

# Family-Based care through Foster Care in Malaysia: A Post-2016 Child Act Amendment Analysis

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## Abstract

**Purpose:** Despite the recognition of family-based care after the amendments to the Child Act 2001 in 2016, a significant number of children in Malaysia continue to reside in institutional care facilities. Extensive research indicates that institutional care can have detrimental effects on a child's holistic development, encompassing physical, intellectual, and mental aspects. In light of these concerns, the prioritization of family-based care is imperative to ensure the well-being of children and to safeguard their inherent right to grow within a family environment. Foster care stands out as a prominent alternative within the realm of family-based care. Presently, Malaysia lacks specific legislation dedicated solely to foster care, with the Child Act 2001 containing limited provisions, some of which have been amended after 2016. Furthermore, the Child Act 2001 does not expressly permit agencies beyond the Social Welfare Department to formally assess the suitability of foster parents. Consequently, institutional care remains a prevalent placement choice for children in need of care and protection, while opportunities for foster care placements remain scarce. This research embarks on a comprehensive analysis of the amendments to the Child Act 2001 concerning foster care as an alternative care solution for children in need of care and protection. The study also delves into the international legal framework for foster care.

**Design/methodology/approach:** Employing a qualitative research methodology comprising library research and content analysis, this study endeavors to inform policy and legislative improvements.

**Findings:** The findings of this research suggest that legal and policy reforms are necessary to strengthen foster care as a viable alternative for children in need of care and protection.

**Research limitations/implications:** The study focuses primarily on the Child Act 2001 and the international legal framework for foster care.

**Practical implications:** The implications of this research extend to child welfare policies, legal frameworks, international alignment, government commitments, and the promotion of family-based care. It also underscores the importance of comprehensive research in addressing the complex issues related to child protection.

**Originality/value:** The expected outcomes of this research align with the Malaysian government's commitment to building an inclusive society that prioritizes children's well-being and fortifies the child protection system. This initiative resonates with the National Child Policy, the National Child Protection Policy, the Twelfth Malaysian Plan (RMK12), and the United Nations Sustainable Development Goals (SDGs) to ensure the holistic welfare and protection of Malaysia's children.

**Keywords:** family-based care, foster care, alternative care, child protection, Child Act 2001

## **Introduction**

Child protection refers to the efforts and systems in place to safeguard the rights, well-being, and safety of children. It encompasses a wide range of measures by the government aimed at preventing and responding to various forms of child abuse, neglect, exploitation, and violence. Child protection efforts often involve legal frameworks, policies, and services designed to ensure that children can grow up in an environment that is free from harm and supportive of their physical, emotional, and psychological development. These systems vary according to countries but typically involve social workers, law enforcement agencies, healthcare professionals, educators, and community organizations working together to identify and address risks to children's safety and welfare (Berrick, Gilbert & Skivenes, 2023).

Alternative or substitute care is part of the child protection system. Children might be placed in alternative care when they cannot stay with their parents for various reasons. Most children in this situation live with other families, like relatives or foster families. However, some end up in non-family settings like institutions, which can have negative impacts on their development and well-being. Many countries are working to reduce the number of children in institutions and, when possible, keep them with their families. This is in line with the United Nations Convention on the Rights of the Child (CRC) and the UN Guidelines for the Alternative Care of Children. These guidelines encourage keeping children with their families, and when that is not possible, it is the state's responsibility to make sure the child's rights are protected. They should provide suitable alternative care options, like kinship care, foster care, other family-based arrangements, group homes, or supervised independent living. Alternative care should only be used when necessary and should aim for the child's well-being, including, if possible, reuniting them with their family (UNICEF, 2023).

Despite the acknowledgment of family-based care in Malaysia, a substantial number of children in the country continue to reside in institutional care facilities. Comprehensive research has consistently indicated that institutional care can have detrimental effects on a child's comprehensive development, encompassing physical, intellectual, and psychological dimensions (Zeanah & Humphreys, 2020). The lack of consistent and appropriate care in institutional settings compounds their health challenges, including malnutrition, infectious diseases, and potential developmental delays (Yaacob, Ahmad and Wan Kamalluarifin, 2020; Zeanah and Humphreys, 2020) Given these substantial concerns, prioritizing family-based care becomes imperative, not only to ensure the overall well-being of children but also to safeguard their inherent right to grow up within a nurturing family environment. The United Nations General Assembly introduced guidelines in 2009 advocating for family-based care options to ensure the well-being and protection of children whose birth parents are absent or incapable of caring for them. Foster care emerges as a prominent alternative within the realm of family-based care. It is often considered a preferable alternative to institutional or group care settings, as it provides a more family-like environment that can better meet the emotional and psychological needs of children (Shapiro, 2008; A.Kadir, 2022; Joyce, 2023).

In Malaysia, family-based care was introduced as part of the amendment to the Child Act 2001 in 2016 and the Child (Family Based Care) Regulations 2017. Family-based care is defined broadly to encompass various family environments, including care by parents, guardians, relatives, foster parents, fit and proper persons, or even care within a centre. However, it is noteworthy that Malaysia currently lacks dedicated legislation specifically addressing foster care (A.Kadir 2011; Mohd and A.Kadir, 2014). The Child Act 2001 contains limited provisions related to foster care, some of which have been revised after 2016. Furthermore, the Child Act

2001 does not explicitly permit agencies other than the Social Welfare Department to formally assess the suitability of foster parents. In this regard, although non-governmental organizations actively engage in providing institutional care for children, they face restrictions in offering family foster care services (A.Kadir & Mohd, 2021). Consequently, institutional care remains a prevalent choice for placing children in need of care and protection, while opportunities for foster care placements remain scarce. Thus, this paper aims to analyse the amendments in the Child Act 2001 concerning foster care in Malaysia. The goal is to assess and enhance legal protection for children in need of care and protection. Essentially, the paper seeks to better understand the national and international legal frameworks for foster care and identify areas where improvements can be made to support the welfare and rights of these children.

### **Literature Review**

Previous research has revealed that children living in institutions often face various challenges, including increased risks of infectious diseases, malnutrition, emotional neglect, and abuse, leading to serious health issues and developmental delays (Shapiro, 2008; Zeanah & Humphreys, 2020). Family-based care, including kinship care, adoption, foster care, and small group homes, is generally considered a more favorable option. For children in need of care and protection, especially those without families, foster care offers the possibility of a family-like environment where they can live similarly to other children, enjoying the benefits of a stable home and substitute parental figures (Shapiro, 2008). While the advantages of family-based care are discussed, the literature lacks comparative studies that would help assess the effectiveness of the Malaysian system compared to other countries and identify areas for improvement.

In Malaysia, institutional care has traditionally been the primary response for vulnerable children, with a significantly higher number of children residing in institutions compared to those who have been adopted or placed in foster care, although specific data on this matter is not available (UNICEF EAPRO, 2006). Notably, there is a growing global trend towards developing family-based care options for vulnerable children. In line with this, the amendment to the Child Act 2001 in 2016 in Malaysia prioritizes family-based care for children and considers institutional care as a last resort (Government of Malaysia, 2016). The implementation of family-based care commenced in 2017 following the enactment of these amendments, emphasizing that biological and foster parents should be given priority in providing care, protection, and rehabilitation for children in need. This shift aims to deinstitutionalize children (Chan, 2015), ensuring they are not placed in institutions and instead return to community-based services. The literature, however, does not deeply explore the local policies, regulations, and challenges in implementing family-based care in Malaysia particularly foster care.

Mohd (2008) and A.Kadir (2011) have emphasized that adoption and foster care are important mechanisms for safeguarding children in need of care and protection, particularly abandoned children in Malaysia. Chan (2008) has contributed to this discourse by conducting a comparative analysis that delves into the concepts of foster care and adoption, offering valuable insights into their practice in Malaysia. Furthermore, Bajuri, Sarnon@Kusenin, Saim, and Ibrahim (2018a) conducted a study aimed at exploring the knowledge of foster parents who have provided care for foster children for a certain duration, focusing on the concept of foster care. Their findings revealed that foster parents primarily acquire their understanding of family-based foster care through their own experiences as foster parents. In another study by the same

authors (2018b), they delve into the knowledge of foster parents regarding the concept of family-based foster care, particularly examining aspects related to misunderstandings, confusion between family-based foster care and adoption, and the sources of knowledge derived from personal experiences. Similarly, Chan and Raja Halim (2019) conducted research to assess the comprehension of foster care applicants regarding the concept of foster care in Malaysia. Their study considered three key aspects: the absence of a clear definition of the term "foster child," the initial motivations for applying for foster care, and the feelings of applicants after receiving a foster child. These studies have predominantly focused on and supported the practice of family-based foster care, primarily from the perspective of foster parents. However, there remains a notable gap in information concerning the legal and policy dimensions of foster care in Malaysia.

A.Kadir (2011) and Mohd and A.Kadir (2014) have extensively examined the concept of foster care and its practical implementation in Malaysia, taking into account the limited legal provisions outlined in the Child Act 2001, as well as considering the Islamic perspective. The authors have also shed light on the pivotal role played by the Social Welfare Department in overseeing foster care initiatives. Additionally, Al Jawdah (2020) and M Usang and Sloth-Nielson (2014) have delved into the concept of *kafalah* in Islam, providing valuable insights into this form of caregiving. A.Kadir and Mohd (2021) have further explored the involvement of the private sector in offering foster care services for children without parental care in Malaysia. While the private sector, including non-governmental organizations, actively participates in providing institutional care for children, there are constraints limiting their ability to offer family-based foster care services. According to the authors, the Social Welfare Department holds exclusive authority over foster care provision. Alternatively, OrphanCare is permitted to arrange foster care but is subject to approval by the Social Welfare Department. Given the absence of specific legislation governing foster care in Malaysia, the procedures for fostering a child are based on the practices of the Social Welfare Department. Pertinent information, such as the process for applying to foster a child, foster parent qualifications, fostering allowances, and procedures, can be found on the official website of the Social Welfare Department (2022) and the Ministry of Finance (2022). Nevertheless, these studies offer limited insights into the guidelines and significance of the amendments made to the Child Act 2001 in 2016, particularly from the perspective of family-based care through foster care. Consequently, there remains a gap in understanding the implications of these legal changes on the practice of foster care in Malaysia, highlighting the need for further research in this area.

## **Method**

The research adopts a qualitative research methodology comprising library research and content analysis. Primary data include statutes, international legal instruments, government documents and classical books. Secondary data include academic journals, conference papers, articles, related textbooks and any relevant documents regarding family-based care and foster care.

## **Findings and Discussion**

### ***Family-Based Care through Foster Care***

According to Merriam-Webster's Advanced Learner's English Dictionary (2008), the term 'foster' as an adjective refers to a situation in which a child lives with and is cared for by individuals who are not the child's biological parents for a specific period of time. Foster care encompasses both formal and informal arrangements for looking after children outside of their biological family home, particularly when parents are incapable, unwilling, or prevented from

providing care (Curran, 2004). Informal foster care involves arrangements made between birth parents and relatives to care for a child. It typically lacks legal authorization, registration, official oversight, and evaluation. These arrangements are generally private and not officially counted or regulated. Formal foster care, on the other hand, is legally authorized by a recognized authority, such as a government agency. Foster parents in formal foster care systems undergo assessments and often receive training to qualify for fostering. Their responsibilities toward the foster child are outlined in a legal contract (Colton & Williams, 2005; Woodward, 1998). Foster parents, whether in informal or formal arrangements, take on the responsibility of caring for a child who is not their biological offspring. They provide a safe and nurturing environment for the child, meeting their physical, emotional, and developmental needs. In return for their caregiving role, foster parents may receive financial support or an allowance to cover the child's expenses during their time in foster care (Triseliotis, Sellick & Short, 2005; Woodward, 1998). In Islamic law, a similar concept known as *kafalah* exists, which can be best translated as 'foster parenting.' *kafalah* is rooted in the idea of sponsorship and providing for the well-being of a child in need. It emphasizes the importance of caring for and nurturing children who may not have biological family members available to fulfill this role (Ahmad, 2010). Thus, Islamic principles promote the protection and support of vulnerable children through *kafalah*, aligning with the broader concept of foster care.

Foster care is distinctively characterized by providing full-time, round-the-clock care for a child outside of their own home (Downs, Moore & McFadden, 2009). The primary objective of foster care in many countries is to offer alternative care for children who have experienced abandonment, abuse, or neglect, enabling them to enjoy similar opportunities as other typical children within a family environment. It is widely recognized that supporting birth parents and preserving biological connections are typically in the best interests of the child. Therefore, foster parents are not intended to "replace" the child's birth parents but rather to "complement" them. The term "foster care" is employed to emphasize that foster parents play a supportive role alongside birth parents rather than supplanting them (Colton & Williams, 2005).

Children placed in foster care typically still have at least one living parent, who may or may not maintain contact with them (Downs, Moore & McFadden, 2009). Children can enter foster care either voluntarily through their parents or by court order, particularly in cases of abuse or neglect (Woodward, 1998). It is important to note that these children have often endured challenging experiences, including maltreatment and parental issues such as physical and emotional neglect, abuse, sexual abuse, abandonment, or exploitation (Downs, Moore & McFadden, 2009). Consequently, they are separated from their birth parents due to these circumstances. However, birth parents typically retain various rights even when their child is placed in state care. Thus, the responsibility for the child is shared among the agency, the court, the birth parents, and the community, while the foster parents provide full-time care for the child. Foster care is primarily designed as a temporary arrangement to provide children with a family life experience until they can be reunited with their birth parents (Triseliotis, Sellick & Short, 2005). Although foster care is fundamentally temporary, it can become long-term or even permanent in certain situations (Triseliotis, 2005). Long-term foster care is typically chosen for children who require permanent family care but cannot return to their birth parents, either because they do not wish to be adopted or because suitable adoptive families are not available (Downs, Moore & McFadden, 2009; Triseliotis, 2005).

During the fostering period, foster parents are expected to provide round-the-clock nurturing care to the child, even if the child is eventually going to return to their birth family (Stahl,

1990). Foster parents also play a crucial role in helping their foster child overcome potential emotional or behavioral challenges (Triseliotis, Sellick & Short, 2005). They are responsible for aiding the child in maintaining psychological ties with their birth parents and facilitating their return home (Stahl, 1990). In this capacity, foster parents must accept the child's biological family, support visitations, and foster emotional and physical connections while collaborating positively with social workers (Triseliotis, Sellick & Short, 2005).

If, for any reason, the birth parents fail to maintain contact with the child, the role of foster parents may inevitably expand (Rowe, 2009). Adoption of foster care children by foster parents becomes a possibility if the parental rights are terminated or voluntarily given up by the birth parents (Woodward, 1998). In some countries, foster care may be a prerequisite for a person to adopt a child, while in others, foster parents might not be permitted to adopt the foster children (Colton & Williams, 2005). Since foster care is designed as a temporary arrangement, its primary objective is to secure a permanent placement for the child, whether that means reuniting them with their birth parents, adoption, or permanent foster care (Stahl, 1990).

Foster care and adoption seem to be the best alternative care options as they promote a family environment for vulnerable children. However, foster care differs from adoption in the sense that it has no legal considerations though both practices do allow persons other than the child's birth parents to assume the parental role (The New Encyclopaedia Britannica, 1989). Foster care is generally temporary in nature while adoption is permanent and legally binding (Triseliotis, Sellick & Short, 2005). Besides, even long-term foster care does not offer higher levels of security and a stronger sense of belonging compared to adoption. Due to this fact, foster children often feel insecure, and they do not belong as the impermanence of foster care that lacks legal security means that such a placement could come to an end at any time. Long-term foster care is basically selected for a child's placement instead of adoption when there are still numerous contacts between the child and his or her parents or relatives and there are still hopes for them to reunite (Triseliotis, 2005). Significantly, long-term foster care is also a form of permanent care in which foster children remain with their foster parents even after they reach eighteen years old (Berrick, Gilbert & Skivenes, 2023).

In addition, the principle relating to foster care can be analysed based on the practice of the court in the common law. In *J v C* [1969] 1 All ER 788, the main concern was the right of custody over a child who has been given away by the natural parents to foster parents through a private arrangement. The natural parents, however, later claimed the child's custody, care and control to be given to them. The court, recognizing private foster care, allowed the foster child to remain in the care of foster parents based on the child's welfare as a paramount consideration. In *W L-6 v Essex County Council & Anor* [1998] 3 All ER 111, the court, while dealing with the issue of whether local authority owes duty of care to foster parents and their own children, referred to several pieces of legislation such as the Children Act United Kingdom, the Foster Placement (Children) Regulations 1991, the Arrangements for Placement of Children (General) Regulations 1991 and the Children Act Guidance volume 3, which governs foster care in the UK. The court emphasized the express duty of the local authorities to accommodate the child. Such accommodation includes a placement with a foster carer. Before the local authority can place a child in foster care, there are several matters to be taken into account such as the child's welfare as well as whether foster care is suitable for the child. Thus, a local authority can place a child in the care of foster parents based on the child's welfare. Although these cases do not directly provide the definition of foster care, they reveal that under common law a child can be placed in foster care either by private arrangement

between natural parents and foster parents or by the local authority. In these circumstances, the issue may arise whether the child can remain with foster parents when the natural parents would like to claim him back. Besides, it is the statutory duty of local authority to provide children in need of care and protection with accommodation. The local authority can discharge this duty by placing the children in foster care after taking into account the welfare of the children. Thus, the case seems to suggest that foster care basically refers to the placement of a child in the care and custody of an individual other than the natural parents due to certain reasons, either temporarily or permanently. The individual is known as a foster parent who is directly appointed by the natural parents themselves through a private fostering arrangement or by the local authority.

Similarly, fostering a child in Malaysia has been practiced by people in looking after someone else's child either for the short or long term. Foster care has been arranged privately between natural parents and foster parents for various reasons. It may also be arranged with someone that the natural parents know well, like friends, relatives or even their own siblings. Due to the fact that fostering has not been registered under any law, it reflects *de facto* adoption or customary adoption. In *Jainah binti Semah v Mansor bin Iman Mat & Anor* [1980] 1 MLJ 222, the practice of adoption among Malays in Pahang is recognized by the court. In this case, a Malay woman adopted a girl from her husband's brother. The child was brought up from birth to the age of eleven years old. Shortly after the death of her husband, the natural father took the child away. The child thereafter lived with the paternal grandfather. The court in recognizing such adoption by a married couple awarded the custody of the child to the adoptive mother despite the fact that her husband had died. In *Re TSY (An Infant)* [1988] 3 MLJ, a boy had been given away to foster parents shortly after birth. The boy lived for almost four and a half years in foster care and had been attached to the foster family when the natural parents claimed him back. There were several reasons that led the boy to be placed in the care of foster parents. Among others, his natural mother's health was bad, financial difficulty and because of Chinese superstition that the boy would be hard to bring up since he was born with two teeth. The foster father was once the natural father's employer and since they knew each other well, the boy was entrusted in their care. The court in this case allowed the petition for adoption. Thus, it can be seen that the practice of foster care leads to adoption.

### ***Legislative Framework for Foster Care***

The Child Act 2001 came into force in 2002. It has been enacted by the Malaysian government to fulfill her obligation under the CRC. The four core principles of the CRC which are non-discrimination, best interests of children, the right to life, survival and development and respect for the views of children are the foundation of the provisions in the Child Act 2001 (Government of Malaysia, 2007). The Child Act 2001 repealed three other existing statutes which were Juvenile Courts Act 1947, the Women and Girls Protection Act 1973 and the Child Protection Act 1991. Based on its Preamble, the main purpose of the Child Act 2001 is to provide care and protection to all the children in need of care and protection without any discrimination so as to ensure their well-being is being safeguarded. A child has been defined as "a person under the age of 18 years" (Child Act 2001, s. 2 (a)). As for the meaning of child in need of care and protection, the Child Act 2001 provides them to include the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused, the parent or the guardian of the child has neglected the child, the child has no parent or guardian or has been abandoned, the child needs to be examined, investigated or treated in preserving his health or the child has behaved in a manner that is, or likely to cause harm to him or other person (Child Act 2001, s. 17(1)). Even though the Child Act 2001 does

not provide a direct provision on foster care, it provides several related provisions. In 2016, the Child Act 2001 was amended to include provisions on family-based care. The Child Act 2001 defines family-based care as:

the care of a child in a family environment including—(a) the care of a child by a parent, guardian or relative; (b) the care of a child by a foster parent or fit and proper person; or (c) the care of a child in a centre (Child Act 2001, s. 2).

The term foster care has not been defined by any statute governing the child, including the Child Act 2001. Section 2 of the Child Act 2001, however, defines ‘foster parent’ as a person who is taking care of the child but is not a parent or relative of the child (a) to whom the care, custody and control of the child has been given by a Court order under section 30(1)(i); or (b) permitted by the Social Welfare Department under section 35 or 37, as the case may be, to receive a child into his care, custody and control. Basically, it means that the child will be looked after by someone who has no relation with him or her.

In essence, children who require care and protection are initially taken into temporary custody by the Social Welfare Department, also known as the Protector, or a police officer, as stipulated in section 18 of the Child Act 2001. These children are then promptly brought before the Court For Children within twenty-four hours, unless there is an urgent need for medical examination or treatment (Child Act 2001, ss. 19(1), 20). In cases where it is not feasible to present the child before a Court For Children within the specified twenty-four hours the child may be placed in a place of safety, or an institution, or in the care of a fit and proper person as directed by a magistrate (Child Act 2001, s. 19(2)(a)(b)). If, after being brought before a Court For Children, it is determined that the child is indeed a child in need of care and protection, the court, taking into account the desirability of placing the child in family-based care, may issue various orders. These orders can include requiring the child's parent or guardian to execute a bond to ensure proper care and guardianship, placing the child in the custody of a fit and proper person or foster parent, placing the child in a centre, or place of safety (institution) (Child Act 2001, s. 30(1)). It is important to note that in 2016, section 30(1) was amended to specifically consider family-based care as a desirable option. It follows that the Social Welfare Department plays a crucial role in assisting children in need of care and protection. This role involves taking them into temporary custody upon receiving complaints, presenting them before the court, and preparing reports for the court's deliberation before any orders are issued.

In regard to foster care, the Child Act 2001 contains specific provisions. According to the Act, when a child has no parent or guardian or has been abandoned (Child Act 2001, s. 17(e)), the child can be ordered to be placed in the care, custody, and control of a suitable foster parent appointed by the Director General of the Social Welfare Department (Child Act 2001, s. 30(1)(c) (i)), or in the care of a fit and proper person (Child Act 2001, s. 30(1)(c) (ii)). This placement can be for a period of two years or until the child reaches the age of eighteen, whichever is shorter (ii)). Pending foster placement, the child would be placed in a place of safety. It is worth noting that all Children's Homes managed by the Social Welfare Department have typically been designated as places of safety under the Child Act 2001. During the 2016 amendment to the Act, this provision replaced the previous section 30(1)(e), which provides for children without parents to be placed in only foster care. At present, it seems that these children can also be placed in the care of fit and proper person. This amendment signifies a shift in emphasis. It suggests that, under the amended Act, a child without parent or guardian is preferably placed in family-based care rather than remaining in institutions until they reach eighteen years old, especially if a suitable foster parent can be found. This change reflects a



preference for family-based care as opposed to institutional care for children without parents or families.

When a court order has been issued under section 30(1)(c)(i) of the Child Act 2001 for foster care placement, the Director General is obligated to promptly make efforts to place the child in the care, custody, and control of a foster parent to comply with the court's order (Child Act 2001, section 30(2)). Despite the lack of specific details in the Child Act 2001, foster care procedures in Malaysia are primarily based on the established practices of the Social Welfare Department. Prospective foster parents can initiate the application process through either personal application or by utilizing the Social Welfare Department website. Currently, the Social Welfare Department also collaborates with organizations like OrphanCare to identify suitable foster parents and facilitate foster care placements for children in their care. This collaborative effort helps streamline the process and ensure that children in need of care and protection, particularly abandoned or children without parents can find suitable family-based environments (A.Kadir, 2011). While the legal framework for foster care in Malaysia may be evolving, these collaborative efforts are crucial in providing care and support to vulnerable children who require foster placements. It is essential that these practices continue to adapt and improve to meet the evolving needs of foster children and foster parents within the country.

If a foster parent is successfully identified, the child will be placed in their care, custody, and control for a minimum of two years. During this period, the foster parent is responsible for raising and providing for the child in a family environment. This approach aims to offer the child a stable and nurturing home outside their biological family. Alternatively, the Child Act 2001 provides an option for the appointed foster parent to return the child to the Social Welfare Department at any later time. This can be done by personally reporting to the Social Welfare Department and bringing the child with them, after which the child may be placed in a place of safety (Child Act 2001, s. 30(3)).

If the parent or guardian of the child does not come forward to claim the child after the two-year foster care period has elapsed, and the court is satisfied that reasonable efforts have been made to locate the parent or guardian, the foster child can be legally adopted by the foster parent or another individual without requiring the consent of the child's natural parents (Child Act 2001, Section 30(4) (aa)). The Social Welfare Department continues to monitor the child's well-being until the adoption process, governed by the adoption statutes like the Adoption Act 1952 or the Registration of Adoptions Act 1952, is successfully completed (Government of Malaysia, 2007; Child Act 2001, s. 30(4)(bb)). Additionally, foster care placement can also occur if a foster parent is granted permission by the Social Welfare Department to take a child into their care, custody, and control. This arrangement is governed by the Child Act 2001, specifically in sections 35 and 37. Therefore, if an individual finds a child and wishes to assume responsibility for their care, they are required to notify the Protector within one week of finding the child (Child Act 2001, s. 35). This notification is a crucial step in initiating the formal foster care arrangement.

When deciding on the placement of children in need of care and protection, the Child Act 2001 specifies that the court must prioritize the best interests of the child as the primary consideration (Child Act 2001, s. 30(5)). The assessment of the child's best interests takes into account various factors, including their family background, behavior, living conditions, school performance, and medical history. These factors are typically documented in a report prepared by the Social Welfare Department, a medical practitioner, or another qualified individual

(Child Act 2001, s. 30(6)). This comprehensive evaluation ensures that the child's unique needs and circumstances are considered when making decisions about their placement in foster care and that they are placed in an environment that promotes their well-being and development.

In addition, the Child (Family Based Care) Regulations 2017 is a set of regulations in Malaysia that provide specific guidelines and procedures related to family-based care for children in need of care and protection, and rehabilitation. These regulations were introduced as part of the amendment to the Child Act 2001 in 2016, which prioritizes family-based care over institutional care for vulnerable children in Malaysia. These regulations in general provide the qualifications and requirements for individuals or families seeking to become family-based care providers including foster parents. These qualifications include being Malaysian citizens, demonstrating the capability to provide adequate care, having good character (free from criminal records), and undergoing relevant training. The regulations outline the responsibilities and duties of both the family-based care provider and the child's birth parent or guardian. These responsibilities often cover essential aspects of a child's well-being and development, including education, healthcare, and emotional support.

### ***International Legal Framework for Foster Care***

Article 20 of the CRC underscores the responsibility of governments to protect and assist children who, for various reasons such as parental death, abandonment, neglect, or abuse, cannot live with or be reunited with their parents. This assistance goes beyond providing alternative placement options like foster care, *kafalah*, adoption, or, if necessary, institutional care. It also encompasses essential services addressing the needs of these children, including healthcare and education. Moreover, the use of the phrase "if necessary" regarding institutional care within this provision implies that such care should be the last resort, with a strong preference for placements in line with the child's best interests (Grosz, M, 2006). State parties are not obligated to offer all four types of alternative care but must ensure that suitable options are available for children in need of care and protection. These types of alternative care are outlined to guide state parties in fulfilling their responsibilities toward children deprived of a family environment. In determining the appropriate long-term care for such children, three primary considerations come into play: family-based solutions, permanent solutions, and national solutions (Inter-Parliamentary Union and UNICEF, n.d.). This underscores the critical importance of family-based care in providing children without parental care with a nurturing family environment.

The CRC recognizes foster care as one of the alternative family-based care options for children in need of protection and care. However, the CRC does not specify detailed standards for foster care. To address this gap, the United Nations General Assembly adopted a Declaration on Social and Legal Principles relating to the Protection and Welfare of Children in 1986 (Inter-Parliamentary Union and UNICEF, n.d.). This declaration includes Articles 10 and 13, which emphasize the importance of regulating foster placement through law and ensuring the well-being of the child through competent supervision by relevant authorities or agencies.

Alternatively, the United Nations has provided guidelines and principles regarding alternative care for children, including foster care, through the "Guidelines for the Alternative Care of Children." These guidelines were developed to ensure the well-being and protection of children who are unable to live with their biological families. While they do not create specific legal obligations, they offer a framework that countries can use to develop their own policies and practices related to foster care and other forms of alternative care. For instance, the Guidelines

emphasised the paramount consideration in any decision regarding alternative care should be the best interests of the child. This principle should guide all actions and decisions concerning the child's care and protection. The guidelines also underscore the importance of a family environment for the child's development. Specifically in foster care, the guidelines highlight the need to carefully match foster parents with children and establish a pool of accredited foster carers. It is crucial to identify and develop support systems for these foster carers, ensuring they are well-equipped to provide a nurturing environment. These guidelines ultimately aim to ensure that children placed in foster care receive the care and support they need to thrive in safe and loving family homes (United Nations, 2010).

In Malaysia, the CRC was ratified in 1995, but certain reservations were made due to conflicts with Malaysian constitutional, legal, cultural, and religious practices (Sayed Mohd, 1998). Nevertheless, to fulfill its obligations under the CRC, Malaysia enacted the Child Act 2001. This legislation aims to provide necessary care and protection to children, especially those deprived of a family environment, including those in foster care. Currently, the Social Welfare Department in Malaysia serves as the competent authority responsible for arranging foster care placements for abandoned children and children without parents or guardians. While there is no specific legislation dedicated solely to foster care in Malaysia, the Child Act 2001, in conjunction with Social Welfare Department practices and support from non-governmental organizations and child welfare agencies, effectively regulates foster care in the country.

### **Conclusion and Recommendations**

In conclusion, foster care is a crucial component of child protection in Malaysia. While Malaysia has taken significant steps by ratifying international conventions like the CRC and introducing the Child Act 2001, there is still work to be done to strengthen the foster care system. Foster care provides children in need of care and protection with a family-based environment where they can thrive, grow, and receive the support they require. However, the absence of specific legislation dedicated solely to foster care presents challenges. While the Child Act 2001 includes provisions related to foster care, there is a need for more comprehensive and detailed regulations to ensure the well-being of foster children and the suitability of foster parents. To enhance the effectiveness of foster care in Malaysia, it is essential to consider several key recommendations:

1. **Legislative Enhancement:** Develop specific legislation and regulations focused on foster care, outlining comprehensive guidelines for foster parent selection, training, rights of foster children, matching processes, and monitoring and support mechanisms.
2. **Resource Allocation:** Allocate more resources and support to foster families, ensuring they have the necessary tools and assistance to provide the best care for foster children.
3. **Standardized Training:** Implement standardized training programs for prospective foster parents to equip them with the skills and knowledge needed to meet the diverse needs of foster children.
4. **Monitoring and Evaluation:** Strengthen the monitoring and evaluation mechanisms to regularly assess the well-being of foster children and the effectiveness of foster care placements.
5. **Collaboration:** Promote collaboration and information sharing among relevant government agencies, non-governmental organizations, and child welfare agencies to create a comprehensive support network for foster care.

By addressing these recommendations and acknowledging the importance of foster care within the broader child protection system, Malaysia can better ensure the positive outcomes and long-term welfare of children in foster care, aligning with its international obligations and commitments under the CRC. Foster care, when properly legislated and supported, plays a vital role in providing a stable and loving environment for vulnerable children, ultimately contributing to their well-being and a brighter future.

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