

**SWOT ANALYSIS ON CHILD SEXUAL ABUSE  
FRAMEWORK UNDER MALAYSIA'S SEXUAL OFFENCES  
AGAINST CHILDREN ACT 2007**

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**ABSTRACT**

The Malaysian Sexual Offences Against Children Act 2017 provides an opportunity to strengthen the protection of children from sexual abuse and ensure that perpetrators are held accountable for their actions. The Act establishes a legal framework for addressing sexual offences against children and provides for the prosecution of offenders, as well as the protection and support of child victims. Despite the legislative novelty, this paper identifies significant weaknesses in the Act that need to be addressed to ensure that it is effective in protecting children and ensuring perpetrators' accountability. Using a SWOT analysis technique, this paper provides insight into the strengths and weaknesses of Act 792. The result is expected to benefit lawyers, academia, legislature, and civil society on differential perspectives in interaction with the Act.

**Keywords:** child sexual abuse, SWOT Analysis, Malaysia

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## INTRODUCTION

After several clamours for specialised law to further protect children in Malaysia, the Sexual Offences against Children Act 2017 (Act 792) came into force on July 10, 2017. As with any legislation, it is subject to open criticism pertaining to its structural framework and effectiveness in achieving its purpose. This criticism is very much expected given the fact that Act 792 is quite recent among other child-related legislation in Malaysia. There are efforts to amend the law which has led to several forums to discuss the areas which require improvement.<sup>1</sup> This paper is significant due to the fact that the Act i.e. SOACA 2017 has not gone through any amendment since coming into force. Some of the proposed amendments include procedure for child witness, “badgering” children in court and payment of compensation to the victim. The amendments is also to cover new offences such as livestreaming of sex and online sextortion.<sup>2</sup>

The criticisms of SOACA 2017 are credence to the significance of the legislation in its protection of children against sexual crimes. This also gives room for further development in the ecosystem and allows Act 792 to sufficiently progress into a fully developed legislation. Hence, the intention of this paper is to provide an overview and close insight into what Act 792 is all about by dissecting its provisions using a SWOT technique.

## METHODOLOGY

This article adopts the SWOT analysis technique. The acronym SWOT stands for Strengths, Weaknesses, Opportunities, and Threats. Although primarily a business analysis tool which has been applied in research to identify the strengths, weaknesses, opportunities and threats of proposed business solutions, it has been applied to evaluate legal

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<sup>1</sup> Cooray, Manique, Siti Zaharah Jamaluddin, and Zulazhar Tahir. "Violence and Sexual Offences against Children in Malaysia: Searching for the Right Approach." *International Journal of Business and Society* 21, no. S1 (2020): 152-164.

<sup>2</sup> Shivani, Supramani. "Govt To Propose Legislative Reforms On Sexual Offences Against Children And Child Witnesses." *The Rakyat Post*, 2023. <https://www.therakyatpost.com/news/2023/03/24/govt-to-propose-legislative-reforms-on-sexual-offences-against-children-and-child-witnesses/>. (Date accessed: 2023-03-26)

issues, the impact of legislation and legal arguments.<sup>3</sup> As a strategic planning tool, SWOT is used in the context of this article to make projections for potential amendments to SOACA 2017 based on the current practicalities and challenges in child sexual abuse legislation.

This methodology involves identifying internal factors (Strengths and Weaknesses) that are within the control of the organization or individual, as well as external factors (Opportunities and Threats) that are outside of their control. The purpose of conducting a SWOT analysis is to gain a comprehensive understanding of the current situation as well as to identify areas of improvement and potential risks. This information can then be used to develop legislative agenda and strategies for civil society towards making informed decisions.<sup>4</sup>

To conduct this SWOT analysis, we initiated a brainstorming session and list out the relevant internal and external factors affecting the legal and procedural framework for child sexual abuse in Malaysia. Then, we categorized the factors into the appropriate SWOT category and evaluate their importance and impact. Finally, the analysis is used to create a plan of action to address any identified weaknesses and threats while taking advantage of its opportunities and strengths.<sup>5</sup>

The significance of this method is the potential of providing law researchers and legal professionals with a better understanding of the internal and external factors that may affect SOACA 2017. Members of parliament can also be informed on the development of legal strategies and the identification of potential areas of improvement to the Act.

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<sup>3</sup> Damanik, Eunike Sabrina. "Pelaksanaan Penyuluhan Dalam Mencegah Tindak Pidana Kekerasan Seksual Terhadap Anak." *Indonesian Journal of Police Studies* 4, no. 4 (2020).

<sup>4</sup> Rachid, G., and M. El Fadel. "Comparative SWOT analysis of strategic environmental assessment systems in the Middle East and North Africa region." *Journal of environmental management* 125 (2013): 85-93.

<sup>5</sup> Pennings, Guido. "A SWOT analysis of unregulated sperm donation." *Reproductive BioMedicine Online* 46, no. 1 (2023): 203-209.

<b>INTERNAL FACTORS</b>	
<b>STRENGTHS</b> <ul style="list-style-type: none"> <li>• Applicability</li> <li>• Special legislation</li> <li>• New offences including child pornography, sexual grooming, and sexual assault</li> <li>• Child witness and corroboration rule</li> </ul>	<b>WEAKNESSES</b> <ul style="list-style-type: none"> <li>• Limited scope of application</li> <li>• Ambiguity in penetrative assault</li> <li>• Position of sweetheart defence</li> <li>• Financial remedies</li> <li>• Limited implementation resources</li> <li>• Low public awareness and education</li> <li>• Rules on implementation of SOACA</li> </ul>
<b>EXTERNAL FACTORS</b>	
<b>OPPORTUNITIES</b> <ul style="list-style-type: none"> <li>• Can provide legal protection for children</li> <li>• Stakeholders cooperation</li> <li>• Increased public awareness</li> <li>• Enhance support service for victim</li> </ul>	<b>THREATS</b> <ul style="list-style-type: none"> <li>• Limited supportive resources</li> <li>• Lack of public awareness</li> <li>• Cultural and social norms</li> <li>• Evolving technology</li> </ul>

Table I: SWOT Analysis of SOACA 2017

## **STRENGTHS OF SOACA 2017**

### **Applicability**

To deter any potential offender and prevent a confirmed offender, the Legislature empowers Act 792 in relation to the extension of its applicability by virtue of Section 3. The provision allows the Act to prevent any offender from evading the claws of our law by playing around with the issue of technicality to escape prosecution on the reason that the offence was committed outside the territorial boundary of Malaysia and therefore Act 792 is toothless against the offender.

Introducing the extra-territorial application feature enables Act 792 to start strong and truly reflect the comprehensive nature of Act 792.

The extradition and extraterritoriality principles are interconnected. It might be argued that the inclusion of this specific section was done so that persons who committed the specified offences outside of Malaysia could be extradited and tried by Malaysian courts. However, under the context of public international law, the application of the extra-territorial application section is always constrained by the double criminality concept. This aspect is a strong one for Act 792 since it clearly shows that the Parliament did not want any criminal to be able to use legal technicalities to evade the law. Section 3 of Act 792 sends a clear and strong message that reads prosecution will come to those who commit any offence stipulated under Act 792 or any offence listed in the Schedule of Act 792 wherever it is committed, whether intra-territorial or extra-territorial.

### **Special legislation**

Before 2017, the principal criminal law that governs the majority of the crimes in Malaysia is the Penal Code. The Penal Code governs various types of crimes including sexual crimes against children. In addition to Act 574, the protection of children against sexual crimes is also afforded under the Child Act 2001 (“Act 611”) and the Domestic Violence Act 1994 (“Act 521”). Nevertheless, prior to Act 792, these aforementioned statutes are either unique in their applications as the respective name of the legislation suggests or the legislation is quite general and viewed as insufficient when it comes to dealing with sexual crimes against children. Noticing that there was a gaping lacuna concerning laws for the protection of children against sexual crime, the Parliament made a very commendable move by expediting all the necessary legislative processes from the tabling of the Act 792 bill in the Parliament until its passing and coming into force, where all these processes had been accomplished within the same year of 2017.<sup>6</sup> This action signifies that sexual crimes against children had been caught under the radar of the Legislature and it needs to be combated expeditiously, hence the swift action.

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<sup>6</sup> Norazla Abdul Wahab, Mohd Farok Mat Nor: Sexual Offences Against Children Act 2017: An Improvement of the Legislation on Sexual Offences Against Children in Malaysia. *Journal of Muwafaqat*. Vol. 1, No. 1, 2018, pp.37-55. Faculty of Syariah and Law, Kolej Universiti Islam Antarabangsa Selangor.

The nature of Act 792 is the same as Act 611 and Act 521 in the sense that these are special legislations enacted to govern and deal with a specific area of law. Nevertheless, when it comes to the area of law concerning sexual offences against children, Act 792 takes precedence and priority as the principal legislation to be referred to by all parties. This special nature of Act 792 also had been affirmed by Judicial Commissioner in *Chan Kok Poh v Public Prosecutor*<sup>7</sup> based on the maxim of *generalia specialibus non derogant*.

### **New offences**

Prior to the enactment of Act 792, many acts were not clearly governed and criminalized under the Malaysian criminal justice system and thus creating a gap in the old laws. Nevertheless, the gaps had been rectified by the enactment of Act 792. Act 792 had taken into account the dynamic nature of our current technological advances that will benefit child sexual offenders by employing new technology into their *modus operandi* and to combat it, Act 792 introduces new types of sexual offences namely offences relating to child pornography, offences relating to sexual grooming of a child and sexual assault against children.

### **Child Pornography**

There are specific clauses under Act 792 that penalizes each act that makes up the child pornography offence. The anti-child pornography provisions are stipulated under Part II of Act 792 and further divided into a total of seven aspects, each of which deals with a different aspect of child pornography. The fact that Part II is comprehensive in nature is one of the Act's merits. It was structured this way to guarantee that any *modus operandi* used by the offender in committing the offence shall be caught within the ambit of the definition given in Part II and to halt any attempt by the offender to escape prosecution by manoeuvring the issue of technicalities. The seven provisions of Act 792 offer extensive and comprehensive protection to children as Part II criminalizes all aspects including the economics that makes up the child pornography system from the production aspects to the distribution end of the system. This encompassing nature of Part II leaves fewer loopholes for the offenders to manipulate the law. The word structure used in Part II makes it easier for the court to interpret

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<sup>7</sup> [2022] 9 MLJ 755.

the law. Overall, the way provisions under Part II of Act 792 are structured is flexible to truly appreciate and reflect the dynamic challenges of the current era where sexual crimes have become more sophisticated.<sup>8</sup>

### **Sexual Grooming**

Furthermore, what makes Act 792 a very effective legislation is apart from child pornography offences, Act 792 introduced another new line of offences which are the offences relating to sexual grooming. This inclusion of new offences indicates that the Malaysian Legislature truly keeps up with the current development of crimes in Malaysia as these sexual grooming offences provide avenues for the prosecution to prosecute the offenders. In this respect, Act 792 sufficiently closes the gap in law because previously there was no clear provision defined concerning sexual grooming under the Penal Code and only section 377E may be used for prosecution. Unlike Act 792, for sexual grooming, the Act provides a total of three sections under Part III which are sections 11, 12, and 13 that cover each aspect of child sexual grooming.

The offence of child grooming under Act 792 is divided into three stages according to each provision. Section 11 provides the general definition of what constitutes child grooming. By virtue of section 11, any communication made in a sexual manner done by a person or that person encourages a child to communicate sexually shall be caught within the ambit of the section. The punishment in the form of three years imprisonment carried by section 11 is the lightest compared to the other two sections as section 11 involves only sexual communication without any action made beyond communication itself. The way “communication” is structured in this section truly reflects the necessity of a comprehensive interpretation of what kind of communication amounts to the sexual grooming of a child. This element of flexibility attached to the definition of “communication” allows law enforcement and prosecution to keep up with the ever-changing nature of current communication technologies.

The next stage of child grooming is governed under section 12 of Act 792. This particular section also deals with communication.

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<sup>8</sup> Abu Bakar Munir, Siti Hajar Mohd Yasin, Siti Sarah Abu Bakar, Firdaus Muhammad-Sukki. *The Sexual Offences Against Children Act 2017: Flaws In The Law* [2018] 5 MLJ cxx. *Malayan Law Journal Articles*.

Nevertheless, in order for a communication to be caught under section 12, the said communication must be done with the intention to commit any offence under section 5, 6, 7, 8, 14 or 15 of Act 792. Additionally, the intention to commit the specific offences is not limited to the aforementioned sections, but it extends to the offences contained in the Schedule of Act 792. This section also applies to a person who communicates but not the person who committed the offence, that person can still be charged under section 12 on the reason that the person facilitates the commission of the offence. The punishment provided by section 12 is five years imprisonment maximum together with mandatory whipping. Section 12 also has a special standing in Act 792 where mere sexual communication done to a child is sufficient even without any offences stipulated under Section 12 of the Schedule having been committed or otherwise. This scenario is clearly explained in Illustration (a) of Section 12. Furthermore, by making Section 12 detached from any commission of the listed offences also equips the prosecution with a swift legal tool to prosecute an offender even though the actual offence as intended is not materialised. Likewise, the same attribute can be found in section 13 where there is no pre-condition that the offences listed thereunder or in the Schedule be committed beforehand. To invoke section 13, it is sufficient for the prosecution to prove that the offender has in fact travelled to meet or meets the child victim with the intention to commit the offences stipulated thereunder. The offence of meeting following child grooming attracts the highest punishment of imprisonment among all provisions under Part III of Act 792 which is ten years maximum.

Undoubtedly, by virtue of these provisions on sexual grooming, Act 792 has gone the extra mile by extending its protection to children by stopping the crime since its infancy and not letting it develop further. Act 792 truly reflects the spirit of “prevention is better than cure”.

### **Sexual Assaults**

As a special law that complements the Penal Code, Act 792 contains offences of sexual assault committed against children. These provisions were stipulated under Part IV of Act 792 and further divided into two categories namely sections 14 and 15 that deal with both physical and non-physical sexual assault respectively. Prior to the enactment of Act 792, offences that constitute sexual assault are also



provided under Child Act 2001,<sup>9</sup> and Domestic Violence Act 1994. Nevertheless, what set Act 792 apart from all three legislations is that both sections 14 and 15 are comprehensive and unconditional upon specific circumstances stipulated under the Child Act and the Domestic Violence Act. To clarify further, it is better to briefly compare all three laws in this respect. For an offender to be caught under the Child Act, the child victim must be under the care of the offender. Further, for the sexual assault to be qualified under the Domestic Violence Act, the child victim must be caught within the definition of a “child” under that Act which is limited to a child who is below the age of eighteen years living as a member of the offender’s family or the family of the offender’s spouse or former spouse.<sup>10</sup> Nonetheless, in the event that the child victim neither fulfills the condition set under the Child Act nor the Domestic Violence Act, that is when sections 14 and 15 come in as it is generic in nature and encompasses all scenarios concerning the child victim in the scope of sexual assault.

It is intriguing to examine the structure of section 14 as it includes conducts where a person who somehow for sexual purposes makes a child touch the child’s own body without any contact on the body of that person and that acts amount to physical sexual assault as well. Further, section 15 laid down a total of eight very comprehensive acts that constitute a non-physical sexual assault on a child. Of all the offences stipulated thereunder, it is to be noted that even a person repeatedly or constantly follows or watches, or contacts a child by any means if done so for sexual purposes shall amount to non-physical sexual assault as well. Currently, these types of activities might be known as “stalking” and this provision opens avenues for the prosecution to prosecute the stalker. Be that as it may, it is clearly stated under section 14 that Act 792 does not cover the offence of rape as it is still under the Penal Code.

### **The nature of the relationship**

Furthermore, it is noteworthy to discuss that Act 792 treats a person who commits any offence under the Act differently should that person be in a relationship of trust with the child victim as provided under section 16(2). If that person is proven to fall in any category under section 16(2), Act 792 shall add extra punishments in addition to the

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<sup>9</sup> Section 31 of Child Act 2001.

<sup>10</sup> Section 2 of Domestic Violence Act 1994.

punishment to which he is liable for. The additional punishments are imprisonment for a term not exceeding five years and mandatory whipping of not less than two strokes. The insertion of this unique provision signifies that the Malaysian justice system abhors sexual offences especially committed by a person who has the care, supervision, or authority over the child victim, and that person instead of upholding the trust of people have misused it to take advantage on the child that he/she is supposed to look after.

### **The position of a child witness and corroboration rule**

A child is presumed to be a competent witness for any offence under Act 792 or any offence stated in the Schedule to Act 792, according to Section 17 of Act 792. The application of this provision is specifically for a child who is a victim of the offences listed under Act 792; it is not intended to bolster the position of every child witness. Nonetheless, the court must be convinced of the child witness' competency throughout the trial in order for this presumption to be valid. Until Act 792 was passed, the evidence regime principally depended on the Evidence Act ("EA"), particularly sections 118 and 133A in the case of a minor witness. However, currently, on top of the EA and Act 792, there is another applicable law on child evidence which is the Evidence of Child Witness Act 2007 ("EOCWA") which governs the procedural aspect of child witnesses rather than dealing with the substantive aspect of it. The objective of the EOCWA is to make court proceeding less intimidating to the child witness.<sup>11</sup> Under section 17, the only way for an accused to remove the child witness from the prosecution's witness list is to prove to the satisfaction of the court that the child witness is not a credible witness by displaying to the court that the child victim is giving a wavering testimony. Nevertheless, ultimately it is up to the trial court to accept the testimony and if the accused is unsuccessful, the presumption persists and the court shall continue to allow the child victim's evidence admissible.<sup>12</sup>

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<sup>11</sup> Asmida Ahmad, Mohd. Nasran Mohamad, Mohd. Al Adib Samuri. "Syariah and Civil Legislation in Malaysia on Child Testimony in Sexual Offences". Asian Journal of Law and Governance. e-ISSN: 2710-5849 | Vol. 3, No. 1, 65-75, 2021; Aminuddin Mustaffa & Kamaliah Salleh. "Child Evidence In Criminal Proceedings In Malaysian Courts: A Study On Post Ratification Of The Convention On The Rights Of The Child". [2010] 6 CLJ(A) i.

<sup>12</sup> Razali bin Silah v Public Prosecutor [2019] 12 MLJ 205.

When discussing about evidence even from the perspective of Act 792, one cannot tread far without touching the issue of corroboration. Under Act 792, section 18 states that the court may accept the evidence of a child witness even if it is uncorroborated. This section might cause some debate at some time, but in actuality, it might be viewed as strengthening the credibility of a young witness. This nature of the evidence is greatly beneficial to the prosecution especially when the offences were committed without any other eyewitness other than the child victim and the accused.<sup>13</sup> Section 18 has been contested in court on a variety of grounds, for instance in the case of *Chan Kok Poh v Public Prosecutor*<sup>14</sup> where section 18 was argued to be in *ultra vires* of the Federal Constitution (“FC”) and clashes with section 133A of the EA. In summary, the High Court decided that the principle of “*generalia specialibus non derogant*” applies and in consequence, section 18 of Act 792, a special law prevails over general legislation namely the EA. In addition, section 18 of Act 792 can be viewed as a cure to the rules set under section 133A of the EA on the ground of discrimination towards child witness as they have been underplayed under section 133A of the EA where in contrast, the capability of a child to become a witness is being supported by many scientific studies.<sup>15</sup>

## WEAKNESSES

There are several weaknesses of SOACA 2017 which have become a challenge for the operationalisation of the law. Among the weaknesses identified include ambiguities regarding penetrative sexual assault, aggravated assault, “sweetheart” defence from the accused, financial remedies and victim compensation, the limited scope of the Act, and limited operational resources.

### **Ambiguity regarding penetrative sexual assault**

Under Act 792, the provision regarding physical sexual assault does not clearly state anywhere under section 14(a) until (d) that it includes

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<sup>13</sup> Mageswary Siva Subramaniam & Hashvini Rekha Pachappan. *Corroboration Rules In Malaysia: A Brief Review On The Impact Of The Sexual Offences Against Children Act*. [2019] 1 LNS(A) cxviii.

<sup>14</sup> [2022] 9 MLJ 755.

<sup>15</sup> Abu Bakar Munir, Siti Hajar Mohd Yasin, Siti Hajar Mohd Yasin, Khairul Anwar Hairudin and Saifullah Qamar. *Child Evidence in the Sexual Offences Against Children Act 2017: So Close, Yet So Far*. Malayan Law Journal Articles [2018] 6 MLJ xxxii.

any act that involves the introduction of any object into the vagina or anus of the child like it is stipulated under section 377CA of the Malaysian Penal Code. Though the wording of section 14(d) includes any other acts that involve physical contact excluding sexual intercourse seems comprehensive but it may lead to complexity in the interpretation of the provision. It is submitted that the Legislature must reconsider the inclusion of acts similar to section 377CA of the Malaysian Penal Code but modified to suit the context of the offence against a child victim since section 377CA is a generic provision irrespective of the age of the victim with more stringent minimum punishments.

### **The position of ‘sweetheart’ defence**

A ‘sweetheart defence’ is a type of defence used by an accused in circumstances where the sexual activity is purely consensual. Nevertheless, there is no defence given to the accused on the ground that the sexual act committed against a child is consensual under Act 792. This current standing of Act 792 on this matter is branded as unfair according to some rights groups in Malaysia on the reason that both the offender and the child engaged in the sexual activity willingly and with consent but were still caught under Act 792.<sup>16</sup> It is argued that the lack of means for the accused to defend himself on the basis of consent may be seen as contributing to the lack of sexual health awareness among young people as they may be afraid of facing legal repercussions if they consult a doctor, which may increase the risk of the spread of STDs, unintended pregnancies, and unsafe abortions. Since Malaysia is predominantly Muslim population, this kind of defence needs to be further researched for its applicability and suitability in the Malaysian context.

### **Financial Remedies**

Act 792 does not provide financial remedies to the child victims or their families directly because there is no specific provision thereunder to

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<sup>16</sup> <https://www.malaymail.com/news/malaysia/2017/03/30/child-advocates-want-sweetheart-defence-in-new-sexual-protection-law/1345877>; <https://www.malaymail.com/news/malaysia/2017/09/12/doctor-calls-for-sweetheart-defence-clause-in-child-sex-law/1463075>; <https://www.thestar.com.my/news/nation/2017/03/30/ngos-want-sweetheart-defence-included-in-bill> & <https://www.malaysiakini.com/letters/549854>.

empower the court to give the order. In order for the child victim (the one that suffers the most both physically and mentally) to benefit from the criminal justice system, it is strongly argued that the inclusion of financial remedies provisions in Act 792 is essential as one should view the child victim as a beneficiary in the criminal justice system, particularly in the context of Act 792. It is generally noted as well that the recovery process of a child victim is cost-incurring.

Other weaknesses that have been identified are;

### **Limited scope and resources within of the Act**

The Act only covers sexual offences against children and does not address other forms of violence and abuse, such as physical abuse, emotional abuse, and neglect. This limits the effectiveness of the Act in protecting children from all forms of harm. The implementation of the Act requires a range of resources that involves various authorities, including trained personnel, forensic facilities, and support services for victims. However, there are concerns that these resources are limited and may not be sufficient to effectively implement the Act.<sup>17</sup>

### **Lack of roles for stakeholders**

The Act has not provided roles for stakeholders besides the prosecution and judiciary. Other important stakeholders such as parents, school managers, and caregivers among others are supposed to be part of the implementation, prevention and protection of children from sexual abuse and crimes.<sup>18</sup> As a result, there is a lack of awareness and education among the general public. The law focuses more on the role of law enforcement officials, about the Act and the issues related to sexual offences against children. This can lead to a lack of reporting and prosecution of cases, as well as a lack of support for child victims.<sup>19</sup>

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<sup>17</sup> Child Rights Coalition Malaysia (CRCM). (2020). Assessing the Implementation of the Sexual Offences Against Children Act 2017. Retrieved from <https://www.unicef.org/malaysia/media/221/file/Assessing%20the%20Implementation%20of%20the%20Sexual%20Offences%20Against%20Children%20Act%202017.pdf>

<sup>18</sup> Adonteng-Kissi, Obed. "Cultural Responsiveness in Child Protection: Stakeholders and Parental Perceptions of Working Children and Culture-appropriate Assessment in Ghana." *The British Journal of Social Work* 53, no. 1 (2023): 118-138.

<sup>19</sup> UNICEF Malaysia. (2019). Sexual Violence Against Children in Malaysia: Understanding the Issues and Ways Forward. Retrieved from

A cursory look at literature and legislation in other jurisdictions such as Australia and India shows that the public has a vital role to play in the protection of children against sexual abuse.<sup>20</sup>

### **Power to make rules**

Legislation of a nature such as the SOACA 2017 often requires guidelines for ease of operations by stakeholders. In ensuring smooth implementation of any legislation, it is common for the Legislature to incorporate supplementary rules of regulations to the main statute. However, the Act has not provided any rules or regulations that further elaborate the provisions of Act 792. This matter is originated in the absence of any provision that empowers the Minister in charge of Act 792 to make rules or regulations attached to the Act itself. Nevertheless, despite no statutory regulations, the implementation mechanism of Act 792 are further elaborated by the Special Guideline in the Handling of Sexual Offences Against Children in Malaysia formulated by the Office of the Chief Registrar of the Federal Court of Malaysia. The scope of the guideline is reactionary to child protection as it focuses on handling cases i.e; prosecution and other law enforcement matters.

Overall, while Act 792 represents an important step towards protecting children from sexual abuse, there are significant weaknesses in the Act that needs to be addressed to ensure that it is effective in protecting children and holding perpetrators accountable.

### **OPPORTUNITIES**

In a SWOT analysis, opportunities refer to external factors that have the potential to positively impact the organization or individual being analysed. SOACA 2017 provides an opportunity to protect children from sexual abuse and ensure that perpetrators are held accountable. The Act establishes a specialised legal framework for addressing

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<https://www.unicef.org/malaysia/media/161/file/Sexual%20Violence%20Against%20Children%20in%20Malaysia%20-%20Understanding%20the%20Issues%20and%20Ways%20Forward.pdf>

<sup>20</sup> McCartan, K. F., Hazel Kemshall, and Joan Tabachnick. "The construction of community understandings of sexual violence: Rethinking public, practitioner and policy discourses." *Journal of Sexual Aggression* 21, no. 1 (2015): 100-116; Das, Aditi. "Institutional care and response to victims of child sexual abuse in India: The role of non-governmental organizations & public hospitals." *International Journal of Social Work and Human Services Practice* 5, no. 4 (2017): 181-196.

sexual offences against children and provides for the prosecution of offenders, as well as the protection and support of child victims. These opportunities are external factors which can help to achieve the purpose presented by the Act including:

### **Strengthening legal protection for children**

The law provides extensive legal protection for children from sexual abuse from pre-commission as well as post-commission of the offence and ensures that perpetrators can be held accountable for their actions. This can act as a deterrent to potential offenders and help to protect children from harm. There is an opportunity to extend these gains by amending the Act to cover new offences and improve the procedural processes for child witnesses

### **Enhancing support services for victims**

The Act provide an opportunity to legislate on support services for child victims. At the moment, this is not provided anywhere in the Act. Several ranges of support services for child victims, including counselling, medical treatment, and rehabilitation are required at different stages of child sexual abuse incidents and prosecution. The amendment of legislation to incorporate these services can help to address the trauma and emotional impact of sexual abuse and support the recovery of child victims.

### **Establish a role for school managers and caregivers**

Beyond section 16 which provides punishment for a person in a relationship of trust, there is no clear provision on what the person in trust should do to protect the child including but not limited to reporting. This is unfortunate despite the low reportage among school managers and high incidence involving persons in a trust relationship.<sup>21</sup> The amendment of the Act can be an opportunity to establish a clear role in the operation of the Act and increase public awareness on issues relating to sexual offences against children, including the importance of reporting such crimes and the legal framework in place to address

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<sup>21</sup> Weatherley, Richard, AB Siti Hajar, O. Noralina, Mettilda John, Nooreen Preusser, and Madeleine Yong. "Evaluation of a school-based sexual abuse prevention curriculum in Malaysia." *Children and Youth Services Review* 34, no. 1 (2012): 119-125.

them. This can help to create a culture of accountability and responsibility for protecting children from harm.

### **Encouraging cooperation among stakeholders**

The Act needs to create a framework for cooperation among a range of stakeholders, including law enforcement officials, healthcare providers, and social workers, to ensure that child victims receive the support and protection they need. The Suspected Child Abuse and Neglect (SCAN) team for instance lack the prerequisite legal framework for handling sexual abuse cases.<sup>22</sup> This can help to improve the effectiveness of their response to sexual offences against children.

Overall, Act 792 provides an opportunity to strengthen the protection of children from sexual abuse and ensure that perpetrators are held accountable for their actions. However, effective implementation of the Act is essential to ensure that these opportunities are realized and that child victim receive the support and protection they need.

### **THREAT**

In a SWOT analysis, threats refer to external factors that have the potential to negatively impact the organization or individual being analysed. Therefore, we analyse the "threat" element and external factors that may hinder the effectiveness of the act in achieving its objectives. Some possible examples of threats could include limited resources and awareness, legal loopholes, evolving technology, as well as cultural and social norms.

### **Lack of public awareness and limited resources**

Due to the absence of a clear role for the stakeholders in the public, there is lack of public awareness. This is a threat to understanding the importance and implications of the Act. There is high focus on prosecutorial and law enforcement rather than prevention of child sexual abuse. This may result in low public support and limited engagement in reporting and preventing sexual offences against children.

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<sup>22</sup> Ghani, Rimah Melati Ab, Azriman Rosman, and Nor Asiah Muhamad. "The Suspected Child Abuse and Neglect (SCAN) Programme in Malaysia: From Inception to Present." *Global Journal of Health Science* 11, no. 7 (2019): 148-148.



### **Cultural and social norms**

Deep-seated cultural and social norms may create barriers to the implementation of the act, such as the belief that sexual offences against children are a private matter or that victims should remain silent and thus complicating the efforts done by the authority to uproot this crime. Moreover, should the Legislature consider the inclusion of the “sweetheart defence” into Act 792, the sensitivity attached to this type of defence must be addressed very carefully as Malaysia is a multi-faith country and predominantly Muslim.

### **Evolving technology**

The rapid evolution of technology and the internet may pose new and complex challenges for the act in terms of identifying, investigating and prosecuting offenders who use technology to commit sexual offences against children.

Inadequate coordination and cooperation among relevant agencies and stakeholders may result in gaps in the implementation and enforcement of the act, making it less effective in protecting children from sexual offences and ultimately may hamper the objective of Act 792.

### **CONCLUSION**

From the foregoing, this article had identified several strengths and weaknesses of the SOACA 2017. Although it is a child focused legislation which seeks to protect children against sexual offences, the weaknesses identified show that the law placed more emphasis on law enforcement more than the prevention of the crimes. This is evident in the absence of roles for stakeholders such as parents, school managers and *madrasa* teachers. Other major weakness is the lack of regulations or rules on the operationalisation of SOACA 2017. Such rule creates some lacunae in the law making powers of the parliament with respect to the operation of the Act. The guidelines formulated by the Federal Court is restricted to the member of the prosecution and judiciary who may be involved with child sexual abuse cases. Based on these and other challenges, we identified certain threats and opportunities which can be a guide for the amendment of the Act. This paper would be significant for parliamentarians, civil societies and legal practitioners who are involved with child rights and sexual offenses.