Ministry of Social Development & Human Security
MSWRR	Ministry of Social Welfare, Relief and Resettlement
NGO	Non-government Organization
ISS-GS	International Social Service General Secretariat
ISS-P	International Social Service-Philippines
RPSA	Rumah Perlindungan Sosial Anak
THC	The Hague Convention
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children Fund
UNGA	United Nations General Assembly
UNHCR	United Nations Commission on Human Rights
UNICEF	United Nations Children’s Fund

EXECUTIVE SUMMARY

On 26 December 2004, a powerful tsunami washed over countries along the rim of the Indian Ocean, resulting in enormous loss of life and leaving in its wake thousands of children suddenly rendered parentless or devoid of familial caregivers. Subsequently, a project to assess appropriate alternative care choices for children without primary caregivers in the affected areas took stock of tsunami-related responses as a basis for identifying sustainable and viable models, good practices and lessons learnt with regard to the impact of the disaster on the lives of children.

The project looked at the basic framework of each country in terms of laws and implementing guidelines for the protection of children; existing alternative care options such as adoption, foster care, kinship care, guardianship, community-based services and their structure; the situation of orphanages and residential centres; and recommendations for sustainable and viable models of alternative care for children.

Four professional social workers with extensive experience in child welfare, affiliated with International Social Service Philippines (ISS-P), undertook the project. The study focused on four countries: Malaysia, Myanmar, Indonesia and Thailand. The methodology was based on:

- A thorough review of secondary data;
- Interviews with key informants;
- Visits to selected residential facilities for children; and
- Information gathered from workshops on child protection.

A significant limitation of the study was a requirement that the assessment be completed in less than three months, while some relevant documents were available only in local languages.

The major findings of the assessment were:

- In all four countries, national laws cover provisions for the protection of children who are abandoned, orphaned, neglected and abused. As States parties to the Convention on the Rights of the Child (CRC), the four governments are undertaking measures to harmonize national laws, policies, and programmes with the CRC. The countries are also signatories to other international instruments for the protection of children. In addition, regional commitments have to be implemented in accordance with membership of the Association of Southeast Asian Nations (ASEAN).
- In all the countries, it is apparent that poverty is the main reason for children entering alternative care. Other reasons are prolonged illness, disability or death of parents; abandonment by parents; and family breakdown causing neglect, abuse and exploitation of children. Some parents send their children to residential facilities for the purpose of education.
- Residential care is the major and primary response to assisting children without primary caregivers. It is the most visible, accessible and readily available service to address immediately the needs of children requiring shelter, care and education. Residential care comes in different forms: Reception centres or child protection centres, residential nurseries, children's homes, orphanages, training/boarding/monastic schools, and family/cottage complexes.
- Degrees and forms of family- and community-based programmes for children without primary caregivers vary, including adoption, foster care and kinship care.
- Data on children without primary caregivers is limited. Where data is available, it is not disaggregated by age, gender, the nature of problems and the types of services provided. Concise and reliable documentation on children in care is not always available.
- Case management is limited. Many children are moved from one institution to another. Visitation or continuing contacts with families is minimal. There are no indications that older children participate in decision-making relative to their placement. There are neither case plans nor reviews of the placements of children, yet these are essential in permanency planning.
- There is a lack of professional social workers (particularly in Myanmar) and the capacity of staff working with children is limited.

- Collaborative partnerships between and among governments, non-government organizations (NGOs), the private sector, donor agencies and United Nations bodies are evident in all countries. A multi-sectoral approach is generally used in many inter-agency activities.
- All four countries have initiatives in varying degrees and forms to promote the CRC. A variety of advocacy and social mobilization activities by governments in partnership with the United Nations Children's Fund (UNICEF), international and local NGOs, communities and children are in place.

The conclusions of the study lead to the following recommendations:

1. Establish a continuum of child welfare services (supportive, supplemental and substitutive).

- Programmes to prevent the separation of children from their families (including family support and other services) should be available alongside alternative family- and community-based programmes such as adoption, foster care, kinship care and guardianship.

2. Improve the quality of care for children.

- Governments of the four countries must ensure that standards for alternative care are in place to guarantee the quality of care and the rights of children whose needs cannot be met within their own families. All types of residential care facilities including boarding and/or monastic schools under the management of faith-based organizations should follow government-set standards.
- Case-management systems should be in place to ensure timely and appropriate movement of cases. Training of para-professionals and all staff is necessary so they understand the developmental stages of children and their behaviour, and are gender-fair and sensitive to children's needs. Moreover, effective case management is possible with trained professional social workers as case managers and case workers.

3. Strengthen advocacy and the promotion of children's rights services.

- As States parties to the CRC, governments are obliged to harmonize their national laws and policies to the standards set by the CRC.
- A comprehensive information, educational and communication programme should be directed at all levels towards a sustained advocacy to stress the essential role of family and community in protecting the rights of children.
- It is essential to build and expand partnerships in order to enhance coordination between local and national agencies and to direct available resources into more responsive child protection programmes. Existing coordinating structures at all levels in each country must be strengthened to address child protection issues in a combined and coordinated manner.

Overall, the results of this assessment indicate some positive progress and initiatives for children without primary caregivers. The best environment for a child's optimum development is within their own families. To ensure children remain with their families wherever possible requires major support and priority consideration by governments and other stakeholders. Protection for children in residential facilities must include quality care. All efforts must be made to reunite children with their own families or otherwise to place them in adoption through approved and monitored processes, and to deinstitutionalize the children in a timely and appropriate manner. The commitment and political will of governments, with the support of UNICEF and other partners, are imperative to realize the fulfilment of all the rights of children without primary caregivers, including those in tsunami-affected countries.

1

INTRODUCTION AND BACKGROUND

On 26 December 2004, an undersea earthquake off the coast of Sumatra, Indonesia generated a massive tsunami that swept across the Indian Ocean and devastated coastal communities. The ensuing disaster directly affected 1.5 million people in 12 countries. An estimated 225,000 lives were lost, a third of whom were believed to be children. The tsunami destroyed not just homes, farms, livelihoods and industries. It separated many children from their families and left many without primary caregivers.

Children are the most vulnerable victims of the disaster. The trauma of experiencing the tsunami and its immediate aftermath was extreme. The subsequent realization by surviving children that they had lost one or both parents, as well as siblings and other relatives and friends, is overwhelming for them. Government and non-government agencies at the national, regional and international levels rallied to support the survivors, particularly children. Very many children however remain in limbo. Children now without parents have found temporary shelter in orphanages or the homes of friends or surviving relatives. The children have few choices.

Concerns for the welfare of these children prompted UNICEF to organize, direct and implement programmes for tsunami-affected children, in collaboration with various agencies. Assistance includes physical, emotional and financial support to all survivors. Studies and research to determine the impact of emergency programmes and services are funded and encouraged. One such project, Assessment of Appropriate Alternative Care Choices for Children without Primary Caregivers in Tsunami-Affected Countries, investigates the situation of children in Malaysia, Myanmar, Indonesia and Thailand. The study's objectives are:

- To review and assess existing child-care services (adoption, foster care, guardianship, community-based responses and their structure) in the four countries, including national legal frameworks.
- To assess the situation of orphanages and residential centres (types, location, admission procedures, facilities, number of staff, qualifications of staff, registration, monitoring and funding).
- To identify features of effective and useful care and support interventions for children, including key components of successful community-based programmes.
- To assess and compare various experiences and models across the four countries and identify good practices and lessons learnt, especially in relation to the impact on the lives of children.
- To make recommendations identifying sustainable and functional models of alternative care by focusing on community structures.

2

SCOPE, METHODOLOGY AND LIMITATIONS

The project to assess appropriate alternative care choices covered Malaysia, Myanmar, Indonesia and Thailand. Relevant data from a study by the International Social Service General Secretariat (ISS-GS)¹ is integrated in this report.

The methodology used was based on: 1) A review of secondary data sources, including information available online such as country reports to the UN Committee on the Rights of the Child, annual reports, brochures, studies and research, conference and seminar proceedings, laws, decrees, rules, regulations and guidelines; 2) interviews with government and non-government representatives; 3) visits to selected facilities for children; and 4) observations.

Four consultants from International Social Service-Philippines (ISS-P) conducted the assessment within three months, including visits to the four countries.

In Malaysia, UNICEF provided support and arranged meetings and visits during the five-day visit of one consultant. The Department of Social Welfare's Director-General, Dato Shamsiah Binti Abdul Rahman, and managers of various divisions were interviewed. Visits were made to two children's homes managed by the department and other residential facilities run by Shelter Homes, an NGO in Kuala Lumpur. Interviews were conducted with NGOs involved in post-tsunami programmes that provide psychosocial services for child survivors and their families.

In Myanmar, two consultants undertook a five-day visit to Yangon, where they participated in the following activities arranged by UNICEF Myanmar: 1) Attendance at a National Seminar on Social Work and Child Protection organized by the Ministry of Social Welfare, Relief and Resettlement (MSWRR) and UNICEF Myanmar; 2) meetings with officials from relevant government ministries, UNICEF Myanmar, and international and local NGOs, as well as a member of the team involved in preparing Myanmar's country report to the UN Committee on the Rights of the Child; and 3) visits to four residential facilities.

In Indonesia, the data-collection process was based on the report of ISS-GS. Two ISS-P consultants attended a presentation by ISS-GS in Jakarta on 9-10 October 2005. This allowed an opportunity to listen not only to the presentation but to the perspectives of government and non-government stakeholders. In Jakarta, with the help of Makmur Sunusi, Director for Child Welfare Services, Department of Social Affairs, the consultants visited a government-run village-like facility for children and young people ranging from babies to 21 years. The facility included 12 cottages for 150 girls and boys, a rehabilitation building housing 100 boys in conflict with the law, and a vocational school. Another facility visited was a cottage complex run by the Social Protection Home for Children (Rumah Perlindungan Sosial Anak) in Jakarta, which serves as a model in providing temporary shelter and protection for children under seven. Five girls aged between four and seven were permitted to meet the consultants but the language barrier made communication difficult.

¹ See UNICEF and ISS-GS. 2005, November. *Supporting the Development of the Alternative Care System at Provincial (Aceh) and National Levels in Indonesia*. UNICEF and ISS-GS.

In Thailand, the assessment was based on a desk review of online materials and a three-day country visit by two consultants. UNICEF Thailand provided a copy of the Child Protection Act 2003 while a brief meeting was held with Sanphasit Koompraphant, the Director of the Centre for the Protection of Children. Other laws and policies were accessed at the UNICEF EAPRO library. Not all laws related to the protection of children are translated into English, and so limited access to laws, existing policies and implementing guidelines related to child welfare services was a significant drawback. Interviews with government representatives and visits to institutions did not take place because UNICEF Thailand intends to conduct a thorough study on the situation of children in residential and alternative care.

Two main limitations affected the assessment: Time restrictions and language barriers. The time allotted for the work was less than three months and some important documents were available only in local languages. A survey form regarding admission procedures, staff qualifications, registration, monitoring and other issues was not used due to time constraints arising from the need for translations, but it will be useful to employ in future studies.

3

THE CONCEPTUAL FRAMEWORK

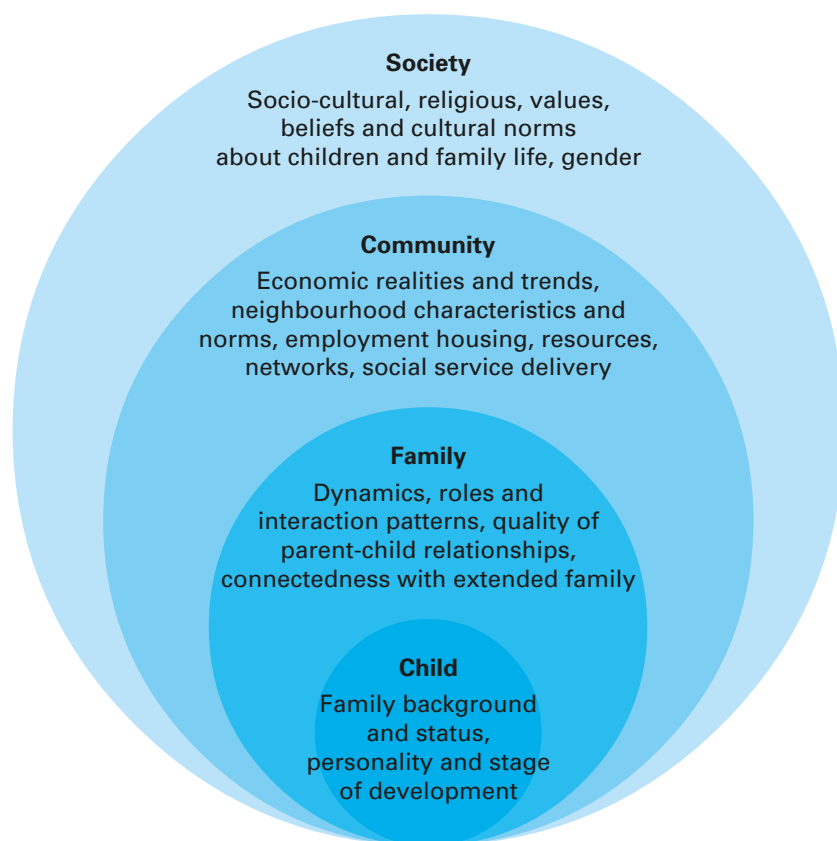
Two theoretical models provided the framework for this study: 1) The ecological model adapted from Bronfenbrenner,² and 2) the continuum of child-welfare services adapted from Kadushin.³

3.1 Ecological model

An intervention to support a child should not address only his or her needs but should respond also to their needs in the context of their environment. This conceptual approach allows simultaneous consideration of the different levels at which programme interventions may be made: 1) Directly with a child; 2) at the family level; 3) at the community level of broader social institutions (including development of policies and programmes and allocation of public resources); and 4) at the level of cultural values.

An analysis along these lines offers insight into various elements that may affect family functioning and that could result in a child being deprived of parental care and there being a necessity to ensure the child's rights are guaranteed and protected.

Figure 1: Ecological framework



² Colton, M.R., Sanders and Williams. 2001. *An Introduction to Working with Children: A Guide for Social Workers*. New York: Palgrave.

³ Kadushin, A. 1980. *Child Welfare Services: An Introduction*. New York: McMillan.

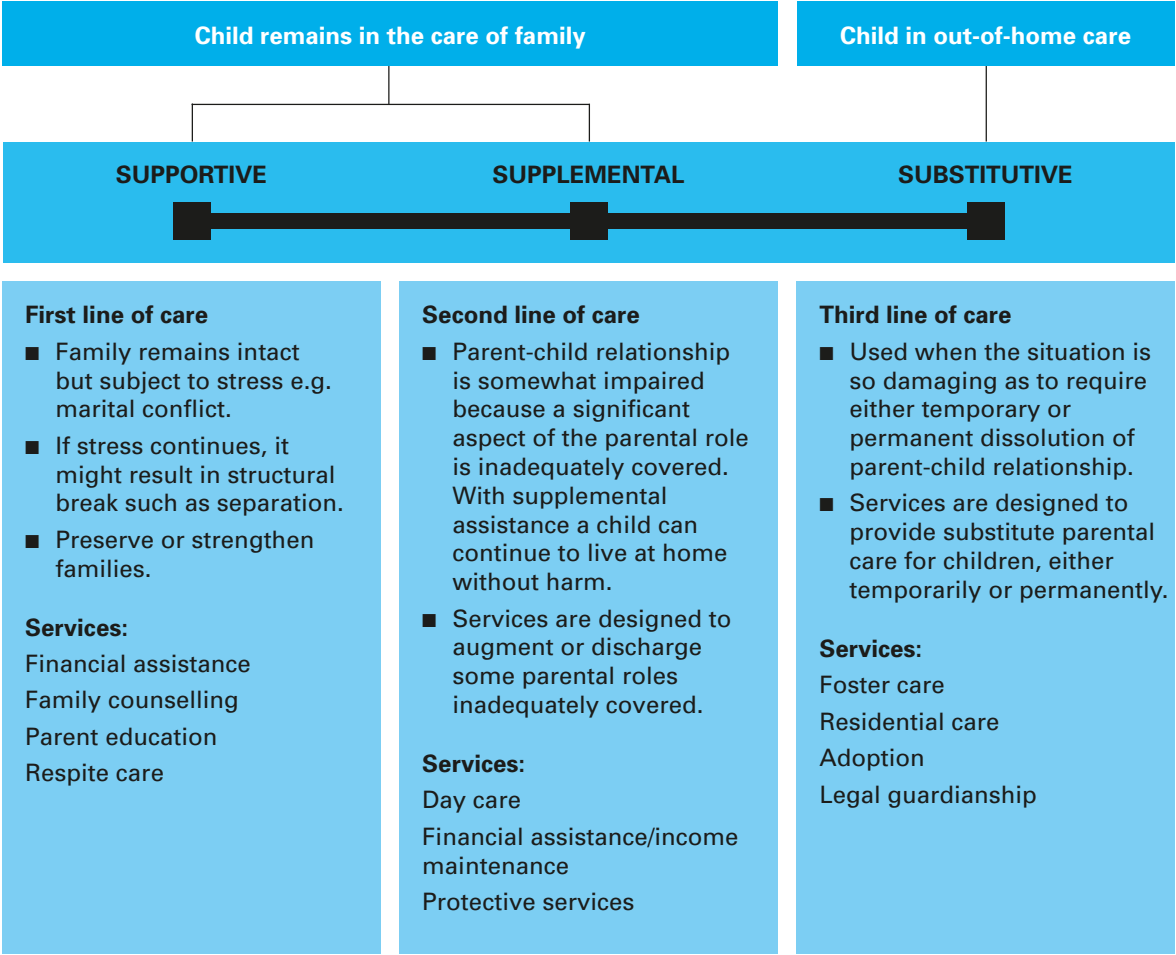
In responding appropriately to the needs of children, the context of family, community, society and culture must be considered. This relationship must take into account the nature and processes of childhood as well as social, cultural, spiritual, economic and political factors that affect the lives of children and families. The significance of these factors for the development of children and their families are reflected in Articles 4, 5, 8, 14 and 29 of the United Nations Convention on the Rights of the Child (CRC). (See Box on page 18)

Hence, when working with children, understanding their cultural context is essential.

3.2 Continuum of child welfare services

Child welfare, a significant field in social work practice, deals with social problems that arise in the parent-child relationship network. It involves providing social services to children whose parents are unable or unwilling to perform their parenting roles or whose community fails to provide the resources and protection required by children and families. Services to children and families can be viewed as a continuum designed to reinforce, supplement or substitute the functions that parents have difficulty in performing,⁴ as shown in Figure 2.

Figure 2: Continuum of child welfare services



Keeping children within their own families offers the best environment for their development. When a family neglects, abuses, exploits and/or maltreats children, however, the removal of a child may be necessary to ensure the child’s safety and protection. Given this context, children may need alternative care choices, either temporarily or permanently. Supportive and supplemental services should be provided to families to facilitate early reintegration of children who are in temporary substitutive care.

⁴ Ibid.

A family should receive the necessary support and assistance to fulfil its child-rearing roles and to guarantee the rights of a child to live in a stable family environment. Professionals need to work hand in hand with families to understand their dynamics, potentials and capacities to solve problems. Communities and local authorities should not be overlooked as resources for providing basic protection for children. The State also has a responsibility to strengthen capacities within families and communities through policies and programmes focused on prevention as well as provision of appropriate alternative care for children.

3.3 Alternative care

Alternative care is defined as care for orphans and other vulnerable children who are not under the custody of their biological parents. It includes adoption, foster families, guardianship, kinship care, residential care and other community-based arrangements to care for children in need of special protection, particularly children without primary caregivers.

A critical concept in implementing alternative care for children is permanency planning that ensures stability, continuity and a sense of belonging to a family. It involves a process of long-term planning to reconnect children in alternative care with their own families or to place children with adoptive families (or *kafala* in Muslim communities). This implies the need for a case plan for each child upon admission into care, subject to periodic review.

A system of case management is necessary to ensure permanency planning for children in alternative care. Case management is a method of providing services whereby a professional social worker assesses the needs of a child and his or her family and arranges, coordinates, monitors, evaluates and advocates for a package of services to meet the child's needs. A two-pronged approach to case management is essential. Firstly, there is a need to prevent the admission of a child into institutions at initial contact by providing supportive and supplemental services to families. Secondly, a child should be moved out of residential or foster care and reunited with their family or placed in adoption as appropriate. For children who cannot be reunited with their family or adopted, a programme for independent living should be considered.

Child welfare case management refers to managing cases in the best interests of the child. The CRC provides that in every decision affecting a child, various possible solutions must be considered and due weight given to the child's best interests.

Effective case management requires the following approaches:

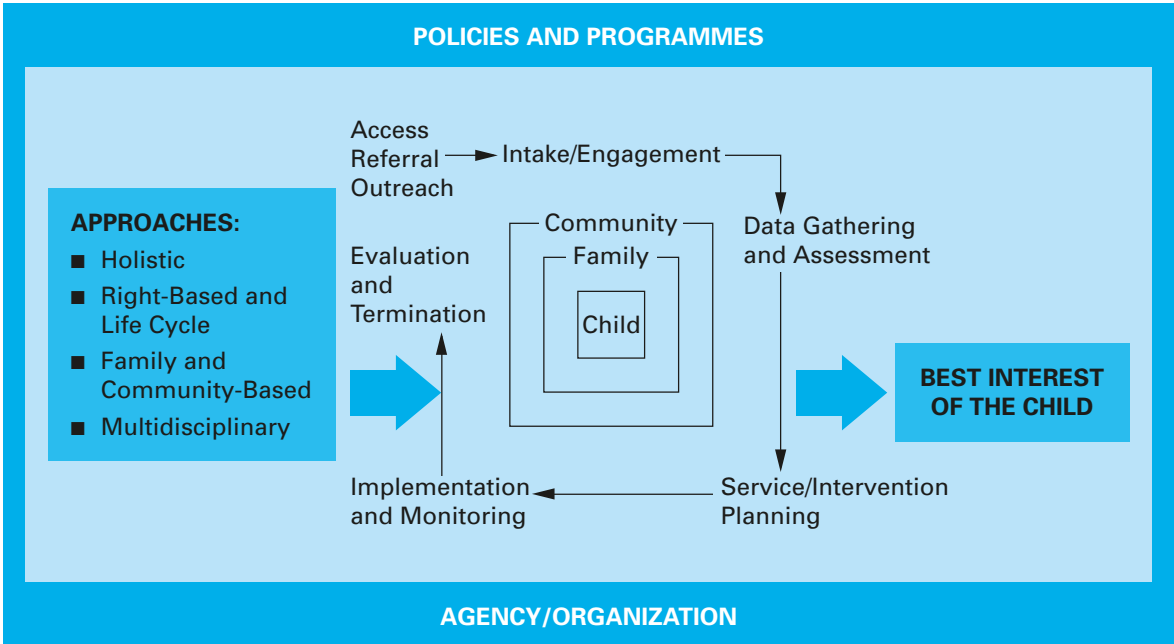
- Holistic care to ensure full or optimum development of a child (physical, social, emotional, cognitive and spiritual);
- A rights-based and life-cycle approach to ensure that a child's rights are upheld throughout the different stages of development;
- A family and community-based approach, recognizing that families and communities are the first line of response to dealing with the problems of children, thus interventions should strengthen the ability of families and communities to care for their children; and
- A multidisciplinary perspective that recognizes that children at risk or those without primary caregivers require access to an array of services, due to the multi-faceted nature of their needs.

Many agencies and professionals need to work together, with mutual responsibility or joint accountability for managing different aspects of helping a child within the context of their family, community and society.⁵

Case management takes place within the context of social organizations or agencies, public and private. An agency should provide structure, policies, procedures and guidelines on the delivery of services to children and their families.

⁵ Ibid.

Figure 3: Case management framework⁶



The case-management process, as shown in Figure 3, is traced from accessing a service to the termination of service(s). Access or entry to an agency and its services can occur through referral or reaching out to target recipients in a community. At the stage of intake and initial contact, a recipient’s needs are considered in relation to an agency’s services. Assessment entails analysis of data in order to understand the recipient’s problems or situation and to develop an individual intervention plan. This involves working with a child and/or their family on the options available to achieve the desired outcome (that is, the well-being of the child). Implementation and monitoring involves taking appropriate action(s) or providing services that would appropriately solve a child’s problem and then following up on the child’s progress. During this phase, a child and his or her family may be linked with other agencies and informal support networks, such as family members and friends. Evaluation and termination involves determining whether the problem is solved and the child’s needs are met, and if so, then ending the provision of services. This process reflects the interconnected character of different phases in case-management practice.

⁶ Manuel, M., Osorio, B., Nuqui, T. and Saguisag, A. 2003. ‘Handbook for Social Workers on Case Management of Children in Need of Special Protection’. Manila: UNICEF. (Unpublished.)

4

INTERNATIONAL AND REGIONAL POLICY FRAMEWORK

Alternative care programmes for children ideally are guided by a legal framework based on relevant international measures and standards, regional commitments and national laws and policies.

4.1 International instruments

4.1.1 United Nations Convention on the Rights of the Child (CRC)

The CRC provides a comprehensive framework for policy and programme development to ensure the promotion and protection of the rights of children. The Convention is almost universally ratified. Signatory governments are obliged to take measures to meet their commitments under the Convention.

The CRC recognizes that the full and harmonious development of a child's personality depends on being able to grow up in a family environment in an atmosphere of happiness, love and understanding. As such, a child should not be separated from his or her parents against his or her will. If such separation proves necessary, in accordance with the laws and procedures of competent authorities, the separation must be in the best interest of the child (Article 9). The State is obliged however to assist parents and others responsible for a child to ensure the child's right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development (Article 27). Parents and legal guardians have the primary responsibility for the upbringing and development of a child (Article 18).

In cases where a child is temporarily or permanently deprived of his or her family environment, they are entitled to special protection, assistance and alternative care, taking into consideration their ethnic, religious, cultural and linguistic background. Alternative care for a child may include foster placement, adoption, *kafala* (Islamic law), kinship care, placement in a group home or, if necessary, placement in suitable institutions that provide care for children (Article 20). Adoption may provide a child with a permanent family in their own country or in another country, in accordance with national laws and procedures (Article 21). *See page 18 for an excerpt from the CRC.*

4.1.2 The Hague Conventions

The Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption (THC), adopted on 29 May 1993, reinforces the principles and norms laid down in the CRC. The Convention provides standards and a mechanism for international cooperation to ensure that inter-country adoptions take place in the best interest of a child and with respect to his or her fundamental rights. These safeguards are intended to prevent the abduction, sale, trafficking or other abuse of children placed in adoption.

The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children has special relevance to situations where children are in need of alternative care by virtue of being outside their country of habitual residence. In this situation, the placement of a child in a foster family or in institutional care, or the provision of care by *kafala* or a similar institution, is permitted under the supervision of a public authority (Article 3).

Excerpt from the UN Convention on the Rights of the Child

The States parties shall...

Article 4: Undertake all appropriate legislative, administrative and other measures for the implementation of the rights of the child recognized in the present Convention. With regard to economic, social and cultural rights, States parties shall undertake such measures to the maximum extent of their available resources and, when needed, within the framework of international cooperation.

Article 5: Respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 8: Respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by the law without unlawful interference. Where the child is illegally deprived of some or all of the elements of his or her identity, States parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 14: Respect the rights of the child to freedom of thought, conscience and religion; the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

Article 29: Agree that the education of the child shall be directed to the development of: a) child's personality, talents and mental and physical activities to their fullest potential; b) respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; c) respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; d) preparation of the child for responsible life in a free society, in a spirit of understanding, peace, tolerance, equality of sexes, and friendship among all people, ethnic, national and religious groups and persons of indigenous origin; e) respect of the natural environment.

4.1.3 United Nations Declaration on foster placement and adoption nationally and internationally

The 1986 UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally, contains provisions that also reinforce the CRC. These provisions relate to the principle of a priority to care by the child's own parents, subsidiarity of institutions as an out-of-home care option, and the standards for foster placement and national and international adoption. Standards for inter-country adoption were set subsequently in the 1993 Hague Convention on inter-country adoption.

The CRC, the Hague Conventions and the 1986 Declaration are consistent in promoting and protecting the rights of a child without primary caregivers. The subsidiarity principle is emphasized in these instruments.

In cases where a child is unable to be cared for by his or her parents or legal guardians based on national laws and procedures, alternative care in a family environment must be provided by the State. In such cases, a periodic review of the child's treatment and other circumstances relevant to their placement must be undertaken (CRC Article 25, THC Article 20). Institutions, services and facilities responsible for the care or protection of a child shall conform to the standards established by competent authorities, particularly in the areas of safety, health, the number and suitability of staff, and competent supervision (CRC Article 3). Family reunification and maintenance of personal relations and direct contacts with one or both parents are based on a child's best interest, as determined by competent authorities.

Further, a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting him or her, with due weight given to these views in accordance with the age and maturity of the child (CRC Article 12, THC Articles 4 and 21). In all matters concerning care, custody and other actions related to a child, the child's best interest is a primary consideration (CRC Article 3, THC Article 1). In the same vein, the principles of non-discrimination and survival and development shall likewise be upheld.

4.1.4 UN Convention against Transnational Organized Crime and its Protocols

The Convention against Transnational Organized Crime was adopted by the UN General Assembly in November 2000. The Convention recognizes that transnational crime is a serious and growing problem and can be solved only through close international cooperation. It deals with crime in general and some of the major activities involving transnational crime such as money laundering, corruption and the obstruction of justice.

Two Protocols were adopted to supplement the Convention: The Protocol to Prevent, Suppress and Punish Trafficking in Persons and the Protocol against the Smuggling of Migrants by Land, Air and Sea. The trafficking Protocol is intended to prevent and combat trafficking in people, especially women and children, and to facilitate international cooperation against such trafficking. It provides for criminal offences, control and cooperation measures against traffickers, as well as measures to protect and assist victims by providing housing, medical care and legal or other counselling. The smuggling Protocol aims to combat smuggling of migrants through the prevention, investigation and prosecution of offences and by promoting international cooperation.

4.1.5 ILO Conventions

Two Conventions promoted by the International Labour Organization (ILO) are geared towards eliminating child labour and protecting children and young people: Convention 138 (1973) and Convention 182 (1999). Convention 138, also known as the Minimum Age Convention, sets 15 as the minimum age at which a person should be employed or work in any occupation. The minimum age for admission to any type of employment or work that by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of a young person is set at not less than 18 years (Article 3). State signatories are obliged to devise national policies to end child labour.

Convention 182 concerns the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Worst forms of child labour are defined to include: 1) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; 2) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; 3) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and 4) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (Article 3). State signatories are obliged to develop and implement effective and time-bound measures, particularly through education.

4.1.6 Millennium Development Goals and A World Fit for Children

At the Millennium Summit in September 2000, State members of the UN committed themselves to targets to be achieved by 2015 – the so-called Millennium Development Goals. Six of the eight millennium goals can be best met if the rights of children to health, education, protection and equality are protected. These goals will be achieved only through the realization of the rights of every child.

The goals have profound implications for children and women, so it is no surprise that they correlate well with the goals considered essential at the UN General Assembly Special Session for Children in 2002.⁷ The UNGA Special Session adopted the document 'A World Fit for Children' and governments were reminded again to establish mechanisms to provide special protection and assistance to children without primary caregivers.

Meanwhile, the UN Committee on the Rights of the Child has recommended to the UN Commission on Human Rights (UNCHR) that a working group draft UN guidelines by 2008 for the protection and alternative care of children without parental care. UNICEF is working on this issue in collaboration with ISS-GS.

⁷ UNICEF EAPRO. 2003. *A Future for All Our Children*. Bangkok: UNICEF. p.6.

4.2 Regional instruments

Malaysia, Myanmar, Indonesia and Thailand are members of the Association of South-East Asian Nations (ASEAN). The ASEAN group comprises three pillars, namely political and security cooperation, economic cooperation and socio-cultural cooperation. These pillars are closely linked and mutually reinforcing for the purpose of ensuring durable peace, stability and shared prosperity in the region, as stipulated in the Bali Concord II adopted by ASEAN leaders at their ninth summit in October 2003. The Vientiane Action Plan (2004-2010) was subsequently adopted as the successor to the Hanoi Plan of Action (1998).

4.2.1 ASEAN Declarations

The ASEAN Socio-Cultural Community Plan of Action includes provision for “building a community of caring societies to address issues of poverty, equity and human development”. In order to achieve this goal, the welfare of children needs to be promoted by safeguarding their rights, ensuring their survival and full development, and protecting them against abuse, neglect and violence.

This commitment is in keeping with the Declaration on the Commitments for Children in ASEAN, adopted by ASEAN ministers responsible for social welfare in August 2001. The Declaration reiterates the region’s commitment to promote regional cooperation for the survival, development, protection and participation of children in ASEAN countries, previously embodied in the ASEAN Plan of Action for Children adopted in December 1993. Further, the Declaration stipulates the necessity of “the holistic development of children to enable and equip them for the achievement of their full potential and to contribute to a future of prosperity and progress in ASEAN”.

Three provisions in the Declaration relate specifically to forms of care: 1) Develop family support and family life-education programmes to help families, the primary caretakers of children, to nurture and protect their children; 2) provide appropriate care, including alternative family care or a home with a family environment to homeless children and those without families; and 3) give priority to children in rescue and relief operations during calamities and natural disasters in the provision of services to alleviate their trauma and hasten their reunification with their families. The ASEAN Ministerial Meetings on Social Welfare and Development and on Disaster Management are working to address these concerns.

Meanwhile, the ASEAN Declaration on HIV/AIDS was adopted at the seventh ASEAN summit in November 2001. Paragraph 12 stresses that “gender equality and the empowerment of women are fundamental elements in the reduction of the vulnerability of women and girls to HIV/AIDS, and that youth are especially vulnerable to the spread of the pandemic and account for over 50 per cent of new infections”.

4.2.2 East Asia and Pacific Ministerial Consultation on Children

The biennial East Asia and Pacific Ministerial Consultation on Children, organized by UNICEF’s East Asia and Pacific Regional Office (EAPRO) in coordination with national governments in the region, was initiated in 1991. These high-level consultations provide opportunities for governments to exchange ideas and experiences and to develop strategies for regional cooperation to promote and protect the rights of children in the region.

The seventh consultation, held in Siem Reap, Cambodia, on 23-25 March 2005, noted the huge loss of lives in the region as a result of the tsunami the previous December. The disaster highlighted the vulnerability of poor children and families and the need for more concerted efforts to prepare for and respond to natural disasters. The Principles of Action in the Siem Reap-Angkor Declaration adopted during the consultation included a stipulation that priority be given to disaster preparedness, mitigation and response, especially to reduce the impact of disasters on children. The Declaration also emphasizes that “the most important and influential contributors to a child’s survival, growth, development and protection are the child’s parents, family and community and [signatories] shall strive to enhance their capacity to care for, nurture and protect their children”.⁸

⁸ UNICEF. 2005. ‘Siem Reap-Angkor Declaration of the Seventh East Asia and Pacific Ministerial Consultation on Children. 2005, March 23-25.’ In *Towards a Region Where Every Child Counts*. Bangkok: UNICEF EAPRO. p.15.

5

FINDINGS

This section integrates the results of the review and assessment of existing alternative care services and legal frameworks in the four countries dealt with in the study. It highlights the situation of children and the common and distinct alternative care choices available in these countries. Finally, it presents some models of good practice to address the challenge of providing the best care for children without primary caregivers.

5.1 Policy context

Policies are essential in the development and implementation of social welfare programmes and services. Thus, a review of existing child welfare laws and child protection measures is indispensable in assessing alternative care choices for children without primary caregivers in the four countries covered in the study.

5.1.1 International instruments

The four countries are signatories to various international instruments for the protection of children, as shown in Table 1. This indicates the commitment of these countries to meet their obligations as States parties to these instruments.

Table 1: Status of ratification of international instruments

	CRC	Organized Transnational Crime Convention	Protocol on Trafficking in Persons	ILO Convention 182	ILO Convention 138	1993 Hague Convention
Malaysia	Ratified 19 Mar 95	Ratified 24 Sep 04	Signed 26 Sep 02	Ratified 10 Nov 00	Ratified 9 Sep 97	
Myanmar	Ratified 14 Aug 91	Acceded 30 Mar 04	Ratified 29 Jan 04			
Thailand	Ratified 26 Apr 92	Signed 3 Dec 00	Signed 18 Dec 01	Ratified 16 Feb 01	Ratified 11 May 04	Ratified 1 Aug 04
Indonesia	Ratified 5 Oct 90	Signed 12 Dec 00	Signed 12 Dec 00	Ratified 28 Mar 00	Ratified 7 Jun 99	

Among the four countries, Indonesia was the first to ratify the CRC. This was done through Presidential Decree No. 36 in 1990.

Myanmar became a State party to the CRC in 1991 with a reservation on Sections 15 and 37. The Government withdrew its reservation in 1993, following the enactment of the Child Law in July that year.

Thailand is the only country that has ratified the 1993 Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption. In this regard, the rights of children who are adopted by foreign families are protected.

Malaysia ratified the CRC in 1995 with reservations on eight Articles. The reservations are under review and appropriate amendments to national laws are being undertaken, including the Child Act 2001.

Myanmar, Indonesia and Thailand have formally presented their first and second reports on the implementation of the CRC to the UN Committee on the Rights of the Child. Malaysia is in the process of submitting its first report to the committee.

5.1.2 National laws

In all four countries, national laws include provisions for the protection of children who are abandoned, orphaned, neglected and abused, as shown in Table 2.

Table 2: National laws on children and other related laws

	Main law on children	Adoption	Foster care	Guardianship	Residential care
Malaysia	Child Act 2001	Adoption Act 1952 Registration of Adoption Act 1952	Child Act 2001	Child Act 2001 Islamic Family Law (Federal Territories) Act 1984	Care Centres Act 1993 Child Act 2001
Myanmar	Child Law 1993	Customary Law/ Registration of Kittima Adoptions Act, 1941		The Guardians and Wards Act (guardianship of the child and his or her property)	Child Law 1993, Chapters XIII and X
Thailand	Child Protection Act 2003	Civil and Commercial Code, Books I-IV, Chapter 4 Adoption Child Adoption Act B.E. 2522 (A.D. 1979) of Thailand	Child Protection Act 2003	Child Protection Act 2003	Child Protection Act 2003
Indonesia	Children's Welfare Law 1979	Law No. 23 Other laws cover domestic and inter-country adoption	No specific law, only Guidelines for Non-institutional Services to Neglected/ Abandoned Children	Law No. 23 provides that an individual or institutions may be appointed as guardian Regulations on guardianship are close to adoption	Law No. 23, Regulation No. 2, on the establishment of institutions

While national laws are in place, some provisions are not in harmony with the CRC. The principle of non-discrimination is not applied with regard to stateless children, and the denial of their identity and nationality deprives them of their rights. In Malaysia, the children of undocumented migrants (people who enter a country without legal papers such as a work visa) are not issued identity cards and are therefore not permitted to attend school and access other social services necessary for their development and protection. In Myanmar, “a large number of returnees from Bangladesh to Northern Rakhine State have gone back to their villages of origin and some 850,000 Muslim residents and a large number of [people of] Chinese or Indian descent throughout the country remain stateless...”.⁹ Some of these people however do have access to Temporary Registration Cards and some have a National Registration Card. In the laws of all four countries, the family is recognized as the basic social unit to care for and nurture children, yet residential care is prevalent for reasons of poverty and other social problems.

Malaysia, Indonesia and Thailand have developed national plans of action or programmes for children that spell out each country’s commitment to achieve major goals articulated in international instruments and national laws. Myanmar had a National Programme of Action for the Survival, Protection and Development of Myanmar’s Children from 1993 to 2000 and a new Plan of Action for Children (2006-2015) was developed in January 2006. Countries may have plans of action, but significant gaps are noted in intent (policy and planning) and implementation. These gaps were highlighted during a UNICEF EAPRO workshop on alternative care in Bangkok in November 2005.

5.2 The situation of children in tsunami-affected countries

The situation of children in the four countries reveals the nature and extent of problems encountered by children in need of special protection, including child survivors of the tsunami. During catastrophes and emergencies, children are at the greatest risk. Children who are separated from parents or primary caregivers are vulnerable to trafficking, labour and sexual exploitation, or kidnapping for illegal adoptions.

In the four countries, Indonesia was the worst hit by the tsunami. In the province of Aceh, in northern Sumatra, many children lost one or both parents. As of December 2005, UNICEF Indonesia estimated 2,500 children in Aceh had been separated from both parents. The number of separated children includes some unaccompanied children in orphanages, although a comprehensive assessment of all orphanages has not been done. Post-tsunami reports indicate some separated children are living with members of their extended families.¹⁰

A finding of the ISS-GS study is the emergence of child-headed households in Aceh. The children live in barracks, where relatives are close by. These children are vulnerable to abuse, placement in institutions, lack of formal education, malnutrition and health problems.¹¹

Malaysia recorded 2,169 families affected by the tsunami, but there is no disaggregated data on the age and gender of survivors. There is no report on unaccompanied children because child survivors were reportedly evacuated with other family members. Measures were taken to prevent children being separated from their parents or family members during the immediate rescue operations. Only one child was reported missing in Perak. The child was found to have died.¹²

Among the four countries, Myanmar was the least affected by the tsunami. A tsunami assistance coordination group confirmed a death toll of 60 to 80 people in the country. The longer-term affected population is estimated to be between 10,000 and 15,000, of whom 5,000 to 7,000 people are directly affected.¹³ While there is no data on the number of children in Myanmar affected by the disaster, it is likely that some families have broken up as a result and that some children are separated from their families and/or are without primary caregivers.

⁹ UNCRC. 2004. ‘Consideration of Reports Submitted by States Parties Under Article 44 of the Convention. Concluding Observations: Myanmar.’ UNCRC. 30 June.

¹⁰ UNICEF and ISS-GS. Op. cit.

¹¹ Ibid.

¹² Reported by the Department of Social Welfare, Malaysia.

¹³ WHO. 2005. ‘Myanmar Tsunami Situation Report.’ Yangon: WHO Myanmar Country Office. 27 January.

From the reports available, Thailand's government appears to have responded quickly and positively to mobilize all resources to help victims of the tsunami. The Government, with support from international bodies, provided relief and recovery interventions, both on the material and the psychological levels. Services such as a 24-hour call centre where relatives could contact victims, shelters for displaced families and children, restoration of family livelihoods, and counselling were provided. But the registration of children without primary caregivers was slow. Table 3 reflects the number of children in Thailand affected by the tsunami.

Table 3: Data on children in Thailand affected by the tsunami

Province	Children without one or both parents or caregivers	Children in temporary shelters*	Children psychologically affected**
Krabi	130	200	
Phang Nga	591	1,800	
Phuket	186		
Ranong	98	–	
Satun	3	–	
Trang	38	–	
Other*	413	–	–
Total	1,459	2,000	50,000

* Parents died, children residing in provinces other than where they lived before the tsunami

** UNICEF estimates

Source: Ministry of Social Development and Human Security, Thailand

All four countries, in varying degrees, faced problems before the tsunami with regard to health, nutrition, education and protection of children. Indonesia and Myanmar are struggling to achieve the Millennium Development Goals on health, nutrition and education. Infant mortality was already high in Myanmar (48:1,000 births), Indonesia (44) and Thailand (24). Malaysia's infant mortality rate was 6:1,000 births in 2001.¹⁴ Myanmar had the lowest net ratio of enrolment by children in primary education and a high rate of malnutrition of children under five. Indonesia's rate of malnutrition was higher than in Thailand and Malaysia. In all countries there was an increasing incidence of HIV/AIDS and unaccompanied children were vulnerable to trafficking.

The threats faced by children in these countries have implications for guaranteeing their rights to survival, protection, development and participation. This is especially the case for children without primary caregivers. The interplay of familial, community, socio-economic, cultural and political factors contributes significantly to an increasing number of children in these countries needing special protection. These issues are tied inextricably to poverty, as many of the children at risk come from economically disadvantaged families.

5.3 Programmes and services for alternative care

The following section describes alternative care choices for children without primary caregivers as practised currently in the four countries.

5.3.1 Family- and community-based care programmes

Family- and community-based programmes for children without primary caregivers encompass the following alternative care choices: Adoption, foster care, kinship care and guardianship. In varying degrees and forms, family- and community-based programmes for children without primary caregivers exist in all four countries.

¹⁴ ASEAN Secretariat. 2003, December. *ASEAN in Figures*. Jakarta: ASEAN.

a) Adoption

Adoption is a permanent placement of a child in a family, whereby the rights and responsibilities of biological parents are legally transferred to the adoptive parent(s). An adopted child acquires the same status, rights and privileges accorded to any child of their adoptive parent(s).

Each of the four countries has distinct adoption laws. In Myanmar, adoption follows Buddhist law, specifically the Registration of Kittima Adoption Act of 1939. Malaysia has different adoption laws for Muslim and non-Muslim children. Indonesia and Thailand permit adoption of children by foreign nationals in their countries. Thailand also permits the adoption of children to a foreign country in accordance with the 1993 Hague Convention. Malaysia and Indonesia do not permit inter-country adoption, while Myanmar does not expressly forbid it but lacks a legal framework that would enable this to occur.

It is noteworthy to mention that Thailand is the only country with adoption processes in place for family selection and matching according to the best interests of a child. The other three countries share an adoption process that is similar, particularly in terms of selection and identification of a child to be adopted. Adoptive parents go to institutions to choose a child to adopt based on their preferences such as age, gender and physical attributes, without appropriate consideration of the child's needs. A child can be returned at any time if the adoptive parents are not satisfied with his or her behaviour or if they find they cannot cope with the demands of parenting. Adoptive parents are permitted to choose a 'replacement' child. In Indonesia, only children under five years can be legally adopted, which means many children are left out of the adoption system.

The effects of adoption differ among the four countries. In Malaysia and Thailand, the parental rights of the biological parents of an adopted child are terminated upon adoption. In Indonesia, these rights are not severed, while adopted children have the same rights as other children. In Myanmar, three forms of adoption are recognized under Buddhist law: 1) *Kittima* is full adoption with inheritance; 2) *apatittha* is adoption by compassion, and the adopted child is sometimes entitled to inheritance; and 3) *chatta-batta* is a foundling who is not given inheritance rights. A *kittima* child is as entitled to inheritance as a biological child, but is not regarded as being on an equal footing with a biological child.¹⁵

The above adoption practices may be discriminatory because they tend to favour the interests of the adoptive parents rather than the welfare of a child. Thus, a review of adoption policies and practices is needed in all four countries.

b) Foster care

Foster care is a form of temporary family placement for a child when his or her biological parents are unable to care for him or her due to family problems. This placement is intended to be for a planned period of time and does not involve the permanent transfer of parental rights and responsibilities.

Foster care as an organized child welfare service is practised in Malaysia and Thailand, whereby foster families caring for a non-related child are assessed, approved and supervised by government authorities.

In Malaysia, the Court for Children may order that an abandoned child be placed in the care, custody and control of a foster parent found to be suitable by the Director-General of the Department of Social Welfare for two years or until the child is 18, whichever is the shorter period. Foster families may adopt a foster child if, after two years, the child's biological parents have not claimed him or her and a social welfare officer has not been able to locate them. A foster parent may return a child as long as he or she reports in person and takes the child to a protector/social welfare officer, who then is responsible to put the child in a place of safety, such as a residential facility. The department provides financial incentives to 148 foster families, amounting to RM250 per child per month, with a maximum of RM500 per family per month.¹⁶

¹⁵ Lahiri, S.C. 1951. *Principles of Modern Burmese Buddhist Law*. Fifth edition. India: Eastern Law House. p.165.

¹⁶ Interview with Inau Edin Nom and Sulaiman Hj Ismail, Department of Social Welfare, 18 October 2005. The exchange rate was RM13:USD1 at the time.

In Thailand, government services and NGOs implement foster care and provide subsidies to foster families. More than 1,000 foster families are supervised through reportedly regular visits by social workers from the Department of Social Welfare.¹⁷ Most foster families are related to the children, though some foster families are selected and subsidized by the department to meet the needs of unrelated children.

In Myanmar and Indonesia, informal fostering of children is practised. The term 'foster care' is interchanged with adoption or guardianship. It is not regulated by government or social service agencies. In Indonesia, the law appears focus mainly on residential care and adoption, which explains the lack of regulation of foster care.¹⁸ In Myanmar, children without primary caregivers who are taken in by families are often treated as domestic helpers. These children are at high risk of exploitation and/or abuse.

c) Kinship care

Kinship care is the full-time nurturing and protection of a child by relatives, members of a tribe or clan, godparents, step-parents, or other adults who have a kinship bond with a child.

Kinship care is practised widely in the four countries. It is deeply rooted in local cultures, but remains mainly informal and is not regulated. Although most children without primary caregivers live with extended families, there is no data on the extent and situation of these children. This is particularly the case in Myanmar and Indonesia, where kinship care is very common. In Malaysia, families who take care of related children may qualify for financial assistance. In Thailand, kinship care is included within the foster-care programme.

d) Guardianship

Guardianship occurs where a court appoints a person to care for and take custody of a child and his or her property until the child reaches the age of majority or at the discretion of a court.

In all four countries, no data was obtained with regard to children under legal guardianship, although legal provisions on guardianship exist.

In Malaysia, the Islamic Family Law (Federal Territories) Act 1984 (Article 303) contains requirements and procedures on guardianship (*hadanah*, or custody of children) for children of Muslim families, including the succession of guardians to be appointed by a court. For orphaned children, where the father and the grandfather of a minor have died without nominating a guardian, a court may appoint a guardian. A court may seek the advice of an expert on child welfare, but it is not bound to follow the advice. The Child Act 2001 also refers to the court appointment of a guardian, but the Department of Social Welfare does not appear to administer a legal guardianship programme.

In Myanmar, the Guardians and Wards Act refers to the guardianship of a child's person and his or her property. A court may be petitioned for guardianship of a minor who has not come of age and for a child of divorced parents. A court determines guardianship and is obliged to take into account the best interests of the child.¹⁹

In Thailand, guardianship is incorporated into the Child Protection Act 2003, which took effect in March 2004.

In Indonesia, Law No. 23 2002 on Child Protection (Articles 33-36) provides that an individual or institution may be appointed to serve as a guardian of a child. A new regulation on requirements and procedures for the appointment of guardians is in process. Under this measure, a guardian may be appointed in three situations: 1) When the parents fail to fulfil their obligations and responsibilities to a child; 2) when the parents are legally incapable of doing so; and 3) when the whereabouts and place of residence of parents is unknown.

¹⁷ Punnabutr, C. 2001. 'Current Trends and Best Practices on Alternative Parental Care'. In *Proceedings of the 6th Global Consultation on Child Welfare Services*. Philippines: Inter-Country Adoption Board (ICAB). 29-31 August.

¹⁸ UNICEF and ISS-IG. Op. cit. p.13.

¹⁹ Myanmar, Government of. 1995. 'Initial reports of States parties due in 1993: Myanmar'. CRC/C/8/Add.9. UNCRC. 18 September 1995.

5.3.2 Residential care

Residential care refers to temporary care within groups for children without primary caregivers or whose biological parents are unable to care for them. Residential care is meant to provide 24-hour care for children, meeting their basic needs of shelter, food, clothing and education.

In all four countries, residential care is the main response to support children without primary caregivers. It is the most visible, accessible and readily available form of care to address immediately a child's need for shelter, care and education.

a) Reasons for admission to residential care

Poverty is the prevailing reason why children enter residential care. With increased population growth, urbanization and industrialization, and accompanying social problems, more and more families have become economically marginalized. Economic difficulties result in situations where many families cannot meet their children's basic needs, that is, food, clothing, shelter and education. Some parents send their children to orphanages or boarding/monastic schools for the purpose of education. Children also enter residential care because of the prolonged illness, disability or death of parents; abandonment; and family breakdown. Some parents are not able to perform their parenting roles due to inadequate coping and problem-solving skills, and this may result in a child requiring alternative care. Relatives may be in the same situation, so assistance is sought from the Government, NGOs or faith-based organizations.

Children in residential-care facilities in the four countries generally are there because they have been abandoned, neglected or orphaned by one or both parents; they have been abused; they have physical and/or psychological disabilities; they are in conflict with the law; or they have or are affected by HIV/AIDS. Their parents may be economically deprived or incapable of caring for them. Age and gender are considered in assigning children to residential facilities.

In Malaysia, children's homes accommodate infants and older children under 18 in one compound. From the age of 12, boys are sent to a boys' home for academic and vocational schooling. Myanmar accepts children from four months to five years in residential nurseries, while children aged from six to 16 are accommodated in separate training schools for girls and for boys. Indonesia has child protection centres for both boys and girls aged seven and under, and separate facilities for older boys and girls. Information was not available for Thailand.

b) Forms of residential care

Residential care or institutional care comes in different forms, including reception centres or child protection centres, residential nurseries, children's homes, orphanages, training/boarding/monastic schools, and family/cottage-type complexes. These are mostly managed by private or faith-based organizations and are usually located in urban areas.

Of eight facilities visited for this study,²⁰ one has capacity for just 40 children. The other seven are large institutions, capable of accommodating 100 to 300 children at a time. For example, Tengku Budriah Children's Home in Cheras, Kuala Lumpur, Malaysia, housed 234 children in October 2005. In Myanmar, the Department of Social Welfare's Training School for Girls, in Yangon, housed 305 children in November 2005. In each of Indonesia's orphanages, there were 100 to 200 children. (Information was not available for Thailand.)

Five of the facilities visited are family/cottage-type complexes and the rest are dormitory accommodations with a central kitchen and dining hall. Facilities are generally clean and safe for the children, although two need improvements in terms of sanitation and infrastructure repairs.

A family/cottage-type system exists in Malaysia, Myanmar and Indonesia. In this type of care, older children live in separate gender-segregated cottages. Eight to 10 children live in each cottage under the supervision of a caregiver. The cottage complex may include a medical clinic, a pre-school or primary school classrooms, and space for vocational training. This system provides a more family-like environment where children are more likely to receive individualized care and attention.

The spectrum of residential-care facilities in Myanmar and Indonesia includes boarding/monastic schools run by faith-based organizations that rear children through their growing years, providing education and residential care for the children. These facilities come under religious affairs ministries and are not covered by standards set by social welfare departments. NGOs providing residential-care services for children are required to register with social welfare departments.

²⁰ Eight facilities were visited: One in Indonesia, three in Malaysia and four in Myanmar.

c) The situation of children in residential care

Basic needs for survival such as shelter, food, clothing and education are generally provided. There is doubt however about whether the developmental needs of the children are addressed. This is especially the case where children with various problems and needs are placed together in one home, such as children with disabilities, victims of abuse and exploitation, those affected by HIV/AIDS, and those with behavioural problems.

In general, case plans or reviews of the placements of children in institutional care do not apparently exist. Some case records were seen in some centres in Myanmar and Indonesia. The records monitor the progress of children, but only in relation to their stay in the centre and not with any long-term permanency planning in mind. In addition, there are no indications that older children are permitted the opportunity to participate in decision-making relative to their placement. Many children experience being moved from one institution to another. In Malaysia, boys who are 12 years old are transferred to a boys' home. In Myanmar, when children reach the age of five they are transferred to a training school for boys or girls. In Indonesia, after six months in a child protection centre, children are moved to a children's home (or *panti*). The practice of moving children from one place to another is not in their best interests because it is detrimental to their capacity to establish long-term and meaningful relationships.

Most of the children in institutions in Malaysia, Myanmar and Indonesia have parents and families, but the parents are unable to visit their children due to distance and financial constraints. Parents also have confidence that their children are in good care. Care agencies are unable to provide transportation assistance for families to visit and they do not coordinate with local nor other agencies for such support. Besides, visitation or continuing contacts with families are not part of the regular care programme and families are not encouraged to visit. Therefore, most of these children stay in institutions until they are 18. They have no, or only minimal, contact with parents or family. Just a few are reunited with their families or placed in adoption or foster care.

The consultants had no access to the profiles of residential care staff, but observed during their visits that many staff members were young women who seemed interested and committed in their work with the children. Some had received training, but most need continuing education to enhance their knowledge and skills in working with children.

d) Auspices of residential care

Most residential facilities are supported by governments through local departments of social welfare. Some government-run centres are also supported by UNICEF and international NGOs. Further, social welfare departments in Malaysia and Myanmar give grants to registered NGOs caring for children in institutions. In Malaysia, a 'smart partnership' with the private sector and the local community is encouraged to support programmes for children.²¹ Faith-based organizations rely primarily on donations from their religious communities, individuals and the private sector.

In all four countries, the protection of children is mainly the responsibility of the local departments of social welfare. Coordinating bodies dealing with children's concerns operate at the national and local levels. In Malaysia, a Coordinating Council for the Protection of Children was created to ensure full implementation of the Child Act 2001. In Myanmar, the National Committee on the Rights of the Child was formed in September 1993. Working and local committees on the rights of children were likewise created in Myanmar at the state, divisional and township levels, although in many locations they are not active.

NGOs duly authorized or registered by the relevant national ministry also deliver social services to specific groups of children. In Malaysia, some NGOs receive grants or subsidies. For example, Shelter Homes receives 5 per cent of its budget from the Government. Some faith-based agencies, including boarding/monastic schools, are active providers of educational and/or community services to children in care.

A summary of alternative care practices in all four countries is shown in Table 4.

²¹ 'Smart partnership' is discussed in detail in Chapter 6: Models of Good Practice.

Table 4: Alternative care practices

	Adoption	Foster care	Guardianship	Kinship care	Residential care
Malaysia	De facto adoption of Muslim children Adoption of non-Muslim children permitted Inter-country adoption not permitted	Foster care encouraged and foster families given government subsidies	Guardianship for Muslim orphans issued by the courts	Informal care provided by extended family members although relatives may qualify for financial help	Children’s homes managed by Department of Social Welfare and NGOs; moving to family/cottage system Standards set by department in accordance with Care Centre Act 1993 Boys moved to a boys’ home at the age of 12 Minimal parental visits
Myanmar	Three agencies involved: Department of Social Welfare, Ministry of Health, Supreme Court Follows Customary Buddhist Law (three types of adoption) Inter-country adoption not permitted	Informal fostering (not regulated)	The Guardians and Wards Act (guardianship of the child and his or her property): no data gathered on the extent of implementation	Informal care provided by extended family members (not regulated)	Children can be placed in formal residential care from the age of four months Children are moved at the age of six from a residential nursery to a training school Minimal parental visits One home offers family/ cottage care Beginning to draft standards for institutional care
Thailand	Permits local and inter-country adoption	Government and NGOs subsidize some foster families		Informal care provided by extended family members	Social welfare ministry has regulation governing standards of care in residential facilities and a monitoring system (but monitoring is not common)

Table 4: Alternative care practices *(continued)*

	Adoption	Foster care	Guardianship	Kinship care	Residential care
Indonesia	Domestic adoptions are encouraged Foreigners are permitted to adopt only within the country	Informal fostering of related and non-related children	'Guardianship' as practised is not covered by law	Informal care provided by extended family members	7,000 children's homes, mostly run by private groups Standards set Department of Social Affairs Children are moved among institutions once they reach a certain age Minimal parental visits

5.4 Networking

Collaborative partnerships between and among governments, NGOs, the private sector, donor agencies and UN bodies is evident in all the countries. UNICEF has a country programme for children, in cooperation with governments, in each country. International NGOs such as the Save the Children and World Vision and local NGOs also operate in Myanmar, Indonesia and Thailand. Malaysia has an institutional relationship with local NGOs and the private sector for the implementation of programmes for children. Collaborative activities in Malaysia include trainings, seminars, workshops, research studies and information/educational campaigns on the rights of a child.

A multi-sectoral approach is generally used in many inter-agency activities in the four countries. Various government agencies, international and local NGOs, UN agencies and academic institutions often work together to discuss issues and concerns, and formulate policies and plans such as national plans or programmes for children. Coalitions and networks of agencies exist, such as the Child Rights Working Group and the Juvenile Justice Inter-Agency Working Group in Yangon, Myanmar. All four countries work closely with other countries by participating in meetings, workshops and seminars held by UN agencies and ASEAN.

5.5 Advocacy and social mobilization

Advocacy involves communicating specific information through various channels (interpersonal and media) in the aim of gaining political and social acceptance for a particular agenda and preparing a society for related actions.

Social mobilization brings together inter-sectoral allies to raise people's awareness of and demand for a particular action (for example, a development programme). Social mobilization works for the delivery of resources and services to those in need and strengthens community participation and self-reliance.²²

In line with these concepts, all four countries have initiatives in varying degrees and forms to promote the CRC. Activities around advocacy and social mobilization are conducted by governments in partnership with UNICEF, international and local NGOs, communities and children. In Myanmar, for example, awareness-raising activities on children's rights have been undertaken at the national, state, divisional and township levels through training programmes and use of mass media. Since 1997, the National Committee on the Rights of the Child, the Department of Social Welfare and UNICEF have published and distributed copies of the CRC, the Child Law (also in English), and brochures, posters, hand-outs and calendars with messages related to the CRC.²³

²² McKee, N. 1992. *Social Mobilization and Social Marketing in Developing Communities: Lessons for Communicators*. Penang: Southbound.

²³ Myanmar, Government of. 1995. Op. cit.

6

MODELS OF GOOD PRACTICE

The results of this study highlight the following child welfare programmes and initiatives in the four countries: 1) Family support to keep economically disadvantaged families together and to prevent institutionalization of children; 2) family/cottage care systems to create a more family-like environment and avoid placement in large institutions; 3) foster care to provide more individualized care for children in relation to their developmental needs; and 4) strategies for resource mobilization. These actions are considered to be good practice because they are geared towards promoting and protecting children's rights with the active involvement of communities and the private sector.

6.1 Family support programmes (Malaysia)

Family support programmes are the first level of care to keep families and children together. A range of services such as financial assistance and psychosocial interventions is available and accessible to families in crisis situations in order to try to prevent a child being separated from his or her family.

The Department of Social Welfare runs programmes to help families improve their socio-economic situations and to enhance their quality of life. These programmes are two-fold: 1) Direct financial assistance and psychosocial support to poor families and their children; and 2) community-based preventive services provided to children at risk and their families through child activity centres supervised by child protection teams. These teams were mandated to be set up throughout Malaysia under the Child Act 2001, which requires that groups of people form protection teams to coordinate locally based services to families and children, if children are or are suspected of being in need of protection.

A programme for assistance to needy children aims to help poor families, single parents and relatives who take care of their own children or kin. A means test assesses financial need while the capacity of parents or relatives to provide care and a safe environment is evaluated. A family's situation is reviewed every six months and the period of a grant should not exceed 30 months. Financial aid under this programme is RM80 per child, not exceeding RM350 per family per month. There are efforts to increase the amount per family. The total budget is RM35.37 million for 2006, which is expected to assist 17,232 families and benefit 52,100 children.

Children of poor families who are in primary and secondary schools also receive government assistance to cover the cost of books, clothing and other materials needed for their schooling.

Micro grants are provided to poor families, including families whose children are in institutions. Recipients receive a maximum of RM2,700 per income-generating or micro-finance project. The newly reconstituted Socio-Economy and Assistance Division of the Department of Social Welfare is devising a more developmentally oriented programme to enable families to access micro-finance and engage in livelihood projects.

Meanwhile, child activity centres serve as a resource where community members can meet and exchange ideas, thus fostering community spirit among specific target groups such as poor families, families with problems and/or in crisis, and children at risk. Other positive actions and services include counselling and crisis intervention services, educational support services, child development activities, seminars/workshops/lectures on parenting and other family-oriented topics, and motivational camps for children and young people.

6.2 Family/cottage care (Malaysia, Myanmar and Indonesia)

The family/cottage type of care provides a family-like environment where children receive more individualized care and attention than in large institutions. Each cottage accommodates not more than 10 children at a time and is staffed by a permanent caregiver who acts as a 'mother'. In this type of setting, children are sometimes able to interact with the community when they go to school outside the cottage complex. A drawback occurs where children are grouped by gender and age, which diminishes the family-like environment. A husband and wife couple acting as surrogate parents to the children would be an ideal.

In Malaysia, the family/cottage system of children's homes in Sg. Buloh, Selangor, represents an innovative approach to caring for children in need who have no relatives or families to care for them. Children aged eight to 17 are referred to the system (or *rumah tunas harapan*) by a magistrate's order, the Director-General of the Department of Social Welfare or by the department's other children's homes. Within this system, Kompleks Penyayang Bakti follows the new approach of *penyayang*, which involves creating a family-like institution within the community and gives child residents the opportunity to grow up in a family environment according to their own ethnic, cultural and religious practices. Children in groups of eight to 10 live in four cottages (two for girls and two for boys) and are cared for by a 'mother' who prepares meals and supervises the children. The complex includes an administrative building and is located on 4.5 hectares where there is also a playground, a mosque and an orchard. The children attend school outside the complex and each receive a little pocket money.

The complex is staffed by one social welfare officer (the manager), an assistant social welfare officer, five assistant social workers, four health attendants and four kitchen staff. Only the manager is a professional social worker, although other staff have received some training. The social workers conduct counselling sessions and revision classes and keep records of the children's progress. Case reviews are conducted every three months. The social workers are all young and seem to have pleasant dispositions.

In Yangon, Myanmar, another family/cottage complex houses children aged from a few months to 16 in small family-like cottages. Vulnerable children who live in the community but not at the complex also receive assistance. The complex receives private sector funding and is registered with the Department of Social Welfare. The aim is to provide accommodation to babies, toddlers and young children up to five years, and to create a family-like environment for school-age children (6-16 years) under the care of a guardian 'mother'.

Within the complex, one cottage is for infants and young children while another is a dormitory for three to five-year-olds. Older children of 6 to 16 live in separate cottages (three for boys and one for girls) housing 10 children each. The complex includes an office/library/clinic, staff quarters, a kitchen, a praying and activity room and a dining hall. There is space for indoor and outdoor play. The complex is clean, well-equipped and well-maintained.

The children live in a family-like environment (except for the distinct age groupings) and receive individualized care and attention. The consultants observed that the children were well cared for and seemed happy under the care of the 'mothers', who are young and appear to have a genuine interest in the children's welfare. Religious education and nursery classes for young children are held at the complex while older children attend government schools in the community. The environment however is cut off from the local community and there is no permanency planning for the children. Children with disabilities or who are affected by HIV/AIDS, or who have other difficulties are not permitted to live at the complex.

In Jakarta, Indonesia, the consultants visited one government-run institution for children under seven that is a model for an institutional setting because it serves both mother and child at the same time. Mothers affected by domestic violence or trafficking receive shelter, with their young children, for six months. The institution is a cottage-type home, clean and well-staffed. Children have space for outdoor play and they appear comfortable and well-adjusted. Staff maintain computerized records of cases and charts regarding the movement of cases.²⁴

Overall, the services provided in these various models of family-like care are comprehensive and meet the needs of child residents. Provision is made for medical services, informal education, formal education, religious education and socio-cultural and recreational activities. The institutions may be regarded as good models when the facilities are individual homes within communities.

²⁴ See UNICEF and ISS-GS. Op. cit. Appendix 2.

6.3 Foster care (Thailand)

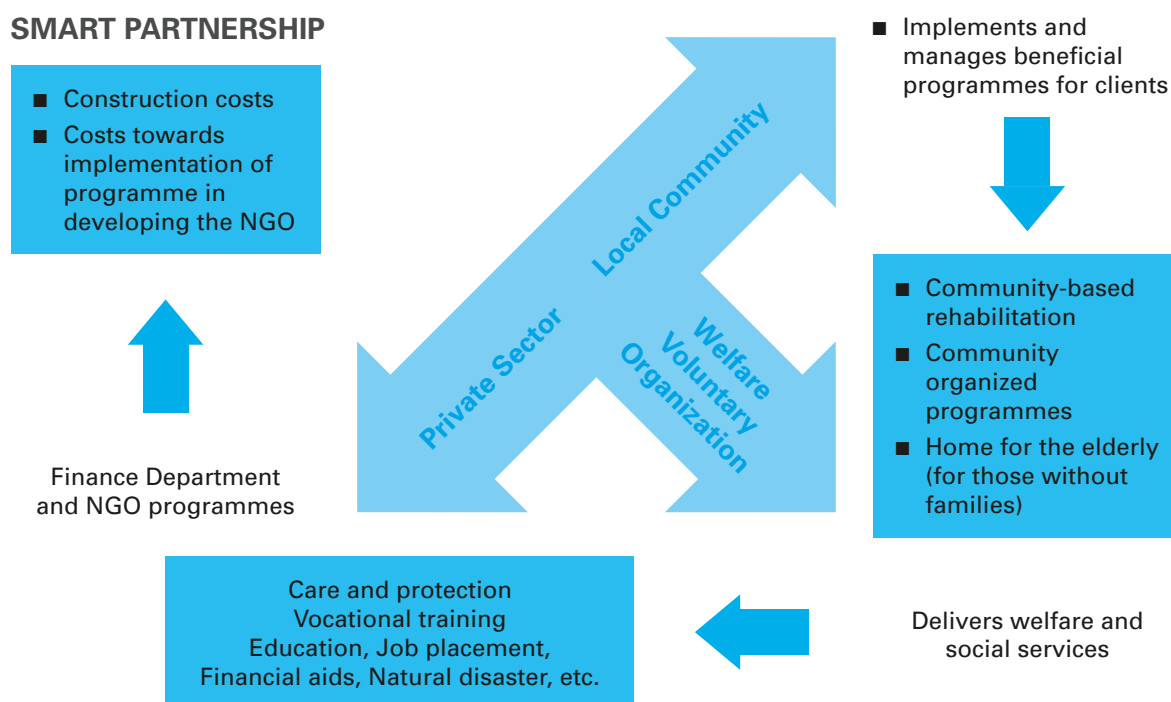
In contrast to the other three countries, Thailand can claim to have a good model for foster care. A foster-care service has been operating for almost 20 years, implemented by government and non-government agencies. There is a process of familiarization for foster families and children before placement as well as follow-up or home visits and evaluations.

As of July 2001, Thailand’s Department of Social Welfare was supervising 1,143 foster families.²⁵ Most of these families foster children who are related and have been orphaned. The department also supervises and subsidizes some foster families who receive cash allowances with basic necessities for unrelated children. These families are visited regularly by a social worker. There has been no formal review to assess the effectiveness or appropriateness of these placements.

6.4 Resource mobilization strategy (Malaysia)

While governments are obliged to provide basic social services, this often occurs by making use of the resources of the private sector and NGOs. One model of resource mobilization is the ‘smart partnership’ in Malaysia. In this model, the Department of Social Welfare involves voluntary organizations (NGOs) and the private sector in the delivery of social services. Figure 4 illustrates this partnership and the responsibilities of each partner.

Figure 4: Smart partnership in Malaysia



Under this model, the private sector is responsible for the construction and implementation costs of social welfare programmes. A facility may then be managed by an NGO while the Government provides educational, medical and other social programmes. One example is Kompleks Penyayang Bakti (described earlier). It demonstrates the ‘smart partnership’ concept whereby the Government (through the Department of Social Welfare), a voluntary agency (Bakti) and the corporate sector (Yarisan Holdings) work together to manage a facility for children.

²⁵ Punnabutr, C. Op. cit.

CHALLENGES AND RECOMMENDATIONS

The review of alternative care choices for children in the four countries revealed the following challenges: 1) To put in place a continuum of child welfare services (supportive, supplemental and substitutive); 2) to improve the quality of care for children; and 3) to strengthen advocacy and the promotion of children's rights services.

7.1 A continuum of services

Programmes to prevent children being separated from their families, such as family support schemes and other services, are generally limited in the four countries. Alternative family- and community-based programmes such as adoption, foster care, kinship care and guardianship are limited in comparison with residential care, which is the main response to caring for children without primary caregivers. The institutions assessed meet the basic needs of child residents, but they generally fall short in responding to the children's psychosocial needs. Institutionalization (especially for a long time) and separation from parents and families have detrimental effects on children. Separation increases a child's vulnerability to health problems (inadequate nutrition, risk of disease) and psychological difficulties in forming and maintaining relationships, building self-esteem and avoiding behavioural problems.

7.1.1 De-institutionalization

De-institutionalization is a process of moving away from a reliance on residential care to community-based/family types of care for children without primary caregivers. This process must be pursued vigorously in all four countries. This can be best achieved by developing support services for families and facilitating the reunification of children with their families or adoptions as appropriate. Policies and actions are needed to redirect donor support to family- and community-based services rather than residential-care services.

7.1.2 Support for families

All four countries need to develop comprehensive and easily accessible family-support programmes geared towards family preservation. Such programmes may include income-generating activities and livelihood opportunities, parent education, day care, counselling, health services and other interventions intended to keep children and their families together where possible. Poverty and economic disadvantage should not be a main reason to separate a child from his or her family. Family-support programmes therefore need to be integrated into government poverty-reduction programmes in accordance with commitments to achieve the Millennium Development Goals.

7.2 Quality care

Across the four countries, children without primary caregivers are generally placed in large institutions with centralized kitchens and big dining halls. They stay for longer than necessary because of the lack of case-by-case planning for individuals and the absence of concerted interventions with families. The participation of such children in matters concerning their welfare is very limited. In most situations, case management is negligible due to a lack of trained staff. Records and data on children are not systematically gathered and sustained.

7.2.1 Family-like environments

Physical facilities need to be arranged in a family-like environment that takes into consideration the needs, level of development and gender of child residents. Large institutions should be decentralized or phased out in favour of small cottage/family-type settings where children continue to live within communities. Dormitory-style sleeping arrangements should be replaced by smaller bedrooms where children have their own cabinets to store personal belongings. Dilapidated buildings should be repaired.

7.2.2 Family relations and reunification

No child should be placed in an institution for an unlimited period. The return and reintegration of a child with his or her family or placement with an adoptive family should be the objective. Residential care should be a last resort and, as much as possible, temporary in nature. Children should not be alienated from their parents. Family visits, including family rituals, need to be integral to care programmes with the aim of re-establishing and strengthening family bonding. Support for parents to visit children in care, for example by helping with transport costs and providing a meal allowance, is recommended as necessary to encourage parents and family members to visit children. Letters, telephone calls and other means of communication also should be encouraged. Social workers and/or trained para-professionals should take advantage of a parental or familial visit to discuss permanency plans for the child. The child should be given the opportunity to participate in this regard. Case-management systems are needed to ensure timely and appropriate actions to place a child in the best environment possible.

7.2.3 Case-management systems

Effective case management is possible with trained social workers functioning as case managers and case workers. To do this, they need knowledge on child development, family dynamics and community resources, as well as skills in assessment, case planning, handling families in crisis and children's behavioural problems, and monitoring and evaluation of interventions. Training of para-professionals and all staff caring for children is essential so that all understand the developmental stages of children and behavioural issues, as well as the importance of gender fairness and sensitivity to the needs of children. In the absence of professional social workers, more training is needed for para-professionals so that they can manage cases themselves.

7.2.4 Standards

Governments of the four countries must ensure that standards for alternative care are in place to guarantee the quality of care and the rights of children whose needs cannot be met within their own families. All types of residential-care facilities, including boarding and/or monastic schools under the management of faith-based organizations, should be obliged to comply with these standards, which should cover:

- Basic philosophy and principles of care and protection for children and the services provided to them and their parents;
- Organization and management (vision, mission, goals, composition of boards or policy-making bodies);
- Quality of care (ratio of staff to children, health and nutrition, allowance for clothing, toiletries, and so on);
- Policies, programmes and case management (admission and discharge policies, individual case records, case-loads of social workers, periodic reviews of case plans, medical, educational, psychological and social services including opportunities for children to participate and families to visit children);
- Personnel policies and procedures (number and ratio of staff, professional qualifications, recruitment, hiring and continuing staff development);
- Financial management policies and procedures (accounting and auditing of funds); and
- Safety requirements (infrastructure, including sanitation, buildings and playgrounds).

7.2.5 Data collection and management

Systems are needed to collect and manage data and information to allow for improved planning, programming, monitoring and evaluation. First, clarity is required regarding concepts, definitions and indicators related to child protection. Second, data on children in care must be disaggregated by age, gender, category and legal status, the nature of problems and services rendered. Third, a system of data collection and analysis must be developed and utilized by concerned agencies and partners. Lastly, the data must be shared and used for advocacy, policy and programme development and the improvement of service delivery.

7.3 Advocacy and promotion of children's rights

The four countries all have laws, policies, procedures and programmes that do not conform with the CRC. There is a widespread attitude or perception among families, communities and society that institutionalized residential care is a primary and valid response to assisting children without primary caregivers. Fragmented and incoherent social welfare structures hamper child protection initiatives. The problem is compounded by a lack of cooperation among stakeholders and key actors who are yet to work together to develop and implement common and coherent policies, approaches and strategies to address child protection concerns.

7.3.1 CRC compliance

As States parties to the CRC, the governments of the four countries are obliged to harmonize their national laws and policies to the standards set by the CRC. This study reveals however that many laws, policies and practices in the four countries are inimical to the interests of children and are discriminatory. It is recommended that each country:

- Conduct a comprehensive review of national laws and policies and develop appropriate amendments in accordance with the CRC.
 - Protect stateless children.
 - Ratify the 1993 Hague Convention on inter-country adoption (Malaysia, Myanmar and Indonesia).
- Develop policies and programmes to guarantee children's rights to survival, development, protection and participation.
 - Prevent separating a child from their parents and family on the grounds of poverty alone.
 - Promote the continuance of family contacts if a child is separated and/or in residential care.
 - Provide opportunities for children to participate meaningfully in decision-making in matters affecting them.
 - Redirect funds away from residential care to family- and community-based services.
- Establish and monitor standards of care for children.
 - Set standards specific to residential care.
 - Set standards specific to community-based programmes.

7.3.2 Public education and awareness

A comprehensive information, educational and communication programme is needed at all levels in all four countries, directed towards sustained advocacy on children's rights and the essential roles of families and communities in protecting the rights of children. Media, personal contacts and other localized strategies are important in reaching target audiences and monitoring the effectiveness of these strategies.

7.3.3 Coordination

Enhanced coordination between local and national government agencies and in mobilizing resources depends on building and expanding partnerships focused on improving child protection. Each country needs to strengthen existing coordinating structures at all levels.

8

CONCLUSIONS

This study has provided an overview of the alternative care choices for children without primary caregivers in Malaysia, Myanmar, Indonesia and Thailand. A summary of several significant conclusions follows.

1. Residential care is the main response to assisting children without primary caregivers. Poverty is a significant factor underlying the admission of children to institutions. De-institutionalization will require much effort given the heavy reliance on residential care. Even so, moves are under way in some places to shift from large institutions to cottage and family-like settings that provide a more conducive environment for the development of children in care.
2. Comprehensive, community-level services are needed for families in order to prevent institutionalization. Governments in the four countries are increasingly aware of and giving consideration to community-based programmes such as adoption, foster care, kinship care and guardianship, including family-support services. This is to be encouraged. At the same time, family-support services should be prioritised.
3. Implementation of national laws is mostly weak and some practices are inconsistent with national law and the CRC. Concepts and definitions need clarification, laws and practices need to be reviewed, and indicators and standards on alternative care need to be constructed.
4. The quality of care provided to children without primary caregivers must improve. Standards, responsive programmes and services, competent staff and resources are imperative to guarantee the protection of children in residential and community-based facilities.

Any intervention to support a child cannot address his or her needs alone, but must respond in the context of the child's environment. As discussed, such an approach allows simultaneous consideration of the several levels at which programme interventions may be made directly with a child: The levels of the family, the community and cultural value systems.

Overall, the results of this study indicate some progress and innovations to assist children without primary caregivers in the four countries. The ideal approach is for children to stay within their own families because a family provides the best environment for a child's healthy development and well-being. To do this as a matter of policy will require significant support and consideration of priorities. For children already in residential facilities, the imperative is to assure them of their rights to quality care and to deinstitutionalize the children in a timely and appropriate manner through family reunification or placement in adoption. This requires that the governments of the four countries, with the support of UNICEF and other partners, make good on their commitments to uphold and safeguard the rights of children.

GLOSSARY

Adoption

A permanent family placement for a child, in which the rights and responsibilities of his or her biological parents are legally transferred to the adoptive parent(s). An adopted child acquires the same status and privileges as if they were born of the adoptive parent(s).

Alternative care

Care for orphans and other vulnerable children who are not under the custody of their biological parents.

Case management

A method of providing services whereby a professional social worker assesses the needs of a child and his or her family and arranges, coordinates, monitors, evaluates and advocates for a package of services to meet a child's complex needs.

Children without primary caregivers

Anyone under 18 who is not in the care and custody of their biological parents or legal guardians, such as children who are abandoned or orphaned.

De-institutionalization

The process of moving away from residential care to community-based family-like care systems. Through this process, children under the care of an institution are eventually reunited with their parents or other family members, or placed with a foster family temporarily until their parents or family are able to care for them, or moved to an adoptive family which thereby provides the child with a permanent family.

Family- and community-based care

Care is provided within a family-like setting in the community, including through adoption, guardianship, foster care and kinship care.

Foster care

A temporary placement in a family for a child whose biological parents are unable to care for him or her. Foster placement is ideally for a planned period of time and does not involve the permanent transfer of parental rights and responsibilities.

Kinship care

The full-time nurturing and protection of a child by relatives, members of the child's tribe or clan, godparents, step-parents, or other adults who have a kinship bond with the child.

Guardianship

A family placement for a child where a court appoints someone to take care and custody of a child and his or her property until the child reaches the age of majority or at the discretion of a court.

Residential care

Refers to temporary group care, commonly in large institutions, for children who do not have primary caregivers or whose parents are unable to care for them or deal with the behaviour or needs of a child. Residential care is meant to provide 24-hour care for children, meeting their basic needs of shelter, food, clothing and education.

REFERENCES

General

- Dubois, B. and Miley, K. 1996. *Social Work: An Empowering Profession*. Massachusetts: Allyn and Bacon.
- Dulmus, C. and Sowers, K. 2004. *How Institutions are Shaping the Future of our Children*. New York: Haworth Press Inc.
- Holland, S. 2004. *Child and Family Assessment in Social Work Practices*. London: Sage Publications.
- Kadushin, A. 1980. *Child Welfare Services: An Introduction*. Third ed. New York: Macmillan.
- Kirst-Ashman, Karen K. 2003. *Introduction to Social Work and Social Welfare: Critical Thinking Perspectives*. California: Pacific Grove Brooks/Cole-Thomson Learning.
- Manuel, M., Osorio, B., Nuqui, T. and Saguisag, A. 2003. 'Handbook for Social Workers on the Case Management of Children in Need of Special Protection.' (Unpublished.) Manila: UNICEF.
- McNeish, D, Newman, T. and Roberts, H. (Ed.s.) 2002. *What Works for Children? Effective Services for Children and Families*. UK: Open University Press.
- Punnabutr, C. 2001. 'Current Trends and Best Practices on Alternative Parental Care'. In *Proceedings of the 6th Global Consultation on Child Welfare Services*. Philippines: Inter-Country Adoption Board (ICAB). 29-31 August.
- Rose, S. and Fatout, M. 2003. *Social Work Practice with Children and Adolescents*. Boston: Allyn and Bacon.
- Save the Children. 2003, July. *A Last Resort: The Growing Concern about Children in Residential Care*. UK: International Save the Children Alliance.
- UNAIDS and UNICEF. 2004. *A Framework for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS*. UNAIDS and UNICEF.
- UNAIDS, UNICEF and USAID. 2002. *Children on the Brink 2002: A Joint Report on Orphan Estimates and Program Strategies*. UNAIDS, UNICEF and USAID.
- UNICEF EAPRO. 2003. *A Future for All Our Children*. Bangkok: UNICEF EAPRO.
- UNICEF EAPRO. 2005. 'Siem Reap-Angkor Declaration of the Seventh East Asia and Pacific Ministerial Consultation on Children. 2005, March 23-25.' In *Towards a Region Where Every Child Counts*. Bangkok: UNICEF EAPRO.
- ### Malaysia
- ASEAN Secretariat. 2003, December. *ASEAN in Figures*. Jakarta: ASEAN.
- ASEAN. 2004. 'Joint Communique of the Fifth ASEAN Ministerial Meeting for Social Welfare and Development.' 16 December. Bangkok: ASEAN.
- Malaysia, Government of. 1994. 'Caring for the Children of Malaysia: A National Plan of Action for Child Survival, Protection and Development of Children in the 1990s.' Kuala Lumpur.
- Malaysia, Government of. 2003. *Annual Report (Laporan Tahunan)*. Malaysia: Department of Social Welfare.
- Malaysian Pediatric Association. 2000-01. *State of Malaysian Children*. Malaysian Pediatric Association.
- UN Country Team of Malaysia and the Government of Malaysia. 2005. *Malaysia Achieving the Millennium Development Goals: Success and Challenges*. Kuala Lumpur: UNDP.
- UNICEF Malaysia. 2004. *Annual Report*. Kuala Lumpur: UNICEF Malaysia.

Myanmar

Lahiri, S.C. 1951. *Principles of Modern Burmese Buddhist Law*. Fifth edition. India: Eastern Law House.

McKee, N. 1992. *Social Mobilization and Social Marketing in Developing Communities: Lessons for Communicators*. Penang: Southbound.

Ministry of Social Welfare, Relief and Resettlement (MSWRR) and UNICEF. 2005, November. 'Draft Action Plan for Social Work and Child Protection'. National Seminar on Social Work and Child Protection. Yangon.

Myanmar, Government of. 1993. *The Child Law of 1993*. Yangon: Government of Myanmar.

Myanmar, Government of. 1995. 'Initial reports of States parties due in 1993: Myanmar'. CRC/C/8/Add.9. UNCRC. 18 September 1995.

Myanmar, Government of. 2002. 'Second periodic reports of States parties due in 1998: Myanmar'. UNCRC. CRC/C/70/Add.21. 5 November 2003.

UNICEF EAPRO. 2005, November. 'Draft Report of Alternative Care Workshop'. Bangkok: UNICEF EAPRO.

UNICEF Myanmar. 1998, March. 'Consultancy Report on Situation of Institutionalized Children in Yangon.' Yangon: UNICEF Myanmar.

UNICEF Myanmar. 2001, April. *Situation Assessment and Analysis: Children and Women in Myanmar*. Yangon: UNICEF Myanmar.

UNICEF Myanmar. 2002, October. *A Report on: A Collaborative Rapid Assessment of Non-Department of Social Welfare Institutions and Informal Arrangements, caring for Children and adolescents concerning capacities and educational needs*. Yangon: UNICEF Myanmar.

UNICEF Myanmar. 2005, April. 'Draft of a Study Report on Institutions for Children Deprived of Parental Care in Myanmar.' (Unpublished.) Yangon: UNICEF Myanmar.

UNICEF Myanmar and Department of Social Welfare. 2005, September. 'Workshop Report on Standards of Care and Protection for Children in Institutions in Myanmar.' Yangon: UNICEF Myanmar.

UNICEF Myanmar and Community and Family Services International. 2001, February. 'A Study of the Psychosocial Needs of Children in Need of Special Protection and Social Work Capacity in Myanmar.' (Unpublished.) Yangon: UNICEF Myanmar.

UNICEF Myanmar and the Ministry of Social Welfare, Relief and Resettlement (MSWRR). 2005. 'Draft Action Plan for Social Work and Child Protection.' Workshop paper presented during the National Seminar on Social Work and Child Protection. 8-10 November. Yangon. (Unpublished.)

WHO. 2005. 'Myanmar Tsunami Situation Report.' Yangon: WHO Myanmar Country Office. January 27.

Indonesia

Indonesia, Government of. 2002. Republic of Indonesia Law No. 23 Year 2002 on Child Protection. Jakarta: Ministry for Women's Empowerment and Department of Social Affairs.

Ministry of Social Affairs of the Republic of Indonesia and UNICEF. 2005. 'Indonesia Government Policy on Separated Children, Unaccompanied Children and Single-parent Children Affected by Emergency Situations.' Jakarta.

UNICEF Indonesia. 2005, October. 'Workshop Materials on the Development of the Alternative Care System at Regional (Aceh) and National Levels in Indonesia.' Jakarta: UNICEF Indonesia.

UNICEF and ISS-GS. 2005, November. *Supporting the Development of the Alternative Care System at Provincial (Aceh) and National Levels in Indonesia*. UNICEF and ISS-GS. Available at: http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Indonesia-Report2005.pdf

Thailand

National Youth Bureau, Office of the Prime Minister and UNICEF Thailand. 2000. *Children in Thailand 1990-2000: Country Report on the Follow-up to the World Summit for Children*. Bangkok.

Punnabutr, C. 2001, August. 'Current Trends and Best Practices on Alternative Parental Care.' Proceedings of the Sixth Global Consultation on Child Welfare Services. Philippines.

Thailand, Government of. 2005, October. 'Data on Victims of Tsunami Disaster. Thailand.' Bangkok: Ministry of Social Development and Human Security Assistance.

UNICEF Thailand. 1997, December. *Children and their Families in a Changing Thai Society*. Bangkok: UNICEF Thailand.

UNICEF Thailand. 2005, February. *Child Protection Sector Analysis*. Bangkok: UNICEF Thailand.

Thailand, Government of. 2004. 'Second periodic report of States parties due in 1999: Thailand.' UNCRC. CRC/C/83/Add.15. 31 May 2005.

NGO Group for the CRC. 2005, June. 'Thailand NGO Report on the Implementation of the Convention on the Rights of the Child 2000-2004.' UNCRC.

APPENDIX

1

INDONESIA

Among the four countries involved in the study to assess appropriate alternative care choices for children without primary caregivers in tsunami-affected countries, Indonesia was the worst hit by the disaster. Thousands of people lost their lives and thousands more, particularly children, were separated from their families.

A study on *Supporting the Development of the Alternative Care System at Provincial (Aceh) and National Levels in Indonesia* was completed by the International Social Service-General Secretariat (ISS-GS) and UNICEF in November 2005. The report focuses mainly on the situation of children and families soon after the tsunami, specifically in the province of Aceh, in northern Sumatra. The findings and recommendations of the report conform with the conclusions of International Social Service-Philippines (ISS-P) consultants with regard to the situation of children and families, programmes and services on alternative care choices, and proposed strategies to resolve some of the problems.

The ISS-P team's report on Indonesia is based on a desk review, participation in an ISS-GS workshop presentation of its findings, a brief visit with Makmur Sunusi, the Director of Child Welfare Services, Department of Social Affairs, in Jakarta, and a visit to one government institution in Jakarta, the Social Protection Home for Children.

For detailed information on Indonesia, please see: UNICEF and ISS-GS. 2005, November. *Supporting the Development of the Alternative Care System at Provincial (Aceh) and National Levels in Indonesia*. UNICEF and ISS-GS. It is available at

http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Indonesia-Report2005.pdf

Other resources

Indonesia, Government of. 2002. Republic of Indonesia Law No. 23 Year 2002 on Child Protection. Jakarta: Ministry for Women's Empowerment and Department of Social Affairs.

Ministry of Social Affairs of the Republic of Indonesia and UNICEF. 2005. 'Indonesia Government Policy on Separated Children, Unaccompanied Children and Single-parent Children Affected by Emergency Situations.' Jakarta.

UNICEF Indonesia. 2005, October. 'Workshop Materials on the Development of the Alternative Care System at Regional (Aceh) and National Levels in Indonesia.' Jakarta: UNICEF Indonesia.

UNICEF and Pusat Kajian dan Perlindungan Anak (PKPA). 2004. 'Kalingga – For the rights of women and children.' Jakarta: UNICEF.

APPENDIX

2

MALAYSIA

1 Introduction

This report is part of a four-country study to assess appropriate alternative care choices for children without primary caregivers commissioned by UNICEF's East Asia and the Pacific Regional Office (EAPRO). The study aims to review and assess existing child-care services (adoption, foster care, guardianship, community-based responses and their structure) and national legal frameworks; assess the current situation of orphanages and residential centres; identify good practices and make recommendations for sustainable and functional models of alternative care for children without primary caregivers.

The report is presented in seven sections. The first section gives the background and aims of the study. The second describes the profile of Malaysia to provide the context. The third outlines the policy framework at the international, regional and national levels for the legal bases for alternative parental care practices in Malaysia. The fourth provides a snapshot of the situation of children in Malaysia. The fifth discusses existing alternative parental care choices to address the needs of children without primary caregivers. The sixth section looks at some structures and mechanisms for service delivery. The final section presents findings, recommendations and conclusions.

2 Country profile

Malaysia has a population of more than 25 million people who live on the peninsula and in the states of Sabah and Sarawak on the island of Borneo. The country prides itself in claiming a harmonious relationship between different peoples, most of whom are ethnic Malays, Chinese and Indians. The official language is Bahasa Melayu but English is widely spoken. The official religion is Islam and the population comprises Muslims, Hindus, Buddhists, Christians and people of other religions. Malaysia is a vibrant society working to achieve its Vision 2020 as a developed nation a society that cares for the welfare of individuals and the environment.

Upon its formation in 1963, Malaysia's estimated population was 9 million. Growing at an average rate of 2.6 per cent until 2000, the population was about 23 million in 2000 (from about 18 million in 1990). The population growth rate since 2000 has been lower, averaging 2.2 per cent.²⁶ Of the population, 80 per cent live in Peninsular Malaysia and about 10 per cent live in each of Sabah and Sarawak. Ethnic groups include Bumiputera (65 per cent), Chinese (26 per cent) and Indians (8 per cent). The Government aims for a 2 per cent average annual growth rate by 2020, in keeping with an expected decline in the fertility rate (3.1 per cent in 2001) due to higher educational levels (especially among women), increasing urbanization and industrialization, delayed marriages and child bearing, and general improvements in living standards.²⁷

The proportion of the population aged under 15 has declined from 37.4 per cent in 1990 to 33.9 per cent in 2001. Children aged under 15 are expected to comprise 30.5 per cent of the population in 2020. The proportion of the population aged 15 to 64 was 59.5 per cent in 1990, rising to 65.1 per cent in 2001. People aged over 65 accounted for 3.6 per cent of the population in 1990, rising to 3.8 per cent in 2001. The median age of the population was 21.3 in 1990, rising to 23.2 in 2001. Males outnumber females. The dependency ratio declined from 69.7 in 1990 to 60.3 in 2001. Life expectancy for men has risen from 69.2 in 1990 to 70.3 in 2001 and for women from 73.7 to 75.2.²⁸

Malaysia is a model for the transformation from a poor developing country in the 1960s to a newly industrializing country in the 1990s. It is moving towards full industrialization by 2010. National development plans have helped to stimulate economic growth, develop human resources and raise the standard of living. Malaysia has enjoyed sustained economic growth since 1970, averaging annual growth of about 7 per cent.²⁹

In a 2004 review of the country's progress in achieving the Millennium Development Goals, Malaysia was found to have achieved most of the goals to which its government committed the country. Poverty has been reduced, with 5.5 per cent of people living below the national poverty line 2000. Nevertheless, poverty continues in some rural areas, particularly in Sabah and Sarawak.

²⁶ ASEAN Secretariat. 2003, December. *ASEAN in Figures*. Jakarta: ASEAN. p. 2.

²⁷ Op.cit., p. 26.

²⁸ Op.cit., p. 32.

²⁹ UN Country Team of Malaysia and the Government of Malaysia. 2005. *Malaysia Achieving the Millennium Development Goals: Success and Challenges*. Kuala Lumpur: UNDP. p.10.

The provision of improved health and social services has led to a significant decline in the infant mortality rate (7 per cent in 2001) and maternal mortality ratio (30).

All children of school age are reportedly enrolled in schools and almost all complete a full course of primary school. More girls than boys remain in the education system to an advanced level, and fewer boys than girls attend secondary school.

Forty-seven per cent of women in Malaysia are in the labour force (48 per cent in 1990).³⁰ Female employment has shifted from agriculture to manufacturing and services.

3 Policy framework

3.1 International

In February 1995, Malaysia acceded to the Convention on the Rights of the Child (CRC) with reservations on eight Articles in relation to the country's constitution, law, and cultural and religious practices. The CRC was signed on 28 December 1994.

Following the 1990 World Summit on Children, Malaysia signed the World Declaration on Survival, Protection and Development of Children on 18 July 1991. A National Plan of Action was formulated in collaboration with various government agencies, NGOs and international agencies led by UNICEF and the World Health Organization (WHO).³¹ With regard to the protection of children in especially difficult circumstances, the following were included in the plan to address the needs of orphans and abandoned children:³²

Policy	Strategies	Activities
Every child to be given the opportunity for optimum growth	Fostering/adoption	Financial assistance provided to children's homes
Financial assistance to be provided	Financial assistance	Establishment of cottage system
Institutional care is considered a last resort	Custodial care provided in children's homes	Training of social workers
Adoption is promoted for orphans	Grants to be made to voluntary organizations	Children's homes to be administered by voluntary organizations
Children are to be fostered within their own cultural backgrounds		Support for foster homes

Malaysia acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995, with reservations. Since 1998, most of the reservations have been withdrawn. A National Policy on Women was already in place in 1989. The policy endorses the objectives of gender equality, eradication of poverty, integration of women in all aspects of national development as equal partners with men. There is a National Plan for Action for the Advancement of Women. In 2005, Malaysia played host to a meeting of the Non-Aligned Movement (comprising more than 100 States that claim not to be unaligned with major power blocs) where the main agenda item concerned women's issues.

Malaysia ratified the International Labour Organization (ILO) Convention 182 on 26 February 2001. It signed the Convention against Transnational Organized Crime on 26 September 2002. Following the International Conference on Population and Development in Cairo in 1995, an action plan was developed to support the country's commitment to integration of population concerns in the national development plan.

³⁰ ASEAN Secretariat. Op. cit. p. 179.

³¹ Malaysia, Government of. 1994. 'Caring for the Children of Malaysia: A National Plan of Action for Child Survival, Protection and Development of Children in the 1990s.' Kuala Lumpur.

³² Malaysia, Government of. 1994. Op. cit. p. 6.

Malaysia's commitment to the World Summit for Social Development also strengthened commitments to children's rights, especially in the areas of education and health and nutrition.

3.2 Regional

As a member of ASEAN, Malaysia is committed to the Bali Concord II (2003), the Vientiane Action Plan (2004-2010) and the following regional statements related to children: the Declaration of Commitments for Children in ASEAN (2001), the ASEAN Declaration on HIV/AIDS (2001), the ASEAN Tourism Agreement (2002) and the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004).

3.3 National

The overall thrust of social development in Malaysia is to build on socio-economic achievements and objectives to support the development of a 'caring society' as envisaged in Vision 2020. Malaysia recognizes that the building block of a caring society is the family.

A National Social Policy was promulgated in 2003 to provide a framework for social progress and balanced development. The policy advocates a holistic approach in enhancing social development. The main aims outlined by the Government are to enhance the life-long empowerment of the individual, strengthen social support systems, deliver effective social services, promote social inclusion and integration, and generate multi-sector collaboration and cooperation.³³

The National Social Policy is in line with the National Social Welfare Policy of 1990, which sets as a goal the creation of a society whose members are imbued with the spirit of self-reliance, enjoy equal opportunities and care for one another, especially those who are less fortunate than others.

The National Development Plan makes clear that the family unit plays a pivotal role in promoting positive values. Efforts to achieve this are to be complemented and supplemented by NGOs, community-based organizations, schools and training institutions. The family action plan has six guiding principles: 1) Attainment of a quality life for the population; 2) promotion of the role of women in development; 3) encouragement for families to care for older people; 4) advocacy and education on family development; 5) programme development for the survival, development and protection of children; and 6) improved support from families, communities and government to assist the vulnerable and marginalized groups.³⁴

The Child Act 2001 (Act 611) was promulgated on 15 February 2001. Amendments were also made to the Child Protection Act 1991, the Women and Girls Protection Act 1973 and the Juvenile Courts Act 1947. The 2001 Act created special courts to deal with children; established the Coordinating Council for the Protection of Children; specifies protection for children in need of care and/or rehabilitation. The general definition of a child now conforms with the CRC (previously, Malaysia had a reservation on this) and the Government takes into consideration the CRC's principles.

Children without primary caregivers are included among those children in need of care and protection under Part V, Chapter 1, (17) of the Child Act 2001:

- 1) The parent or guardian of the child is unfit, or has neglected, or is unable, to exercise proper supervision and control over the child and the child is falling into bad association;
- 2) The parent or guardian of the child has neglected or is unwilling to provide for him adequate care, food, clothing and shelter;
- 3) The child –
 - 3.1) has no parent or guardian; or
 - 3.2) has been abandoned by his parent or guardian and after reasonable inquiries, the parent or guardian cannot be found, and no other suitable person is willing and able to care for the child.

In cases such as outlined above, a social welfare officer (protector) or the police may take a child into temporary custody until he or she can be brought before a children's court. In this situation, the child may be placed in a place of safety, under the care of a fit and proper person, or with a foster parent.

³³ ASEAN. 2004. 'Joint Communique of the Fifth ASEAN Ministerial Meeting for Social Welfare and Development.' 16 December. Bangkok: ASEAN.

³⁴ Ibid.

The Care Centres Act 1993 (Act 506), promulgated on 7 July 1993, provides for the registration of care centres with the Department of Social Welfare (under the Ministry of Women, Family and Community Development), based on a set of standards. A care centre is defined as a residential care centre or a day-care centre. Section 7 of the Act clarifies the conditions or standards to be met by care centres, covering the capacity of the centre, the number and qualifications of staff, provision of services (health care, a balanced diet, rest and recreation), compliance with building requirements (safety regarding fire, health and sanitation). A care centre's registration may be cancelled or the Director-General may authorize the closure of a centre under certain conditions.

The Child Care Centre Act 1984 (Act 308) was promulgated on 4 September 1984 and regulations for institution-based centres were subsequently issued. The law and its regulations provide requirements for the registration and standards to be met by child-care centres, the closure of such centres and cancellation of registration, as well as related offences and penalties. The Act targets the quality of care at child-care centres for children under four. It is required that guidance and training be provided to child-care providers, parents and those involved in early childhood and child development field.

The Adoption Act 1952 was revised on 13 October 1981 as Act 257. It governs the adoption of non-Muslim children in West Malaysia. A 'child' is defined as an unmarried person under the age of 21 and includes a female under that age who is divorced. An adopted person has the same status as that of a biological child, including rights of inheritance to the adoptive parents' property.

Meanwhile, the Registration of Adoptions Act 1952 (revised on 7 July 1981 as Act 253) provides for the registration of adoptions for Muslim children in West Malaysia. Only children under 18 may be adopted. An adopted child has no right to inherit the adoptive parents' property.

The Islamic Family Law (Federal Territories) Act 1984 (Act 303) contains provisions in respect of marriage, divorce, maintenance, guardianship and other matters connected with family life.

The Infants and Guardians Act 1961 (Amendment 1999) refers to the rights and liabilities of parents, including the rights of single mothers.

The Domestic Violence Act 1994 (Act 521) and Regulations protect victims of violence, particularly women and children, through the issuance of protection orders, and refers to procedures and services for victims.

4 The situation of children

Economic growth has brought benefits to Malaysia, but increasing industrialization and urbanization confront many families with many challenges and transitions. Threats to families include the breakdown of extended family structures, and family disintegration and marital dissolution (through abandonment, separation, divorce or a spouse's death). The increasing participation of women in the workforce also leads to changes in traditional family life.

In particular, children face risks and problems, as outlined below.

- Malaysia was identified at a meeting at Medan, Indonesia, in March 2004 as a source, transit and destination country for the trafficking of children and women.³⁵
- Malaysia's Ministry of Women, Family and Community Development reported there were 934 cases of child abuse reported in 2000, 1,036 cases in 2001, 1,242 cases in 2002, and 1,390 cases in 2003.³⁶
- Among the 934 child abuse cases reported in 2000, 71 children (7.6 per cent) were abandoned and 183 (19.6 per cent) were neglected.³⁷
- In 1995-1999, 12,404 children ran away from home. Of these children, 69.4 per cent were female. Children regarded as 'delinquent' were primarily male (98.3 per cent).³⁸
- In 1998, 3,145 children with disabilities were provided with rehabilitation services, rising to 5,091 in 2000.

³⁵ UNICEF Malaysia. 2004. *Annual Report*. Kuala Lumpur: UNICEF Malaysia. p.19.

³⁶ Malaysia, Government of. 'Violence against Children Report'. Kuala Lumpur: Ministry of Women, Family and Community Development.

³⁷ Malaysian Pediatric Association. 2000-01. *State of Malaysian Children*. Malaysian Pediatric Association.

³⁸ Ibid.

- Malaysia's Ministry of Health reported in 2003 that 112 children under two years had HIV (0.21 per cent of 54,429 reported cases of HIV); 642 children aged 13 to 19 had HIV while 20,115 young people aged 20 to 29 had acquired the virus.
- About 14,000 children under 15 were orphans in 2001 as a result of HIV/AIDS, according to UNAIDS estimates.³⁹

Data is lacking on the incidence of children without primary caregivers, that is, children who are orphaned, abandoned or otherwise neglected. The available data concerns only children residing in children's homes or with foster families, and the information is sporadic due to the varying capacities of the homes.

Malaysia is host to about 30,000 undocumented migrants, mainly from neighbouring countries, according to a study by the Universiti Kebangsaan Malaysia (UKM).⁴⁰ These migrants are primarily in Sarawak and Sabah. Many have families already or form families in Malaysia. Concerns about the well-being of children of undocumented migrants have been raised with the Government by NGOs and countries of origin.

Children born in Malaysia of undocumented migrants do not receive nationality or citizenship. They are therefore unable to attend school or make use of social services. Some such children end up living on the streets and come into conflict with the law, leading to their detention and deportation (even while their parents remain in Malaysia). Children in this situation may be regarded as lacking parental care because they do not inform authorities of the whereabouts of their parents for fear of arrest and deportation.

Victims of trafficking are considered 'illegal migrants' because no distinction is made between the two. Nevertheless, the Child Act 2001 has provisions for the protection of children who are trafficked or abducted within or outside Malaysia. It specifies penalties for people who are involved in trafficking a child (including through harbouring, transferring or conferring, wholly or partly, temporarily or permanently, for any valuable consideration). A child who is proved to have been brought to Malaysia by fraud, misrepresentation or any false pretence or transferred for valuable consideration is to be sent in a place of safety or placed in the custody of a relative or another fit and proper person until the child reaches 18.

Girls and women are commonly trafficked into Malaysia for sexual purposes. The UKM study noted that half of the 6,000 foreigners arrested for prostitution in 2003 were aged under 18. The victims are generally placed in detention facilities.

After the tsunami

In Malaysia, the tsunami of 26 December 2004 directly affected people in several areas.⁴¹

Areas	Families Affected	Individuals Affected	Evacuation Centres
Perlis	99	523	3
Kedag	1,296	3,902	11
Pulau Pinang	745	2,639	18
Perak	29	155	1
Selangor	–	–	–
Total	2,169	7,219	33

Disaggregated data on the age and gender of the people affected is not available. Nor is information about unaccompanied children, because measures were undertaken to ensure that children were not separated from family members during rescue operations and children were evacuated with their families. One child reported missing in Perak was found later to have died.

³⁹ ASEAN Secretariat. Op. cit. p. 59.

⁴⁰ UNICEF Malaysia. Op. cit. p. 49.

⁴¹ Malaysia, Government of. 2005. 'Orientation Document'. Malaysia: Department of Social Welfare.

The Department of Social Welfare spent RM2.27 million for relief and rehabilitation of affected families and communities. Departmental staff provided counselling to survivors and 300 children received educational assistance while food rations were made available, fishermen received boats and engines, and houses were rebuilt.

Several NGOs helped survivors, in coordination with government agencies such as the Department of Social Welfare and the Ministry of Health. NGOs including Pusat Janadaya (Empower), Protect and Save the Children Association of Selangor and Kuala Lumpur, and HELP University College provided psychosocial support for families and their children as well as other services to assist in the recovery to normal life.⁴² In a UNICEF-assisted mental health project with HELP, the following needs were addressed:

- Timely and effective psychosocial interventions for post-traumatic stress disorder;
- Provision of more skilled mental-health professionals in the community;
- Improvements to the social support network on mental health in the community;
- Provision of accurate information and education for children, caregivers and community members on the early signs of mental-health symptoms associated with the trauma; and
- Capacity-building and care for service providers.

Pusat Janadaya also ran a programme for child survivors and their mothers. The objective was to create a safe environment where children had the opportunity to express their feelings and experiences regarding the tsunami and to build coping skills for the short and long term.⁴³ The children were open to discussing their experiences and feelings (shock, bereavement, anger and dissatisfaction with staying in transition houses) and participated in devising suggestions on how they could deal with problems. The three-day programme was too short to include therapy sessions but gave the workers a basis for assessing therapy needs in the longer term.

5 Status of alternative care choices for children

5.1 Family support programmes

As embodied in the CRC, all efforts should be exerted to prevent the separation of children from their parents. The provision of concrete support program to birth/biological parents and families to enable them to care for their children in their own homes should be given priority.

The Department of Social Welfare's community development projects to enhance the socio-economic status of poor and disadvantaged communities and its financial support for families in need are part of the support programmes aimed at enabling families to keep their children in their care. Families in these programmes receive RM80 per child to a monthly maximum of RM350 per family. There are efforts to increase the amount per family since the poverty line is set at RM529 per family per month. The total budget for such assistance is RM35.37 million for 2006, which is expected to help 17,232 families and 52,100 children.⁴⁴

The Assistance to Needy Children programme targets poor families, single parents and families that take care of their own children or those related to them. A means test applies and the capacity of parents/relatives to provide a safe environment and other benefits to children is assessed. A family's situation is reviewed every six months, with grant periods not exceeding 30 months.

Grants for small income-generating projects are also provided to poor families, including families whose children are in institutions. A maximum of RM2,700 per project is provided to recipients.⁴⁵ The Department of Social Welfare's Socio-Economy and Assistance Division is formulating a development programme for micro-finance and other livelihood projects for families.

Children of economically disadvantaged families also receive educational assistance, covering books, clothing and other materials.

⁴² Interviews with Goh Chee Leong (HELP), Aggy Hooi (Protect and Save the Children Association) and Ho Yock Lin (Empower) in Kuala Lumpur, 17 October 2005. HELP's project on Strengthening Capacity in Psycho-social Responses to Emergencies is supported by UNICEF Malaysia.

⁴³ Observations and recommendations by Empower Executive Director Yunus Ali, 12 November 2005.

⁴⁴ Interview with Inau Edin Nom, Chief, Socio-Economy and Assistance Division, Department of Social Welfare, 18 October 2005.

⁴⁵ Malaysia, Government of. 'Panduan Pelanggan Permohonan Bantuan Kewangan'. (Pamphlet on family support programmes.) Malaysia.

Meanwhile, child protection teams conduct preventive programmes for high-risk children and their families through crisis intervention centres and child activity centres. The latter serve as resource centres where community members can meet and exchange ideas, in turn fostering community spirit. The activity centres also provide counselling and crisis-intervention services, educational support services, child development activities, lectures, seminars, workshops on parenting and other family-oriented topics, motivational camps for children and young people, and other activities.

Community-based rehabilitation programmes for people with disabilities involve the participation of disabled people, their parents and members of the community. The aim is to reduce the impact of disabilities, to ensure the disabled are socially accepted and integrated in their families and communities, to support families, and to encourage the production of helpful devices and educational materials from locally available resources.

5.2 Community-based programmes or non-institutional care

5.2.1 Foster care

Under the Child Act 2001, a child in need of care and protection may be placed in a place of safety or under the care of a fit and proper person designated by the Court for Children. In the case of a child who has no parent or guardian or who has been abandoned, the court is required to place the child in the care, custody and control of a foster parent found to be suitable by the Director-General of the Department of Social Welfare, for a period of two years or until he or she is 18, whichever is shorter. The foster parent may return the child, as long as he or she reports in person and brings the child to a social welfare officer who is responsible to place the child in a place of safety.

The suitability of a foster parent is evaluated by a social welfare officer who assesses the foster family's background, general conduct, home surroundings, and so on. A foster parent may adopt a child if, after two years, the child's biological parents have not claimed the child and the social welfare officer has taken steps to trace the child's parents.

Foster parents are encouraged to take care of orphaned and abandoned children. They are given financial support of RM250 per child with a maximum of RM500 per family per month. There are 148 foster parents in Malaysia. The programme's budget is RM588,000 for 2006.⁴⁶

5.2.2 National adoption

Adoption (under the Adoption Act 1952) applies to children and young people who are under 21 and unmarried, as well as females who are divorced. The consent of a parent or guardian is required unless the child is abandoned, neglected or abused by his or her parents. A court is required to ensure parents or guardians understand the effect of adoption and that their parental rights will be permanently terminated. The wishes of a child, based on their age and level of understanding, must also be considered. Adoption must be in a child's best interest.⁴⁷

Applicants for adoption must be 25 and at least 21 years older than the child to be adopted, or 21 and a relative of the child, or the mother or father of the child. A male sole applicant is not permitted to adopt a female child unless a court rules an exception.

An adoption order shall be made by a court only if a child has been continuously in the care of the applicant for at least three consecutive months and the Department of Social Welfare has been informed at least three months previously.

A court appoints a guardian upon an application for adoption. The guardian is to investigate the circumstances of the child and assess the applicants, including to check if any payment or reward has been made in consideration of the adoption.

Custody of the child is given for a probationary period of six months to two years, under the supervision of the guardian or the Social Welfare Director-General. Upon issuance of the adoption order, an adoptive child enjoys the same rights as that of a biological child, including the right to inheritance.

In 2003, 961 adoptions were registered.⁴⁸

⁴⁶ Interview with Inau Edin Nom and Sulaiman Hj Ismail, Department of Social Welfare, 18 October 2005.

⁴⁷ This information is based on the Adoption Act 1952.

⁴⁸ Malaysia, Government of. 2003. *Annual Report (Laporan Tahunan)*. Malaysia: Department of Social Welfare.

The Registrars of Adoption are authorized by the Registration of Adoptions Act 1952 to register de facto adoptions of Muslim children who are under 18, unmarried, and who are in the care of an adult who has treated them as their own child for at least two years, continuously. Applicants must be at least 25, and 18 years older than the adoptive child, or at least 21 if related to the child, including parents of the child. The consent of parents is required and the child is not legally an heir to the adoptive parents.⁴⁹ No data is available on the number of registered adoptions.

Inter-country adoption of children is not permitted.

5.2.3 Residential care

A place of safety, as mentioned in the Child Act 2001, refers to children's homes or residential facilities for children managed by the Department of Social Welfare. The homes are intended to provide substitute care and protection that encourages the healthy growth and holistic development of dependent and needy children in a harmonious and safe environment. Residential care is a last resort. The duration of a child's stay in a home is meant to be for only a certain period of time until the child may be returned to their own family or to a foster or adoptive family. Under Chapter 2, (30,d), the Court for Children may however order a child be placed in a place of safety for up to three years or until he or she is 18, whichever is the shorter.

Children placed in children's homes are orphaned, abandoned, neglected or ill-treated. Or their parents are sick or hospitalized or detained or imprisoned, are poor or not in a position to care for their children. Some children in homes have or are affected by HIV/AIDS.⁵⁰

Programmes conducted at children's homes include the following:

- Care and protection: The emphasis is on providing proper care in an environment similar to that found in a family home to ensure a child's physical, mental, emotional and spiritual growth and development. Their basic needs such as food, clothing and other necessities are provided.
- Counselling and guidance: Counselling services are provided to help a child resolve their emotional and psychological problems and to mould their character and behaviour.
- Education: Children of school age attend schools outside the home. Special classes to teach Bahasa Malaysia and mathematics are held in the homes, as well as kindergarten for pre-schoolers.
- Vocational training: Older children receive training on basic skills to help them secure jobs.
- Religious and moral instruction: Children are encouraged to observe and practise the religion of their parents. Muslim children have a prayer room and religious instruction while non-Muslims also have facilities and are encouraged to practise their faiths.
- Recreation: Children participate in indoor and outdoor games, sports, etc.
- Health and medical attention: Medical officers visit the homes weekly.

There are nine children's homes with a capacity for 100 children each. An average of 972 children are in care at any one time. The budget for the institutions is RM13.2 million a year.

Institution	Target group	Established
Taman Bakti Home, Kepala Batas, Palau Pinang	For girls under 18 and boys under 12	1969
Sultan Abdul Aziz Home, Kuala Kangsar, Perak		1962
Tengku Budriah Home, Cheras, Kuala Lumpur		1964
Tengku Ampuan Fatimah Home, Kuantan, Pahang		1963
Tan Sri Abdul Hamid Khan Boy's Home, Serendah, Selangor	For boys between 12 and 18	1959
Tun Abdul Aziz Boy's Home, Durian Daun, Melaka		1951
Three other homes are in Perlis, Sabah and Sarawak	For girls and boys	

⁴⁹ Discussion based on the Registration of Adoptions Act 1952.

⁵⁰ Interview with Department of Social Welfare Director-General, Dato Shamsiah Binti Abdul Rahman, 17 October 2005.

The consultant visited Tengku Budriah, where 234 children resided, 34 of whom were infants (10 boys and two children with disabilities).⁵¹ There were 63 boys under 12. The staff conduct monthly case conferences and children are placed in foster homes or adopted. The number of children placed out was not given.

The home is located on several hectares which include six blocks of buildings for the children, a pre-school, an administrative building, a dining hall/central kitchen and a playground. Each cottage and a nursery can accommodate 20 children. At the time of the visit, the home was over-capacity.

The home is administered by a principal and 34 staff members comprising eight social welfare assistants, 17 health attendants, and others. The home costs about RM1 million a year to administer.

A Board of Visitors is appointed by the Minister for Social Welfare. It comprises 13 members who visit the home regularly to make recommendations for improvements, conduct various programmes for the children and to organize fundraising activities.

5.2.4 The family/cottage system

The family/cottage system of care, known as *rumah tunas harapan*, is an innovative approach to caring for children who have no relatives or families to care for them. Children in groups of eight to 10 are cared for by married couples in a cottage where they have the opportunity to grow up in a family environment and according to their own ethnic, cultural and religious practices. The programme is supported by the private sector and local communities.

There are six family/cottage-like complexes.

Location	Maximum capacity	Actual number of children (1999)	Established
Kuala Selangor	40	56 children	1988
Kuala Pila	16	32	1992
Kuala Terengganu	16	32	1993
Jasin	16	16	1998
Taman Kemumin	–	16	1998
Sg. Buloh, Selangor	40	40	1999

The consultant visited Kompleks Penyayang Bakti at Sg. Buloh on 17 October 2005. It opened in July 2001 under the new concept of *penyayang*, which refers to developing a family-like facility within the community. Government agencies, a voluntary agency (Bakti) and the corporate sector (Yarisan Holdings) manage the complex together, putting the 'smart partnership' concept into practice.

Child residents aged 8 to 17 are referred to the complex by a court order, the Director-General of Social Welfare, or from other children's homes. There were 40 children living in two cottages for girls and two cottages for boys. An 'adopted mother' assigned to each cottage prepares the children's meals and supervises their activities. The complex is on 4.5 hectares and includes a playground, a mosque and an orchard.

The staff comprise one social welfare officer (manager), an assistant social welfare officer, five assistant social workers, four health attendants and four kitchen staff. The social workers conduct counselling sessions and revision classes and keep records of the children's progress. The children attend school outside of the complex and receive a little pocket money. Services cover health care, informal education, religious education and recreational activities. Cases are reviewed every three months.

Of the 40 children initially placed at the complex, four ran away and were reported to be back with their families, two were returned to a boys' home due to disciplinary problems, one was adopted out and another one was placed in foster care.⁵² The rest of the children have lived in the complex for more than four years. Family members visit rarely.

⁵¹ Information also based on an interview with Sitti Sabaruni, 17 October 2005.

⁵² Information based partly on interview with Atika Zainal, 17 October 2005.

A nursery and a senior citizen's shelter are planned for the complex in the future.

5.2.5 Homes for girls and women

Centres for the rehabilitation of girls and young women aged under 21 who are victims of prostitution, at risk of entering prostitution or 'exposed to moral danger'. Girls and young women are placed in the centres by a court order or upon the recommendation of a protector. The residents undergo rehabilitation for three years, although in some situations the Board of Visitors may reduce this to a minimum of one year. Services provided include care and protection, counselling and guidance, religious and moral education, academic and vocational training, and sports and recreation.

Name	Maximum capacity	Actual number of residents (1999)
Taman Seri Puteri Bt.Gajah Perak	200	156
Taman Seri Puteri Cheras. Selangor.Darul Ehsan	30	66
Taman Seri Puteri Rembau Negeri Sembilan	200	209
Tama Seri Puteri Meri, Sarawak	100	109
Taman Seri Puteri Kota Kinabalu	100	61
Total	630	601

5.2.6 Institutions for people with disabilities

The Department of Social Welfare administers five rehabilitation centres for people with mental disabilities and one centre for people who are physically disabled. The maximum capacity is 980 people. The centres, known as taman sinar harapan, are in Johor (two), Terengganu, Negeri Sembilan, Selangor and Cheras. There are long waiting lists for admission. Most people on these lists are left to reside in other institutions.

5.3 NGO-managed children's homes

The Government provides grants to local NGOs to enable them to sustain and develop programmes and facilities for the marginalized and to collaborate with the private sector and local communities. The Government allocated RM34 million in its 2004 budget to promote the role of NGOs and to implement various community programmes and activities.⁵³

Of 33,000 NGOs registered with Malaysia's Registrar of Society, 3,000 are welfare-related. Of these, 207 receive annual grants while 86 serve children through community and institution-based programmes. These NGOs must be registered in accordance with the Child Act and provide programmes and services tailored to the needs of children. RM4.8 million is allocated for different types of grants as such projects (for example, special education), maintenance (food provision), administration (rent and clerical support) and repairs (for buildings). No information is available regarding the number of NGOs providing services to children without primary caregivers.⁵⁴

The consultant visited Shelter's Homes for Children on 17 October 2005. Shelter was established in 1981 and receives 5 per cent of its funds from the Department of Social Welfare. The homes are intended to provide children with a stable, safe, caring and home-like atmosphere.

Shelter manages four homes in different communities in Kuala Lumpur. A maximum of 20 children live in each home. One houses children aged four to 12, while the other three cater to 13 to 18-year olds (one for non-schooling girls, one for boys and another for girls).

⁵³ ASEAN. 2004. Op. cit.

⁵⁴ Interview with Norani Hashim, Chief, Community Development Division, Department of Social Welfare, 18 October 2005.

Programmes include caring for abused, abandoned, neglected or at-risk children (including through counselling and therapy) and raising public awareness about parenting and youth issues and the need for individuals to be able to recognize child abuse and to act against it. Services cover families, communities, a support network for single mothers, and young people in prisons. Professional staff comprise seven to eight social workers, one clinical psychologist, two to three counsellors and trained caregivers. The ratio of staff in the homes is 1:3-4 children. Staff turnover is 20 per cent, but management reportedly ensures standards of care are maintained.⁵⁵

6 Structures and mechanisms for service delivery

The Department of Social Welfare under the Ministry of Women, Family and Community Development is the primary government agency responsible for children's concerns. The department is being reorganized, with a new Children's Division mandated to provide care, protection and rehabilitative services to children and to implement rehabilitative programmes for children in conflict with the law and girls at moral risk.⁵⁶

Each of Malaysia's 104 districts (across 15 states) has a local social welfare office that provides direct social services. The offices employ professional social workers but many staff have no professional training. The department provides training to staff before they are assigned to the districts.

It is reported that the department's 2004 budget allocation to education and social welfare was high at 28 per cent and 46 per cent of the total budget respectively.⁵⁷

The Child Act 2001 established a Coordinating Council for the Protection of Children to ensure the full implementation of the law. The council is chaired by the Department of Social Welfare's Director-General and comprises 14 representatives from government agencies and seven people experienced on child welfare and development, appointed for three years by the Minister. The council is mandated to establish child protection teams throughout the country to coordinate locally-based services to families and children where necessary. The teams are led by a social welfare officer, or protector, appointed by the minister. A medical officer and a senior police officer also provide services to children and their families. NGOs authorized by the department also provide services to children and their families. Some receive grants to manage children's homes or community development programmes.

7 Findings, recommendations and conclusion

The following analysis and recommendations are based on a review of publications, documents, interviews with departmental officials and representatives from selected NGOs, as well as field visits to some care centres.

7.1 Policy environment

The policy environment for children is generally positive, with Malaysia being a signatory to various international instruments and regional commitments as well as enacting various laws for the welfare and protection of children. The Care Centres Act, the Adoption Act 1952 and the Registration of Adoptions Act 1952 are primarily intended to address issues related to children without primary caregivers. The challenge is in the implementation of these laws. Provisions of the Child Act 2001 related to children in need of care and protection need however to be reviewed, specifically with regard to the time children spend in residential care and the transfer of children, especially boys, to other institutions.

Malaysia is a State party to the CRC and other international instruments providing for the protection of children with regard to child labour and trafficking. Much work is needed however to harmonize national laws with the principles and standards of the CRC and other international instruments. It is understood that harmonization takes into account the political, economic, social, cultural/ethnic and religious milieu of a country, but basic principles of non-discrimination, a child's best interests, child survival and development and participation must be upheld. It is recommended that Malaysia review its reservations on the CRC. There are positive developments in this area.

⁵⁵ Interview with James Nayagam, Shelter Homes Executive Director, 17 October 2005.

⁵⁶ Malaysia, Government of. 2005. Op. cit.

⁵⁷ UNICEF Malaysia. Op. cit.

The Child Act 2001 is a step towards harmonizing national law with the CRC. Under the Act, a child is defined as “a person under the age of 18 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 (Act 574)”. The general definition of a child at least conforms with the CRC. The creation of a Court for Children and related protection structures at the national and local levels is to be commended, but no information is available about implementation. As well, some provisions of the Act need to be reviewed and amended to conform with the standards set by the CRC, the Beijing Rules on the Administration of Juvenile Justice and the UN Guidelines for Juveniles Deprived of Liberty.

Action is required to address issues related to the children of undocumented migrants (stateless children) and the trafficking of children from other countries. It is recommended that immigration and nationality laws be reviewed, services such as education for stateless children be made available, and that child victims of trafficking receive humane treatment in accordance with full protection of their rights as children. Parents and communities also need to recognize the importance of education for their children. The Government has commissioned studies to address these issues. UNICEF Malaysia is ready to participate in national debate on the integration of minority children into the formal educational process and to provide technical support and material assistance to priority areas in basic education.⁵⁸ With regard to trafficking, a more rigorous cooperation among ASEAN countries is necessary to implement the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children.

7.2 Programmes and service delivery

The Department of Social Welfare has a comprehensive family support programme, delivered primarily through its socio-economy and assistance programme. The amount of financial assistance to families in need is due for review to ensure that all basic needs, particularly the educational needs of children, are met. Further, the formulation and establishment of a micro-finance programme will help to improve the economic well-being of poor families. With an increased budget, the programme should be able to reach more families who place their children in residential care because of economic difficulties.

For children who are orphans, abandoned or neglected, residential care is the primary response. In theory, institutional care is meant to be a last resort, but practice seems to show otherwise. Although no data was gathered about the number and categories of children in children’s homes, their numbers are much greater than those who are in foster homes or adopted. Data on age, gender, the nature of problems and other relevant information about children in care would assist case management and the design of services appropriate to the children’s developmental level and needs. Case data and other records may be available, but they were not provided to the consultant due to language differences.

Based on the visits to three children’s homes, the physical facilities appear to be adequate, clean and safe. The Department of Social Welfare has made an effort to provide a more family-like environment through the cottage/family system. A ‘mother’ caring for 10 children in a cottage is a far better scenario than 234 children residing in one institution. It is suggested that the term ‘adopted mother’ be changed to ‘foster mother’ because adoption connotes permanency. It is recommended that big institutions be decentralized in favour of the family/cottage system so that children in care receive more individualized attention.

The care and services provided in children’s homes appear comprehensive and adequate. There is doubt however about whether the homes address the developmental needs of children in general and the specific needs of children with disabilities and children who are victims of abuse and exploitation. Children with various problems and needs are often placed together in one home. It would be preferable to group children according to their problems or experiences, particularly abused and exploited children. This would then assist in the delivery of specialised programmes such as therapy and counselling, preparation for court actions, and reintegration with families. Special attention is also needed for children who have or are affected by HIV/AIDS.

There is no indication that children in care are given the opportunity to participate in decisions and discussions about matters of concern to them. It is recommended that such opportunities be provided, for example in planning socio-cultural activities, identifying incentives for good behaviour, and in developing positive disciplinary measures, among other things.

⁵⁸ Speech by Rudiger Luchmann, Programme Coordinator, UNICEF Malaysia, during a Seminar on Protecting the Rights of Children of Minority Groups, November 2005.

The Child Act 2001 states that a child placed in a children's home is expected to stay in the home for three years or until he or she is 18. The Department of Social Welfare's Director-General clarified however that a child may be discharged by the home before three years has elapsed or before he or she is 18 if the child can be placed in foster care, is adopted, or their parents are found to be capable of caring for the child. It is recommended that more concerted action be taken to ensure that a child stays in residential care for the shortest possible time, since such care is temporary in nature. A child should not be alienated from his or her biological or extended family. Family visits need to be encouraged and supported in order to keep family ties intact and to plan for reintegration.

Case management is needed for permanency planning and moving a child out of institutional care as soon as possible. Case management should be two-pronged: 1) To prevent at the outset the placement of children in institutions and to support families in their own communities; and 2) to remove children already in institutions in the aim of reintegrating them with their own families by means of placing children in foster homes or, where applicable, placing the children with adoptive families. Social workers need to develop individual case plans to this end.

A significant concern is the policy of transferring boys to another institution when they turn 12. Such transfers must be handled with sensitivity so that the child understands why he is being moved and is prepared for leaving his friends, caregivers, social workers and familiar environment. Transfers of children should be avoided as much as possible.

The Care Centre Act 1984 provides standards for residential care with regard to physical facilities, ratio of staff to residents, programmes and services, and so on. The standards apply also to NGOs. Standards are important to ensure a nurturing, safe and family environment for children. Unfortunately, the consultant was unable to assess the quality of the standards because they were available only in Bahasa Malaysia.

Although adoption and foster care are part of the alternative care choices for children without primary caregivers, these need to be developed further. All children whose parents are no longer capable of caring for them should have the option of adoption. Assessments of the capability of adoptive parents and supervision before formal adoption are important for the development of a satisfying parent-child relationship. In addition, the development of foster families must be pursued at the local level, taking into consideration the influence of social and cultural factors. An information and education programme through the mass media, group meetings and personal contacts may help to give communities a greater understanding and appreciation of the benefits to children of adoption and foster care. Incentives may encourage more families to offer to care for children in need.

The Department of Social Welfare facilitates the delivery of services at the national and local levels in response to the needs of families and their children. An increased budget for family support and preventive programmes, supported by professional service providers, would go a long way to realizing the rights of all children in Malaysia.

7.3 Capacity-building

It is encouraging to note that the Department of Social Welfare intends to upgrade its programmes and services at all levels. A priority agenda is to build and improve the skills of staff. It is recommended therefore that professional social workers be assigned to handle case management for children in all departmental residential facilities, as well as those in foster care and adoption. Social welfare assistants may help social workers to gather data, conduct home visits and make related contacts, but the analysis and interventions should be done by a professional social worker. Specific training on case management is recommended.

All involved in the care of children must continue to be provided with staff development activities and training so that they are aware of the latest child-care trends, strategies for behaviour management, how to providing opportunities for children's participation, and so on. A special focus must be considered for working with children who have or are affected by HIV/AIDS as well as abused and exploited children.

7.4 Networking

The Department of Social Welfare promotes the so-called 'Smart Partnership' programme, which involves cooperation among government agencies, NGOs, local communities and the private sector. The family/cottage system of care is a model for the programme. The department also allocates grants to NGOs for administrative and programme support and has maintained a positive cooperative relationship with its partners. This is a good model to promote.

Psycho-social programmes for child survivors of the tsunami disaster and their families, which are being implemented by Empower and HELP, appear to be effective in helping them to deal with their traumatic experiences. Therapy is a long process however and it is recommended that the Department of Social Welfare and/or UNICEF support specific programmes for young children, young adults and their parents. As stated by Empower: "As long as the survivors are afraid and in pain, they continue to be at a survival-level existence and unable to fully grow and thrive and rebuild their lives." Further, programmes for children, especially younger children, will be effective only when the children's parents are also partners in the therapeutic process.

UN agencies, particularly UNICEF and UNAIDS, collaborate with the Department of Social Welfare on programmes for families and children. UNICEF Malaysia, in partnership with the Malaysian Government, has formulated a country programme for children to be implemented in coming years. It is recommended that the country programme specifically incorporate planning for alternative care for orphaned and abandoned children, including skills development for professional social workers to conduct case management and similar support to other child-welfare service providers.

7.5 Conclusion

The Government of Malaysia has recognized that economic and social development are necessary to achieve its Vision 2020. The Government has achieved most of its Millennium Development Goals and is determined to implement its National Social Policy under the leadership of the Department of Social Welfare. The department is being restructured so that it will be more effective in addressing the needs of children and families, especially those who are marginalized and would benefit greatly from development-oriented programmes and competent professional staff.

With regard to children without primary caregivers, activities are under way to strengthen family-support programmes and shift away from a reliance on large institutions in favour of the family/cottage system of care. Policies and standards are in place for residential care facilities. The challenge is to develop more foster and adoptive homes in order to reduce greatly the number of children now living in large institutions.

Malaysia's programmes and services for children and families are comprehensive and implemented at the national, state and district levels. The challenge here is to review and adapt policies, standards, programmes and services so that they are all in harmony with the CRC, are gender-fair and are responsive to the developmental needs of all children and the special concerns and needs of specific children such as those who are 'stateless' and those who have or are affected by HIV/AIDS. With technical support from UNICEF Malaysia and the cooperation of the Government, these challenges can be addressed to meet the best interests of children in Malaysia.

REFERENCES

- ASEAN Secretariat. 2003, December. *ASEAN in Figures*. Jakarta: ASEAN.
- ASEAN. 2004. 'Joint Communique of the Fifth ASEAN Ministerial Meeting for Social Welfare and Development.' 16 December. Bangkok: ASEAN.
- Malaysia, Government of. 1994. 'Caring for the Children of Malaysia: A National Plan of Action for Child Survival, Protection and Development of Children in the 1990s.' Kuala Lumpur.
- Malaysia, Government of. 2003. *Annual Report (Laporan Tahunan)*. Malaysia: Department of Social Welfare.
- Malaysia, Government of. 2005. 'Orientation Document'. Malaysia: Department of Social Welfare.
- Malaysia, Government of. 'Violence against Children Report'. Kuala Lumpur: Ministry of Women, Family and Community Development.
- Malaysia, Government of. 'Panduan Pelanggan Permohonan Bantuan Kewangan'. (Pamphlet on family support programmes.) Malaysia.
- Malaysian Pediatric Association. 2000-01. *State of Malaysian Children*. Malaysian Pediatric Association.
- UN Country Team of Malaysia and the Government of Malaysia. 2005. *Malaysia Achieving the Millennium Development Goals: Success and Challenges*. Kuala Lumpur: UNDP.
- UNICEF Malaysia. 2004. *Annual Report*. Kuala Lumpur: UNICEF Malaysia.

APPENDIX

3

MYANMAR

1 Introduction

This report is part of a four-country study to assess appropriate alternative care choices for children without primary caregivers commissioned by UNICEF East Asia and the Pacific Regional Office (EAPRO). The study aims to review and assess existing child-care services (adoption, foster care, guardianship, community-based responses and their structure) and national legal frameworks; assess the current situation of orphanages and residential centres; identify good practices and make recommendations for sustainable and functional models of alternative care for children without primary caregivers.

The study was based primarily on desk review of secondary data sources provided by UNICEF Myanmar, including the results of surveys and studies, conference and workshop proceedings, laws, brochures (including reference materials provided by local and international NGOs) and online UN resources. The consultants also visited a small number of institutions. This study however cannot make generalizations about the conditions at all institutions in Myanmar and the reflections here should not be taken as conclusive statements about the conditions of institutions in Myanmar.

Two consultants also undertook a five-day visit to Yangon, where they participated in the following activities arranged by UNICEF Myanmar: 1) Attendance on the final day of a three-day National Seminar on Social Work and Child Protection organized by the Ministry of Social Welfare, Relief and Resettlement (MSWRR) and UNICEF Myanmar; 2) meetings with officials from relevant government ministries, UNICEF Myanmar child protection project officers, representatives of international and local NGOs, and a member of the team involved in preparing Myanmar's country report to the UN Committee on the Rights of the Child; and 3) visits to four residential facilities. Briefings were provided by the managers of relevant the agencies.

The report is presented in seven sections. The first section gives the background and aims of the study. The second describes the profile of Myanmar to provide the context. The third outlines the policy frameworks for alternative care practice in Myanmar. The fourth provides a snapshot of the situation of children in Myanmar, particularly those in need of special protection. The fifth discusses existing alternative parental care choices to address the needs of children without primary caregivers. The sixth section looks at some structures and mechanisms for service delivery. The final section presents findings, recommendations and conclusions.

2 Country profile

Myanmar is on the Bay of Bengal and shares borders with Bangladesh and India to the west, the People's Republic of China to the north, and Lao PDR and Thailand to the east. It has the largest land mass in South-East Asia, stretching about 2,000 kilometres from north to south and 1,000 kilometres from east to west. Its total land area is about 676,578 square kilometres.

Myanmar is a richly diverse country with several geographic zones. Its coastline extends 2,832 kilometres from the estuarial areas of Rakhine near Bangladesh, with hundreds of coastal barrier and delta islands, to the tip of Tanintharyi, bordering Thailand. Mountains rise to the east along the Thai border and to the north in the foothills of the Himalayas. The central part of the country is primarily very dry, marked by expansive plains and wide rivers, which eventually empty into the Bay of Bengal and the Andaman Sea.

Administratively, Myanmar is divided into seven states and seven divisions, consisting of 62 districts, 324 townships, 13,762 village tracts and 65,235 villages. The states of Kachin, Kayah, Kayin, Chin, Mon, Rakhine and Shan lie around the perimeter, while the divisions of Ayeyarwady, Bago, Magway, Mandalay, Sagaing, Tanintharyi and Yangon are located relatively towards the centre of the country. The country is governed by the State Peace and Development Council (SPDC).

Most people in Myanmar practise Theravada Buddhism (89 per cent). People of other religions predominantly include Christians (5 per cent) and Muslims (4 per cent).

Myanmar is one of the most ethnically diverse countries in Asia. Its 135 ethnic groups are clustered into eight main groups: ethnic Barmars (69 per cent based on the 1983 census) who mainly live in the plains and river valleys of the Central Myanmar Division; Shans (8.5 per cent) who occupy the frontier states bordering Thailand, Lao PDR, China, India and Bangladesh; Kayins (6.2 per cent), Rakhines (4.5 per cent) and less numerous groups such as the Mon, Kayah, Kachin and Chin. Each group has its own language or dialect and observes particular customs and traditions. All these groups share several common cultural attributes, including observing respect for elders and recognizing that the extended family is the most important unit of social organization.

Myanmar's population was estimated to be about 49 million as of mid-2000, growing at an annual rate of 1.84 per cent through the 1990s. The fertility rate is estimated to be 2.7, down from 2.9 in 1990. The rate is low compared with countries such as Lao PDR (5.8) and Cambodia (4.6) and is more comparable with Malaysia (3.2) and Indonesia (2.6).⁵⁹ The 1983 census recorded that 75 per cent of the population lived in rural areas.

About 39 per cent of people are aged under 18, of which an estimated 6 million are 0-4 years. The high percentage of children in the population indicates a high dependency ratio and would entail significant additional resources and services to provide food, health care and amenities for physical, social, emotional and mental development as well as substantial basic education facilities.

Myanmar, a naturally rich country, has a per capita gross domestic product of US\$300. No official assessment of poverty has been undertaken in Myanmar, nor is the poverty line defined. Unofficial estimates suggest that half of the population lives below the poverty line. At the national level, about half the number of households are of low economic status (defined as households with structurally weak houses and no access to channels of media communication or vehicles or other machines), while the rest are considered to have a higher economic status (households with solid structures and ownership of a radio or television, or a vehicle or other machines).⁶⁰ There are wide regional variations. Urban poverty is also a serious problem in Myanmar, particularly in peri-urban areas. A World Vision survey in 1998 found that many families living in two peri-urban townships of Yangon and Mandalay earned barely enough income to cover daily minimal food expenses. A third of families were unable to do so.⁶¹

3 Policy framework

This section provides a summary of international instruments, regional agreements and national laws and related policies that provide the policy context for Myanmar's child-welfare programmes.

3.1 International instruments and policies

Myanmar became a State party to the UN Convention on the Rights of the Child (CRC) on 15 July 1991, with reservations on Section 15 and Section 37. The reservations were withdrawn on 15 October 1993 following the enactment of the Child Law on 14 July 1993.⁶² Myanmar is also a signatory to other international conventions such as the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Prevention and Punishment of the Crime of Genocide.

Myanmar is also committed to the following international policy initiatives to improve the situation of children and women: Sanitation for All by the Year 2000, Universal Salt Iodization, Universal Child Immunization, Polio Eradication by 2000, Education for All, A World Fit for Children, and the Millennium Development Goals.

3.2 Regional agreements

Myanmar is a party to various regional agreements that have been supported by UNICEF and other UN agencies, including COMMIT (the Coordinated Mekong Ministerial Initiative against Trafficking), the Bali Concord II (2003), the Siem Reap Declaration (2005) and the Hanoi Plan of Action (1998). As a member of the Association of South-East Asian Nations (ASEAN), Myanmar is also committed to carrying out the social welfare and social development programmes within the objectives and regional issuances of ASEAN, such as the Bali Concord II with the Vientiane Action Plan (2004-2010), the Declaration of Commitments for Children in ASEAN (2001), the ASEAN Declaration on HIV/AIDS (2001), the ASEAN Tourism Agreement (2002) and the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004).

⁵⁹ UNICEF Myanmar. 2001, April. *Situation Assessment and Analysis: Children and Women in Myanmar*. Yangon: UNICEF Myanmar.

⁶⁰ This data derives from a 1997 UNICEF Multiple Indicator Cluster Survey (MICS).

⁶¹ UNICEF Myanmar. 2001. Op. cit.

⁶² Myanmar, Government of. 2002. 'Second periodic reports of States parties due in 1998: Myanmar.' UNCRC. CRC/C/70/Add.21. 5 November 2003.

3.3 National laws and related policies

Child-welfare programmes and services in the country, particularly for children in need of special protection, are primarily guided by the Child Law 1993. This law was passed on 14 July 1993 (SLORC Law No. 9/93) in direct response to the Government's obligations as a signatory to the CRC. The rules were promulgated in December 2001. Some key provisions of the law are highlighted below.

The law defines a child as a person who has attained the age of 16 years, while a youth means a person who is aged between 16 and 18. The objectives of this law are: "a) To implement the rights of the child; b) to protect the rights of the child; c) to ensure that children may enjoy fully their rights in accordance with the law; d) to carry out measures for the best interests of the child depending upon the financial resources of the State; e) to enable custody and care of children in need of protection and care by the State or voluntary social workers or non-governmental organizations; f) to enable a separate trial of a juvenile offence and to carry out protection and care by the State or voluntary social workers or non-governmental organizations; and g) to enable a separate trial of a juvenile offence and to carry out measures with the objective of reforming the character of the child who has committed an offence".⁶³

Section 32 of the law defines children in need of protection and care, and places the responsibility on the Department of Social Welfare to respond to children at risk. "A child in need of protection and care, is one who: i) Has no parents or guardian; ii) earns his living by begging; iii) is so deprived a character that he is uncontrollable by his parents or guardian; iv) is in the custody of a cruel or wicked parents or guardian; v) is of unsound mind; vi) is afflicted with a contagious disease; vii) uses a narcotic drug or a psychotropic substance; and viii) is determined as such from time to time by the Social Welfare Department."⁶⁴

The law mandates the creation of the National Committee on the Rights of the Child (NCRC) to implement effectively the provisions of the law and the CRC. It also provides for the establishment of local Committees on the Rights of the Child at the state/division, district and township levels to provide services for the benefit of children.

Myanmar Customary Law (Burma Act XIV, 1939, or the Registration of Kittima Adoptions Act) came into force on 1 April 1941. It provides the legal mandate for Buddhists in Myanmar to adopt a child. This law allows for three kinds of adoption: *kittima*, *apatitha*, and *chata-bhatta*. *Kittima* is the full adoption of a son or daughter, and only a *kittima* child is entitled to inheritance.

The Government has also adopted related policies and plans to protect the rights of children in Myanmar.

- The Five-Year Plan (1996-97 to 2000-01) provides the broad parameters, indicative targets, priorities and strategies to be implemented by line departments and agencies in accordance with the 16 political, economic and social objectives identified by the national authorities.
- The National Programme of Action for the Survival, Protection and Development of Myanmar's Children in the 1990s (NPA) prioritizes the problems and needs of children and women in Myanmar in the areas of health and nutrition, water supply and sanitation, education and early childhood development, including children in especially difficult circumstances. A new Myanmar Plan of Action for Children (2006-2015) was developed in January 2006 and covers health and nutrition; safe water supply and environmental sanitation; education and early childhood development; and child protection.
- The National Health Plan (NHP) aimed to achieve the goal of Health for All by 2000. The NPA and the NHP both spell out the country's commitment to achieve major sectoral goals articulated in the Declaration on Survival, Development and Protection of Children made at the World Summit on Children in 1990.
- The Thirty-Year Long-term Basic Education Development Plan (2001-2031) was launched with the vision of creating an education system that could generate a learning society capable of facing the challenges of the information age.

⁶³ Myanmar, Government of. 1993. The Child Law of 1993. Yangon, Government of Myanmar.

⁶⁴ Ibid.

4 The situation of children

A snapshot of the general situation of children in Myanmar, particularly those in need of special protection, is presented in the following section. The data used for this section was taken mainly from a 2001 situation assessment.⁶⁵

4.1 General situation of children

The mortality rate for children under five and the infant mortality rate remain high in Myanmar, estimated at 106 and 76 per 1,000 live births respectively,⁶⁶ equating to an estimated annual 125,000 deaths of children under five. The rate is the highest among all but one ASEAN State. Although improvement has been observed, some specific intervention to address vitamin A supplementation, universal salt iodization and maternal neonatal tetanus elimination requires continuous and comprehensive efforts to have an impact on overall mortality for children under five.

Malnutrition is widespread among children under five, with a third of children severely or moderately malnourished. About 10 to 20 per cent of babies are estimated to be born with a low birth weight. Only 15 per cent of children are exclusively breastfed for the first three months. Some dietary practices have a negative impact on children's health. Infants often receive inadequate supplementary food with very low nutritional value, which increases the risk of infectious disease and undermines the benefit of breastfeeding.

The HIV epidemic is spreading, crossing from high-risk groups into the wider population. According to the National AIDS Programme, the number of adults living with HIV/AIDS is 339,000, which is about double the number estimated in 2002. UNAIDS estimates the range could be 170,000 to 620,000. In 2004, 97,000 women (the range is 51,000 to 180,000) and about 8,000 children (the range is 3,600 to 16,000) were estimated to have HIV. Most of these children acquired the virus from their mothers. It is obvious that transmission of HIV from mother to child is having an increasing impact on children and there is a significant need for care and support for children who have HIV or are affected by it. An estimated 46,000 people need anti-retroviral therapy, although just 2,518 persons in 2005 were able to receive treatment in the public and non-profit sector, including fewer than 100 children. There is an urgent need for increasing access to HIV/AIDS prevention, treatment and care in Myanmar, including primary prevention for women and young people, and prevention of mother-to-child transmissions.

In 1990, only about 2 per cent of children aged three to five attended some form of day-care services or organized pre-school activities, while no such service is available for children aged 0-3. About 7 per cent of three- to five-year-old children received some form of pre-school education. Nineteen per cent of urban children attended pre-school compared with only 3 per cent in rural areas.⁶⁷ Official data shows high drop-out rates in Grade 1 (organized as the first year of primary school), at 18 per cent, declining to 5 per cent in Standard 4 in the 1995-96 school year. Primary school enrolment has increased from 66 per cent in 1990 to 83 per cent in 2003. About 750,000 children drop out of primary school each year, with the overwhelming majority of 630,000 being rural students, specifically the poorest and/or those living in remote areas. In 1998-99, the transition rate to middle school, and then to high school, was 67 per cent and 92 per cent, respectively. Options for alternative learning systems are limited to monastic schools that serve children whose families cannot afford to send them to public schools.

4.2 Children in need of special protection

Similar to other countries in the region, there is no accurate picture of the true scale and magnitude of children in need of special protection in Myanmar. Nevertheless, the estimates and qualitative descriptions cited below are indicative signs of the growing number of Myanmar children whose lives are at risk.

⁶⁵ UNICEF Myanmar. 2001. Op. cit.

⁶⁶ UNICEF. 2006. *State of the World's Children 2006*. Geneva: UNICEF.

⁶⁷ This data derives from the 1997 UNICEF Multiple Indicator Cluster Survey (MICS).

4.2.1 Children living in residential care

There is little comprehensive data on the number of children living in residential facilities in Myanmar. About 8,000 children may live in State custodial institutions, but the figures could be much higher. Housed in these institutions are orphans, wards of the State, children with disabilities, juvenile offenders, street children and children formerly involved in commercial sex. Many children also live in privately run, monastic and other faith-based institutions. Some of these institutions are registered with the Department of Social Welfare and receive some government support while others operate without registration.

4.2.2 Street children

Most street children are about eight to 14, but some may be as young as three or four. Generally an urban phenomenon, street children tend to come from broken families, or families living at the subsistence level who are unable to provide adequate support. Many are illiterate or have dropped out of primary school. The children have no access to basic services such as health, education, welfare and legal protection or care. They face numerous hazards and risks on the street, such as abuse and HIV/AIDS.

4.2.3 Child workers

Working children are engaged in a wide variety of activities such as vending and scavenging. Some work as porters or labourers. The children are primarily aged 10 to 14 and work eight to 11 hours a day, every day, for wages between 500 and 1,500 kyats a day.⁶⁸ Many of these children have dropped out of school in order to earn a livelihood.

4.2.4 Children in contact with the law

When children come into contact with the law in Myanmar, they are often seen as offenders and juvenile delinquents, as opposed to victims, witnesses and those needing special protection. Many children in contact with the law come from broken families and/or are deprived of parental care, and many have committed minor offences or were simply found on the streets. A life on the streets sometimes leaves children open to exploitation by adults. In its Concluding Observations, the Committee on the Rights of the Child noted that the minimum age of criminal responsibility in Myanmar is set too low, at age seven.⁶⁹ It recommended that the age of criminal responsibility be raised to an internationally acceptable age. Many street children end up in government institutions, either because they are placed there by court order or because they are considered children in need of care and protection.

4.2.5 Trafficked children

Trafficking of children for sexual purposes both within Myanmar and across borders involves girls, young women and boys. Proximity to Thailand exposes many girls and young women from the border areas to trafficking for sexual purposes. Hill tribe girls and young women are reportedly enticed or sold to brothels in Thailand. Young girls and women in the commercial sex trade are increasingly threatened by HIV/AIDS. Other industries are also fostering trafficking. For example, an increasing number of boys and young men are trafficked for industries including construction and fishing.

4.2.6 Children with disabilities

While there is no nation-wide data on children with disabilities in Myanmar, 3 to 5 per cent of the population is estimated to have some kind of physical or mental disability. Four categories of disabilities are classified by the Department of Health: physical disabilities, blindness, deafness and leprosy.

⁶⁸ At the time of the study, the exchange rate was about K1,200=1USD.

⁶⁹ UNCR. 2004. 'Consideration of Reports Submitted by States Parties Under Article 44 of the Convention. Concluding Observations: Myanmar.' UNCR. June 30.

4.2.7 Displaced children

In Myanmar, displaced children are primarily located along the Bangladeshi and Thai borders. The UN Committee on the Rights of the Child, in considering the second periodic report of Myanmar, noted “that a large number of returnees from Bangladesh to Northern Rakhine State have gone back to their villages of origin and it is concerned that some 850,000 Muslim residents in northern Rakhine State and a large number of persons of Chinese or Indian descent throughout the country remain stateless, making it impossible for children of these families to benefit from the provisions and principles of the [CRC].”⁷⁰

4.2.8 Tsunami-affected children

Myanmar is one of the countries of the Indian Ocean region least affected by the consequences of the tsunami on 26 December 2004. Data from the Myanmar Department of Health’s Central Epidemiology Unit indicates that at least 12 townships have been affected, with 61 deaths, 41 injured and three people missing. The UN and its partners estimate that about 10,000 people in the Irrawaddy delta area have been affected, with several thousand more affected in Tanintharyi division.⁷¹ Furthermore, some 200 villages spread over the southern coast of Myanmar may also have suffered from the economic impacts of the tsunami disaster. A tsunami assistance coordination group confirmed a death toll of 60 to 80, and estimated the longer-term affected population to be between 10,000 and 15,000 people, of whom 5,000 to 7,000 have been directly affected.⁷²

There is little data on the number of children affected by the tsunami, but there are several known cases where children have been separated and have found themselves without primary caregivers. Following the tsunami, children in affected villages, particularly those bordering Thailand and in Tanintharyi division, were found to be particularly vulnerable to economic and sexual exploitation as well as trafficking. These communities have higher proportions of migrants and less access to livelihood and income-generating activities. Some communities lacked the information, knowledge and skills needed to undertake initiatives to address these threats and strengthen the protective environment for children (including any psycho-social and social-welfare support to the most vulnerable among them).

Like other countries in the region, the challenges facing children in Myanmar are directly related to a lack of guaranteed access to health, nutrition, education and protection. This in turn has an impact on the rights of children to survival, protection, development and participation during their life cycle. Children deprived of parental care are particularly vulnerable and in need of special protection.

5 Status of existing alternative care choices for children

This section reviews the current alternative child care interventions for children without primary caregivers in Myanmar.

5.1 Family and community-based care

Family and community-based care in the country encompasses the following alternative care choices: Adoption, guardianship, informal foster care and informal kinship care.

⁷⁰ Ibid.

⁷¹ WHO. 2005. ‘Myanmar Tsunami Situation Report.’ Yangon: WHO Myanmar Country Office. January 27.

⁷² Ibid.

5.1.1 Adoption

Myanmar's adoption follows the existing Myanmar Customary Law, which differentiates between three types of adoption among Buddhists: *Kittima*, *apatitha* and *chata-bhatta*. *Kittima* is the full adoption of a girl or boy with the intention that the child shall inherit. Only a *kittima* child is entitled to inheritance although he or she is not regarded as being on an equal footing with a birth child. An *apatitha* child is one who has been adopted casually and without any intention expressed on the part of the adoptive parents that the child shall inherit. Such a child may inherit however if the parents have no other children or grandchildren and also no *kittima* child. In that case, he or she is entitled to half of the inheritance, the rest to be divided among other relatives. *Chata-bhatta* is the compassionate adoption of a son or daughter. A *chatta-batta* child is a foundling, a destitute, and brought up in a family through compassion but not as a child of the family.⁷³

Chapter 11, Rules 61-63 of the Rules accompanying the Child Law, also provides for the adoption of a child (provided that he or she is Buddhist) who is under the care of the Department of Social Welfare and notes the obligations of the department and the prospective adoptive parents.⁷⁴ The department is required to assess whether the parents are able to ensure that the best interests of the child are met and may cause the adoption to be disqualified, in which case the child must resume living at a government facility.⁷⁵ The adoptive parents also have duties to ensure that they abide by any terms and conditions imposed by the department, support the development of the child, and act in his or her best interests.⁷⁶

Prospective adoptive parents go to hospitals or institutions to choose a child. A six-month custody period is required, during which time the adoptive parents may decide not to continue with the adoption process. Although inter-country adoption is not prohibited, no legal framework is in place to deal with it.⁷⁷

The above data indicates the need to accelerate the review of current adoption policies and practices to ensure that the best interests of children in Myanmar are upheld.

5.1.2 Guardianship

No data was obtained about children in Myanmar under guardianship. The Guardians and Wards Act addresses the guardianship of the child and his or her property. Guardianship may be petitioned to the court for a child who has not come of age or for a child of divorced parents. Guardianship is decided by the court, taking into account the best interest of the child.⁷⁸

5.1.3 Informal kinship care

Care by relatives is deeply rooted in Myanmar culture. Orphans are usually looked after by members of their extended family members, including grandparents, aunts, uncles or other relatives. This 'informal' placement is not regulated and does not have formal support from authorities or social service agencies. As such, it can result in situations of exploitation of a child. There is no data available on the number and situation of children in care under this type of arrangement.

5.1.4 Informal fostering

The terms 'informal fostering' and 'informal adoption' are used interchangeably. Some families accept into care a non-related child without any formal agreement. Like kinship care, this is not regulated. In this type of care, children without primary caregivers are often treated as domestic helpers and are highly at risk of being exploited or abused.

⁷³ Lahiri, S.C. 1951. *Principles of Modern Burmese Buddhist Law*. Fifth edition. India: Eastern Law House. See also the Registration of Kittima Adoptions Act (1939).

⁷⁴ Myanmar Child Law 1993, Rule 61, provides that "any person who would like to adopt a child who is under the custody and care of the Department of Social Welfare shall apply to the Department of Social Welfare by using Form 22".

⁷⁵ Myanmar Child Law 1993, Rule 62.

⁷⁶ Myanmar Child Law 1993, Rule 63.

⁷⁷ Meeting with officials from the Department of Social Welfare.

⁷⁸ Myanmar, Government of. 1995. 'Initial reports of States parties due in 1993: Myanmar'. CRC/C/8/Add.9. UNCRC. 18 September 1995.

5.2 Residential care

Residential care comes in different forms such as nurseries, training schools, boarding schools, hostels, orphanages and family/cottage care. Two chapters of the Child Law provide for the establishment of facilities for the custody and care of children in need of special protection.⁷⁹

In Myanmar, institutional or residential care with dormitory-type accommodation is the most widely practised alternative care for children without primary caregivers. These are provided by the Government, NGO and voluntary agencies, and faith-based organizations. Basic services provided to children are shelter, food, health, education and vocational training. The consultants had the opportunity to visit four residential facilities in Yangon. This proved very helpful and provided a glimpse of the country's various forms of residential care.

5.2.1 Government-run residential nurseries and training schools

The Department of Social Welfare has established six residential nurseries for children under five and eight training schools for boys and girls aged six to 18.⁸⁰ These facilities are funded by the Government with support from international organizations. Children who are abandoned or orphaned at birth or during infancy are placed in a nursery. If they are not adopted, they are transferred to a training school for boys or girls when they reach school age.⁸¹ After 18, girls are transferred to the Women's Development Centre.⁸² The consultants visited the Shwe Gon Daing nursery and the Training Schools for Girls.

The nursery was established in 1952 and began caring for 30 infants. It now can accommodate 100 children, aged 0 to three. At the time of the visit, 52 children were in care, 25 girls and 27 boys. Three of the children have cerebral palsy and four have or are affected by HIV. Children admitted into care are those who are abandoned and neglected, children from broken families, fatherless or motherless children, and socially or economically disadvantaged children. Each child has a case file with basic information or brief case history although there is no clear discharge or case plan. A growth and monitoring chart for each child is available. Children who are not adopted or reunited with their families are moved to another facility when they are three.

The nursery is clean and spacious. There is a pre-primary school in the community for three- to five-year-old children. Medical check-ups and treatment, including referrals, is carried out by a doctor. Two full-time nurses attend to the children's daily medical and health needs. The meal allowance of K520 a day for a child is provided by the Government and donors.⁸³

The Training Schools for Girls was set up in 1945 by the vigilance society as a home for girls. It was renamed as a training school when it was handed over to the Department of Social Welfare in 1962. The objectives of the school are: 1) To provide protection and care for the development of girls aged six to 16; 2) to provide formal education and training; and c) to reintegrate the girls into society. It admits girls aged over five from residential nurseries, girls six to 16 years sent by the Juvenile Court or the Department of Social Welfare, and girls who are orphans, poor and with social problems. The facility can accommodate 300 children. At the time of the visit, 305 girls were in care.

Food, clothing, shelter, formal education (including vocational training), counselling, sports and recreational activities and placement are provided. Primary-level education classes are held within the compound in cooperation with the Department of Education. Girls who have completed primary level are sent to middle school, high school and university. Vocational training such as sewing, embroidery, poultry-raising and vegetable gardening (which include income-generating activities) are available for those who do not wish to continue their studies. Girls who are over 18 are transferred to the Women's Development Centre for vocational training and job placement, or they are returned to their parents through a reintegration programme.⁸⁴ There are no permanency plans for children in care. Parental and family visits are minimal, and some children have no contact with their families.

⁷⁹ Chapter XIII (Training School, Temporary Care Station, Home and Residential Nursery) and Chapter XVI (Homes Established by a Voluntary Social Worker or a NGO).

⁸⁰ Myanmar, Government of. 2004. Op. cit.

⁸¹ UNICEF Myanmar. 2001. Op. cit..

⁸² Myanmar, Government of. 'Training School for Girls'. (Brochure.) Yangon: Ministry of Social Welfare Relief and Resettlement.

⁸³ Myanmar, Government of. 'Residential Nursery Shwe Gon Daing'. (Brochure.) Yangon: Ministry of Social Welfare Relief and Resettlement. Meeting with Government officials.

⁸⁴ Myanmar, Government of. 'Training School for Girls'. (Brochure.) Yangon: Ministry of Social Welfare Relief and Resettlement.

The school provides a dormitory-type facility. Each dormitory has a television. The dormitory for younger girls has double-bunk wooden beds arranged adjacent to each other, with two children sharing a bed. There is a central kitchen and a dining hall. A more 'family-like' structure is needed, with small group-living arrangements such as smaller bedrooms for eight to 10 children to replace the dormitory arrangement. Sanitation also needs some improvement.

5.2.2 Facilities run by NGOs and faith-based institutions

Based on Department of Social Welfare data, 167 residential care facilities are managed by NGOs, registered with the department, serving more than 9,000 children. Voluntary organizations run 134 youth development centres and nine homes for girls who have no parents or guardians, and disadvantaged children.⁸⁵ The spectrum of residential care facilities includes faith-based organizations such as monastic schools and Christian institutions (also referred to as boarding schools) that provide education and residential care for children from disadvantaged and poor areas of the country. The monastic schools are dealt with under the Ministry of Religious Affairs and are managed by monks, although not all monastic schools are registered. The actual number of children in faith-based institutions is not known. Non-Department of Social Welfare institutions receive funds from various sources such as grants from the department, local donors and international organizations. Faith-based facilities rely largely on donations, private funds and livelihood projects. The conditions in many monastic institutions are poor, and there is little awareness of children's needs.

The consultants visited an orphanage/monastic institution in Thinganyun Township, Yangon, which caters to children from two to 17. There were 107 children in care at the time of the visit, of whom about eight were girls and 32 were orphans. Most of the children lived in the orphanage/school until they finished secondary education. A few children ran away. The facility has a record book with one page for each child, including a photo and basic information, including the child's name, date of birth, address, name of parents or relatives, and reason for admission. Some notations are also made when a child leaves the school. A separate list keeps track of children enrolled in the monastery education school for the academic year 2005-06 indicating the name, date of birth, standard or grade level, type of ethnic group, name of father and mother, and family address. The youngest in the list was a five-year old boy while the eldest was 17. Many were 10 to 14

Topics discussed during the visit included language issues for children belonging to ethnic minorities (use of a child's birth language or ethnic dialect becomes limited); the rarity of parent-child contact and the very limited chance of a child visiting or returning to their families due to distance and economic reasons (some children go home to their parents or guardians once within four to five years); corporal punishment as a disciplinary measure; and the health problems of the children.

5.2.3 Family/cottage care

Another form of alternative care in Myanmar is family/cottage care, which also supports vulnerable children in the community. The consultants visited one home that aims to provide accommodation to babies, toddlers and children up to five, and to provide a family-type environment for school-age children under the care of a guardian 'mother'. Children with disabilities or difficulties or who are affected by HIV/AIDS are not accepted. This type of care allows abandoned or 'orphaned' children to receive individualized care and attention, but the environment is isolated from the general community and there is no permanency planning. Children of school age are grouped according to gender, which lessens the feeling of a family-like environment.

The home maintains separate family-type cottages. There is a baby unit for children under three, a dormitory for three- to five-year-olds, and four family units for six- to 16-year-olds (three cottages for boys and one for girls). Each cottage accommodates 10 children. The home can serve a maximum of 100 children. At the time of the visit, 65 children were in care (six babies, 19 children of pre-school age, and 40 older children). Children under six are cared for by 'babysitters' who work on two shifts. Older children are cared for and supervised by a 'mother'. The children were observed to be happy and comfortable while the 'babysitters' and 'guardian mothers' seemed to have a genuine interest in and affection for the children.

⁸⁵ Myanmar, Government of. 2002. 'Second periodic reports of States parties due in 1998: Myanmar.' UNCR. CRC/C/70/Add.21. 5 November 2003.

The home is well-designed, well-equipped and clean. It has a separate praying/activity room, a dining hall, a kitchen, staff quarters, an office, a library and a medical clinic. Children receive adequate health care and nutritious meals. They have periodic medical check-ups and there are health records. Religious education and nursery classes are provided. Children of school age attend government schools in the community. Boys are also encouraged to enrol in vocational courses such as television and radio repair, while girls are directed to courses on cooking, embroidery, typing and nursing.

Overall, the quality of care in the home could be further enhanced and developed by ensuring that a permanency plan for each child is initiated upon entry into care, in order to facilitate the early return of a child to their family and/or placement with an adoptive family. Periodic review of each child's placement must likewise be undertaken, and parental visits encouraged and supported to keep family ties intact.

5.2.4 Issues related to residential care

The foregoing discussion raises several fundamental issues and practices that affect the care and protection of children in residential care. These include: 1) Poverty as a primary reason for entry into care; 2) the transfer of children from one institution to another; 3) the prolonged or indefinite stay of children in institutions; 4) limited or no parental visits; 5) no permanency plans for children; 6) no periodic reviews of placement; 7) the use of corporal punishment as a form of discipline; 8) the focus on custodial aspects of care; 9) the need to improve physical facilities; and 10) poor conditions, nutrition and health care. It is worth mentioning that these themes are likewise reflected in several other studies previously undertaken in Myanmar.⁸⁶ These issues clearly point out that the best interests of children in residential care are often overlooked.

6 Structures and mechanisms for service delivery

The Department of Social Welfare is mandated to provide social welfare programmes. This responsibility is carried out through various programmes and services for children, young people, women, disabled people, and older people who are socially and economically disadvantaged. Its programmes cover early childhood care, child and youth welfare services, women's welfare services, aged care, rehabilitation for the disabled, drug rehabilitation and grants to voluntary organizations.

The department has established various institutions for vulnerable groups of children, including those noted in previous sections, and it also facilitates the adoption of children in under customary law. The department's capacity to address the needs of children at risk is hindered however by a lack of professional social workers and trained para-professional staff, as well as limited financial resources.

The National Committee on the Rights of the Child (NCRC), chaired by the Minister of Social Welfare, Relief and Resettlement, was set up with the aim to protect the rights of children in Myanmar. Two of its major functions as provided in the Child Law are: 1) To give "guidance to relevant government departments and organizations to effectively and successfully implement the provisions of the Child Law"; and 2) to "cooperate and coordinate activities of government departments and organizations, voluntary and non-governmental organizations relating to a child; reviewing from time to time the progress made". Working committees and sub-committees operate at the national level while Local Committees on the Rights of the Child (LCRC) operate at the state, divisional, district and township levels to provide services for the benefit of children. There is a need to build and enhance the capacity of these committees in order to see the functions stipulated in the Child Law conducted effectively. Further discussion is presented in the findings and recommendations section.

Meanwhile, international and local NGOs and faith-based organizations play an important role in delivering services to children in need of special protection.

⁸⁶ Some of these studies are listed in the bibliography and deal with institutions for children deprived of parental care, the psychosocial needs of children and social work capacity, and caring for children with regard to capacities and educational needs.

7 Findings, recommendations and conclusions

This section presents the findings, recommendations and conclusions of the study.

7.1 Findings

7.1.1 Policy environment

The 1991 ratification of the CRC was a positive step and led to the adaptation of Myanmar's national laws and the adoption of the Child Law 1993. In addition to the CRC, the Government has acceded to the CEDAW. Moreover, it has pursued means to protect the rights of children through other national policy initiatives, as cited in earlier sections. It is also noteworthy that Myanmar has complied with the requirement to submit periodic country reports to the UNCRC.

Despite the good intentions, challenges in policy and programme implementation need to be addressed. These include: 1) The need to harmonize national laws with the CRC; 2) the weak enforcement of child protection laws; 3) the need to strengthen the capability of the NCRC and related committees; and 4) the need to raise awareness about children's rights.

The intent of the Child Law is clear in guaranteeing children's rights, but implementation leaves much to be desired. The UNCRC has recommended that Myanmar amend and/or repeal national laws in order to harmonize fully with the provisions of the CRC. "The Child Law did not seem to be in full compliance with the provisions of the Convention and international standards in areas such as juvenile justice and child protection. The general principles of the Convention such as non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the views of the child were not adequately reflected in Myanmar's legislation. Moreover, the Citizenship Act, Village and Towns Act and Whipping Acts should be amended or repealed," advises the UNCRC.⁸⁷ Other recommendations include "that the State party take the necessary measures to allow children and their families who have returned to Myanmar and who are stateless to acquire Myanmar citizenship by way of naturalization...; continue to involve civil society and children throughout all stages of the implementation of the Convention; ensure equal access to education and health for all children, for girls as well as boys, for all ethnic and religious minority groups, and children with disabilities...; reform the juvenile justice system...; and take an active approach in tackling the issue of HIV/AIDS."⁸⁸

Neither the NCRC nor its lower-level committees are fully functional. The UNCRC remarked that it "welcomes the establishment of an interdisciplinary National Committee on the Rights of the Child whose main mandate is the coordination of the work of governmental bodies involved in the implementation of the Child Law. The Committee is nevertheless concerned that this Committee is not fully operational".⁸⁹ The NCRC's effectiveness as a coordinating and monitoring mechanism is a concern, and the UNCRC recommends that the Government strengthen it "by providing it with the necessary authority and resources to fulfil its mandate, namely to coordinate all activities related to the implementation of the Convention, in an effective manner". These recommendations indicate that much institutional development is needed before national committee structures can be said to contribute to the care and protection of children.

7.1.2 Alternative care choices and the service-delivery system

Children should not be separated from their parents as a result of poverty or economic difficulties. The assessment of the situation in residential care facilities shows however that poverty and economic disadvantage are the main reasons for many children entering residential care. This situation points to the urgent task of initiating and/or developing a range of preventive, supportive and supplemental services to address the needs of vulnerable children and their families. Such programmes should be integrated into the country's overall poverty alleviation programme.

⁸⁷ UN Information Service. 2004. 'Committee on Rights of the Child Considers Second Periodic Report of Myanmar.' Press release, 26 May. UNIS.

See also: UNCRC. 2004. 'Consideration of Reports Submitted by States Parties Under Article 44 of the Convention. Concluding Observations: Myanmar.' UNCRC. June 30.

⁸⁸ Ibid.

⁸⁹ Ibid.

In Myanmar, the prevailing form of alternative care for children without primary caregivers is residential care. The results of studies and surveys show that the quality of care in many institutions is below a standard required for a minimum level of child development, though basic needs may be met. Factors such as overcrowding, lack of trained staff and limited resources adversely affect the quality of care.

In the institutions that were visited, permanency planning is not practised. Once admitted into care, many children are 'forgotten' or left in limbo. There are no written case plans and children stay for long periods of time. Contacts between children and their parent(s) are rare due to constraints of distance and lack of money to cover travel expenses. The children therefore gradually lose a close relationship with their parents. This implies also that limited action is being taken to restore parental capacity. As well, the right to maintain regular contact with parents as provided in the Child Law and the CRC is not adhered to for most children in residential care.

The practice of moving children from one institution to another is not in keeping with the principle of the best interests of the child and is indicative of how cases are being managed. Moves must be handled with sensitivity and children must be properly prepared.

Previous studies indicate that in the absence of trained professional staff, service delivery has not followed the principles of permanency planning and efficient case management. Current residential care practice for children is generally focused on custodial aspects of care. Elements of child development are apparently neglected. Institutions do not take a proactive approach to returning children to their families. A case-management system is needed to ensure timely and appropriate discharge of children, either back to their families or to adoptive families.

The legal base for adoption in Myanmar is the Registration of Kittima Adoption Act. Under this Act, adoption of a child is null and void if it is not *kiitima* adoption and if the deed of adoption is not registered. Adoption as practised under this law is to some extent discriminatory because only the *kittima* child is entitled to inheritance, and even a *kittima* child is not regarded to be on equal footing with a birth child. Adoption is available only to adoptive parents and children who are Buddhist.

The Department of Social Welfare, the Ministry of Health and the courts are involved in adoption work. The Department of Social Welfare handles the adoption of young children in residential nurseries while the Ministry of Health facilitates the adoption of babies in hospitals. Both agencies allow adoptive parents to choose a child and permit such parents to stop the adoption process and to adopt another child instead. Such practices indicate that adoption is being used to primarily fulfil adult wishes to be parents rather than to find suitable families for children. This contradicts the CRC general principle on ensuring the best interests of the child.

Other than this form of adoption, there are no formal family-based alternative care choices for children in Myanmar. Kinship care and fostering as practised are informal and unregulated. This has significant implications in terms of ensuring and guaranteeing the rights of children under care. In keeping with Article 20 of the CRC, there is an urgent need to promote and develop alternative family placements for children without primary caregivers, such as formalised foster family care and kinship care. In providing alternative care, due regard should be paid to the continuity in a child's upbringing and to his or her ethnic, religious, cultural and linguistic background.

7.1.3 Capability-building

In Myanmar, a significant constraint is the very small number of social workers and limited capacity of staff working with children. To help address the lack of professionally trained social workers, the Department of Social Welfare, through its Social Welfare Training School, offers a month-long course for voluntary social workers, voluntary probation officers and voluntary day-care teachers. No refresher course or follow-up training is provided.⁹⁰ UNICEF Myanmar, in collaboration with the Department of Social Welfare and others, has conducted various training programmes. In 2005, two important workshops were also conducted in Yangon, jointly organized by UNICEF Myanmar and the Department of Social Welfare. A two-day Workshop on Standards of Care and Protection for Children in Institutions was held in September 2005. The participants included representatives from the Department of Social Welfare, other managers of institutions, NGOs and children. Delegates from Cambodia, Papua New Guinea, Timor Leste and Viet Nam shared their experiences on the protection of children deprived of parental care, highlighting policies and standards developed. A draft document on standards of care and protection for children in institutions in Myanmar was presented and discussed during this workshop.⁹¹

Social work is still new to Myanmar, with no available tertiary-level study for potential social workers. The importance of building the capacity of social workers through professional education and culturally appropriate training programmes is being recognized. It is in this context that the three-day National Seminar on Social Work and Child Protection was conducted in November 2005. The seminar provided a critical opportunity for participants to exchange knowledge and ideas about the development of social work as a profession, and the chance to create a concrete plan of action, detailing ways in which to develop a strong and culturally appropriate social welfare system in Myanmar.⁹² Resource people from the Philippines, Singapore and Viet Nam were invited. At the end of the training, the participants presented a Draft Action Plan for Social Work and Child Protection. The following action points were highlighted: 1) Develop an internationally recognized curriculum; 2) make use of the curricula within the ASEAN region and adapt them to fit the Myanmar context; 3) develop and commence a university level diploma in social work as a starting point to increase professionalism in the field; and 4) produce high-quality short-term social work training for para-professionals in coordination with local and international bodies.⁹³ In 2006, the Department of Social Welfare and Yangon University (Psychology and Law Departments) met regularly to develop a 12-month social work curriculum, with UNICEF support. The proposal was approved recently by the Ministry of Social Welfare and the Ministry of Education. This first such course was due to start in June 2006.

7.1.4 Networking

Active collaboration and partnership among stakeholders is necessary in the field of child welfare and children's rights. Myanmar's NCRC could play more of a role in raising awareness and contributing to the care and protection of children.

Examples of existing strategies to coordinate the work of international NGOs and local groups working with vulnerable children in Myanmar include the establishment of a Child Rights Working Group and the Juvenile Justice Inter-agency Working Group. The first group's aims include: 1) To advocate for and support a collaborative policy environment where the rights to the survival, development, protection and participation of children are realized according to the obligations and responsibilities assumed by Myanmar as a State party to the CRC and the CEDAW; 2) to influence the policies of decision-makers and practices of civil society by promoting awareness and knowledge about children's rights through building the capacity of members and developing materials. Participation in the Child Rights Working Group is open to all UN agencies and NGOs working in Myanmar on children's issues.

⁹⁰ UNICEF Myanmar and Community and Family Services International. 2001, February. 'A Study of the Psychosocial Needs of Children in Need of Special Protection and Social Work Capacity in Myanmar.' (Unpublished.) Yangon: UNICEF Myanmar.

⁹¹ UNICEF Myanmar and Department of Social Welfare. 2005, September. 'Workshop Report on Standards of Care and Protection for Children in Institutions in Myanmar.' Yangon: UNICEF Myanmar.

⁹² Long, C. 2005. 'Opening Keynote Address.' National Seminar on Social Work and Child Protection. 8-10 November. Yangon.

⁹³ UNICEF Myanmar and the Ministry of Social Welfare, Relief and Resettlement (MSWRR). 2005. 'Draft Action Plan for Social Work and Child Protection.' Workshop paper. National Seminar on Social Work and Child Protection. 8-10 November. Yangon. (Unpublished.)

In Myanmar, networking between and among various government, non-government, international and UN agencies is demonstrated at the national level. As a member of ASEAN, Myanmar also cooperates with other members by participating in meetings, workshops and seminars sponsored by ASEAN and UN agencies.

In the field of child welfare, UNICEF Myanmar plays an important role in influencing and facilitating collaborative networking among partners. It has consistently involved partners in the design and implementation of activities such as development of plans, seminars and workshops and other capability-building activities, and research studies. UNICEF continues to provide technical support to the Department of Social Welfare and assists in identifying and sharing good practices and lessons learnt across the region.

7.1.5 Advocacy and social mobilization

Several advocacy and social mobilization efforts had been done by the Government in partnership with UNICEF, local and international NGOs, communities and children. Advocacy activities to promote children's rights and Child Law have been undertaken at the national, state, divisional and township levels through training programmes and the mass media. Since 1997, the NCRC, the Department of Social Welfare and UNICEF have published and distributed copies of the Child Law (also in English) as well as brochures, posters, hand-outs and table calendars with CRC-related messages.⁹⁴

Efforts have been made to make the CRC and the Child Law widely known, but greater effort is needed to translate awareness into action among a wider base of children's rights advocates, particularly at the family and community levels. The fulfilment of children's rights depends also on the actions of families and communities, hence a need for a mix of culturally-appropriate advocacy and mobilization activities to facilitate behaviour choice and participation and to leverage resources for children's programmes at the family and community level.

7.1.6 Lack of data

A significant challenge is the lack of sufficient reliable data for planning, monitoring and evaluation. As noted earlier, data on the number and situation of children in need of special protection and children in residential care facilities cannot be ascertained. Research, monitoring and evaluation need to be strengthened in order to establish reliable and consistent data for advocacy, planning and monitoring progress towards goals that benefit children.

7.2 Recommendations

The great diversity and uniqueness of Myanmar's land and people, its demographic dimensions, poverty and the situation of children must all be considered in policy formulation, planning, development and delivery of programme interventions to children without primary caregivers.

Some practical possibilities or action points for future direction include a range of strategies such as policy review and formulation, programme development, improving service delivery (ethnically and culturally relevant interventions), setting of standards, advocacy, capacity-building, networking and research. Many of the recommendations below reflect proposals from available data sources such as the draft action plan from the 2005 National Seminar on Social Work and Child Protection, concluding observations of the UNCRRC, and recommendations of previous studies.

7.2.1 Policy

- Undertake a thorough review and reform of existing laws and procedures to reflect or harmonize with the CRC and other international instruments affecting children and to ensure enforcement.
- The Department of Social Welfare (under the MSWRR), the Ministry of Health and the courts to review jointly the current adoption legislation and practices with support from UNICEF to ensure protection of adopted children in line with the CRC.
- Review policy of receiving children in institutions to prevent placement and drift in care.

⁹⁴ Myanmar, Government of. 1995. Op. cit.

- Develop national policies, strategies and an action plan to support shifting from residential care to family and community-based forms of care.
- Ensure that policies in the CRC, CEDAW, the Millennium Development Goals, and World Fit for Children of which Myanmar is a signatory are reflected and/or mainstreamed into policies and plans for children at all levels.

7.2.2 Standards

- Finalize minimum care standards in partnership with concerned stakeholders, building on the draft standards of care and protection⁹⁵ discussed at the Workshop on Minimum Standards of Care and Protection for Children in Institutions in September 2005.
- Intensify the quality of care through registration, licensing, accreditation of social welfare and development agencies and monitoring of standards.

7.2.3 Programmes and service delivery

- Develop and undertake community-based projects or programmes to support and empower vulnerable families and communities, covering livelihood and micro-credit schemes, integrated early childhood care and development, family counselling, support groups, and parenting programmes.
- Develop and expand local or domestic adoption and foster care programmes for young children up to six.
- Conduct pilot projects to be used as models or alternatives to institutionalization, particularly foster care for young children, as a resource for children in need of care and to support family preservation and reunification programs. These can be done in selected areas in partnership with local and international partners. If the results are favourable, replicate and expand these initiatives, bearing in mind the cultural context.
- Upgrade the functioning of existing residential care, mainly through staff training and introduction of case management and quality care standards.
- Institute a case management system to ensure timely and appropriate discharge or movement of cases. Put into effect the Department of Social Welfare's guidelines on care and treatment in institutions (admission, assessment, care and treatment, evaluation, discharge, after-care and termination). A case review of all children in care could be started in government residential nurseries as a basis for appropriate action such as reunification with families or adoption.
- Restructure large institutions into smaller family-like homes of eight to 10 children or introduce a arrangements for smaller groups of children to live together.
- Support increased participation among children and young people so that they are active partners in their own protection. Organize assemblies, camps, art and cultural activities, theatre groups, drama and puppet workshops and life-skills programmes to raise awareness and provide information on children's rights.
- Adopt a rights-based life-cycle approach to child protection to ensure comprehensive and convergent service delivery.

7.2.4 Networking

- Enhance partnership and collaboration between and among ministries and partners to support implementation of policies and strategies for the protection of children and to improve planning and development of appropriate interventions (such as sharing of technical and material resources).
- Maximize the existing network of NGOs (for example, the Child Rights Working Group and the Juvenile Justice Inter-Agency Working Group) engaged in multi-disciplinary programmes with vulnerable children to enhance service delivery.

⁹⁵ UNICEF Myanmar. 2005, April. 'Draft of a Study Report on Institutions for Children Deprived of Parental Care in Myanmar.' (Unpublished.) Yangon: UNICEF Myanmar.

- UNICEF, in partnership with the Department of Social Welfare, to continue to promote consensus- building among key agencies and professionals in the child welfare system.
- Intensify cooperation and links at the national, regional and international levels.

7.2.5 Advocacy and social mobilization

- Embark on a systematic public information and education campaign to raise awareness about the rights of children and the essential role of the family and the community in protecting such rights.
- Develop a mix of culturally-appropriate advocacy and social mobilization activities to facilitate positive behaviour choice and participation and to leverage resources for children at the family and community levels.
- Strengthen and support social mobilization efforts at a community level.
- Accelerate mobilization of local and international businesses as social allies.
- Advocate for the adoption of minimum standards for the care of children in need of special protection.

7.2.6 Capability-building

- Continue to build the internal capacities of the NCRC to raise awareness and contribute to the care and protection of children.
- Strengthen and/or build the capacity of families and communities as the front line for the protection of children. Parents and community members could be trained, for example, to take leadership roles and to teach and support mothers, families and children in their neighbourhoods.
- Undertake sustained skills-building initiatives for professionals, para-professionals and caregivers through formal and informal training activities. Forums such as the National Seminar on Social Work and Child Protection in 2005 are good venues for sharing and addressing issues facing vulnerable children.
- Develop professional social work competencies at the national, state, division and township levels in accordance with the action plan adopted at the seminar noted above.
- Develop and implement a university-level social work diploma in partnership with schools of social work in the region, including those in the Philippines, Singapore and Thailand.
- Undertake exchange visits/study tours to learn and share experiences.

7.2.7 Research

- Review and consolidate the findings of studies and surveys on children deprived of parental care as the basis for developing a comprehensive and integrated strategic plan for children at risk of being separated from their families and/or without primary caregivers.
- Disseminate and utilize the results and findings of studies and surveys. Such studies provide a rich source of data that can inform policy formulation, advocacy and social mobilization, programme development, networking and capacity-building, and improve service delivery.
- Identify and document good practices for replication and/or to increase the impacts of programmes and their sustainability, and to build locally-relevant 'theories' or 'knowledge bases'. Documentation can be in the form of research or technical reports, case studies and audio-visual materials.
- Develop a priority research agenda, including operational research on programme effectiveness, and support the development of participatory research methods.
- Conduct studies on the impact of programme interventions and methodologies, and develop and test a core set of indicators specifically related to children in need of special protection.
- Establish a user-friendly data-management and information system on children in need of special protection. Uses could include advocacy, policy formulation, planning, programme development, improvement of service delivery, and monitoring and evaluation.

7.3 Concluding statements

As in many developing countries, the challenges facing the child welfare system in Myanmar are manifold. Poverty is the underlying cause, weakening the social fabric and eroding the society's safety nets. Inadequate social services for vulnerable children, particularly those without primary caregivers, compounded by limited technical capacity and scarce financial resources, pose a great challenge to deinstitutionalization. Moving away from institutionalization in Myanmar will require significant effort, given the reliance on residential care and current policies and attitudes. Much remains to be accomplished before the country's child welfare system can fully realize the goal of permanency planning for children in need of special protection.

The problem of institutionalization has broad implications. Poverty results in families and children being marginalized, and this problem needs to be tackled at all levels. The phenomenon of children without primary caregivers is a result of interrelated factors involving the family, the community and society. It is clear that no plan for children can succeed without being closely linked to these various contexts at all levels.

An array of services – a continuum of services – is needed to reinforce, supplement, or substitute the functions that parents have difficulty in performing. Keeping children within their own families offers the best environment for their healthy development and well-being. When a family neglects, abuses, exploits and/or maltreats children, however, the removal of a child may be necessary to ensure their safety and protection. This brings to the fore the need for alternative care options, particularly family-based settings, that meet quality standards of care. While the CRC does not specify a particular model of alternative care, research studies show that large institutions seldom afford positive experiences for children. Foster care, adoption and other forms of family placement can offer more fulfilling relationships and opportunities for children without primary caregivers.

Any interventions to support a child cannot address his or her needs alone, but must respond in the context of the child's environment – their family, community, society and culture. All programme interventions should promote strengthening the role and ability of parents, the family and the community in caring for their children. Further, no one agency and no one professional can provide all the services needed by children. A multidisciplinary approach is required.

Taken as a whole, the results of the study indicate some positive progress and initiatives for protecting children without primary caregivers in Myanmar. These include studies completed on vulnerable children, the continuing development of standards of care, and a series of capability-building activities. Also, the family/cottage home in Yangon and the traditional practice of accommodating orphaned children in the extended family provide a foundation for further developing culturally appropriate models of family- and community-based care, including foster care for young children. The Department of Social Welfare, in partnership with local and international agencies and organizations, as well as professionals and para-professionals working in the child protection system, have been working hard to improve the situation of children in need of special protection, particularly those without primary caregivers. Their efforts indicate that the work with institutions to reintegrate children (deinstitutionalization) is progressing, albeit slowly.

In general, the present initiatives undertaken by the Government (mainly through the Department of Social Welfare) with support from UNICEF, international NGOs and other stakeholders are favourable for developing alternatives to institutional care for children without primary caregivers. Future actions can draw and build on these initiatives, as well as good practice and lessons learnt from across the region.

REFERENCES

- Htwa, S. 2004. 'Statement by H.E. Major General Sein Htwa, Minister for Social Welfare, Relief and Resettlement.' Fifth Ministerial Meeting on Social Welfare and Development, 14-17 December. Bangkok.
- Lahiri, S.C. 1951. *Principles of Modern Burmese Buddhist Law*. Fifth edition. India: Eastern Law House.
- Long, C. 2005. 'Opening Keynote Address.' National Seminar on Social Work and Child Protection. 8-10 November. Yangon.
- Mckee, N. 1992. *Social Mobilization and Social Marketing in Developing Communities: Lessons for Communicators*. Penang: Southbound.
- MSWRR and UNICEF. 2005, November. 'Draft Action Plan for Social Work and Child Protection'. National Seminar on Social Work and Child Protection. Yangon.
- Myanmar, Government of. 1993. *The Child Law of 1993*. Yangon: Government of Myanmar.
- Myanmar, Government of. 1995. 'Initial reports of States parties due in 1993: Myanmar'. CRC/C/8/Add.9. UNCRC. 18 September 1995.
- Myanmar, Government of. 2002. 'Second periodic reports of States parties due in 1998: Myanmar'. UNCRC. CRC/C/70/Add.21. 5 November 2003.
- Myanmar, Government of. 'Relief and Rehabilitation.' (Brochure.) Yangon: Ministry of Social Welfare Relief and Resettlement.
- Myanmar, Government of. 'Residential Nursery Shwe Gon Daing'. (Brochure.) Yangon: Ministry of Social Welfare Relief and Resettlement.
- Myanmar, Government of. 'Training School for Girls'. (Brochure.) Yangon: Ministry of Social Welfare Relief and Resettlement.
- UNCRC. 2004. 'Consideration of Reports Submitted by States Parties Under Article 44 of the Convention. Concluding Observations: Myanmar.' UNCRC. June 30.
- UNICEF. 2006. *State of the World's Children 2006*. Geneva: UNICEF.
- UNICEF EAPRO. 2005, November. 'Draft Report of Alternative Care Workshop'. Bangkok: UNICEF EAPRO.
- UNICEF Myanmar. 1998, March. 'Consultancy Report on Situation of Institutionalized Children in Yangon.' Yangon: UNICEF Myanmar.
- UNICEF Myanmar. 2001, April. *Situation Assessment and Analysis: Children and Women in Myanmar*. Yangon: UNICEF Myanmar.
- UNICEF Myanmar. 2002, October. *A Report on: A Collaborative Rapid Assessment of Non-Department of Social Welfare Institutions and Informal Arrangements, caring for Children and adolescents concerning capacities and educational needs*. Yangon: UNICEF Myanmar.
- UNICEF Myanmar. 2005, April. 'Draft of a Study Report on Institutions for Children Deprived of Parental Care in Myanmar.' (Unpublished.) Yangon: UNICEF Myanmar.
- UNICEF Myanmar and Department of Social Welfare. 2005, September. 'Workshop Report on Standards of Care and Protection for Children in Institutions in Myanmar.' Yangon: UNICEF Myanmar.
- UNICEF Myanmar and Community and Family Services International. 2001, February. 'A Study of the Psychosocial Needs of Children in Need of Special Protection and Social Work Capacity in Myanmar.' (Unpublished.) Yangon: UNICEF Myanmar.
- UNICEF Myanmar and the Ministry of Social Welfare, Relief and Resettlement (MSWRR). 2005. 'Draft Action Plan for Social Work and Child Protection.' Workshop paper presented during the National Seminar on Social Work and Child Protection. 8-10 November. Yangon. (Unpublished.)
- UN Information Service. 2004. 'Committee on Rights of the Child Considers Second Periodic Report of Myanmar.' Press release, 26 May. UNIS.
- WHO. 2005. 'Myanmar Tsunami Situation Report.' Yangon: WHO Myanmar Country Office. January 27.

APPENDIX

4

THAILAND

1 Introduction

This report is part of a four-country study to assess appropriate alternative care choices for children without primary caregivers commissioned by UNICEF East Asia and the Pacific Regional Office (EAPRO). The data for Thailand in this report is limited because a thorough study on the situation of children is to be conducted by UNICEF Thailand. As such, the two consultants did not conduct interviews with key government informants or visit institutions in Thailand. The data presented here is based solely on a desk review of materials available online and a three-day country visit, during which time the consultants met briefly with Sanphasit Koompraphant, the Director of the Centre for the Protection of Children, and reviewed materials such as Thailand's Child Protection Act 2003 and other relevant laws and policies. The review of all laws relevant to determine existing policies and implementing guidelines for child-welfare services was limited because many have not been translated from Thai.

The report is presented in seven sections. After this introduction, the second section gives a brief profile of Thailand to provide the context. The third section outlines the policy framework at the international and national levels. The fourth gives an overview of the situation of children in Thailand while the fifth assesses interventions for alternative care for children without primary caregivers, with particular reference to children's welfare after the 2004 tsunami disaster. The sixth section looks at some structures and mechanisms for service delivery. Finally, concluding statements and recommendations are presented.

2 Country profile

Thailand is one of the countries hit by the tsunami disaster on 26 December 2004. Thailand's government is widely acknowledged to have led an effective response by extending immediate and focused relief operations for the survivors, processing and identifying many of those who died, and also dealing with the impacts on a large number of foreign nationals affected by the disaster.

Thailand's system of government is a constitutional monarchy. The Prime Minister is the head of government and the King is the head of state. The legislature system and structure is bicameral, comprising a House of Representatives (500 members) and a Senate (200 members).

Ethnic groups in Thailand include Thais (75 per cent), Chinese (14 per cent), Malays (3 per cent) and others such as Khmer, Hmong and Karen (8 per cent). The official language is Thai while other languages spoken by people in Thailand include English, Chinese, Malay, Lao and Mon-Khmer. Eighty-five per cent of the population practises Buddhism (Theravada). The remainder are Muslim (7 per cent), Christian (2 per cent), non-religious (2 per cent) and undifferentiated (4 per cent).

Although state enterprises play a significant role in some sectors, the economy is market-oriented with a strong tradition of private enterprise. Gross domestic product growth in 2004 was estimated to be 6 to 7 per cent. According to the National Statistics Office, about 40 per cent of all employed workers are employed in the agricultural sector, although agriculture accounts for about 10 per cent of GDP.

Thailand occupies a land area of 513,115 square kilometres, and has an estimated population of 65.4 million as follows:⁹⁶

- 0 to 14 years: 15,621,934 (23.9 per cent)
- 15 to 64 years: 44,927,392 (68.6 per cent)
- 65 years and over: 4,895,045 (7.5 per cent)
- Median age: 30.8
- Population growth rate: 0.87 per cent
- Birth rate: 15.7 births/1,000 population
- Death rate: 7.02/1,000 population
- Infant mortality rate: 20.48/1,000 live births
- Life expectancy at birth: 71.57 years (69.38 for men and 73.88 for women)

⁹⁶ Bangkok Post, The. 2005. 'Facts & Figures'. In *Bangkok Post Economic Mid-Year Review*. Bangkok: *The Bangkok Post*.

Life expectancy is high by world standards, while the infant mortality rate is low. The population is expected to double only in 73 years, as a result of the country's long history of family planning. Based on a 2003 estimate, the average number of children per woman is 1.9.

The accessibility of basic services for most of the population is very good. Immunization coverage has been maintained at 95 per cent for five years. In the past decade, the under-five infant mortality rate has been reduced by 31 per cent for acute respiratory infections and 95 per cent for measles.⁹⁷

Moderate to severe malnutrition is below one per cent and the incidence of low birth weight is 8.5 per cent. Iodized salt reaches 93 per cent of the population. As a result, iodine deficiency disorders have been virtually eliminated. There is almost universal access to safe drinking water and sewage disposal.⁹⁸

Nevertheless, there is growing concern about increasing numbers of children who are at risk and in need of special protection. Estimates of the number of children engaged in prostitution vary from 20,000 to 30,000. A government estimate reveals that 5 per cent of children in prostitution are boys. Although child labour has reportedly declined from about 2.6 million in 1992, it is estimated that about 1 million children were still engaged as child workers in the first quarter of 1999.

The prevalence of HIV among the 900,000 women who become pregnant each year is 1 to 2 per cent. The Thai Working Group on HIV/AIDS Projections estimates that 24,662 children were living with HIV/AIDS in 2005. In addition, 3,006 new HIV cases and 2,697 new AIDS cases in children are estimated to have occurred during 2005. About 320,000 children were orphaned through loss of their fathers, 84,000 had lost mothers and 30,000 had lost both parents, according to 2005 estimates. Orphans due to HIV/AIDS account for 34.8 per cent of the total number of orphans in Thailand.⁹⁹

As with other countries in the region, Thailand faces social problems such as corruption in government, business and religious institutions, as well as problems arising from drugs and drug trafficking, tropical diseases in rural areas (malaria, dengue fever and cholera), and so on. The gap in living conditions between the rich and the poor as well as between city and countryside contribute to the pervading social problems.

3 Policy framework

3.1 International

Thailand has been active in becoming a party to international human rights instruments and has already acceded to five core United Nations human rights instruments:¹⁰⁰

- The Convention on the Rights of the Child (CRC) on 26 April 1992 and subsequently its two Optional Protocols (on the involvement of children in armed conflict, and on the sale of children, child prostitution, and child pornography);
- The International Covenant on Civil and Political Rights on 29 January 1997;
- The International Covenant on Economic, Social and Cultural Rights on 5 December 1999;
- The Convention on the Elimination of All Forms of Discrimination against Women on 8 September 1985 and its protocol on 20 December 2000; and
- The International Convention on the Elimination of All Forms of Racial Discrimination on 28 January 2003.

Thailand has also ratified the following international instruments:¹⁰¹

⁹⁷ UNICEF. 'Thailand at a Glance.' UNICEF.

⁹⁸ Ibid.

⁹⁹ Thailand Country Report to the East Asia and Pacific Regional Consultation on Children and HIV/AIDS, March 2006.

¹⁰⁰ Thailand, Government of. 2005, August. 'Major Foreign Policy Statements.' Bangkok: Ministry of Foreign Affairs.

¹⁰¹ Ibid.

- ILO Convention No. 29 on Forced Labour (in 1969), ILO Convention No. 182 concerning the worst forms of child labour (in 2001), ILO Convention No. 138 concerning the minimum age for admission to employment (in 2004);
- The Hague Convention on the Protection on the Civil Aspects of International Child Abduction (in 2002) and the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption (in 2004); and
- The UN Convention on Organized Transnational Crimes (signed in 2000) and the Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol against Smuggling of Migrants by Land, Sea, And Air (signed in 2003).

3.2 National

The Thai Constitution of 1997, Section 53, is explicit about responsibility for children and young people with no parent/s or guardian, who are entitled to care and education provided by the State. The constitution deems it to be the State's duty to provide children with facilities for education, health and protection in many areas and without discrimination. The Department of Public Welfare is the government office responsible for the provision of services to children under 18 living in difficult circumstances. It undertakes three types of services: placing children in institutions, with families, and in foster homes. The principle of the "the best interests of a child" is to be taken into account in relevant policy and legislative development.¹⁰²

Likewise, a child's right to know and be cared for by his or her parents is supported by two laws: Section 25 of the Official Information Act 1997 gives a person the right to access personal information held in government records; and Section 14 of the Civil Registration Act 1991 stipulates that the person who appears in the records or a representative of that person, if still a child, may request the registrar to copy and certify his or her registration records.¹⁰³

Although Thailand is not a signatory to the Convention on the Status of Refugees, the Government provides protection to a limited category of asylum-seekers based in nine refugee camps along the Thai-Myanmar border. People born in Thailand who do not have at least one parent with Thai nationality may be permitted to apply for Thai nationality on an individual basis under Section 2 of the Nationality Act 1992. Such people include children of undocumented migrants, people residing temporarily in the country, and children of displaced persons or minority groups. Application for nationality is difficult however and Thai citizenship is unlikely to be granted to children who do not have at least one parent holding Thai citizenship.

Other preventive educational and social measures include the following:

- The Eight National Plan on Children and Youth Development states as a goal that all parties in society participate in child development based on the CRC and that all children benefit equally. Emphasis is placed on developing the capacity of families, communities and society to maximize the development potential of children and young people.
- Thailand's draft National Strategy and Plan of Action for a World Fit for Children for the years 2005-2015 is based on the framework of the final document adopted by the General Assembly Special Session on Children in 2002, adding certain aspects pertinent to the situation in Thailand. Public hearings on the draft are finished and the document was expected to be ready for submission and approval by Cabinet of Ministers in 2005.
- Under the newly established Ministry of Social Development and Human Security, the Office of Welfare Promotion and Protection of Children, Youth, the Vulnerable, the Disabled and the Elderly was set up to promote and protect the rights and welfare of children, among others. The office was transformed from the National Youth Bureau, formerly under the Office of the Prime Minister. The office promotes and protects children's welfare and rights.

Several measures such as law reform and international cooperation have been continuously introduced to address crimes and violations against children. These include the enactment of the following:

¹⁰² Thailand, Government of. 2004. 'Second periodic report of States parties due in 1999: Thailand.' UNCRC. CRC/C/83/Add.15. 31 May 2005.

¹⁰³ Ibid.

- The Act Concerning Measures for Prevention and Suppression of Trafficking in Women and Children to combat organized trafficking syndicates nationally and internationally.
- The Prevention and Suppression of Prostitution Act to toughen the penalties for people who sexually exploit children under 18, regardless of consent.
- An amendment to the Criminal Procedure Code 1999 concerning pornography to cover offences committed against boys as well as girls.
- The 20th amendment of the Criminal Procedure Code regarding the testimony of a child under 18 who is the injured person, the witness or the accused must be conducted in an appropriate place in the presence of a psychologist, a social worker or a prosecutor.
- The Child Protection Act 2003, which came into effect on 30 March 2004, which is intended to provide protection for children from all forms of abuse, exploitation, violence and gross negligence by clearly stipulating that any child under 18 is protected by the State.

Family and child-welfare policies and programmes take into account the principle of the best interests of the child. These also contain measures to guide families on their responsibilities as stipulated by law.¹⁰⁴

- The 1997 constitution stipulates that children and young people are entitled to protection, liberties and other fundamental rights and basic services from the State.
- Section 67 of the 1994 Tambon (sub-district) Council and Tambon Administration Organization Act provides the responsibility to promote development in support of women, children, young people and the elderly.
- Section 1,564 of the Civil and Commercial Code states that “parents are bound to maintain their children and to provide proper education for them during their minority”.
- The Children and Youth Development Plan under the Eighth National Plan 1997-2001 provides a framework for a strategy to facilitate the creation and maintenance of an environment conducive to the healthy development of children. A family and community approach is embraced.

4 The situation of children

Thailand’s national policies and compliance with international laws and measures reflects its concerns to protect children. This was evident in the progress made by Thailand to comply with the CRC, as noted in the country’s first and second reports submitted to the Committee on the Rights of the Child. The CRC’s principles with respect to human dignity, the best interests of children, non-discrimination, protection of children against violence, family unity, strengthening of the community and gender equity were incorporated into the 1997 national constitution and the national plan on children and youth development, which is included in national economic and social development plans.

The national budget gives a high priority to social development, which received 44 per cent of the budget in 2000.¹⁰⁵ Of this allocation, 26 per cent went to education, 10 per cent to social services and 8 per cent to health.¹⁰⁶ The educational system is said to be comprehensive, ranging from kindergarten to university and adult education. Free compulsory education is provided for children aged from six to nine. About 93.5 per cent of primary-school-aged children are enrolled in schools, of whom 79 per cent are likely to proceed to secondary education. The literacy rate is high at 96 per cent. Women’s literacy is slightly lower (94.6 per cent) than that of men (97 per cent).

Thailand’s reports to the Committee on the Rights of the Child note that the quality and assurance of social services provided to children still needs improvement. Emphasis needs to shift from input in terms of budget and personnel to quality of process and service delivery. Budget allocations do not necessarily translate into expenditure however and more analysis is needed to determine what proportion of the allocated budget is expended in the social sector in reality.

¹⁰⁴ Ibid.

¹⁰⁵ National Youth Bureau, Office of the Prime Minister and UNICEF Thailand. 2000. *Children in Thailand 1990-2000: Country Report on the Follow-up to the World Summit for Children*. Bangkok.

¹⁰⁶ Ibid.

The State delivers basic services to children and families through government agencies, NGOs and networks and collaborative partnerships among agencies. Assistance to help a child stay with his or her family include counselling for the child and the family, funds to start income-generating activities, child-support funds and family welfare services, assistance for health-care and education costs, and other forms of financial assistance.

The core of the traditional family in Thailand remains the mother. As a Thai proverb notes: “Without a father, a child’s life will be hard; it will have no direction. Without a mother, the situation is even worse. It will be like a sinking boat or a broken ferry.”¹⁰⁷ Traditionally, a child whose mother died during childbirth was adopted by the mother’s relatives since the child was considered to belong to the mother’s kinship group and had rights to its land and associated resources. After a mother died, her older children (from about 12 years) would care for themselves and younger siblings. In times of need, a mother’s kin group would provide a safety net, fulfilling the children’s basic needs and in line with the best interests of the child and kin group.

In Thailand, women are primarily responsible for child care and related decision-making. Studies show that urban mothers (be they blue- or white-collar workers) assess the following ‘hierarchy of resorts’ to determine the child-care options open to her:¹⁰⁸

- The first choice is to provide the care herself either by not working or by taking her child to work.
- The second option is to leave the child with other family members.
- The third option, if relatives are not available, is to use either a trained or untrained babysitter.
- For wealthier families, a variety of alternative child-care centres are available. Some are adequate while others are disreputable.

Most mothers do not want non-relatives as alternative carers for their children. If the above options are not available, the last resort is to send a child to live with relatives in the mother’s natal community.¹⁰⁹

5 Interventions for alternative care for children without primary caregivers

Although out-of-home care is a last resort, the Department of Public Welfare has established various homes to take care of neglected children, orphans, street children and other children who are unable to live with their families. Residential care for children is categorized as: Children’s homes for boys, for girls or for babies; and reception home and child-welfare protection homes to accommodate children in conflict with the law, misbehaving, abused and/or exploited. Services include the provision of basic necessities, rehabilitation, medical care, education, occupational training, ethics and morality education, job procurement, preparation for discharge and follow-up when a child leaves an institution. Several government agencies and NGOs assist in this service.

The Child Protection Act 2003 notes the following child-care facilities:

- A nursery refers to a place that provides care for at least six children aged no more than six who are not related by kinship to the owner or operator of the nursery.
- A gatehouse is a place where a child is temporarily sheltered and cared for with the intention of investigating the situation of the child and his or her family so as to develop guidelines for appropriate provision of assistance and protection.
- A welfare centre is a place that provides care and seeks to address development needs for children over six who are in need of assistance.
- A safety protection centre is a place that provides education, discipline and occupational training to a child who is in need of protection in order to correct his or her behaviour, and provide treatment and rehabilitation for the child’s physical and mental conditions.

¹⁰⁷ UNICEF Thailand. 1997, December. *Children and their Families in a Changing Thai Society*. Bangkok: UNICEF Thailand.

¹⁰⁸ Punnabutr, C. 2001. ‘Current Trends and Best Practices on Alternative Parental Care’. In Proceedings of the 6th Global Consultation on Child Welfare Services. Philippines: Inter-Country Adoption Board (ICAB). 29-31 August.

¹⁰⁹ UNICEF Thailand. 1997. Op. cit. p. 49.

- A development and rehabilitation centre is a place, school, institution or centre established for the purpose of treatment and rehabilitation of the physical and mental conditions of a child who is in need of special welfare assistance or protection, as well as providing the child with education, guidance and occupational training.
- A remand home refers to a Central Observation and Protection Centre for children and young people in conflict with the law, under the Juvenile and Family Division of Provincial Courts established under the Act Instituting the Juvenile and Family Courts and the Juvenile and Family Procedures 1991.

In 1990, the Department of Public Welfare set up a pilot programme to help foster families in land settlement areas under the department's jurisdiction. Coordination, training, seminars and field trips have been held. Familiarization is provided for foster families and children before placement, and follow-up reviews and home visits are conducted. As of July 2001, the department was supervising 1,143 foster families.¹¹⁰ Most were related to the children, whose parents had died. The department also subsidizes select foster families with cash allowances for basic necessities. These families are also visited regularly by a social worker. Pilot foster families continue to take in children.

Placement for adoption of children without primary caregivers is considered appropriate only when children are abandoned or voluntarily given up by their parents as the most appropriate option for a child's welfare. Families in Thailand are given the first option to adopt a child and most adoptions are domestic adoptions by a child's relatives. There are fewer inter-country adoptions, which mostly involve abandoned children.

The 2004 tsunami had a significant and disturbing impact on the children who were directly affected by it. The Government offered a timely and effective response to mobilize resources (according to news reports and updates by concerned agencies). The Government worked with international organisations to provide relief and recovery interventions to the affected population, on both the material and the psychological level. The Government promptly provided health services and relief payments, helped to build new homes and offered its military assets to assist the whole tsunami-affected region. A Southern Disaster Victim Relief Collaboration Centre was established in Phuket, supported by a Relief Centre at the Department for Disaster Prevention and Mitigation in Bangkok. Crisis management centres were set up in all six affected provinces, coordinated by the Phuket centre. A donation centre received and coordinated cash donations and essential supplies while a 24-hour call centre helped relatives make contact with survivors.¹¹¹

A child protection sector analysis by UNICEF reveals that even children who had not lost their parents were accommodated in temporary shelters, an understandable response in the immediate crisis.¹¹² It notes however that it would not be in the best interests of these children to remain in such shelters for a prolonged period. A return to normalcy for parents and their children would be more difficult if appropriate intervention was not extended to primary caregivers as well as their children. UNICEF recommended resources and interventions be invested on these families.

¹¹⁰ Punnabutr, C. Op. cit.

¹¹¹ UN Thailand. 2004. 'Tsunami in Thailand.' UN. 26 December.

¹¹² UNICEF Thailand. 2005, February. *Child Protection Sector Analysis*. Bangkok: UNICEF Thailand.

Table 5: Child protection analysis data on tsunami-affected children

Province	Children without one or both parents* or a caregiver	Children in temporary shelters**	Children psychologically affected**
Krabi	130	200	
Phang Nga	591	1,800	
Phuket	186		
Ranong	98	–	
Satun	3	–	
Trang	38	–	
Other*	413	–	–
Total	1,459	2,000	50,000

* Parents who died in tsunami-hit provinces but resided in other provinces

** UNICEF estimates

Source: Ministry of Social Development and Human Security

Only 15 per cent of the children orphaned by the tsunami in Thailand now live with non-relatives or with a relative previously unknown to the child, according to UNICEF.¹¹³ Registration of these children was slow, which led UNICEF to assist the Government in providing training schemes in social work skills, computerized registration systems and the monitoring of vulnerable children. The child protection analysis gives brief but substantial data that is a good starting point for targeted interventions for children without primary caregivers.

6 Structures and mechanisms for service delivery

Based on a desk review of available child welfare documents and laws, the State assumes a reasonable degree of control and responsibility for social-welfare programmes and structures in Thailand, while also delegating responsibilities to various stakeholders through cooperation, networking, partnerships among various resource providers. Conscious effort to engage the participation of service recipients can be seen in the government and NGO reports to the Committee on the Rights of the Child.

The Child Protection Act 2003 establishes lines of authority and levels of decision-making as well as procedures and activities for the adoption of children. It nominates the Child Adoption Centre of the Department of Public Welfare as the sole government agency responsible for adoption of children in Thailand. Inter-country adoptions are dealt with by four NGOs that are licensed to work with the Child Adoption Centre. The department or any of these NGOs is responsible for matching a child with an approved prospective foreign adoptive parent. Prospective adoptive parents are provided with photos and information about the background and health of the child. Once they accept a proposed child, the application is reviewed by the Child Adoption Board. If the board finds the prospective adoptive parents suitable, the case is referred to the Minister of Labour and Social Welfare for official authorization. Thailand recognizes and makes use of a multidisciplinary team and professional social workers in arranging inter-country adoptions.

UNICEF Thailand's report following up on the World Summit for Children notes that as the work of ministries in Thailand is decentralized to sub-district administrative organizations, local officials need to be informed and guided on the relationship between children's rights, child development and services for children and concerned parties.¹¹⁴ This training should refer also to budget and resource allocations to assure maximum benefits accrue to the children concerned.

Sanphasit Koompraphant, Director of the Centre for the Protection of Children's Rights, a local NGO, underscores the following positive points in relation to the Child Protection Act and child protection services in Thailand:

¹¹³ UNICEF Thailand. 2005. 'UNICEF's work in Thailand in response to the tsunami.' Bangkok: UNICEF Thailand. 23 June.

¹¹⁴ National Youth Bureau, et al. 2000. Op. cit. pp. 53-54.

- Disciplinary standards and licensing;
- Working together with other professionals for children's and family services, case management, case conferences and joint training;
- Building up a forum for disciplinary and multidisciplinary seminars, workshops and conferences; and
- Professional and multidisciplinary training.

The Child Protection Act spells out the composition and qualifications expected of members of child protection committees. Direct service delivery seems to be undertaken equally by government and non-government agencies. Variations in types of child-care options appear to be based on the age and nature of care needed by a child. General guidelines and procedures for the care and protection of children are outlined in the Act. Sanctions or penalties for violations are also indicated, although these are rather light.

The NGO report on the CRC's implantation in Thailand makes significant recommendations for improving the delivery of social services:¹¹⁵

- The State should urgently take a holistic approach on family and child development by highlighting family roles and responsibilities, training on parenting skills, promoting networks of parents who will support each other, encouraging networks of children and social safety nets to take part in family and child development, improving social-welfare schemes for families in need, expanding family counselling services and educating the public on the Act on Social Welfare Management B.E. 2546 and the Act on Child Protection B.E. 2546.
- In promoting good physical and mental health of children 0-5 years age, urgent measures should include the preparation of newly married couples on parenting skills and pre- and post-natal care, promotion of good nutrition of mothers and children, provision of services and counselling on nutrition and micronutrients, control of iron-deficiency syndrome in pregnant women and iodine-deficiency disorders among children, and training of child health development for personnel involved.
- Common measures for children in need of special protection should include strengthening childrearing knowledge and skills for families of children at risk as well as socio-economic support and counselling services for families in crisis. More alternative families should be identified to replace original families that cannot fulfil their duties towards the child.
- Welfare should be provided together with development services targeting poor families, families at risk, and families with AIDS or affected by AIDS and families with very old caregivers. Basic services for children should focus on proactive and preventive actions by detecting children at risk and intervening before they fall into more severe situations. Access should be improved to ensure that families and children can get to it when needed.
- Personnel should increase in number and quality, and training be offered to ensure their ethical conduct and awareness of children's rights. Most importantly, the data-collection system and development of indicators on children in need of special protection for the purpose of planning and monitoring must be improved.
- The Government should also establish a clear, effective and regular system of evaluation and assessment of the impact of laws, procedures, policies and programmes implemented for the promotion and realization of children's rights and ensure that children and youth groups, NGOs, professional groups and other relevant entities are involved in this internal or self-monitoring system. Results and outcomes of these evaluations and assessments should be used to adjust and further improve the existing legislation, procedures, policies and programmes in order to take further adequate actions.

7 Concluding statements

Given the limitation of the data gathered for this assessment, the following observations and recommendations are offered.

¹¹⁵ NGO Group for the CRC. 2005, June. 'Thailand NGO Report on the Implementation of the Convention on the Rights of the Child 2000-2004.' UNCRC.

As the UNICEF analysis suggests, it is essential to identify caregivers of surviving children and to assess their capacities to care for children.¹¹⁶ It is important to determine the assistance required by families who have lost their means of livelihood and may not have the means to care adequately for an extra child. A review and evaluation of child protection objectives for January-July 2005 serves as basis for further planning and programme intervention. The review calls for:

- Provision of psychosocial support to social service providers (teachers and health and community workers), and training and orientation on child care and support.
- Specialized psychosocial care and support for traumatized children and families in affected populations, requiring a strengthening of psychosocial capacity and skills.
- Identification of separated and/or unaccompanied children and securing systems to reunite them with their families (immediate or extended).

Care provision for children who are now without primary caregivers as a result of the tsunami, whether they are in residential, foster or kinship care, needs to be assessed as soon as possible to address the need for stability and continuity of caregiving. Educational continuity is important too and likely to affect other areas of children's lives. Keeping siblings together is also a significant protective factor. The participation of older children in permanency planning is crucial.

It appears that kinship care or placement is the most culturally sensitive out-of-home care option for children in Thailand, yet not much attention is given to this in terms of policies, procedures and guidelines. The difference between relocating a child to another family for foster placement and arranging for a child to move in with a grandparent or relative needs to be understood and articulated. Wealthy families may choose to send their children to boarding schools with no expectation that the children will be harmed by the experience of separation from home. It is not primarily the separation that threatens a child but the circumstances that precipitate the separation. A decision to move a child from his or her own home to another setting requires careful deliberation.¹¹⁷ Hence, kinship care may serve as a resource but it is not necessarily the most appropriate option for a particular child.

Thailand's Child Protection Act 2003 is comprehensive as a core child-welfare document, but it needs to be supplemented by implementing rules or guidelines for specific areas. For example, child-care and placement guidelines regarding procedures for involuntary commitment of a child or termination of parental rights are needed so that placement of a child does not leave them in limbo. Under the Act, the Ministry of Social Development and Human Security is responsible for drafting these guidelines and regulations.

The Child Protection Act is laudable for its provisions focused on promoting the welfare, safety and protection of children. An area that may need to be enhanced is the functionality of the child protection committees because they include many members of various disciplines as well as civil servants of varied interests. The backgrounds of staff working with and for children need to be more diverse, especially in terms of assisting children with deteriorating mental health.¹¹⁸

Moreover, the penalties provided in the Act for violations of children and their rights do not seem to deter such crimes. A review of penalties and deterrents is necessary.

The planning, dissemination and utilization of research studies that are macro and holistic is recommended.¹¹⁹ It is expected that such research will be undertaken soon.

As a whole, Thailand's child-welfare system appears to have progressed well in terms of support from the Government, legal foundations, and the professional capacity of social workers. An effective system needs however to be reviewed continually and adapted and improved as necessary. For example, as laws change to provide greater equality for women, new social services may emerge that benefit children. It is to be hoped that Thailand will indeed follow this process of review and improvement, in line with its work thus far.

¹¹⁶ UNICEF Thailand. 2005, February. Op. cit.

¹¹⁷ Webb, N.B. 2003. *Social Work Practice with Children*. Second Edition. United States: Guilford Press.

¹¹⁸ National Youth Bureau et al. Op. cit.

¹¹⁹ Ibid.

REFERENCES

- Bangkok Post*, The. 2005. 'Facts & Figures'. In Bangkok Post Economic Mid-Year Review. Bangkok: *The Bangkok Post*.
- National Youth Bureau, Office of the Prime Minister and UNICEF Thailand. 2000. *Children in Thailand 1990-2000: Country Report on the Follow-up to the World Summit for Children*. Bangkok.
- NGO Group for the CRC. 2005, June. 'Thailand NGO Report on the Implementation of the Convention on the Rights of the Child 2000-2004.' UNCRC.
- Punnabutr, C. 2001. 'Current Trends and Best Practices on Alternative Parental Care'. In *Proceedings of the 6th Global Consultation on Child Welfare Services*. Philippines: Inter-Country Adoption Board (ICAB). 29-31 August.
- Thailand, Government of. 2004. 'Second periodic report of States parties due in 1999: Thailand.' UNCRC. CRC/C/83/Add.15. 31 May 2005.
- Thailand, Government of. 2005, August. 'Major Foreign Policy Statements.' Bangkok: Ministry of Foreign Affairs.
- Thailand, Government of. 2005, October. 'Data on Victims of Tsunami Disaster. Thailand.' Bangkok: Ministry of Social Development and Human Security Assistance.
- UNICEF Thailand. 1997, December. *Children and their Families in a Changing Thai Society*. Bangkok: UNICEF Thailand.
- UNICEF Thailand. 2005, February. *Child Protection Sector Analysis*. Bangkok: UNICEF Thailand.
- UNICEF Thailand. 2005. 'UNICEF's work in Thailand in response to the tsunami.' Bangkok: UNICEF Thailand. 23 June. Available at: http://www.unicef.org.uk/press/news_detail.asp?news_id=475
- UNICEF. 'At a Glance: Thailand.' UNICEF. Available at: http://www.unicef.org/infobycountry/Thailand_1022.html
- UN Thailand. 2004. 'Tsunami in Thailand.' UN. 26 December. Available at: <http://www.un.or.th/tsunamiinthailand/index.html>
- Webb, N.B. 2003. *Social Work Practice with Children*. Second Edition. United States: Guilford Press.

UNICEF East Asia and Pacific Regional Office

19 Phra Atit Road
Bangkok 10200, Thailand
Tel: (66 2) 356-9499
Fax: (66 2) 280-3563
www.unicef.org