



STANDING WITH SEXUAL CRIME VICTIMS: WCC SUPPORT SERVICES



Federal Foreign Office



Produced and Published by

Women's Centre for Change

241, Jalan Burma, 10350 Penang, Malaysia.

☎ 04-228 0342 📞 011-3108 4001

🌐 www.wccpenang.org 📱 📺 📢 WCC Penang

Funded by

Federal Foreign Office of Germany

Written by

Prema E. Devaraj and Tan Pek Leng

Collectively Edited by

Loh Cheng Kooi, Karen Lai, Hastiny Subramaniam, Lim Kah Cheng,
Lalitha Menon, Chang Mei Leng, Susan Siew and Teoh Piek Fong

Layout by

C-Square Sdn Bhd, Penang

Printed by

Phoenix Printers Sdn Bhd

ISBN No: 978-967-16908-5-7

Copyright © 2021 Women's Centre for Change, Penang

All Rights Reserved

Any part of this publication may be copied, reproduced or adapted to meet the individual or group's needs provided that the parts reproduced are acknowledged to Women's Centre for Change, Penang.

Contents

List of Abbreviations	iii
List of Figures	iv
List of Tables	v
Executive Summary	vi
1.0 Introduction	1
2.0 Victim Vulnerability and the Need for Support	
2.1 The Need for Victim Support	4
2.2 Recognising Secondary Victimisation in the Criminal Justice System	6
2.3 The Impact of Victim Support	10
3.0 Providing Victim Support	
3.1 Victim Support in Hospital	11
3.2 Victim Support in the Criminal Justice System	14
3.2.1 Case Studies	18
4.0 Advocating for Change	
4.1 Training on Victim Advocacy	21
4.2 Interagency Dialogues on Victim Support in Court	23
4.2.1 Networking between WCC and the Agencies	25
4.3 Lobbying for Better Victim Support	25
4.4 Legislative and Policy Reform	27
4.5 Production of Resource Materials on Victim Advocacy	30

5.0 Data on WCC's Victim Support Services (VSS) for Sexual Crime Cases, 2015–2019

5.1 Profile of Sexual Crime Cases for which WCC provided VSS	33
5.1.1 Types of Cases	33
5.1.2 Profile of Victims and Accused	34
5.1.3 Sources of Referrals	36
5.1.4 Status of Cases as at December 2019	37
5.2 Analysis of Closed Sexual Crime Cases for which WCC provided VSS	38
5.2.1 Profile of Sexual Crimes and Victims in Closed Cases	38
5.2.2 Court Outcomes in Closed Cases	39
5.2.3 Length of Trial and Court Outcomes	42
5.2.4 Comparison of Court Outcomes between Current Study and 2005–2007 Study	43
5.3 Impact of WCC Victim Support in Court	45
5.4 Discussion	48

6.0 Conclusion and Recommendations

6.1 Monitor and Evaluate Existing Victim Support Initiatives	51
6.2 Document the Outcome and Impact of Victim Support in Sexual Crime Cases	53
6.3 Conduct Specialised Training on Victim Support	53
6.3.1 Specialised Training for Criminal Justice System Personnel	53
6.3.2 Specialised Training for Medical Personnel	54
6.4 Organise Interagency Dialogues on Victim Advocacy at State and National Levels	54
6.5 Establish a National High-Level Taskforce for the Implementation of an Integrated Victim Support System	55

List of Abbreviations

AG	Attorney General
CIC	Child Interview Centre
CRT	Court Recording Transcription
DII	Sexual, Women and Children Investigation Division of PDRM
DNAA	Discharge Not Amounting to Acquittal
DPP	Deputy Public Prosecutor
HPP	Hospital Pulau Pinang (Penang Hospital)
HSJ	Hospital Seberang Jaya (Seberang Jaya Hospital)
IO	Investigating Officer
ILKAP	Institut Latihan Kehakiman dan Perundangan (Judicial and Legal Training Institute)
IPKPP	Ibu Pejabat Polis Kontinjen Pulau Pinang (Penang Police Contingent Headquarters)
IRC	Institutional Reform Committee
JAG	Joint Action Group for Gender Equality
JBG	Jabatan Bantuan Guaman (Legal Aid Department)
LAC	Legal Aid Centre
OSCC	One Stop Crisis Centre
MWFCD	Ministry of Women, Family and Community Development
NGO	Non-Governmental Organisation
NLAD	National Legal Aid Department
PDRM	Polis Diraja Malaysia (Royal Malaysian Police)
VSS	Victim Support Services
WCC	Women's Centre for Change, Penang
WSS	Witness Support Services

List of Figures

Figure 1	Secondary Victimisation in the Criminal Justice Process	7
Figure 2	WCC Support for OSCC Referrals from Penang Hospitals, 2019	12
Figure 3	Types of Services and Number of Interventions WCC Provided for Hospital Referrals, 2019	13
Figure 4	Types of Services and Number of Interventions WCC Provided to Victims in the Criminal Justice Process, 2019	16
Figure 5	Distribution by Type of Case	33
Figure 6	Distribution of Victims by Sex	34
Figure 7	Distribution of Victims by Age	34
Figure 8	Distribution of Accused by Age	35
Figure 9	Distribution of Cases by Source of Referral	36
Figure 10	Status of Cases as at December 2019	37
Figure 11	Type and Number of Closed Cases by Age of Victims	38
Figure 12	Distribution of Victims in Closed Cases by Sex	39
Figure 13	Distribution of Closed Cases by Court Outcome	39
Figure 14	Reasons for DNAA and Acquittals in Closed Cases	40
Figure 15	Distribution of Court Outcomes by Type of Sexual Crime	41
Figure 16	WCC Support in Court and Impact on Court Outcomes	45

List of Tables

Table 1	Comparison of Sexual Crime Court Outcomes in the Current Study and the 2005-2007 Study	viii
Table 2	Special Measures for Intimidated and Vulnerable Witnesses in the Criminal Justice System	5
Table 3	WCC Training Workshops and Target Groups	22
Table 4	Distribution of Type of Case by Age of Victims	35
Table 5	Status of Cases that went to Trial, as at December 2019	38
Table 6	Distribution of Closed Cases by Length of Trial and Comparison with 2005-2007 Study	42
Table 7	Comparison of Court Outcomes between Current Study and 2005-2007 Study	44
Table 8	Comparison of Conviction Rate in Contested Cases between Current Study and 2005-2007 Study	44

Executive Summary

This report, ***Standing with Sexual Crime Victims: WCC Support Services***, seeks to document a special service the Women's Centre for Change, Penang (WCC) provides to victims of gender-based violence. It focuses on victim support services (VSS) offered to clients of sexual assault who had sought justice through the criminal justice system over the past ten years, and assesses if this additional support work has had any significant impact.

WCC has previously undertaken a major research project that yielded the book, *Seeking Justice for Victims of Sexual Crime*, published in 2009.¹ The project, conducted from 2005 to 2007, involved analysing 439 closed files of sexual crime cases that were heard in the subordinate courts in Penang between 2000 and 2004. It unveiled a high incidence (45.0%) of 'discharge not amounting to acquittal' (DNAA) and a low conviction rate (4.0%) in cases which were contested in court, that is, where the accused did not plead guilty.

The evidence from this 2005–2007 study, which showed clearly the tremendous barriers to justice faced by victims of sexual crime, convinced WCC of the necessity to step up the type of support services that would help ease the victims' journeys through the criminal justice system and, hopefully, improve the outcome of the court trials.

The additional support services included:

- Support which WCC social workers extended to the victims and their families when they had to go to the hospitals and courts, as well as assistance by WCC advocacy staff to familiarise the victims with court procedures and liaise with the relevant parties;
- Networking with relevant agencies, such as the hospitals, judiciary, Deputy Public Prosecutors (DPPs), police, and Social Welfare Departments, to improve support for the victims through interagency cooperation and coordination;
- Training conducted for legal, medical and court personnel on victim advocacy to sensitise them and enable them to render more effective support to the victims;

¹ Lochhead, J. and Tan Pek Leng (2009) *Seeking Justice for Victims of Sexual Crime*, Penang: Women's Centre for Change.

- Production and dissemination of resource materials on victim support; and,
- Advocating for legislative and policy reform through the women's groups coalition, Joint Action Group for Gender Equality (JAG).

To assess the impact of its VSS, WCC undertook this study to analyse data on the sexual crime cases for which it provided support in the period of 2015–2019. Although WCC offers VSS to victims of both domestic violence and sexual crime, only the sexual crime cases are considered here so that the findings can be compared against those of the 2005–2007 study.

Detailed analysis of the 2015–2019 data and its comparison with findings of the 2005–2007 study are presented in Section 5 of this report. It includes profiles of the types of cases handled, the victims, and the accused, as well as analysis of the court outcomes.

The most obvious way to evaluate the impact of VSS provided by WCC is a comparison of court outcomes recorded in the two studies. However, caution is in order as the sample size for the current study is rather small and is limited to a narrower range of sexual crimes. From 2015 to 2019, WCC provided VSS for 181 cases where the victims had entered the criminal justice system, that is, they had already lodged a police report. Of these cases, 118 involved sexual crimes, 59 involved domestic violence and the other four were related to other forms of violence or intimidation. Of the 118 sexual crime cases, only 86 went to trial. Of these an even smaller number – 57 cases – have completed full trial and were closed by December 2019. Eighteen of the cases were still ongoing whilst the outcomes in 11 cases were still pending appeal either by the prosecution or the accused as at December 2019.²

Essentially then, the data comparison is between 57 cases handled by WCC from 2015 to 2019, and 439 cases tried in the subordinate courts in Penang from 2000 to 2004. Nonetheless, because no other comparable data is available in the country, the limited data derived from WCC's study is important as it is indicative of the kind of improved results – in terms of court outcomes and reduction in attrition rates – that has been brought about by more supportive treatment of the victims.

² In these 11 appeals for which WCC provided victim support, two had resulted in convictions, two in acquittals, and seven in DNAA. However, these 11 cases were not included in the current study for consistency with the 2005–2007 study.

With that proviso, the headline numbers that emerged from the current study are indeed encouraging as shown below:

Table 1: Comparison of Sexual Crime Court Outcomes in the Current Study and the 2005–2007 Study

Outcome of Cases in Court	Current Study (2015–2019 data)		2005–2007 Study (2000–2004 data)	
	Number	Percentage	Number	Percentage
Pleaded Guilty	24	42.0%	137	31.2%
Convicted After Trial	10	17.5%	12	2.7%
Acquitted	6	10.5%	79	18.0%
DNAA	17	30.0%	198	45.1%
Others ³	0	0%	13	3.0%
Total	57	100.0%	439	100.0%

The data in Table 1 shows that on all counts, the results have improved. More startling is the conviction rate of **30.3%** for contested cases in the current study as against the comparable figure of **4.0%** in the 2005–2007 study.⁴

This improvement cannot be credited to WCC’s VSS alone as the entire scenario for sexual crime victims has changed for the better since 2005. Hence, it is crucial to carry these gains further through even more effective collaboration between all agencies and organisations concerned.

To this end, this report concludes with recommendations for the following actions:

- Monitoring and evaluating existing victim support initiatives;
- Documenting the outcome and impact of victim support initiatives in sexual crime cases;
- Conducting specialised training on victim support for criminal justice system personnel;
- Organising interagency dialogues on victim advocacy at state and national levels; and,
- Establishing a high-level National Taskforce for the implementation of an integrated victim support system.

For these recommendations to work, adequate funding from the government is needed.

³ These categories in the 2005–2007 study were not applicable to the 2015–2019 study.

⁴ With reference to Table 1: Number of contested cases in the current study is 57–24 = 33. Number of convictions = 10, therefore conviction rate for contested cases in 2015–2019 is (10/33)x100 = 30.3%.

SECTION 1.0

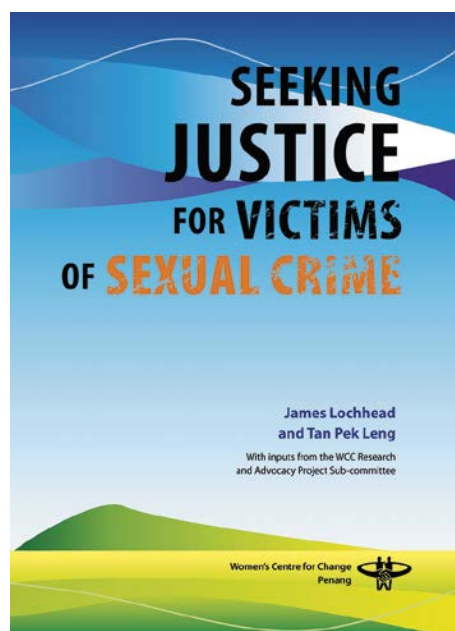
Introduction

In 2005, the Women's Centre for Change, Penang (WCC) embarked on a three-year research project to collect and document information and statistics on sexual crimes and outcomes of sexual crime trials. The aims of the project were to:

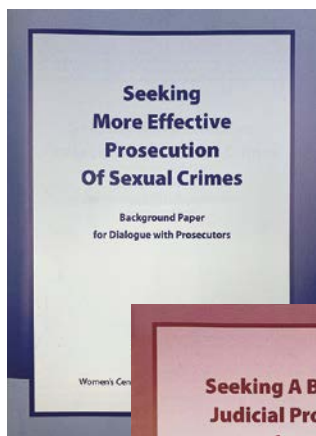
- Publish, discuss and act concretely on the issues related to sexual crimes against women;
- Enhance gender awareness within the judiciary and relevant government agencies on the situation of violence against women; and,
- Lobby for legislative reforms that would ensure a fair trial and trial experience for the victims of sexual crimes.

WCC's research into 439 closed files of sexual crime cases that were heard in the subordinate courts in Penang between 2000 and 2004 unveiled a high incidence (45.0%) of 'discharge not amounting to acquittal' (DNAA) and a low conviction rate (4.0%) in cases which were contested in court, that is, where the accused did not plead guilty. It was clearly very difficult for a sexual crime victim to access redress and justice through the courts.

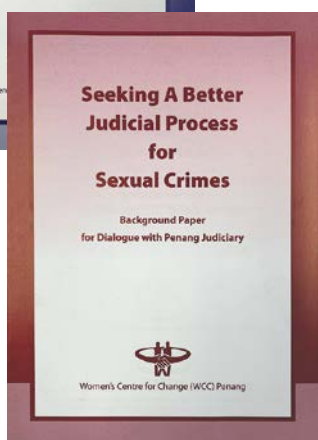
This 2005–2007 study showed a high attrition rate, where victims did not take their cases in the criminal justice system to completion. The main reasons for their "dropping out" included the shame and stigma associated with being the victim of a sexual crime; victim blaming attitudes from those around them, including their own family members and agency personnel handling the cases; and the trauma of going through the criminal justice process, such as facing the accused, giving details about the sexual assault, delays and lengthy court trials. Victim attrition was a major contributing factor to DNAA and the low conviction rate.



The study also highlighted a number of factors that accounted for low conviction rates, such as inadequacies in the prosecution's case preparation and presentation, lack of physical evidence of the crime, and structural factors such as delays and lengthy court trials. It was clear that both attitudinal and structural factors played a role in determining the outcomes of sexual crime cases.



In 2007, these findings were highlighted in two separate dialogues: with Deputy Public Prosecutors (DPPs) in Kuala Lumpur and with members of the judiciary in Penang. Two background papers, *Seeking More Effective Prosecution of Sexual Crimes* and *Seeking a Better Judicial Process for Sexual Crimes* were distributed at the respective dialogues.



In 2009, the complete research findings were published in a book entitled *Seeking Justice for Victims of Sexual Crimes*.⁵ The findings gave substance to WCC's perceptions of the injustices faced by victims of sexual crimes when going through the criminal justice process. Besides providing an insight into how the criminal justice system treats victims of sexual crime, the research raised crucial questions about gender and justice, and proposed recommendations for reform.

Equipped with this data and information, WCC began to map out the different areas of work required for victim advocacy, in particular, providing victim support services (VSS) and lobbying for effective change in the criminal justice system to make victim support integral to the process.

This report documents the milestones WCC has achieved in the provision of VSS for its clients who are the victims of sexual crimes. Although WCC offers VSS to victims of both domestic violence and sexual crime, only the sexual crime cases are considered here so that the findings can be compared against those of the 2005-2007 study.

⁵ Lochhead, J. and Tan Pek Leng (2009).

Section 2 of this report provides a background for understanding victim vulnerability and secondary victimisation in the criminal justice system. The journey towards victim support and the type and extent of VSS provided by WCC before, during, and after the time when the victim enters the criminal justice system are detailed in Section 3. WCC's advocacy programme for victim support, which includes training, interagency meetings and dialogues, production of resource materials, and lobbying for legislative and policy reform are highlighted in Section 4.

Section 5 analyses the data on sexual crime cases handled by WCC between 2015 and 2019 and covers the types of cases supported, as well as the court outcomes in these cases. Comparison is also made between the court outcomes documented in the current study and those detailed in the 2005–2007 study. Importantly, WCC's victim support is highlighted and the link between support provision and outcomes in court is discussed. The final section, Section 6, provides recommendations on the way forward for a more systematic provision of VSS.

Through the documentation of existing initiatives, presentation of data, and recommendations for action by all relevant parties, it is hoped that this report will serve as an advocacy tool towards furthering the discussion on and improving the provision of victim support services in the country.

SECTION 2.0

Victim Vulnerability and the Need for Support

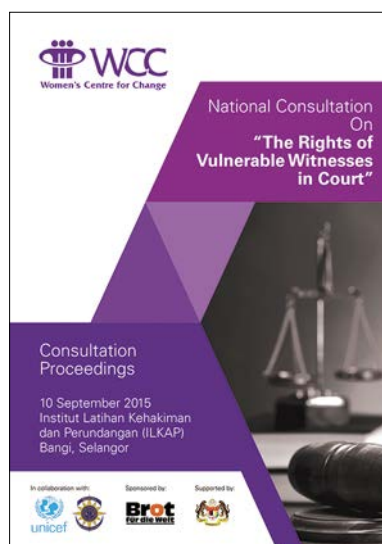
Victims of sexual crimes are extremely vulnerable and greatly in need of support due to the nature of the crime and its impact on them. Their vulnerability stems from a number of causes, not least being the stigma and shame often associated with sexual crimes, victim blaming, and the secondary victimisation they often face if they choose to pursue justice through the courts. It is for these reasons that VSS is an essential service for them.

2.1 The Need for Victim Support

Many victims of sexual crimes do not report the assault against them for fear of being blamed or shamed. There are others, of course, who do lodge reports and wish to seek justice and redress through the criminal justice system. It is an important part of their recovery – premised on the belief they can access justice through the said system and that the perpetrator will be held to account for the crime committed.

Studies around the world have shown that victims (and witnesses) who do not feel supported are less likely to remain cooperative and continue to attend trial.⁶ Without adequate support, a victim who is frightened or stressed may not be able to give evidence in court properly, more so if the victim is a child. Hence, the provision of victim support is crucial in helping to ensure victims attend trial and give, as best as they can, a full and accurate account of the crime.

Victim support is the process of providing emotional and practical support (including shelter, daily necessities and relevant information) to the victim not just immediately after the incident but also when she⁷ chooses to go through the criminal justice process.



⁶ Casey, S. (2017) 'Vulnerable Victims and the Need for Victim Advocacy', *Consultation Proceedings of the National Consultation on The Rights of Vulnerable Witnesses in Court*, Penang: Women's Centre for Change, p13.

⁷ In this report, unless the context otherwise requires, the use of "she", "her" and "herself" for victims is for convenience and shall be interpreted to refer to male victims as well although the number of male victims is much lower (11.0% in this report). In the case of perpetrators, the masculine pronouns are used because there are no reported female perpetrators at all. It is noted that the Malaysian Penal Code provisions on rape specify the gender of the victim and the perpetrator but this does not affect the manner of reporting here.

It involves having an understanding of the victim's feelings and needs, and an awareness of how criminal justice processes can impact a victim. It also involves ensuring that existing official support and protection measures are properly implemented.

Current legal provisions have set in place special measures to support and protect intimidated and vulnerable witnesses as they journey through the criminal justice process (see Table 2 for some of these provisions).

Table 2: Special Measures for Intimidated and Vulnerable Witnesses in the Criminal Justice System

	SPECIAL MEASURES	LEGISLATION
1	a) Protection order b) All other protective measures to be taken by enforcement officers	Domestic Violence Act 1994 & Domestic Violence (Amendment) Act 2017
2	Bail Condition: accused not to intimidate / approach the victim / prosecution witnesses	Sections 388 and 389 of the Criminal Procedure Code
3	Media restriction on identifying the child	Section 15 of the Child Act 2001
4	Child in need of care and protection	Child Act 2001
5	Protection against liability for persons assisting / informing on behalf of child in need of care & protection	Sections 26, 27, 28, 29, 29A, and 116 of the Child Act 2001 & Child (Amendment) Act 2016
6	Proceedings in camera / media restriction	Section 101 of the Subordinate Courts Act 1948
7	Protection for privacy / safety of witness	Section 265A of the Criminal Procedure Code
8	a) Use of screen / live-link / video recording b) Adult accompanying child witness c) Unrepresented accused prevented from directly questioning child witness d) Dispensing of formal attire e) Provisions for children with disabilities f) Restriction on media reporting / protection of child's identity	Evidence of Child Witness Act 2007
9	Live-link for adults	Section 272B of the Criminal Procedure Code
10	Victim Impact Statement	Section 183A of the Criminal Procedure Code
11	Right to investigation status (Complainant)	Section 107A of the Criminal Procedure Code
12	Intimidation of witness	Section 5 of the Abduction & Criminal Intimidation of Witness Act 1947

These provisions indicate the government's recognition and understanding of victim vulnerability and the fact that victims (and witnesses) need to be protected and supported.

2.2 Recognising Secondary Victimisation in the Criminal Justice System

Despite existing legislative provisions that afford some protection for these vulnerable victims, they still find the criminal justice process a difficult one to journey through. One of the reasons for this is the secondary victimisation which many victims undergo in the criminal justice system.

Secondary victimisation is the additional distress victims of a crime undergo, not as a direct result of the crime but due to the way in which agencies or individuals, as well as processes in the criminal justice system, deal with or affect them. The insensitive treatment of victims and the frequently cumbersome processes and structures within the criminal justice system exacerbate vulnerabilities, often leaving the victims feeling isolated and insecure. Many then lose faith and trust in the help available from either the communities around them or the professional agencies meant to support them.

Examples of secondary victimisation include:⁸

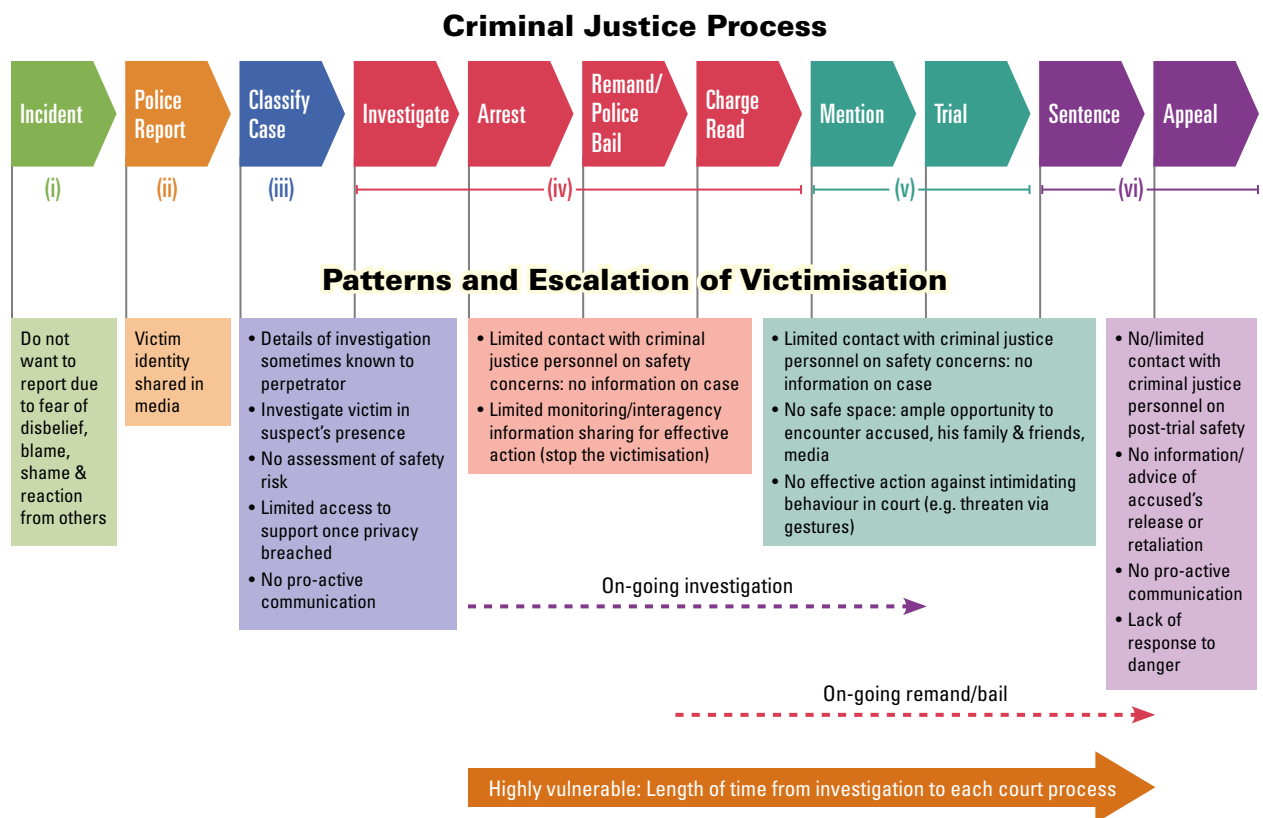
- Insensitive questioning or comments by criminal justice agency personnel;
- Refusal to recognise the victim's experience as a crime;
- Trivialisation or disbelief of abuse;
- Failing to act on the information given by the victim;
- Victim blaming by service providers;
- Failure to provide information regarding the status of the case;
- Failure to explain complex legal procedures;
- Delays in court proceedings;
- Hostile questioning from defence lawyers;
- Repeated exposure of the victim to the accused;
- Threatening or intimidating behaviour by accused or his/her family and friends; and,
- Intrusive or inappropriate investigation, filming, photographing, and/or reporting by the media.

Secondary victimisation needs to be acknowledged and taken seriously as it can impact on a victim's decision whether or not to continue with the criminal justice process. It can increase the possibility of victims dropping out of the criminal justice system.

⁸ Casey, S. (2017) p13.

WCC has documented the experiences of victims of sexual crimes and domestic violence to highlight the pattern and escalation of secondary victimisation of vulnerable victims and the points at which these occurred along the criminal justice process as shown in Figure 1.⁹

Figure 1: Secondary Victimisation in the Criminal Justice Process



N.B.: Available Protection: Bail Conditions & Protection Orders (DVA 1994, Child Act 2001) not used or not implemented effectively.

⁹ Melissa Mohd Akhir (2017) 'Presenting Realities on The Ground: Case Studies' in *Consultation Proceedings of the National Consultation on The Rights of Vulnerable Witnesses in Court*, Penang: Women's Centre for Change, pp 47-58. Diagram adapted from Cruz, F. and Garvey, T. (2014) *Improving Witness Safety and Preventing Witness Intimidation in the Justice System: Benchmarks for Progress*, Washington D.C.: AEQUITAS: The Prosecutors' Resource on Violence Against Women and The Justice Management Institute, p13.
<http://www.jmijustice.org/wp-content/uploads/2020/01/Benchmarks-for-Progress.pdf>

With reference to Figure 1, the following are elaborations on the forms of secondary victimisation that are likely to take place at each stage of the criminal justice process.

i) Post-Incident Stage

Many victims or their families are reluctant to report or even disclose the incident due to the fear of being disbelieved, blamed or shamed by negative reactions from others, such as the front desk officer at the relevant agencies, the community, and even their own family members.

ii) Lodging of Police Report or Informing the Child Protector

Lodging a formal complaint or making a report of the crime often incurs fear of disbelief and also of stigmatisation. Sometimes a breach of privacy occurs: for example, when a victim's identity, particularly the identity of a child victim, is shared inadvertently or otherwise in the media. The victim and her family members are traumatised by the damage to her reputation in the community.

iii) Classification of the Criminal Case and Investigation by the Police or the Child Protector

There have been instances of breaches in practice, for instance, when the details of the report or evidence in the investigation become known to the accused/suspect; when a child victim is questioned in the suspect's presence with a view to 'mediate' the case; or when the child is interviewed on her own without the presence of the legal guardian or child protector.

Signs of existing or potential intimidation are not recognised and an assessment of safety risks is not undertaken. Victims and witnesses are seldom informed about the potential threat of intimidation or harassment from the accused, what they can do about it, or whom they can contact for help. Ongoing assessment of risk or needs rarely takes place and there is often little proactive communication from the officers involved in keeping the victim or witnesses informed.

iv) Arrest, Remand, Charge and Bail of Accused

This tends to be the start of a particularly vulnerable phase for the victim when intimidation or manipulation of the victim by the accused (where he is granted bail), his family, and/or his friends, may hinder the criminal justice process. Victims may be inclined to withdraw from their cases out of consideration for their own safety. Ironically, at this critical stage, the victim receives limited information from the criminal justice personnel on safety concerns and the progress of the case. For example, although information on whether the accused is out on bail is of particular concern to the victim, this information is not always conveyed to her. Even when intimidation occurs or is reported at this point, there is very limited monitoring or interagency information sharing towards effective action to stop the re-victimisation.

v) Court Case Management and Main Trial

Most criminal cases are highly dependent on the victim's evidence. Yet, the victim has very little contact with the criminal justice personnel and receives minimal information on the progress of the case. She is also rarely advised on possible safety concerns.

In court, there are usually limited safe spaces where the victim can seek refuge before she is called to give evidence. There is ample opportunity for the accused or third parties, including the media, to encounter or confront the victim or her family outside the courtroom. Even when intimidating behaviour occurs in court, no effective action is taken against the accused. Such incidents are also rarely documented or shared with the police, DPP, or other relevant parties.

vi) Sentencing and Appeal

In the instances where the accused is not imprisoned after the trial, there is usually limited contact between criminal justice personnel and the accused. Hence, there is little, if any, information that can be conveyed to the victim regarding options for safety. In cases where the accused serves time, there is also usually minimal information or advice provided to the victim regarding the perpetrator's release or possibility of retaliation. The lack of proactive communication and the lack of consideration for the potential danger the victim might face remain real and unaddressed concerns.

As Figure 1 illustrates, beginning from the reporting of the crime to the investigation, remand, or bail stages of the criminal justice process, the dangers of harassment and secondary victimisation have been known to escalate as the case proceeds, more so as the likelihood of criminal punishment of the accused increases.

It has been WCC's observation that at the various points of secondary victimisation highlighted in the Figure 1, the available protective measures for the victim under existing Malaysian laws are often not applied, or not effectively implemented.

The combination of secondary victimisation and a lack of adequate and appropriate support for victims in the criminal justice system often result in victims dropping out of the prosecution process. When this happens, victims do not get the redress or justice they need for their healing and recovery. Perpetrators are not held to account for their crimes and, worse still, can repeat these crimes in society with impunity. The effectiveness of the criminal justice system is thus undermined. The criminal justice system relies to a very large extent on the victim's (and/or witnesses') ability to report a crime and give effective testimony, otherwise it is nearly impossible to hold criminals accountable.

2.3 The Impact of Victim Support

Victim support services are common in many places around the world, including in the United States of America, United Kingdom, Australia, New Zealand, Canada, many European countries, and increasingly in Asia and Africa.¹⁰ There are a variety of different models and structures used, for instance, law enforcement-based programmes, programmes affiliated with prosecutors or courts, and social welfare department programmes.

Research into these programmes have highlighted a number of benefits of victim support, including:¹¹

- Improved victim/witness attendance rates at trial;
- Significantly improved trial outcomes due to lower rates of victim/witness non-attendance and improved quality of testimony;
- Increase in guilty pleas, resulting mainly from increased victim/witness attendance in court and reduction in recantations;
- Increase in number and quality of victim impact statements submitted to the court;
- Increase in victim/witness confidence in and satisfaction with the criminal justice system;
- Improved interagency collaboration across justice agencies and between the justice sector and victim support service providers;
- Reduction in secondary victimisation and more effective and efficient referral of victims to appropriate support services; and,
- Overall increase in efficiency and effectiveness of the criminal justice system by reducing delays and adjournments from witness non-attendance, reducing discontinuances, shortening case processing times, and increasing likelihood of offenders being brought to justice.

Recognising the above and realising the value and potential impact of victim support, WCC sought to provide such support for victims of domestic violence and sexual crimes.

¹⁰ Casey, S. (2017) pp15-19.

¹¹ Avail Consulting (2004) *No Witness, No Justice: Pilot Evaluation*, England and Wales Crown Prosecution Service and ACPO. <https://www.yumpu.com/en/document/read/37527934/no-witness-no-justice-nwnj-pilot-evaluation-executive-summary>; Turley, C. and Tompkins, C. (2012) *Early Learning from Victim Support's Homicide Service*, Ministry of Justice Research Series 2/12, London: Ministry of Justice, United Kingdom. <https://www.bl.uk/collection-items/early-learning-from-victim-supports-homicide-service>; Bradford, B. (2011) "Voice, neutrality and respect: Use of victim support services, procedural fairness and confidence in the criminal justice system", *Criminology and Criminal Justice*, 11(4): 1-22.

SECTION 3.0

Providing Victim Support

Following from the research findings in the 2005–2007 study, WCC resolved to reach out to more sexual crime and domestic violence victims. The One Stop Crisis Centres (OSCCs) in government hospitals were providing services to victims of domestic violence and sexual crime. Prior to this, in 1996, WCC had collaborated with Hospital Pulau Pinang (HPP) which referred victims to WCC.

One Stop Crisis Centres (OSCCs)

OSCCs are specialised rooms set up in 1996 to provide an integrated multi-agency service in the Emergency Departments of most government hospitals so that victims of sexual and domestic violence can receive all essential services in one location.¹² They are open 24 hours a day. In main state hospitals, victims can make a police report at the hospital itself. A victim will be medically assessed by the Emergency Department before being referred to other specialists such as paediatricians, obstetricians and gynaecologists, and surgeons for treatment. These specialists will attend to the victim at the OSCC. OSCCs facilitate the collection of samples when police reports are made. There are at least 115 OSCCs across the country, with six located in Penang.¹³

3.1 Victim Support in Hospital

In 2009, WCC reinitiated its collaboration with HPP for systematic victim support for domestic violence and sexual crime victims seeking treatment at the OSCC in the Emergency Department of the hospital. WCC staff would go to the OSCC HPP to attend to victims of sexual crimes or domestic violence when consent had been obtained from adult victims or guardians of child victims.

Victim support for those attending OSCC in HPP was formalised in 2010. The following year, in 2011, WCC extended this service to Hospital Seberang Jaya (HSJ) on the mainland via WCC Seberang/Pusat Perkhidmatan Wanita (PPW).¹⁴ By 2019, victims attending OSCCs in five of the six hospitals in Penang, both on the island and the mainland, could be referred to WCC should they wish to receive such support.¹⁵

¹² <http://www.myhealth.gov.my/en/one-stop-crisis-centre-oscc/>

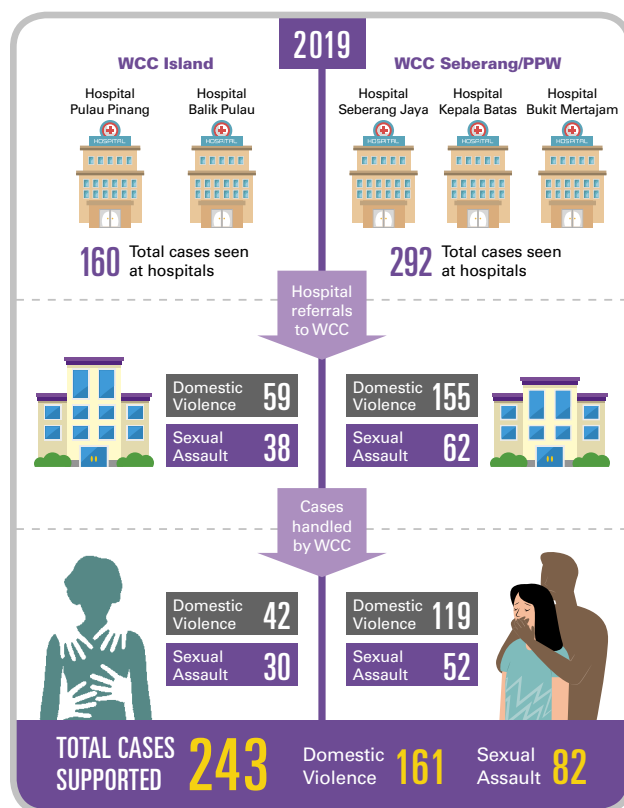
¹³ Arunah C. et al (2010) "Emergency And Trauma Services In Malaysian Hospitals", *National Health Care Establishments and Work Force Statistics 2010*. http://www.crc.gov.my/nhsi/wp-content/uploads/publications/NHEWS_Hospital2010/Chapter6Hospitals_Report_2010.pdf

¹⁴ WCC Seberang/PPW was set up in 2009 under a smart partnership between the Penang State Government and WCC. Managed by WCC, its operations are funded under the State Government's Executive Council for Social Development.

¹⁵ OSCCs are established in all six hospitals in Penang: Hospital Pulau Pinang, Hospital Seberang Jaya, Hospital Balik Pulau, Hospital Kepala Batas, Hospital Bukit Mertajam and Hospital Sungai Bakap. Currently WCC provides support for referrals from all these hospitals except Hospital Sungai Bakap largely due to it being located a long distance away.

Figure 2 shows the number of referrals from five Penang hospitals to WCC Island and WCC Seberang/PPW in 2019. Out of a total of 314 referrals, WCC provided support for 243 cases, comprising 161 cases of domestic violence and 82 cases of sexual assault.

Figure 2: WCC Support for OSCC Referrals from Penang Hospitals, 2019

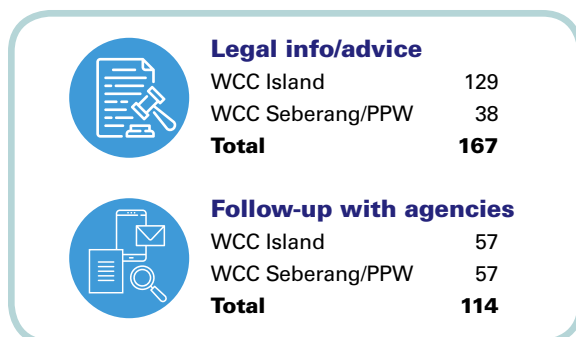


Source: WCC Annual Review 2019, p8

In a number of cases, despite victims at the OSCCs giving consent for a WCC referral, incorrect telephone numbers were provided or recorded and sometimes victims changed their telephone numbers, rendering the WCC social workers unable to trace the victims once they left the hospital. Hence, the discrepancy between the number of hospital referrals and actual number of cases handled.

Victim support for hospital referrals involved emotional support and counselling, provision of legal information, and advice on actions victims could take pertaining to their safety and rights. Follow-up support for these victims took the form of phone calls or face-to-face meetings, and contacting of agencies to ensure support for and protection of the victims where needed.

Figure 3: Types of Services and Number of Interventions WCC Provided for Hospital Referrals, 2019



Source: WCC Annual Review 2019, p9

Figure 3 shows the number of interventions for different types of support given to the 243 victims from hospital referrals in 2019. WCC provided information and advice 167 times and followed up with agencies 114 times through face-to-face meetings, telephone calls, WhatsApp communications, emails or letters where necessary.¹⁶

To evaluate the effectiveness of WCC support services at the hospitals, in 2020, WCC solicited feedback from the Emergency Physicians in charge of the OSCC at HPP and HSJ through a questionnaire. The following responses were received:

Kolaborasi antara OSCC dan WCC telah bermula semenjak 2010 dan sejak masa itu, rujukan kes kepada WCC untuk memberi VSS (perkhidmatan sokongan kepada mangsa) telah dimulakan. Perkhidmatan ini telah berkembang dan sekarang VSS yang diberi oleh WCC telah berkembang hingga merangkumi OSCC hospital-hospital lain dalam negeri Pulau Pinang.

VSS yang diberi oleh WCC kepada mangsa adalah amat berkesan kerana ia dirumus khas kepada mangsa-mangsa terlibat dan merangkumi banyak aspek untuk memberi pertolongan yang holistik kepada mangsa, iaitu dari segi fizikal dan mental, dan meliputi juga sokongan untuk pergi ke mahkamah.

Adalah penting juga sokongan ini boleh diberi awal dan tepat kepada mangsa. Dalam sesetengah kes yang amat serius, sistem telah diwujudkan supaya rujukan boleh dibuat segera kepada WCC dan pegawai WCC boleh datang untuk memberi VSS kepada mangsa di hospital pada hari yang sama. Sekiranya perlu menunggu untuk temujanji pegawai kaunselor hospital di klinik ianya mungkin mengambil masa sebulan hingga enam minggu. Yang penting juga adalah sokongan yang diberi kepada mangsa haruslah menolong mereka untuk mengatasi situasi dan membuat pilihan-pilihan yang bersesuaian dengan diri mereka sendiri.

Dr Kwanhathai Darin Wong,
Consultant Emergency Physician, HPP



¹⁶ WCC Annual Review 2019, p8.

Translation:

The collaboration between OSCC and WCC began in 2010 and, subsequently, case referrals to WCC to provide Victim Support Services (VSS) to victims were initiated. These services have grown since then and now, VSS provided by WCC have expanded to include OSCCs in other hospitals within the state of Penang.

VSS given by WCC to the victims are very effective because they are specifically targeted to the victim concerned and encompass many aspects in order to provide holistic assistance to the victim in terms of physical and mental support, as well as court support services.

It is also important that this support can be provided early and appropriately to the victim. In some very serious cases, a system has been set up so that immediate referrals can be made to WCC and WCC officers can come to render VSS to the victim in the hospital on the same day. Under normal circumstances, it may take 4 to 6 weeks to set up an appointment with the hospital counsellor at the clinic. It is also important that the support given to the victims helps them overcome the situation and make appropriate choices.

Dr Kwanhathai Darin Wong,
Consultant Emergency Physician, HPP

Dr Sumaiyah Bt Syed Ibrahim, Emergency Physician in charge of the OSCC at HSJ, concurred with Dr Darin Wong, saying that the collaboration between WCC and the OSCC had been very helpful and effective, with all follow-up problems solved effectively through the cooperation of WCC Seberang/PPW.

Consolidating the relationship between WCC and the OSCCs are the OSCC interagency meetings. The Penang State Health Department and HPP host twice-yearly interagency meetings which bring together the OSCCs and the Suspected Child Abuse and Neglect (SCAN) teams, as well as police, social welfare, and WCC representatives. The aim of these meetings is to discuss issues that arise from providing help to victims of domestic violence and sexual crimes, and to improve coordination among agencies when handling such cases.

3.2 Victim Support in the Criminal Justice System

Not all the cases of domestic violence and sexual crime handled by the OSCCs or even those referred to WCC would result in an accused being charged. In 2019, only 65 (26.7%) of the 243 hospital referrals to WCC resulted in victims entering the criminal justice system. In these cases, WCC provided the victims with VSS as they went through the process.

While most of WCC's VSS work originates from hospital referrals, WCC also comes into contact with victims who are at different stages of the criminal justice process. Some are referred to WCC or make contact with WCC before a police report is lodged and some after. Victims also contact WCC at various stages of their trial: pre-trial, during a trial, and even after a trial – in the course of an appeal.

Thus, WCC's support and advocacy services for the victim involves the following stages:

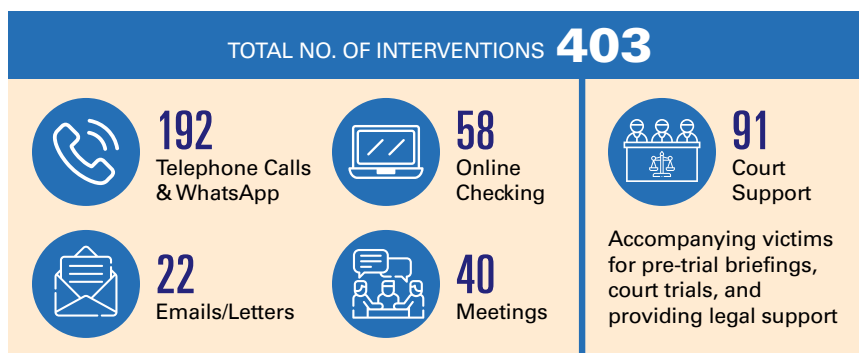
- Post-incident critical support to assist the victim in dealing with relevant agencies, for instance, helping a victim lodge a police report, seek medical help and assessment of physical and emotional injury at the OSCC and at the Social Welfare Department;
- Follow-up with police investigations and accessing initial protection from the perpetrator where necessary;
- Monitoring the prosecution of the crime (including liaising with DPPs on pre-trial preparation, requesting for video live-link or screens, etc., when necessary);
- Providing relevant information and familiarising victims with the court processes before the trial begins by using WCC's resource materials;
- Accompanying victims in court for direct provision of emotional, practical, and legal support while victims and/or their families attend court, give evidence or victim impact statements during trial. In instances of appeals, DNAA, or acquittals, WCC support continues where necessary, for example, following up on the status of appeals, helping victims deal with the emotional consequences of the verdict, etc.; and,
- Providing referrals for healing and recovery (for example, play therapy or counselling).

All these forms of support requires WCC to undertake a variety of actions involving the victims, their families and relevant agencies, including face-to-face meetings, phone calls, WhatsApp communications, e-mails and, where necessary, the penning of official letters in support of the victims and to provide or request relevant information.

Victim support and advocacy in the criminal justice system require significant investment of time and human resources. Figure 4 shows the types and extent of victim support WCC provided to 65 victims of domestic violence and sexual assault in 2019, of whom almost 70% were child victims of sexual assault.¹⁷

Support in these 65 cases involved a total of 403 interventions consisting of 192 telephone calls and WhatsApp messages, 58 instances of monitoring cases via e-filing, 22 e-mails or letters sent to agencies, and 40 meetings with victims or agencies. Additionally, there were 91 instances of WCC court support, which included accompanying the victims for pre-trial briefings; providing legal support (including working with watching brief lawyers on the cases); and attending court with these victims. In most instances two staff members from WCC would be involved in providing victim support in court: a social worker to provide emotional support to the victim and an advocacy officer to handle issues pertaining to victim protection and rights in court.

Figure 4: Types of Services and Number of Interventions WCC Provided to Victims in the Criminal Justice Process, 2019



Source: WCC Annual Review 2019, p17

As pointed out earlier, a large proportion of WCC sexual assault clients are female children. Providing support to child victims of sexual crimes brings with it a specific set of challenges and requires different skills as opposed to dealing with adult victims. The challenges include the level of understanding the child has of what has happened to her and what is involved in the court process. Hence, explanations can take more time before the child reaches an adequate level of understanding. There is, often, concern over the child's coping skills and her ability to speak for herself and give testimony effectively in court. Care needs to be taken to ensure that court facilities are child-friendly and protections under the law for child witnesses are used to reduce trauma.

¹⁷ WCC Annual Review 2019, p16.

Additionally, working with children and providing counselling and support to them requires obtaining permission and cooperation from their parents or guardians. This is not always forthcoming. Some parents feel the less said about the matter the better, and block WCC's access to the child victim. Very often, the parents themselves need support and counselling as well in order to cope with their own emotions and better support their child.

Sometimes the parents and the child (especially teenagers) have different ideas about what action to take. For example, a parent may want to lodge a report regarding statutory rape while the child may not – this is especially prevalent in “*suka sama suka*” cases where the victim is in an intimate relationship with the accused. On the other hand, a child may have accused her father or stepfather of incest and her mother or other family members might want the child to withdraw the allegation. Children often face a dilemma when a family member is the accused. Victim support in these circumstances is crucial and has to be handled sensitively.

In 2020, as part of its exercise to evaluate the effectiveness of its VSS, WCC solicited feedback from the Penang Police Contingent through a questionnaire. The following responses were received:

Perkhidmatan VSS yang disediakan oleh WCC amat membantu mangsa-mangsa di dalam kes-kes keganasan rumahtangga dalam mengawal emosi dan mententeramkan mangsa serta memberi mangsa pendedahan kepada cara-cara mengatasi masalah dan lebih memahami proses undang-undang. Perkhidmatan kepada mangsa kanak-kanak yang akan menghadapi perbicaraan amat berkesan kerana mangsa lebih bersedia di dalam perbicaraan dan tempoh perbicaraan akan dipendekkan.

Translation:

The VSS provided by WCC are of great help to victims of domestic violence cases – assisting them to manage their emotions, calming them, exposing them to various ways of overcoming their problems, and improving their understanding of the legal process. Services provided for child victims who are about to face trial are also very effective because the victims are better prepared for the trials and this helps to shorten the trial period.

Inspector Noornizan Bt Juhasu, Investigating Officer (IO),
Sexual, Women and Child Investigation Division (D11),
Penang Police Contingent Headquarters (IPKPP)

Assistant Superintendent of Police (ASP) Rizatulmi Haizaran Bt Abd Samat, the Staff Officer (Head) of D11 in Penang, highlighted in particular the crucial role played by WCC in helping the child victims understand court procedures as the police force itself is often too short-handed to handle this role effectively.

3.2.1 Case Studies

Case A: Child Sexual Abuse

An 8-year old girl was molested by her adult neighbour. The victim was seen at the OSCC in HPP, warded in hospital and subsequently discharged. WCC staff went to the victim's house to visit her and her mother.

In terms of VSS provision, the following took place:

- One social worker was involved in providing ongoing counselling for the mother and trying to get financial support for the impoverished family. The child was referred to a play therapist as she was severely traumatised and had told her mother that she "nak mati" (wanted to die);
- Two WCC advocacy officers were involved in liaising with the IO and DPP over the case besides briefing the child and her mother about the progress of the case, video live-link facilities, and court dates; and
- Five WCC volunteers took turns to transport the child and her mother for:
 - psychiatric evaluations once a month for a year (some of these sessions were in a different state),
 - play therapy (24 sessions) for a year,
 - pre-trial briefings at the DPP's office, and,
 - pre-trial familiarisation of the court premises and the designated court room to reduce anxiety over hearings and giving testimony at court.

The child and her family lived at least an hour's drive away from the various agencies at which she needed to attend appointments.

In the end, with WCC providing victim support and the sensitivity of the DPP and the IO involved, the child was able to attend court and give her testimony through video live-link. The child made a victim impact statement which was put on record. The accused was found guilty and sentenced to four years' imprisonment. From the time a police report of the crime was made to the time a conviction was obtained, a total of two years and six months had passed.



Case B: Adult Sexual Assault

A 19-year old woman was raped by a man she befriended on Facebook. The assault had taken place when she was forced to meet him on account of his online threats. She disclosed the incident to her best friend who brought her to a police station where she lodged a report. The police referred her to the OSCC at a government hospital for a medical examination.



At the time of the incident, both parents of the woman were suffering from chronic illnesses. She was unable to tell them what had happened to her. Only her two siblings were informed about the incident. She felt very vulnerable.

In terms of VSS provision, the following took place:

- One WCC social worker was involved in providing ongoing counselling for the victim. The victim was very depressed because of the incident. She was pursuing her diploma at a local university at the time of the incident but was unable to concentrate on her studies; and,
- One WCC advocacy officer was involved in liaising with the police and DPP over the progress of the case. The victim was extremely fearful and began to panic upon receiving the subpoena to attend court as a witness for the case hearing. The WCC social worker counselled her and the WCC advocacy officer briefed her on the court process and her legal rights. Both of them accompanied her in court during the trial when she testified. The victim also received emotional support from her best friend who brought her to court.

The accused pleaded guilty and was sentenced to seven years of imprisonment and two strokes of the cane. From the time a police report of the crime was made to the time a court verdict was obtained, it was approximately six months, a relatively short time compared to other sexual crime trials.

Case C: Child Sexual Abuse

A 14-year old boy child was tricked into sharing his nude photographs with an acquaintance he befriended on WeChat. This acquaintance later blackmailed the boy into meeting up. He then sodomised the boy and recorded the act on video.

The victim disclosed the incident to his school counsellor and then lodged a police report. He was sent to OSCC HPP for a medical examination and DNA sample collection. The case was referred to WCC by the school counsellor.



In terms of VSS provision, the following took place:

- One WCC social worker was involved in providing ongoing support for the victim and his parents. His parents were very stressed over the incident. Both of them were working full time and, citing time constraints, declined WCC's offer for referral to a play therapist for their son. Instead, the victim received counselling from his school counsellor;
- Two WCC advocacy officers were involved in liaising with the police and DPP over the progress of the case, as well as briefing the victim and his parents about the legal process and their rights in court. The parents were worried that their son would be blamed for the incident and that media coverage would expose their son's identity; and,
- WCC helped get a watching brief lawyer for the family to protect the victim's rights in court. The watching brief lawyer attended court during the victim's testimony and liaised with the DPP on the victim's needs in court. In this case, the victim needed a screen and an interpreter while giving his testimony and during cross-examination. The victim managed to give his account of the incident in court although he was very agitated while testifying.

This case was fraught with difficulties. The trial was postponed six times for various reasons, including the judge being away and the defence lawyer being on emergency leave. During the trial, the DPP was changed four times. The victim's parents alleged harassment by the accused's family and friends to withdraw the case. They found it difficult to travel to court (more than 45-minutes' drive each way) and to take leave from their work, especially with the numerous court postponements.

In the end, unfortunately, despite the support from WCC, the victim and his parents withdrew from the trial as they had apparently settled the case with the accused. The accused was acquitted. From the time a police report of the crime was made to the time the court verdict was delivered, it was almost one year and eight months.

SECTION 4.0

Advocating for Change

WCC's 2005–2007 research into sexual crimes put forward several recommendations to improve the way the criminal justice system and its personnel treat victims of sexual crime.¹⁸ These included enhancing skills and changing attitudes of personnel in the criminal justice system through training on a variety of issues, among them being promoting a more empathetic courtroom culture and improving understanding of victim advocacy and rights.

In implementing the above recommendations, WCC first focused on direct support for victims as mentioned earlier in Section 3. It also took on the following initiatives:

- Training on Victim Advocacy
- Initiating Interagency Dialogues on Victim Support in Court
- Lobbying on the Issue of Victim Support and Advocacy
- Promoting Legislative and Policy Reform
- Production of Resource Materials on Victim Advocacy

4.1 Training on Victim Advocacy

In 2009, 'victim advocacy' and 'vulnerable witnesses' were unfamiliar terms for many of the personnel involved in the criminal justice system. WCC began to solicit support and opportunities to train a variety of stakeholders on the realities of the criminal justice system from a victim's perspective and their impact on the victim's access to justice.

WCC designed training modules for specific target groups, including members of the judiciary, DPPs and court interpreters. Key components of the training included concepts of secondary victimisation, rights of vulnerable witnesses, as well as existing provisions in the law for support and protection of victims. Case studies based on WCC clients' experiences in court effectively highlighted the existing gaps, both structural (for example: reluctance to use court facilities to support the victims, court facilities not functioning, inordinate delays in the process) and attitudinal (for example: insensitivity of agency personnel, not believing the

¹⁸ Lochhead, J. and Tan Pek Leng (2009).

victim, not being aware of victim intimidation) were crucial in getting participants of the training to acknowledge and accept the difficulties faced by victims in court and the need for victim support. The dispelling of myths on sexual crimes and the understanding of counterintuitive behaviours in victims of sexual crimes were also significant parts of the training curriculum.



WCC training at ILKAP

Over the last six years, WCC conducted numerous training workshops on victim support and advocacy, including the need for sensitive handling of domestic violence and child sexual abuse cases. Different stakeholders participated in these training workshops, including medical, legal, and court personnel. Table 3 shows the different target groups trained.

Table 3: WCC Training Workshops and Target Groups

YEARS	PARTNER ORGANISATIONS	PARTICIPANTS
2013-2019	OSCC HPP	400 OSCC staff from six main and district hospitals in Penang plus OSCC staff from hospitals in Kedah and Perlis.
2013-2019	Malaysian Bar Council and State Bar Committees	117 watching brief lawyers from Penang, Kedah, Perak, Kelantan, Kuala Lumpur, Johor, Negeri Sembilan and Melaka.
2013-2017	Judicial and Legal Training Institute (ILKAP)	238 Magistrates, Sessions Court judges, DPPs, police officers and welfare officers.
2015-2019	Chief Registrar's Office of the Federal Court of Malaysia	71 court interpreters from Penang, Kedah and Perlis on appropriate handling of child sexual crime cases in the courts.
2018	National Legal Aid Department (NLAD)	91 NLAD directors, legal officers and panel lawyers across Malaysia.
2019	Royal Malaysian Police (PDRM)	36 D11 IOs from five districts in Penang.

4.2 Interagency Dialogues on Victim Support in Court

To address the issue of victim support holistically, WCC saw the need to have the agencies involved understand each other's roles and limitations, and work together to ensure that a victim is supported and protected throughout the criminal justice process. Supporting and protecting victims requires a synergistic approach where agencies work together and not in silos.

In 2013, with the support of the Penang judiciary, WCC initiated the first interagency dialogue aimed at improving victim support and advocacy in court in Penang. Participants at this dialogue included sessions court judges, magistrates, DPPs, police officers, welfare officers, medical officers, and



WCC Interagency Dialogue

representatives from both the Legal Aid Centre (LAC) and the Legal Aid Department (JBG). While the OSCC interagency meetings focused on victims in a hospital setting, the victim advocacy interagency dialogues focused on victims in the criminal justice system. Since 2013, WCC has hosted 11 Penang State Level Interagency Dialogues.

During these dialogues, participants are able to share data, information on procedures, and raise issues of concern. WCC was able to raise issues pertaining to victim support in court such as:

- Failure to issue subpoenas to victim and/or witnesses or such subpoenas being issued at the last minute;
- Delays in court (multiple postponements can contribute to case withdrawal);
- Multiple trials for one victim in gang rape cases;
- Court facilities not put to use, for instance, waiting room locked;
- Court facilities not in working order, for example, video live-link not functioning;
- Intimidation of victims outside the court room; and,
- Importance of pre-trial briefings for victims.

These victim advocacy interagency dialogues were held twice yearly from 2013 to 2017, and subsequently once a year, at the WCC office, until the present. WCC has begun to observe some positive changes after these numerous dialogues: witnesses are receiving subpoenas ahead of time and are being informed of the court dates by the IOs; DPPs actively provide pre-trial briefings for victims in court; and, the witness rooms are always available for victims.

To assess the usefulness of the interagency dialogues, in 2020, WCC administered a questionnaire to the different agencies involved in them. The following responses were received:

“Mesyuarat antara agensi sangat membantu dalam memahami masalah-masalah yang wujud antara agensi; contohnya, antara pihak hospital, jabatan kimia, mahkamah dan lain-lain agensi yang berkaitan. Dengan sesi perbincangan...(agensi-agensi ini dapat) mencari kaedah yang lebih sesuai untuk mengatasi masalah atau sekurang-kurangnya dapat mengurangkan impak buruk dari masalah yang timbul. Boleh bertukar pendapat dan (mendapat) cadangan penambahbaikan.”

Translation:

Meetings between the agencies are very helpful in understanding the problems that exist between them; for example, between the hospitals, chemistry department, court and other related agencies. Through these discussion sessions, (the agencies are able) to find more suitable methods to overcome the problems or at least be able to reduce the negative impact arising. Can exchange opinions and obtain suggestions for improvement.

ASP Rizatulmi Haizaran Bt Abd Samat,
Staff Officer, D11, IPKPP



“Mesyuarat berkenaan memberi manfaat kerana agensi-agensi berkaitan sering bekerja dengan skop kerja dan SOP masing-masing, dan jarang dapat bertemu dan berbincang dengan pihak-pihak lain. Dengan pertemuan dan perbincangan yang diadakan, setiap agensi boleh mendapat maklumbalas mengenai isu-isu yang timbul dan boleh mencari jalan penyelesaian yang bersesuaian dan dipersetujui oleh pihak-pihak yang berkenaan. Setiap agensi juga dapat mempertimbangkan dan menilai bagaimana tindakan yang diambil oleh agensi masing-masing memberi impak dan menyumbang kepada sokongan kepada mangsa dan agensi-agensi yang lain.”

Translation:

The meetings are beneficial because the agencies concerned often operate within their respective scopes of work and SOP, and rarely get to meet and discuss with other parties. Through meetings and discussions held, each agency can get feedback on issues that arise and find a suitable solution agreed upon by the relevant parties. Each agency can also consider and evaluate how the actions taken by the respective agencies impact on or contribute to the support provided for the victims and other agencies.

Dr Kwanhathai Darin Wong,
Consultant Emergency Physician, HPP

4.2.1 Networking between WCC and the Agencies

WCC has a good working relationship with hospitals and welfare officers, built up over the years of handling clients and providing shelter when needed. Moving into the field of victim support in the criminal justice system, WCC sought to extend this collaborative network by establishing a working relationship with the DPPs, the police, and court personnel, for example, the court interpreters. As such, regular meetings and visits were held with agencies to build a good rapport.

Between 2013 and 2019, WCC held five official meetings with high-level police officers in Penang and between 2014 and 2018, WCC met officially with the Penang Prosecution Department three times. During such meetings, WCC highlighted shortcomings or addressed issues pertaining to victim advocacy as part of constructive efforts to ensure that victims received the necessary support and protection.

4.3 Lobbying for Better Victim Support

In 2015, WCC was able to spearhead a “National Consultation on The Rights of Vulnerable Witnesses in Court”, the first ever of its kind in the country. This was done in collaboration with the Prime Minister’s Department, the Bar Council, and UNICEF at ILKAP in Bangi, Selangor. International and local experts spoke on different victim support systems around the world. WCC presented survey results on existing court facilities and protections available for vulnerable victims, as well as detailed case studies outlining the gaps in victim support and protection. Eighty participants from key agencies such as the judiciary, Attorney General’s Chambers (AG’s Chambers), police, welfare department, and various non-governmental organisations (NGOs) attended. The media coverage of the consultation brought attention to the issue at the national level.

The following are quotes from the Opening Speeches at the National Consultation:

The Malaysian Bar is committed to changes that would lead to better protection for vulnerable witnesses, which we believe would enhance the administration of justice.

Steven Thiru, President, Malaysian Bar

The government recognises the need for improvements in our criminal justice system, and particularly in granting vulnerable victims a fair chance of access to justice. As such, we welcome initiatives taken by civil society groups such as WCC and the Malaysian Bar in increasing awareness on the needs and rights of vulnerable victims, and gladly partnered with them in organising the National Consultation. We are certain that this National Consultation can be a catalyst for positive, long-term change in our criminal justice system and how we treat vulnerable victims.

Lee Lay Choo, Director-General, ILKAP,
representing YB Hajah Puan Nancy Bt Haji Shukri,
Minister in the Prime Minister's Department

Two years later, in 2017, WCC launched the proceedings report for the National Consultation.¹⁹ Following the launch, a high-level meeting was held among 60 key government agencies, civil society organisations, and institutions. Representatives from several embassies attended the meeting.

WCC disseminated 500 copies of the Proceedings to the courts, police departments, state social welfare offices, and state prosecution offices to highlight the need for better victim support services in Malaysia, with the aim of motivating the participating agencies to act on the Proceedings' recommendations in order to improve victims' rights in court.

In 2018, WCC partnered with the Sabah Women's Action Resource Group (SAWO) and the Sabah Law Society to organise the first seminar on "Support for Survivors of Sexual Crimes" in Kota Kinabalu, Sabah. This was attended by nearly 60 representatives from the judiciary (including from the native and syariah courts), AG's Chambers, police, welfare department, hospitals, Legal Aid Department, Sabah State Education Department, Sabah Women's Affairs Department, Sabah Law Society, local community-based groups, and NGOs.

¹⁹ Consultation Proceedings on the National Consultation on the Rights of Vulnerable Witnesses in Court (2017).



Participants at 2018 seminar on “Support for Survivors of Sexual Crimes” in Sabah

The following quote is taken from the opening speech at the seminar:

The judiciary must administer the law on sexual crimes with sensitivity and understanding. It has been said that there is no real justice until the criminal justice system takes into account the wellbeing of survivors of sexual crimes.

**YAA Datuk Seri Panglima David Wong Dak Wah,
Chief Judge of Sabah and Sarawak**

At the local level in Penang, WCC’s talks on victim support are an ongoing activity at different forums with a variety of stakeholders, including the police, the Social Welfare Department and the hospital.

4.4 Legislative and Policy Reform

Between 2015 and 2017, WCC lobbied for legislative reform towards improving protection for victims. As part of JAG, WCC provided legal input on amendments to the Domestic Violence Act 1994, the Criminal Procedure Code, and the Child Act 2001; in the course of which, it actively engaged with parliamentarians, the AG’s Chambers and the Ministry of Women, Family and Community Development (MWFCDD).

In 2016, WCC led the briefings to MWFCDD and parliamentarians on amendments to the Child Act 2001, where WCC lobbied for improved child protection measures, more child-friendly laws, and the abolition of child marriage.

These inputs have been realised, particularly through the 2016 improvements on the Child Act 2001 which provide for:

- The creation of a Register of Children, listing criminals involved in crimes against children;²⁰ and,
- Greater awareness on the need for protection of child privacy in the media.

In the Criminal Procedure Code, new sections were added that focused on better protection for domestic violence victims.²¹ These include:

- In incidents of domestic violence, arrests can now be made without a warrant; and,
- Perpetrators convicted of committing domestic violence are no longer eligible to be released on a good behaviour bond.

In 2017, again as a member of JAG, WCC was invited by the Prime Minister's department to be part of the special Taskforce to draft the Sexual Offences Against Children Bill, together with the AG's Chambers, the MWFC, and other NGOs, such as child rights groups.



Photo Credit: The Star

Cheering at the passing of the Sexual Offences Against Children Act 2017

²⁰ The move to create a national child sex offenders registry was announced in November 2016 <https://www.thesundaily.my/archive/2046283-YTARCH405444>. WCC raised concerns about the registry and how it would work <https://www.malaymail.com/news/what-you-think/2016/11/22/the-register-of-children-a-word-of-caution-prema-devaraj/1255645>. After some delay, the National Child Sex Offenders Registry was finally passed in March 2019 <https://www.malaymail.com/news/malaysia/2019/03/26/child-sex-offenders-registry-launched-3000-paedophiles-listed/1736695>.

²¹ 'Your KiniGuide to the Criminal Procedure Code Amendments', Malaysiakini, May 25 2016. <https://www.malaysiakini.com/news/342838>

The lobbying efforts at various levels over the years culminated in legal reform in the area of victim advocacy in 2017. Achievements included:

- The passing of the Sexual Offences Against Children Act 2017 which recognises child grooming and child pornography as crimes;²²
- The establishment of a Special Court in Putrajaya to try sexual crime cases against children in a bid to fast track the disposal of cases;²³
- The introduction, via the Legal Aid (Amendment) Act 2017, of the legal companion service to assist child victims of sexual crimes in court;²⁴
- The launching of comprehensive standard operating procedures for handling child sexual crimes;²⁵ and,
- Provision of Emergency Protection Orders for further protection of domestic violence victims through amendment of the Domestic Violence Act 1994.²⁶

The above changes in legislation and policy, which enable more efficient and sensitive handling of victims in the criminal justice system, constitute an important part of victim support and advocacy.

In 2018, after the 14th General Election, the then new Pakatan Harapan government set up the Institutional Reform Committee (IRC) to solicit feedback from the public on critical reforms that have to be instituted to ensure good governance in the country. WCC made a representation to the IRC and put forward a strong recommendation for the setting up of a national taskforce to look into victim support in courts across the country.²⁷

²² 'UNICEF Malaysia applauds passing of Sexual Offences Against Children Bill 2017', New Straits Times, May 16 2017. <https://www.nst.com.my/news/government-public-policy/2017/05/239669/unicef-malaysia-applauds-passing-sexual-offences>

²³ 'Malaysia gets its first court on sexual crimes against children', New Straits Times, June 22 2017. <https://www.nst.com.my/news/crime-courts/2017/06/251214/malaysia-gets-its-first-court-sexual-crimes-against-children>

²⁴ 'Legal companions' available under Legal Aid Act amendments', New Straits Times, July 20, 2017. <https://www.nst.com.my/news/nation/2017/07/259107/legal-companions-available-under-legal-aid-act-amendments>

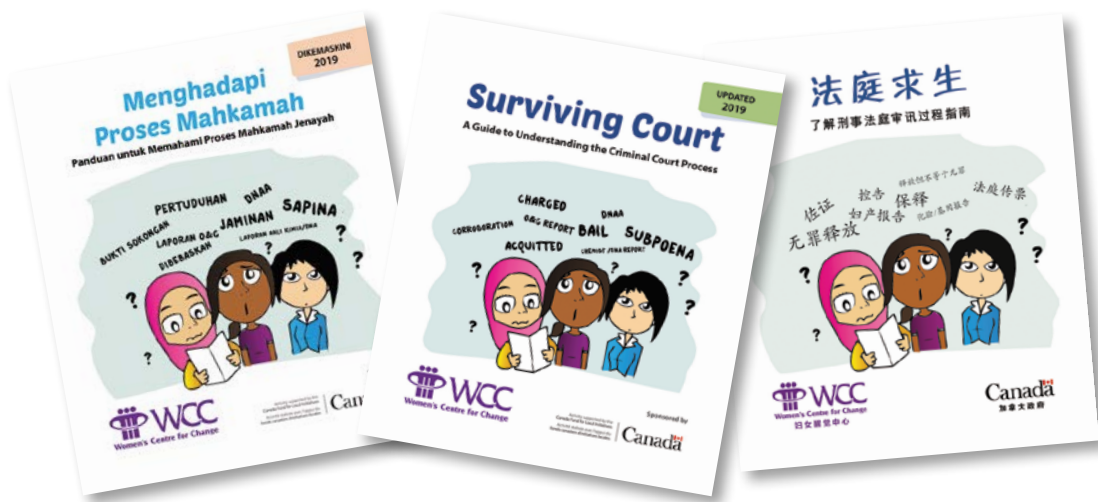
²⁵ 'SOP launched to help child victims of sexual offenders', Free Malaysia Today, December 13, 2017. <https://www.freemalaysiatoday.com/category/nation/2017/12/13/sop-launched-to-help-child-victims-of-sexual-offenders/>

²⁶ 'Welfare officers will be empowered to issue EPO, protect domestic violence victims', New Straits Times, July 18, 2017. <https://www.nst.com.my/news/nation/2017/07/258515/welfare-officers-will-be-empowered-issue-epo-protect-domestic-violence>

²⁷ WCC Annual Review 2018, p25.

4.5 Production of Resource Materials on Victim Advocacy

As material on victims' rights and how they can get support or protection were limited, WCC produced a user-friendly guide booklet *Surviving Court* in 2013 to help victims and their family members, as well as other witnesses, better understand the police investigation and court processes.²⁸ The booklet was eventually published in three languages, namely English, Bahasa Malaysia and Chinese (http://www.wccpenang.org/books/).



In 2015, to meet the overwhelming demand for the information contained in the booklet, WCC produced the *Surviving Court Video Series* as a ten-part series which was uploaded on the WCC website (http://www.wccpenang.org/videos/). Also available on YouTube, these videos are in Bahasa Malaysia and are subtitled in Bahasa Malaysia, English, Chinese, and Tamil. As of December 2020, the YouTube views for the Malay and English videos were over 80,000.

WCC also produced a short video entitled *Suara Saksi Rentan* (Voices of Vulnerable Witnesses) which featured victims of sexual crimes and domestic violence who were clients of WCC sharing their experiences and challenges of going through the criminal justice process, especially going to court. Importantly, this helps personnel in agencies involved in the court process to better understand the victims' perspectives of the criminal justice system. The video was first released at the launch of the Consultation Proceedings in 2017 and made available on the WCC website (http://www.wccpenang.org/videos/) in 2018. The video is in Bahasa Malaysia with both Bahasa Malaysia and English subtitles.

²⁸ WCC (2013) *Surviving Court: A Guide to Understanding the Criminal Court Process*.

On 25 November 2020, in conjunction with International Day for the Elimination of Violence against Women, WCC launched a short video, *The Shower*, to address victim blaming. This video is aimed at creating awareness amongst the general public on this critical issue.

All these materials help raise the level of awareness on the experience of sexual crime victims and the trying times they have to endure. These materials also provide a basis for discussion on victim advocacy and possible ways forward.

The provision of adequate and appropriate victim support services is an ongoing quest for WCC. Different initiatives have been taken and continue to be taken to address structural and attitudinal challenges to victim support services.



WCC's video, *The Shower*, against victim blaming

SECTION 5.0

Data on WCC's Victim Support Services (VSS) for Sexual Crime Cases, 2015–2019

As WCC's collaboration with OSCC HPP to provide support services for victims of domestic violence and sexual crimes began formally in 2010, the year 2019 marks a full decade of the formalisation of this valuable and essential service. It is appropriate then for WCC to conduct an assessment of the efficacy of its VSS by examining the related data it has accumulated. However, as systematic data collection only began in 2015, the current study is only able to draw upon the information gathered from 2015 to 2019 (five years).

During this period, WCC provided VSS for 181 cases where the victims had entered the criminal justice system, that is, they had already lodged a police report. Of these cases, 118 involved sexual crimes, 59 involved domestic violence and the other four were related to other forms of violence or intimidation. In order to gauge the impact of VSS on the victims, this study will only focus on the sexual crime cases so that comparisons can be made with data collected from the 2005–2007 study.

The data analysis yields information on:

- i) Profile of sexual crime cases for which WCC provided VSS;
- ii) Profile and outcome of closed sexual crime cases for which WCC provided VSS; and,
- iii) Impact of WCC's victim support on the outcome of sexual crime court cases.

It should be noted, however, that of the 118 sexual crime cases WCC dealt with from 2015 to 2019, only 86 cases went to trial, and of these an even smaller number, 57 cases, completed full trial and were closed as of December 2019. Eighteen of the cases were still ongoing whilst the outcomes in 11 cases were still pending due to appeal either by the prosecution or the accused as at the end of December 2019.

Essentially then, the data comparison is between 57 cases handled by WCC from 2015 to 2019 and, in the case of the 2005–2007 study, 439 cases tried in the subordinate courts in Penang from 2000 to 2004. Nonetheless, because no other comparable data is available in the country, the limited data derived from WCC's study is important as it is indicative of the kind of improved results – in terms of court outcomes and reduction in attrition rates – that has been brought about by more supportive treatment of the victims. Detailed discussions of the data are presented below.

5.1 Profile of Sexual Crime Cases for which WCC provided VSS

5.1.1 Types of Cases

As shown in Figure 5 below, the 118 cases of sexual crimes for which WCC provided VSS between 2015 and 2019 ranged from incest to molestation, rape, statutory rape, sodomy, sexual harassment, and in certain instances a combination of crimes, for example, statutory rape and sodomy.

Figure 5: Distribution by Type of Case

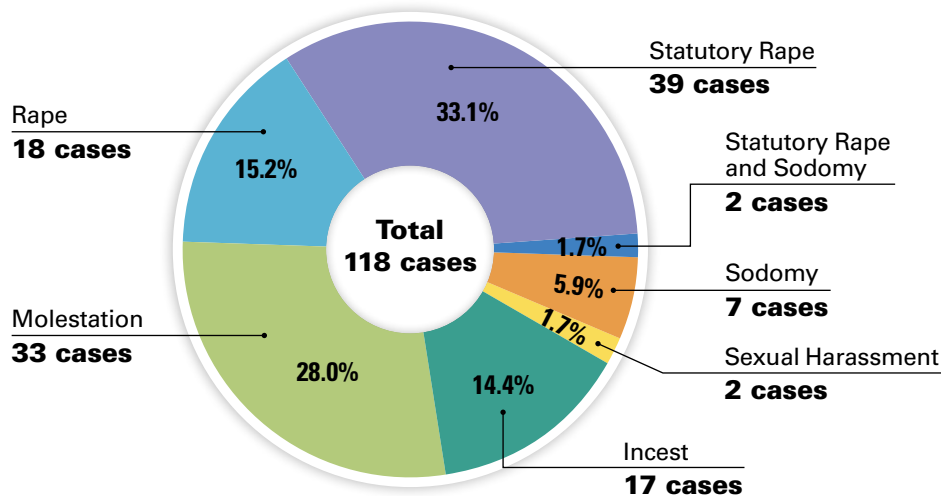


Figure 5 shows that the total number of rape cases (76), which includes incest,²⁹ rape, or statutory rape, made up 64.4% of the overall number of cases. Statutory rape (including the two statutory rape and sodomy cases), constituted close to half (53.9%) of all rape cases. Molestation cases, at 28.0%, made up the bulk of the cases that were not rape cases.

²⁹ Incest is a category of rape.

5.1.2 Profile of Victims and Accused

To better understand the profile of the victims and accused in sexual crimes, data on their sex and age are provided in Figures 6, 7 and 8 and Table 4 below.

Figure 6: Distribution of Victims by Sex

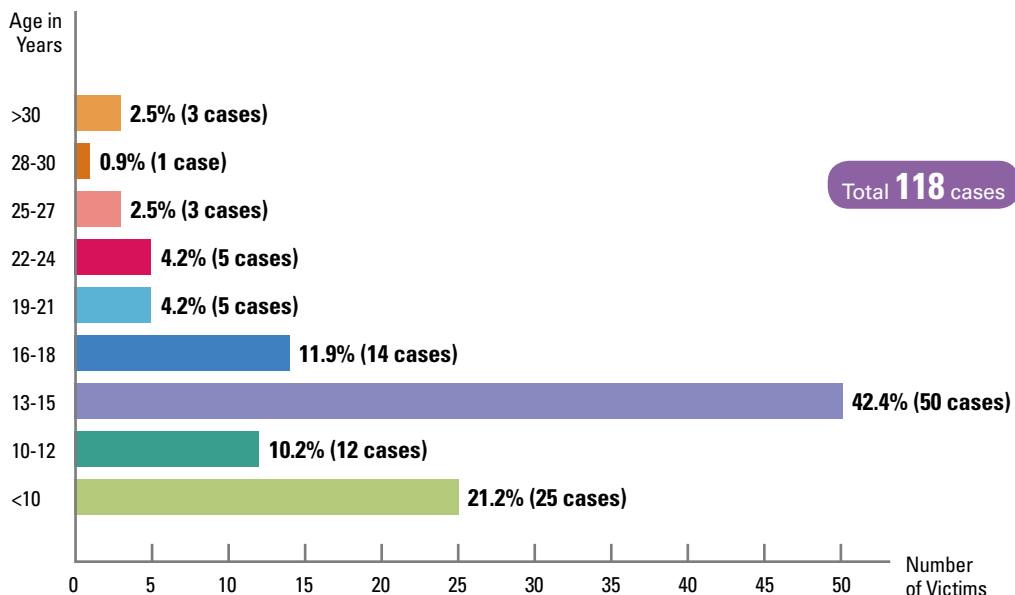


Among the sexual crime cases for which WCC provided VSS, only 11% of the victims were male whilst the vast majority were female (89%). Nonetheless, the occurrence of sexual assault on male victims shows that prevention programmes need to address both male and female audiences. Additionally, personnel in the criminal justice system need to be sensitised to handle both male and female victims.

The accused were all males.

The age distribution of the sexual crime victims under study is shown in Figure 7.

Figure 7: Distribution of Victims by Age



The vast majority of the sexual crime victims who received VSS from WCC (84.7%) were below the age of 18, that is, they were children as defined by law. Of the 100 cases involving children, an overwhelming majority (87.0%) of the victims were below 16 years of age, with 50.0% being between 13 and 15 years of age, and 37.0% being below 13.

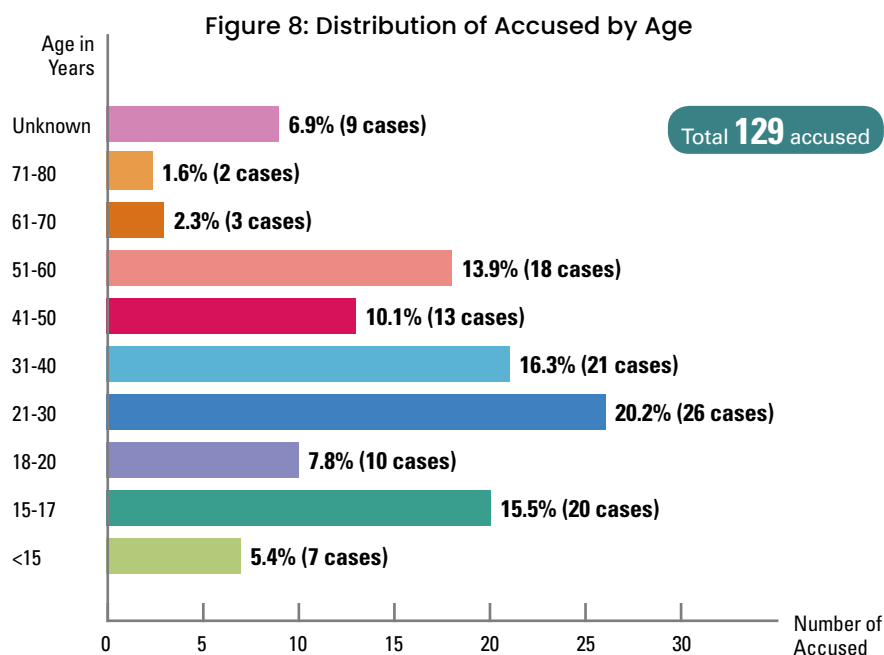
The correlation between the age of victims and the type of sexual crime committed against them is shown in Table 4.

Table 4: Distribution of Type of Case by Age of Victims

Type of Case	Age of Victims			
	Below 18 years		Above 18 years	
	Number	Percentage	Number	Percentage
Incest	16	16.0%	1	5.5%
Molestation	28	28.0%	5	27.8%
Rape	8	8.0%	10	55.6%
Statutory Rape	39	39.0%	-	-
Sodomy	7	7.0%	-	-
Statutory Rape and Sodomy	2	2.0%	-	-
Sexual Harassment	-	-	2	11.1%
Total	100	100.0%	18	100.0%

Of the sexual crimes involving children, statutory rape, molestation, and incest cases were the most common at 39.0%, 28.0% and 16.0% respectively. For sexual crimes involving adults, rape made up 55.6% of the cases.

In all cases, the accused were male. However, information on the ages and number of accused was not always available to WCC. Based on available data, the age profile of the accused is presented in Figure 8.



The total number of accused shown in Figure 8 is higher than the number of sexual crime cases for which WCC rendered VSS. This is because in 10 of the cases, the crime was committed by more than one person (gang rape).

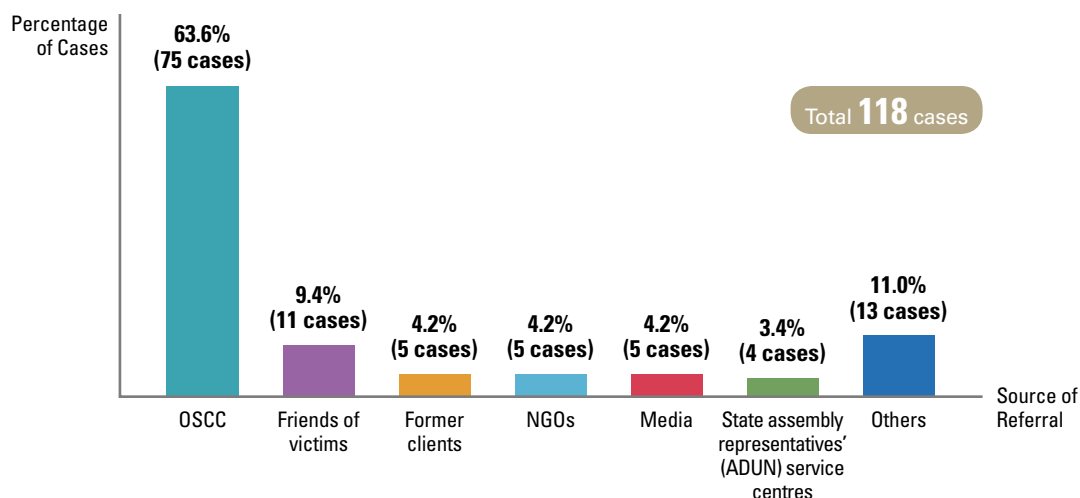
The available data on the accused shows that the majority of them were adult men (79.1%). Additionally, the data also shows that 20.9% of them were children, that is, below 18 years of age. Among the cases where the accused were children, a number involved statutory rape within a context of consensual sex between teenagers (*"suka sama suka"* cases). There were, however, also instances of sexual assault – molest or rape – committed by male children.

In at least six of these cases, the male child was accused along with others who were about the same age or older. The fact that these male children were not acting alone and were possibly induced by others, adults or children, to commit sexual assault, is worrying.

5.1.3 Sources of Referrals

Most of the sexual crime cases supported by WCC came through referrals. Figure 9 shows the sources of referrals.

Figure 9: Distribution of Cases by Source of Referral



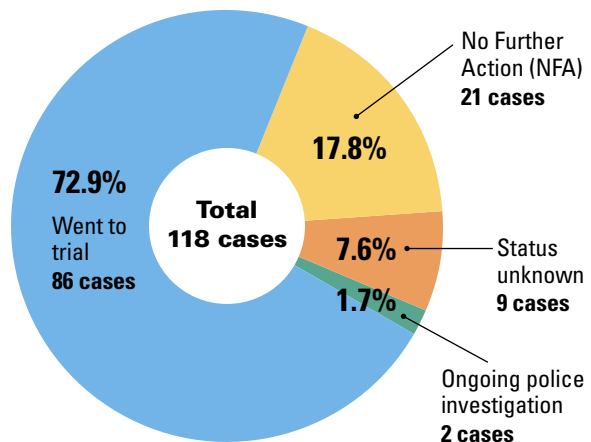
As indicated by Figure 9, a large proportion of the cases (63.6%) came through OSCC referrals. Other sources of referrals included friends of the victim (9.4%), former clients of WCC (4.2%), NGOs (4.2%), and the service centres of state assembly representatives (3.4%). Some clients also contacted WCC after finding out about the organisation through the media (4.2%).

5.1.4 Status of Cases as at December 2019

The status of the sexual crime cases which were provided VSS by WCC, as at December 2019, is shown in Figure 10.

Of the 118 sexual crime cases under study, 86 cases (72.9%) went to trial whereas 21 cases (17.8%) resulted in No Further Action (NFA). The NFA cases were declared thus mainly because there was insufficient evidence for prosecution to proceed (15 cases) or the reluctance of the victim or victim's family to pursue the case in court (5 cases). In one case, a false accusation was apparently made by the parents of the victim.

Figure 10: Status of Cases as at December 2019



Evidence is a key issue in the prosecution of a case and in sexual crimes this can often be difficult to obtain, especially if the crime is reported much later or where there are no other witnesses, as is often the case. It is understandable that many victims choose not to pursue the matter given the shame and stigma often associated with sexual crimes. The whole experience of going through the criminal justice process can be unbearable for the victim and her family, especially if the victim has been made pregnant by the accused. Despite WCC's support, some victims are unable or unwilling to carry on with their cases.

Returning to Figure 10, the status of nine cases are unknown as the clients became uncontactable, and in two cases, police investigations are ongoing.

Key Takeaways

Rape made up the vast majority (64.4%) of sexual crime cases for which WCC provided VSS, with molestation constituting most of the remaining cases at 28.0%.

A vast majority of the sexual crime victims were female (89.0%) and below the age of 18 (84.7%).

All the accused were male, with 79.1% being over the age of 18 years.

The majority of cases (63.6%) coming to WCC for support were referrals from hospitals.

Of the sexual crime cases provided VSS by WCC almost three quarters (72.9%) proceeded to trial.



5.2 Analysis of Closed Sexual Crime Cases for which WCC provided VSS

Table 5: Status of Cases that went to Trial, as at December 2019

The status of the 86 sexual crime cases which went to trial, as at December 2019, is shown in Table 5.

Status	No of cases	Percentage
Court Outcome Obtained	68	79.1%
Case Ongoing	18	20.9%
Total	86	100.0%

Of the 86 cases, 68 cases (79.1%) obtained outcomes in court. The outcomes were of four types: accused pleaded guilty; accused convicted of the crime at the end of the trial; case resulted in a DNAA; or, accused acquitted of all charges. However, in 11 of these 68 cases, the verdicts are being challenged in court; either by the accused appealing against a conviction or the DPP appealing against a DNAA or acquittal. The remaining 18 cases (20.9%) are still ongoing.

Hence, current analysis of the impact of WCC's VSS on the outcomes of sexual crime cases can be based only on the 57 cases in which there are no further appeals by any party. These are referred to as closed cases. The following section analyses the outcomes of the 57 closed sexual crime cases.

5.2.1 Profile of Sexual Crimes and Victims in Closed Cases

The profile of the sexual crimes and the ages of victims in the 57 closed cases is shown in Figure 11.

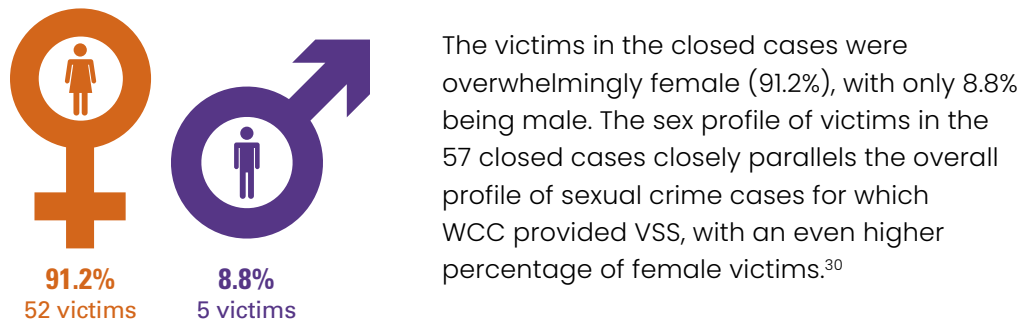
Figure 11: Type and Number of Closed Cases by Age of Victims



The majority of the closed cases (89.5%) involved child victims and approximately half of these closed cases (50.9%) involved statutory rape.

The sex distribution of victims in these closed cases is shown in Figure 12.

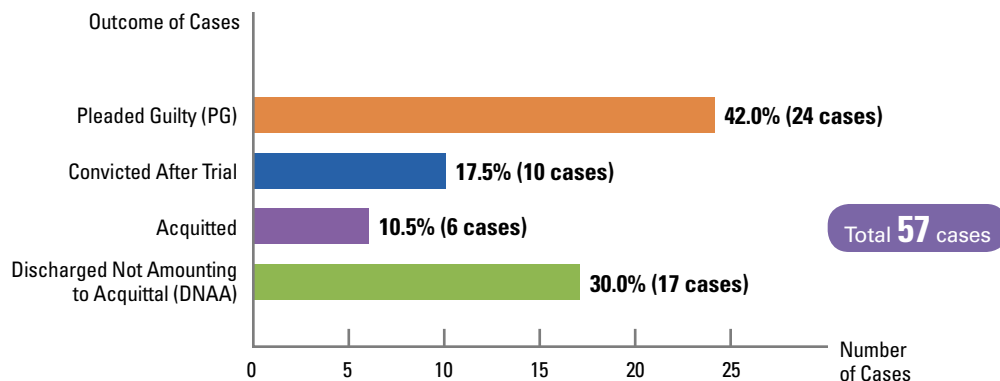
Figure 12: Distribution of Victims in Closed Cases by Sex



5.2.2 Court Outcomes in Closed Cases

The court outcomes in the 57 closed cases are shown in Figure 13.

Figure 13: Distribution of Closed Cases by Court Outcome

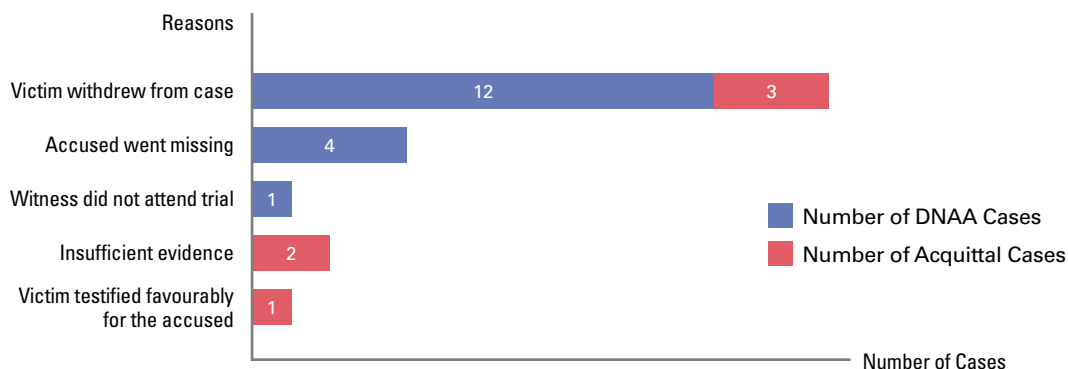


In 24 of the 57 cases (42.0%), the accused pleaded guilty (PG). Of the remaining 33 contested cases, 10 cases (17.5%) resulted in a conviction, 17 cases (30.0%) in a DNAA and six cases (10.5%) in an acquittal.

³⁰ The comparable figures for sex of victims in all 118 sexual crime cases examined were 89.0% female victims and 11.0% male victims.

The reasons for DNAA and acquittal outcomes are shown in Figure 14.

Figure 14: Reasons for DNAA and Acquittals in Closed Cases



The main reason for DNAA was the victims' decision to withdraw from the case, that is, not to proceed with the trial, which affected 12 (70.6%) of the 17 DNAA cases. In four of the remaining five cases (23.5%), the accused went missing, and in the fifth case (5.9%), the witness did not attend the trial.

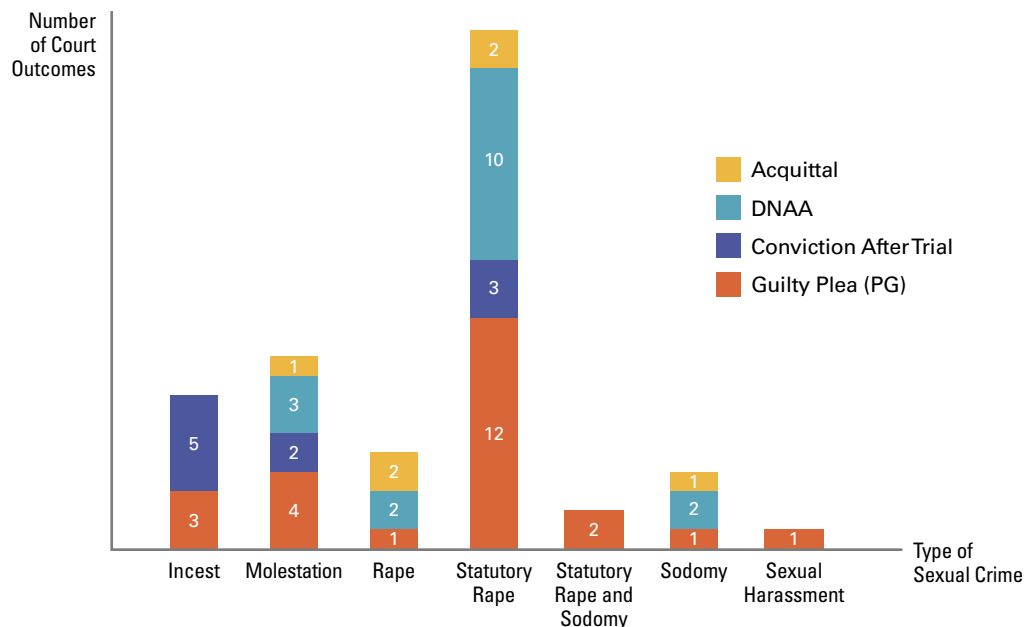
Victims withdrawing from the criminal justice process were also observed in half of the six acquittal verdicts. In three cases, families of child victims made the decision to settle the matter outside the criminal justice system, which resulted in a recording of "acquittal" by the court.

In the remaining three cases, two of the acquittals were due to insufficient evidence and, in the final case, the victim, who was 16 years of age, testified favourably for the accused because the victim was expecting to marry the accused who was 40 years old.

Clearly, victim attrition is key in bringing about DNAA and acquittal outcomes in this sample of closed cases.

The court outcomes were also checked against type of sexual crime as shown in Figure 15.

Figure 15: Distribution of Court Outcomes by Type of Sexual Crime



Successful prosecutions (i.e. combining guilty pleas and conviction outcomes) were obtained in 34 of the 57 cases (59.6%). It is noted that the majority of successful prosecutions (70.6%) were due to the accused pleading guilty, in 24 of the 34 cases. Convictions after a full trial occurred in only 10 of the 34 cases (29.4%) indicating the difficulty in convicting someone accused of a sexual crime in court.

The small sample size for each type of sexual crime calls for caution in drawing conclusions from Figure 15. Nonetheless, it is significant to note that all (100.0%) the incest cases were successfully prosecuted, whereas successful prosecution was only seen in 60.0% of molestation cases, 55.6% of statutory rape cases and 20.0% of rape cases. The number of cases in the other types of sexual crimes (combination of statutory rape and sodomy, sodomy, and sexual harassment) are too small in number to allow for meaningful discussion.

Many factors are involved in securing successful prosecution in a full trial, including sufficient evidence, diligent and skilful investigation and prosecution, as well as the strength of the victim's testimony and corroboration. In many instances this is hard to achieve. Convictions are harder to secure in rape cases as compared to statutory rape cases as the burden of proof in rape cases involves proving lack of consent, whereas in statutory rape cases, consent of the victim is not a defence for the crime.

5.2.3 Length of Trial and Court Outcomes

The length of a trial is known to have a bearing on its outcome. Victims may get disheartened, feel disempowered, or endure secondary victimisation if the process of seeking justice is prolonged, and thus drop out, resulting in an acquittal of the case or a DNAA. The length of trial in the 57 closed cases is shown in Table 6.

Table 6: Distribution of Closed Cases by Length of Trial and Comparison with 2005–2007 Study

Length of Trial	No of Cases (Current Study)	Percentage (Current Study)	Percentage (2005–2007 Study)
< 6 months	9	15.8%	33.0%
6 months – 1 year	18	31.6%	19.0%
1 – 2 years	19	33.3%	31.0%
2 – 3 years	4	7.0%	8.0%
> 3 years	–	–	9.0%
Unknown	7	12.3%	–
Total	57	100.0%	100.0%

Of the 57 closed cases, almost half (47.4%) were completed within a year, somewhat lower than the 52.0% recorded in the 2005–2007 study. In terms of trials that lasted one to three years, the numbers were practically the same, at 40.3% for the current study and 39.0% for the earlier study. In the 2005–2007 study, 9.0% of trials lasted more than three years. No similarly lengthy trial was recorded in the current study. However, in seven cases (12.3%), the length of the trial was not known as the victims became uncontactable.

On the whole, except for there not being any trials that lasted more than three years, the situation regarding length of trial cannot be said to have improved over that in the 2005–2007 study. This continues to be an area of great concern as the length of trial affects the victims.

Key Takeaways



The majority of the 57 closed sexual crime cases were statutory rape cases (50.9%), followed by molestation (17.5%), and incest (14.0%).

Most of the victims were children (89.5%) and female (91.2%).

Successful prosecutions (guilty pleas and convictions) made up 59.6% of the outcomes. Guilty pleas accounted for 70.6% of the successful prosecutions.

The highest rate of successful prosecution was seen in cases of incest (100.0%), molestation (60.0%), and statutory rape (55.6%). In comparison, only 20.0% of rape cases were successfully prosecuted.

Almost 30.0% of the cases resulted in DNAA, mainly due to victims withdrawing from their cases.

5.2.4 Comparison of Court Outcomes between Current Study and 2005–2007 Study

As mentioned earlier, WCC's previous research into sexual crimes analysed 439 closed files of sexual crimes cases heard in the Penang Sessions Court between 2000–2004.³¹ The findings were that the DNAA rate was high, at 45.1%, and the conviction rate in contested cases was very low, at 4.0%.

In order to gauge if VSS provided by WCC improved the outcomes of sexual crime cases, a comparison between the data from the 2005–2007 study and the current data on closed sexual crime cases is presented below. However, in making the comparison, the limitations of the data in the current study must be taken into consideration. These include:

- i) the small number of closed cases (57) in the current study compared to that in the previous research (439); and
- ii) a narrower range of sexual crimes (6) than that in the 2005–2007 study (16).

Within the scope of the above limitations, a comparison is made between the findings on trial outcomes in the current study and those in the 2005–2007 study as shown in Table 7.

³¹ Lochhead, J. and Tan Pek Leng (2009).

**Table 7: Comparison of Court Outcomes between
Current Study and 2005–2007 Study**

Outcome of Cases in Court	Current Study (2015–2019 data)		2005–2007 Study (2000–2004 data)	
	Number	Percentage	Number	Percentage
Pleaded Guilty	24	42.0%	137	31.2%
Convicted After Trial	10	17.5%	12	2.7%
Acquitted	6	10.5%	79	18.0%
DNAA	17	30.0%	198	45.1%
Others ³²	0	0%	13	3.0%
Total	57	100.0%	439	100.0%

In comparing the two studies, the following is noted:

The percentage of convictions after a trial in the current study (17.5%) is almost seven times higher than that recorded in the 2005–2007 study (2.7%). The percentage of DNAA cases in the current study (30.0%) is about two-thirds that in the previous study (45.1%). The percentage of those pleading guilty to sexual crimes is about 10.0% higher in the current study (42.0%) compared with that in the previous study (31.2%). The percentage of acquittals in the current study (10.5%) is almost half of that in the 2005–2007 study (18.0%). The combined percentage of guilty pleas and convictions in the current study (59.5%) is 1.7 times higher than that in the previous study (33.9%).

In every court outcome, the present study shows a significant improvement compared to the previous study.

A further comparison is made of conviction rates in cases where the accused claimed trial (cases where the accused did not plead guilty) between the current study and the previous one. The results are as shown Table 8.

**Table 8: Comparison of Conviction Rate in Contested Cases
between Current Study and 2005–2007 Study**

	Current Study (2015–2019 data)	2005–2007 Study (2000–2004 data)
Total Contested Cases (Total Closed Cases minus Guilty Plea Cases)	33 cases	302 cases
No of Convicted Cases after Full Trial	10	12
Conviction Rate	30.3%	4.0%

³² These categories were not applicable to the 2015–2019 study.

The 2005–2007 study found that only 12 out of 302 (4.0%) contested cases resulted in a conviction while in the current study 10 out of 33 cases (30.3%) resulted in a conviction. The current study registered a conviction rate almost eight times that recorded in the previous one.

Key Takeaways

Significant improvements in court outcomes were seen across the board in the present study compared to the previous study.

The percentages of convictions after a trial and those pleading guilty to sexual crimes were much higher than in the previous study.

The percentages of DNAA cases and acquittals were much lower than in the previous study.

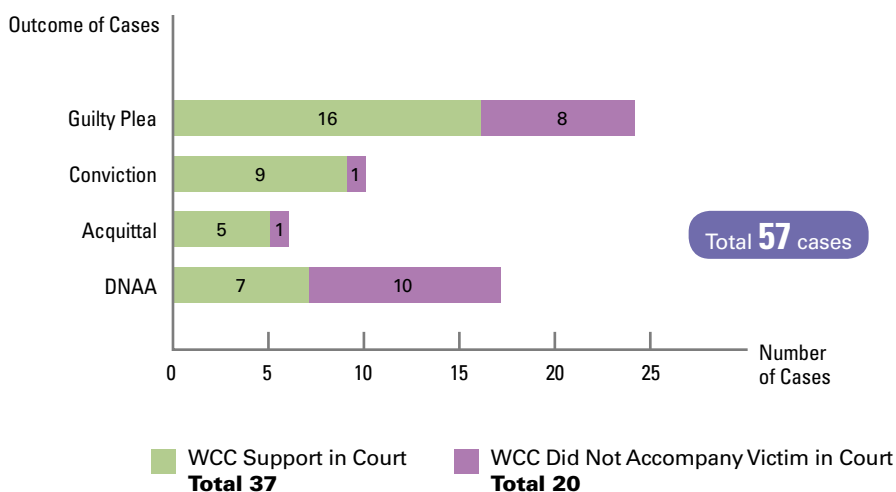
Successful prosecutions (i.e. the combination of guilty pleas and convictions) were almost twice those in the previous study.



5.3 Impact of WCC Victim Support in Court

A major component of WCC's VSS is accompanying the victim in court when the victim has to give evidence or is to be cross-examined. Figure 16 shows WCC's court support in 57 closed sexual crime cases.

Figure 16: WCC Support in Court and Impact on Court Outcomes



WCC staff/volunteers accompanied the victim in court in 37 of the 57 closed cases (65.0%). In doing so WCC representatives attended court 132 times. As mentioned earlier two WCC staff members, a social worker and an advocacy officer, usually accompany the victim in court.

In the remaining 20 cases (35.0%), WCC representatives did not accompany the victim in court either because:

- i) the accused pleaded guilty at the first mention or at an early stage of the trial, and hence the victim did not have to attend court, or
- ii) the victim or the family contacted WCC only after giving testimony in court or at a later stage in the criminal justice process and there was no necessity for WCC representatives to accompany the victim in court.

In all 57 cases, irrespective of whether WCC representatives were able to accompany the victim in court, WCC provided victim support services through the provision of information, emotional support, and updates on the trial process and outcomes by liaising with criminal justice personnel, for example, DPPs.

For the 37 cases for which WCC provided direct court support, it augmented its service by appointing watching brief lawyers for the victims in seven of the cases (18.9%). WCC contacted the watching brief lawyers on behalf of the victims and their families and liaised between the two parties. In these cases, the watching brief lawyers' roles included:

- requesting for updates on the status of the case from the DPP;
- explaining what happens in court to the victim and her family;
- preparing the victim for court by liaising with the DPP;
- informing the DPP and the court whenever the victim's rights are affected in court, for instance, being questioned unnecessarily or harshly by the defence lawyer; and,
- highlighting the negative impact of the crime on the victim for consideration in determining the sentence and compensation.

Additionally, in two other cases (5.4%) arrangements were made for legal companions to attend court with the victims.

The watching brief lawyer represents the victim's interests during the court trial, and essentially ensures that the victim stands better advised on the court proceedings. A watching brief lawyer must obtain permission from the judge to appear in court and to speak on behalf of the victim during the trial.³³ A watching brief lawyer who is invited or given permission to address the court is deemed to do so as *amicus curiae* or a "friend of the court",³⁴ to assist the court in coming to a more informed decision by providing factual or legal information.

A legal companion is an officer from the Legal Aid Department whose role is to protect the interests of the child victim.³⁵ The legal companion's role is similar to that of the watching brief lawyer, with the additional tasks:

- To advise the guardian / protector of the child victim on legal matters;
- To accompany and represent the child victim in any trial in court; and,
- To advise on civil actions that can be taken by the child victim.

While outcomes in court are the result of a complexity of factors, the data in Figure 16 shows that outcomes were better on the whole when WCC attended court and provided court support to the victims. The most significant differences were in relation to conviction and DNAA. For cases where WCC representatives accompanied the victims in court, the conviction rate was 24.3% (nine out of 37 cases) versus 5.0% (one out of 20 cases) where it did not, that is, almost five times higher. There were fewer instances of DNAA, seven out of 37 cases (18.9%) where WCC accompanied the victim in court, as compared to ten out of 20 cases (50.0%) when it was unable to.

It would seem that when victims were provided with support in court, more of them stayed in the course of the criminal justice process, that is, the length of the trial. They then had a better chance at accessing justice and redress.

³³ The Malaysian case of *Pendakwa Raya v Mohd Aisha Bin Kulop Abdul Hamid* AP 41-69-2008 states that although the Criminal Procedure Code does not have a specific provision for watching brief, convention allows watching brief lawyers to address the court with permission. However, the role of a watching brief lawyer should not extend over the role of the prosecutor or defence counsel (for example, suggesting appropriate sentencing). In such a situation, if the watching brief lawyer representing the victim wishes to do so, she or he should impress it upon the DPP to address the court accordingly.

³⁴ Dato' Mahadev Shankar, *Watching Briefs – Indulgence, Right or Potential Estoppel?* [1999] 1 MLJ clxi.

³⁵ Legal Companion Services. <http://www.jbg.gov.my/index.php/en/services/legal-companion-services>.

In WCC's experience, providing victim support is a lengthy process which sometimes takes up to several years for a particular case. In addition to accompanying victims and their families in court, it includes time taken to provide information to them, to familiarise them with court processes, and to follow up with criminal justice personnel. In the 10 cases WCC supported which obtained convictions after trial, the minimum length of time of victim support provided was 10 months and the longest was nearly three years.

Key Takeaways

Of the 57 closed cases, WCC accompanied the victims in court in 37 cases.

In supporting these 37 cases, WCC attended court 132 times.

WCC has no direct influence over the outcome of a trial, which relies on a complexity of factors. However, the impact of WCC's victim support in court would be in reducing the attrition rate of victims, thus possibly providing the victims with a better chance to access justice and redress.



5.4 Discussion

The analysis in this section, which is based on data derived from the sexual crime cases for which WCC rendered VSS in the 2015-2019 period, yielded a profile that is very much in line with the national profile. In keeping with the national trend, statutory rape accounted for the largest proportion of sexual crime cases (34.8%) in this study. All in, rape cases made up 64.4% of all sexual crimes in the WCC cohort. This study also showed that the victims were predominantly children (84.7%) while the accused were mainly adult males (79.1%).

While acknowledging the limitations of the current study, primarily due to its small sample size and limited range of sexual crimes, it is heartening to note the general improvement in outcomes, that is, more successful prosecutions and less victim attrition, as compared to WCC's research findings about ten years ago.

While understanding that the outcome in any trial involves a complexity of factors, in sexual crime trials, attrition of the victim from the criminal justice system due to the shame and stigma of the crime, the various forms of secondary victimisation in the criminal justice system, as well as the difficulties in discharging the burden of proof in sexual crimes make successful prosecutions difficult to obtain unless the accused pleads guilty.

The data in this study, as compared to WCC's previous study, shows relatively more guilty pleas, more convictions, less DNAA (due to lower attrition of the victims) and less acquittals. A major difference between the two studies is the victim support services provided by WCC in the current study, albeit at different stages of the criminal justice process and in different forms.

It must certainly be acknowledged, though, that other contributory factors came into play to bring about the better court outcomes registered in the current study. The key factors are discussed below.

i) Increased court efficiency

In 2011, following a major revamp, the Courts implemented an e-filing system in stages to increase its efficiency in managing cases. Additionally, there have been directives from the Chief Judge of the Federal Court pertaining to prioritisation of cases, especially those involving children.³⁶

ii) Greater sensitivity and diligence of the deputy public prosecutors, investigating officers and court personnel

In recent years, WCC has noted the pro-activeness of some of the DPPs and IOs in the handling of certain matters in sexual crimes cases, for example, the issuing of subpoenas on time, keeping victims informed of the progress of the case, pre-trial briefings and use of special court facilities for vulnerable victims, for example video live-links or screens. This has probably been brought about by a combination of factors, such as a demand from the public for better prosecution of sexual crimes, especially those involving children as the result of a few high-profile cases of child sexual abuse; and the recent establishment of standard operating procedures for handling sexual crimes. In Penang, an increased awareness on the rights of victims through WCC trainings on sexual crimes, talks on victim advocacy, and deliberations in the interagency dialogues initiated by WCC may have contributed to greater sensitivity of personnel in the relevant agencies. With the presence of more sensitised court and enforcement agency personnel, secondary victimisation can be reduced and this increases the chances of victims remaining in the criminal justice system for the duration of the trial.

³⁶ Chief Justice Federal Court Malaysia Practice Directives on Case Prioritisation (2/2004).

iii) Victim Support

In all cases in the current study, WCC rendered victim support which included providing information, counselling and emotional support, accompanying the victim in court (in 65% of the cases), following up with agencies, and liaising with watching brief lawyers for the victim and often times her family – especially in cases involving children. WCC contributed to the victim and their families feeling more supported throughout the criminal justice process and made it less likely for them to drop out. Additionally, having the presence of watching brief lawyers and legal companions in court had also contributed to the victim feeling that her rights were being recognised and protected. Although many victims might still drop out of the criminal justice process despite receiving these kinds of support, the chances of attrition are reduced when a victim is treated with respect and her rights in court are protected and upheld. This is what WCC seeks to achieve.



In summary, the recent data, despite the limitations mentioned, suggest that there has been progress made in dealing with sexual crimes cases in terms of more successful prosecutions and less attrition from trials. WCC would suggest that victim support played a role in contributing to the reduction in victim attrition, thus enabling the victim to have a better chance of accessing justice and redress from the courts.

SECTION 6.0

Conclusion and Recommendations

The journey undertaken by WCC to create an understanding on victim support began more than 10 years ago. WCC's efforts through provision of victim support services, training of court and enforcement agency personnel, interagency dialogues, production of materials, as well as documentation and research have shown what can be done in Penang to start with. But the journey does not end here.

There is still a lot more to do both locally and also at the national level. Augmenting the understanding on the need for victim support services in the criminal justice system is an ongoing process which requires multi-level stakeholder support and adequate resources. Once sufficient understanding has been built, work towards a more comprehensive system of victim support must be put into place.

The following are recommendations for the way forward. These include the recommendations from the WCC 2005–2007 study and also builds on the 2015 National Consultation discussions and presentations. They comprise:

- Monitoring and evaluating existing victim support initiatives;
- Documenting the outcome and impact of victim support initiatives in sexual crime trials;
- Conducting specialised training for personnel in the criminal justice system;
- Organising interagency dialogues on victim advocacy at both the state and national levels; and,
- Establishing a high-level National Taskforce for the implementation of an integrated victim support system.

6.1 Monitor and Evaluate Existing Victim Support Initiatives

The government has already introduced certain measures to ensure various forms of support for vulnerable victims and witnesses when they appear in court.³⁷ These include legislation for victim impact statements, compensation for victims, protection orders, and the provision of facilities such as video live-link, witness waiting rooms, and screens.³⁸

³⁷ Teh Honguan, Joshua (2017) 'Presenting Realities on the Ground: Survey of Facilities and Protection Available for Vulnerable Victims', *Consultation Proceedings of the National Consultation On Rights of Vulnerable Witnesses in Court*, pp34–46.

³⁸ Evidence of Child Witness Act 2007.

However, feedback suggests that the implementation of such support and the use of the facilities are not uniform in courtrooms across the states or even within individual states.

A significant milestone took place in 2017, with the setting up two special courts, in Putrajaya and Kuching respectively, to expedite the disposal of cases involving sexual offences against children. These courts were to be presided over by a Sessions Court Judge with expertise in the law relating to juveniles. They were to be equipped with infrastructure such as Court Recording Transcription (CRT) facilities, child witness waiting room, video live-link, screen, and disabled-friendly facilities among other things.³⁹ The progress of both these courts need to be evaluated for the effectiveness of the victim support being provided, as well as their efficiency and effectiveness in handling sexual crimes involving children.

Another improvement is the introduction of the legal companion service for child victims of sexual crimes during proceedings in court, also began in 2017. This programme also needs to be evaluated for its efficiency and effectiveness in providing the necessary support for child victims of sexual crimes nationwide.⁴⁰

There is a need for systematic and continuous monitoring and assessment of the various measures and facilities that are in place to protect the rights of vulnerable victims and witnesses in criminal courts across Malaysia. The data obtained from such monitoring efforts would help to identify where the problems lie and enable steps to be taken to ensure uniform and effective implementation.

These steps could also include building facilities in courts which lack them, setting aside adequate funds for maintenance of existing facilities and running pilot projects on a district level to ensure full compliance by all criminal justice agencies, with a view to upholding the rights of vulnerable victims and witnesses. The success of these initiatives and existing good practices would provide a benchmark for uniform implementation in the country. Key to the monitoring would also be feedback from victims attending court trials.

Monitoring and assessments could be taken on by the judiciary or external agencies such as research institutions or human rights groups and would require an adequate budget.

³⁹ http://www.kehakiman.gov.my/sites/default/files/PRESS%20RELEASE%20PERASMIAN%20MAHKAMAH%20JENAYAH%20SEKSUAL%20TERHADAP%20KANAK-KANAK_6.pdf

⁴⁰ Legal Aid (Amendment) Bill 2017 (Act 26) provides for a legal companion in court for child victims. http://www.jbg.gov.my/images/doc/Akta/20171017_A1548_BI_Act%20A1548%20BI.pdf

6.2 Document the Outcome and Impact of Victim Support in Sexual Crime Cases

In the interest of justice and accountability within the criminal justice system, the victim support services provided and the outcomes of sexual crime cases in court need to be monitored. This would not only provide an assessment of the investigation and prosecution of sexual crimes by the relevant agencies but also the effectiveness and impact of victim support on outcomes in sexual crime cases. Data needs to be systematically collected and shared on the types of support received, the types of outcomes (guilty plea, conviction, DNAA, acquittal), and the rate and causes of attrition, as well as feedback from the victims attending trial.

Implemented initially as pilot projects at state level, this type of monitoring and assessment can evolve into national level monitoring and assessment and will eventually produce data for national evaluation of victim support services and outcomes. The judiciary and research institutes could be enlisted as partners to help in the monitoring and assessment.

6.3 Conduct Specialised Training on Victim Support

6.3.1 Specialised Training for Criminal Justice System Personnel

Criminal justice personnel need to be sensitised and attuned to the needs of vulnerable victims and witnesses. When proper support is provided to vulnerable victims and witnesses, their ability to lodge reports and provide effective testimonies will be improved, which in turn will help the criminal justice system hold criminals accountable for their crimes and help ensure that the rule of law is upheld.

Personnel from the judiciary and AG's Chambers, DPPs, police and welfare officers, legal companions, and watching brief lawyers should be provided with regular training which focus on victim's rights under the law and sensitisation of these officers to sexual crime. The training curriculum should be conducted on the premise that sexual crimes essentially revolve around issues of power, gender and violence, with sex being used as a weapon. It is vital that criminal justice personnel are sensitised against victim blaming and secondary victimisation. Importantly, judges and prosecutors need to understand the occurrence of counterintuitive behaviours in sexual crime victims and how to assess or interpret them evidentially, as well as proper handling of children giving testimony in court.

Such training can be implemented through ILKAP, with course accreditations for professional development.

6.3.2 Specialised Training for Medical Personnel

Medical personnel, particularly those involved in the OSCCs at government hospitals should also receive training on handling vulnerable victims and be sensitised to their needs. In addition, there should be training for medical personnel on how to better collect and document evidence in sexual crime cases, as well as how to give evidence in court.

All these trainings should be part of a systematic effort to raise the level of awareness and professionalism in the field of victim advocacy. As such, it may be necessary to have structured courses which would allow for professional development over a period of time.

6.4 Organise Interagency Dialogues on Victim Advocacy at State and National Levels

Victim support is not a single agency effort. As such, key criminal justice agencies need to have regular discussions over issues faced when handling cases involving vulnerable victims and witnesses. These interagency dialogues will allow for challenges to be deliberated on, solutions to problems be worked out, good practices be documented and adopted, and knowledge be built to raise standards in the provision of victim support services.

Agencies which should be involved in such dialogues include the court, prosecution, police, welfare, hospitals, agencies providing legal aid, and human rights organisations. These interagency dialogues should be formalised as part of the yearly agenda of these agencies, preferably through a directive from the AG's Chambers or the Minister of Law's Office. There should be bi-annual meetings at the state level and annual meetings at the national level. Discussions and decisions at these levels will provide input and impetus for reform towards better victim support and advocacy.

6.5 Establish a National High-Level Taskforce for the Implementation of an Integrated Victim Support System

Various models of victim support services are available around the world. They range from being welfare-based, police-based, prosecutor-based to NGO-based. In Malaysia, government agencies such as the Social Welfare Department and the police, as well as NGOs such as WCC, have taken different initiatives to provide some form of support services to vulnerable victims and witnesses.

The Social Welfare Department has a witness support service (WSS) stated on their website and welfare officers do accompany child victims but not adult victims in court. However, the feedback is that the service is not uniformly implemented both within and between states, with the public often being unaware of how to access this service.⁴¹

Police initiatives for victim or witness support services include the setting up of Child Interview Centres (CICs) in 2002 to reduce the trauma of children giving evidence in court; the appointment of victim care officers; and the introduction, in 2011, of a triage service for victims of sexual crimes in 35 police stations in Selangor, Kuala Lumpur, Penang, and Johor to reduce the trauma of reporting the crime.^{42,43} However, it is unclear whether the effectiveness of these initiatives have been properly monitored or evaluated.

WCC has provided some level of support to victims who approached or were referred to us for help, as discussed in earlier sections of this report, but does not have sufficient personnel and resources to monitor outcomes in adequate depth or detail.

The above stakeholders provide some level of support but not in a cohesive manner. There are still gaps in the support provided to the victims. A coordinated effort among the agencies is needed to implement a continuous form of support service for the victim throughout the criminal justice process.

⁴¹ 'Support Systems for Child Survivors', *RAGE*, March 21 2017. <https://www.rage.com.my/support-systems-child-survivors/>

⁴² 'Meet the 'Mother' of the Cops' Women and Child Investigation Division', *Free Malaysia Today*, March 8 2019. <https://www.freemalaysiatoday.com/category/nation/2019/03/08/meet-the-mother-of-the-cops-women-and-child-investigation-division/>

⁴³ 'Triage system to improve Service Quality', *The Star*, 10 October 2011. <https://www.thestar.com.my/news/nation/2011/10/10/triage-system-to-improve-service-quality>

A High-Level National Taskforce on Victim Support and Advocacy, involving stakeholders such as the Attorney General's Chambers, the Ministry of Home Affairs, the Ministry of Women, Family and Community Development, the Malaysian Bar, NGOs, and other groups, is necessary for oversight on the establishment of an Integrated Victim Support System. Such a Taskforce is needed to coordinate among ministries, agencies and relevant groups at both state and national levels. The Taskforce needs to exist not just in name but also with sufficient power to ensure the allocation of adequate financial and human resources for this endeavour. There must be sufficient political will to get victim support services and advocacy on the reform agenda.

The High-Level National Task Force can also work towards regular victim support and advocacy conferences, seminars and forums with various stakeholders to build understanding on the crucial need for victim support and advocacy across the country. Over time, a standard can be set for a nationwide practice of victim advocacy in the criminal justice system.

In concluding, WCC would state that the implementation and progress of all the recommendations cited above require not just a vision, but also political will, and an adequate budget. It is often the case that the lack of an adequate budget derails the best laid out policy plans, especially those which are not seen as important.

For victim support and advocacy to be an effective and efficient reality in Malaysia, the commitments made must include a plan of action which is appropriately and adequately resourced both in terms of personnel and finance. Furthermore, there must be a mechanism for monitoring the plan of action for accountability and to ensure the commitments are upheld.



For further information, contact:

Women's Centre for Change (WCC)

241, Jalan Burma, 10350 Penang, Malaysia.

☎ : 04-228 0342

☎ : 04-228 5784

☎ : 011-3108 4001

✉ : wcc@wccpenang.org

WCC Seberang/Pusat Perkhidmatan Wanita (PPW)

13, Lorong Sutera 6, Taman Sutera,

13700 Seberang Jaya, Penang, Malaysia.

☎ : 04-398 8340

☎ : 016-439 0698

✉ : wccseberang@wccpenang.org

🌐 www.wccpenang.org

📘 📷 🐦 WCC Penang

ISBN 978-967-16908-5-7



9 7 8 9 6 7 1 6 9 0 8 5 7