



Protecting children against sexual offences in Association of Southeast Asian Nations (ASEAN) Member States

An overview and analysis of the
current legal framework for the
protection of children against sexual
exploitation and abuse in ASEAN Member
States

2 February 2023

A Letter from the CEOs

Safeguarding children is a responsibility every one of us shares.

For more than two decades, the International Centre for Missing & Exploited Children (**ICMEC**) has focused on building a global community of caring adults and institutions all working together to bring about a world where children can grow up free from going missing, or being abducted, sexually abused, or exploited.

With the support of committed partners like Freshfields Bruckhaus Deringer, ICMEC is able to offer support to governments, policymakers, law enforcement, prosecutors, industries, civil society, and others around the world to advance our common goal of building a safer world for children.

The following report details the current legal framework for the protection of children against sexual exploitation and abuse in the Association of Southeast Asian Nations (**ASEAN**). While our global community continues to make progress in improving the laws and systems to protect children, we still have work to do because one child missing, abused, or exploited is one too many. We hope that policymakers, law enforcement, and child-protection organisations will benefit from this comprehensive report to identify challenges and gaps that still exist leaving our children vulnerable.



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About the International Centre for Missing & Exploited Children

ICMEC envisions a world where children can grow up safe from exploitation, abuse, or risk of going missing. Our mission is to advance child protection and safeguard vulnerable children by:

- Powering the global search for children who are missing.
- Disrupting the economics and mechanics of commercial child exploitation.
- Training frontline professionals to prevent and respond to cases of child abuse and exploitation.

Over the last two decades, ICMEC has worked in more than 120 countries, empowering the global community with the tools, training, and technology to create a safer world for children. ICMEC is headquartered in the United States, with regional representation in Australia, Brazil, and Singapore.

About Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer (***Freshfields***) is a global law firm with a long-standing track record of successfully supporting the world's leading national and multinational corporations, financial institutions, and governments on ground-breaking and business-critical mandates.

Freshfields provides free legal services in the public interest (*pro bono*) to a wide range of clients around the world, from individuals to some of the world's biggest charitable and non-profit organisations. Partnering with organisations such as ICMEC is an important part of Freshfields' pro-bono strategy and its desire to play a role in improving the communities in which we live and work.

Our collaborators

Freshfields has worked with a number of law firms throughout the ASEAN region to gather and analyse jurisdiction-specific legislation and guidance relating to sexual offences against children. A global team of Freshfields lawyers, including from Singapore, China, Hong Kong, London, Tokyo and Vietnam, drafted this report to identify similarities and differences in the legislative framework across ASEAN and to highlight potential challenges. We would like to take this opportunity to extend special thanks to our collaborators, each of whom has contributed substantial time and resources and without which this report would not have been possible. We are extremely grateful for their contributions. Links to the websites of each firm are included in the Annex to this report.

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Executive Summary

This report (the **Report**) provides a comparative overview and analysis of the current legislative framework for the protection of children against sexual exploitation and abuse across the ASEAN region, namely: Brunei Darussalam (**Brunei**), Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam (together, the **ASEAN Member States**). The Report was prepared by Freshfields in collaboration with ICMEC and local lawyers in each of the ASEAN Member States.

The offences. Broadly speaking, all ASEAN Member States have laws in place that protect children, on at least some level, against sexual exploitation and abuse. The laws cover, to varying degrees, the following offences: (i) rape; (ii) child prostitution; (iii) abduction and trafficking; and (iv) child pornography,¹ as well as other forms of child sexual abuse. Furthermore, ASEAN Member States almost uniformly are parties to the key global and regional conventions on the protection of children against trafficking and sexual exploitation and abuse.

However, across jurisdictions, there is substantial variation in the scope of protection that these laws afford children. For instance, there are key differences with respect to:

- (i) the age (and, in some cases, gender) of the victim;
- (ii) the specific conduct that constitutes an offence;
- (iii) the impact of child marriage on an offence or its enforcement;
- (iv) whether certain offences are criminalised at all (e.g., grooming);
- (v) whether the legislation adequately covers online modes of committing an offence; and
- (vi) whether the offence has transnational or extraterritorial effect.

The latter two categories – online commission of offences and transnational or extraterritorial offences – are especially notable given the modern reality that child sexual abuse and exploitation offences such as pornography, prostitution and trafficking are increasingly committed at least partially online and/or across national borders.

Enforcement. On the enforcement front, all ASEAN Member States, except for Brunei, have mandatory reporting obligations for certain individuals or classes of individuals who have knowledge or, in some cases, reasonable suspicion of the occurrence of child sexual abuse. The scope of these obligations varies widely, and while most apply at least to medical or education/childcare professionals and family members, very few apply to websites (hosting content on the internet) or service providers/IT professionals, or to financial institutions or payment platforms who might process payments for such services. The infrastructure in place for making and handling such reports also varies and appears to be better developed in some jurisdictions than others.

¹ Increasingly the term 'Child Sexual Abuse Material', or 'CSAM', is used instead of 'child pornography'. However, we have used the term 'child pornography' throughout this Report as several ASEAN jurisdictions frame their laws using this terminology.

Sentencing also varies across ASEAN, but some common themes emerge. First, unsurprisingly, *finer and custodial sentences* (sometimes in combination) are the most common penalties for sexual offences against children, and their amount and/or length depend on a range of factors including the seriousness of the offence and the presence of any aggravating or mitigating factors. Second, certain severe punishments, including *corporal punishment and life imprisonment*, are available in only a few jurisdictions (Brunei, Malaysia and Singapore), and *capital punishment* is rarer still (in Thailand and Vietnam); such punishments are typically reserved for the most serious offences.

Extradition. Due to the international nature of many modern sexual offences against children, the ability to extradite accused offenders is an important feature of enforcement. All ASEAN jurisdictions have at least some extradition treaties in place that would cover sexual offences against children, and certain applicable international conventions also provide a right to extradite in relation to offences committed thereunder. However, coverage remains far from uniform. It has been reported that ASEAN Member States recently made progress toward negotiating a multilateral, ASEAN-wide extradition agreement. In the meantime, the ASEAN Member States have endorsed a model bilateral extradition treaty which they (or others) may choose to adopt.

In summary, ASEAN Member States have taken great legislative strides toward the protection of children against sexual offences, but there remains work to be done to close certain gaps in coverage and to better support enforcement and regional cooperation with respect to combatting such offences.

The remainder of this Report explores these topics, and others, in more detail, and is structured as follows:

		Page
Introduction		
1.	Purpose of the Report	1
2.	Methodology	1
Analysis and comparison		
3.	Overview of sexual offences against children in domestic laws	2
4.	Gender-specific laws	27
5.	Reporting obligations	30
6.	Penalties and sentencing	36
7.	Defences to sexual offences	49
8.	Registration of child sex offenders	55
9.	Domestic laws in an international context	56
10.	International conventions	62
11.	Recommendations	67



INTRODUCTION

1. Purpose of the Report

- 1.1 This Report provides a comparative overview and analysis of the current legislative framework for the protection of children against sexual exploitation and abuse across ASEAN Member States, namely: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. This Report aims to summarise the relevant legislation and identify gaps and issues within that framework.
- 1.2 The Report has been prepared by Freshfields in collaboration with ICMEC and local law firms located in each relevant jurisdiction.²

2. Methodology

- 2.1 The research underpinning the Report was collected from legal advisors in each respective ASEAN jurisdiction. ICMEC and Freshfields developed a questionnaire addressing a range of questions relating to laws on sexual offences against children, including the following:
 - (a) Are there domestic laws that specifically address sexual offences against children, and what are they?
 - (b) Are any of those laws gender-specific?
 - (c) Does the legislation cover online offences?
 - (d) What are the key definitions used in the construction of sexual offences under the relevant domestic laws?
 - (e) Are there any reporting obligations in relation to sexual offences against children under domestic law?
 - (f) Are there any laws that specifically impose liability on financial institutions or payment platforms for processing payments and/or accepting money in connection with child sexual offences, or impose specific diligence obligations on those entities in relation to child sexual offences?
 - (g) Do any domestic laws that address sexual offences against children have extraterritorial effect or cover transnational offences?
 - (h) Is the country a party to any international convention (that has been ratified) dealing with the exploitation of children?
 - (i) Are there sentencing guidelines in place for sexual offences against children, and what are mitigating or aggravating factors at sentencing?
 - (j) Is there a national database of sexual offenders against children or a similar general sexual offenders database?

² The legal position set out in the Report is correct as of December 2022. In respect of Laos, new legislation is continuously being announced and enforced to varying degrees, which may affect the contents of this Report.

- 2.2 Based on the completed questionnaires and in collaboration with local legal experts in each jurisdiction, Freshfields analysed the relevant legislation in each ASEAN Member State. The following sub-topics were identified through the questionnaires as key themes that provide important grounds for comparison:
- (a) The range of sexual offences against children.
 - (b) Gender-specific laws.
 - (c) Reporting obligations.
 - (d) Penalties and sentencing.
 - (e) Defences to sexual offences.
 - (f) Child sex offender registration.
 - (g) Domestic laws in an international context.
 - (h) International conventions.
- 2.3 Freshfields collaborated with local law firms for each jurisdiction. For further details please see the Annex to this Report.

ANALYSIS AND COMPARISON

3. Overview of sexual offences against children in domestic laws

- 3.1 This section provides a general overview and comparison of the sexual offences currently criminalised in ASEAN Member States. It is not exhaustive but rather seeks to demonstrate the range of offences covered and key differences or gaps in that coverage. The following offences or categories of offences are discussed:
- (a) Rape and related offences.
 - (b) Child prostitution and sex tourism.
 - (c) Trafficking and abduction.
 - (d) Child pornography.
 - (e) Grooming.
 - (f) Online offences.
 - (g) Other forms of child sexual abuse.
 - (h) Processing or receiving monies in connection with child sexual abuse crimes.
- 3.2 This section also addresses the impact of marriage on the commission of an offence at Subsection I.

A. Rape and related offences

3.3 All ASEAN Member States recognise the offence of rape and have specific laws addressing the rape of children.

3.4 That said, there is substantial variation amongst the ASEAN Member States regarding: (i) the conduct that constitutes rape; (ii) the offence of statutory rape; (iii) the requisite gender and age of the victim; (iv) the impact of marriage on the offence; and (v) other offences relating to rape.

3.5 **Conduct constituting rape.** The definition of what conduct constitutes rape varies across jurisdictions. In particular:

(a) **The required act.** Rape generally is defined as requiring penetration by a man's penis and/or, in some jurisdictions, such as **Cambodia, Singapore, and Vietnam**, another object or body part. In certain jurisdictions, however, full penetration is not necessarily required for the act of rape.

For instance, in **the Philippines**, the rape offence includes "*carnal knowledge*", defined as "*the act of a man having sexual intercourse or sexual bodily connections with a woman*", which includes contact between the perpetrator's penis and the victim's labia beyond merely the external surface but shy of full penetration.³

(b) **The means by which the required act is committed.** It is widely established that rape is committed where the relevant act is done without the consent of the victim, such as through the use of physical force or the threat of violence.

For instance, in **Indonesia**, a person is prohibited from "*committing violence or threat of violence in forcing a child to commit sexual intercourse with him/her or with others*".

Most jurisdictions go further than this, e.g.:

(i) **Substances/narcotics: Brunei, Cambodia, Laos, the Philippines, and Vietnam** criminalise the commitment of the required act where the offender takes advantage of the victim not only through the use of force, threats, or intimidation, but also the use of substances such as narcotics.

For instance, in **Laos**, child rape involves not only the use of force or a weapon to threaten, but also the use of "*anaesthesia drug, alcohol, or other methods that place women and children in a situation where they are defenceless*" in order to have sexual relations with them.

(ii) **Trickery, opportunism, or abuse of authority:** In many jurisdictions, rape may be committed by tricking or deceiving an individual into

³ It may also include sexual assault by any person "*by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person*".

purportedly giving consent, or by abusing one's authority to obtain that purported consent.

For instance, in **the Philippines**, rape may be committed where the offender engages in sexual intercourse through fraudulent scheming or abuse of authority. Similarly, in **Cambodia** and **Vietnam** the offender may be guilty by being "*opportunistic*" (Cambodia) or "*taking advantage of the victim's defencelessness or other tricks*" (Vietnam).

3.6 **Statutory rape.** In several jurisdictions, consent cannot legally be given if the victim is under a certain age and/or of limited or impaired mental capacity. In those jurisdictions, having sexual intercourse with individuals that are unable legally to consent will amount to statutory rape. In other words, it will amount to rape irrespective of whether the victim purported to consent or not.

3.7 In some jurisdictions, such as **Laos** and **Vietnam**, the age of consent is as young as 12 or 13 years of age. In **Brunei**, the legislation is generally silent as to the age at which an individual is considered legally competent to consent to sexual intercourse. However, specific offences under the Penal Code and Unlawful Carnal Knowledge Act (including for the offence of statutory rape) do specify the age of consent of the victim.⁴ In **Indonesia**, the law does not recognise the 'age of consent' as a specific concept, however a child (meaning a person under the age of 18) cannot give consent. Therefore, any sexual contact with a child under Indonesian law is automatically deemed to be non-consensual.

3.8 In the **Philippines**, there is no criminal liability for an individual who has 'carnal knowledge' of another person under 16 years of age provided: (i) the difference in age between the parties is not more than three years; and (ii) the sexual act in question is proven to be consensual, non-abusive⁵ and non-exploitative.⁶ This does not apply in cases where the victim is under 13 years of age.

Statutory rape: age of consent

- 12** Laos
- 13** Vietnam
- 14** Brunei*
- 15** Cambodia, Thailand
- 16** Malaysia, Myanmar, The Philippines, Singapore
- 18** Indonesia

*For the specific statutory rape offence only. Note that the age of consent is not consistently defined under Brunei's legislation.

⁴ In Brunei, sexual intercourse with a girl under the age of 14 constitutes statutory rape. However, the legal age of consent in respect of certain sexual offences is 16 and for other offences the legislation is silent as to the age of consent. Therefore, there is uncertainty as to whether sexual intercourse with an individual aged 14 or 15 would amount to statutory rape in Brunei. That said, Brunei has related offences that would likely cover sexual relations with such individuals in any event – e.g., "*carnal intercourse against the order of nature*" – which is discussed at paragraph 3.11 below.

⁵ Non-abusive means the absence of undue influence, intimidation, fraud, coercion, threat, physical, sexual, psychological, or mental injury or maltreatment, either with intention or through neglect, during the conduct of sexual activities with the victim.

⁶ Non-exploitative means there is no actual or attempted act of unfairly taking advantage of the child's position of vulnerability, differential power, or trust, during the conduct of sexual activities with the victim.

3.9 **Gender of the victim.** In certain jurisdictions, the rape offence is limited to situations in which the victim is female. For instance, in **Brunei, Malaysia, and Myanmar**, rape can occur only against a female victim, and male children are not protected by general rape or child-specific rape laws. That said, related sexual offences would, in many cases, cover non-consensual sexual intercourse with a male child (see further at paragraph 3.11 below).

Country	Gender-specific	<p>Child rape laws applying only to female victims</p> <p>▼</p> <p>Malaysia Myanmar Brunei (for statutory rape offence)</p>
Brunei	Female victim (for statutory rape offence)	
Cambodia	No	
Indonesia	No	
Laos	No	
Malaysia	Male perpetrator, female victim	
Myanmar	Male perpetrator, female victim	
The Philippines	No	
Singapore	No	
Thailand	No	
Vietnam	No	

3.10 **Impact of marriage.** In several jurisdictions, non-consensual sexual intercourse between a legally married couple is not treated as rape. See Subsection I below for further details.

3.11 **Related offences.** All ASEAN Member States recognise offences that are distinct from, but closely related to, rape. Several of these related offences may, at least theoretically, expand the protections afforded to children against non-consensual sexual relations. For example:

- (a) As noted above, in **Brunei, Malaysia and Myanmar** the rape offence is limited to female victims. However, these jurisdictions criminalise "*carnal intercourse against the order of nature*" with any man, woman, or animal. This offence would likely apply in circumstances where rape was committed against a male child.
- (b) Furthermore, in **Myanmar**, the statutory rape offence applies only to female victims under the age of 16. There is, however, a separate offence for inducing minor girls under the age of 18 into illicit intercourse with another person, which could protect against the rape of girls older than 16. There is also an offence for "*sexual exploitation of the child*" regardless of the child's consent, where a child is defined as someone under the age of 18; the rape of boys could fall under this offence.

- (c) **Indonesia's** rape offence covers non-consensual sexual intercourse with another person. However, there is a separate, wider offence that also would cover any forced sexual intercourse with a (male or female) child under the age of 18.
- (d) **Thailand** has made it an offence to have sexual intercourse with a child below the age of 15. There is also an offence for non-consensual sexual intercourse with a person between the ages of 15 and 18. 'Sexual intercourse' is defined more broadly than rape in most of the other jurisdictions, and includes any act done with the offender's sex organ or any other object "*by any means*", which likely would cover both penetrative and non-penetrative acts.
- (e) **Singapore**, in addition to the penetrative offences listed (in which the child is the subject of penetration), also criminalises "*caus[ing] a person under 16 years of age to sexually penetrate*", with a part of his or her body or other object, another person or him or herself.
- (f) In **the Philippines**, there is a separate offence for 'sexual violence' which covers sexual acts – including rape – that are committed against women or children (which is gender-neutral).

3.12 In sum, it is clear that while all ASEAN Member States have protections in place against non-consensual sexual intercourse with children, the robustness and scope of those protections varies. In certain jurisdictions, the strength of these protections is undermined by critical gaps in coverage, such as their inapplicability to boys (e.g., **Brunei, Malaysia, and Myanmar**), or to children above a certain age (e.g., **Laos and Vietnam**, where the threshold for statutory rape is only 12 or 13 years of age, respectively). The prohibited conduct itself also varies across jurisdictions, with only certain jurisdictions defining rape as being conducted through not only physical force but also, for example, opportunism or trickery, and others defining the offence in terms of more narrowly proscribed conduct.

B. Child prostitution and sex tourism

3.13 All ASEAN Member States have implemented laws that criminalise child prostitution, whether through specific legislation targeting prostitution, anti-trafficking legislation (on which see further Subsection C), or provisions in the relevant criminal or penal codes. Each jurisdiction, other than Singapore, is a party to the United Nations' Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which entered into force in 2002 (the ***Optional Protocol***).

3.14 The Optional Protocol is discussed further in Section 10 of this Report. For present purposes, we note that the Optional Protocol provides that each State Party shall ensure that the offering, obtaining, procuring, or providing a child for child prostitution shall be criminalised, whether committed domestically or transnationally. 'Child prostitution' is defined under the Optional Protocol as "*the use of a child in sexual activities for remuneration or any other form of consideration*".

3.15 Certain jurisdictions have followed the Optional Protocol's definition of 'child prostitution' closely, or even expanded on its scope. **Cambodia, Indonesia, and Thailand**, for example, have adopted the same or broadly similar definitions to that in the Optional Protocol, whereas **the Philippines** has expanded the definition to cover also sexual conduct under "*coercion or influence of any adult*".

3.16 Other jurisdictions have taken slightly different approaches to that set out in the Optional Protocol. For example:

- (a) **Singapore's** Penal Code prohibits anyone from buying, selling, hiring, otherwise obtaining, letting to hire, or otherwise disposing of any person under the age of 21 "*with intent that that person be employed or used for prostitution*". Prostitution is defined as "*the offering of an individual's body for hire, whether for money or in kind, for the purpose of sexual penetration*" (emphasis added), which is a narrower scope than the Optional Protocol definition (which refers to 'sexual activities'). This would suggest that the prohibition against prostitution protects child victims only from prostitution in the form of penetration. However, the Singapore Penal Code also separately prohibits "*obtain[ing] for consideration*" (or communicating with another person for purposes of obtaining for consideration) the 'sexual services' of a person under 18 years of age. 'Sexual services' is broadly defined and includes any sexual services involving the sexual penetration of the vagina or anus by a part of another person's body (other than the penis) or by anything else; or the penetration of the vagina, anus or mouth by a man's penis, or the touching which is sexual of another person or of himself or herself. Thus, the prostitution of boys below the age of 18 would likely be criminalised under this provision, as would the prostitution of girls for sexual services other than sexual penetration.

In addition to those provisions, **Singapore** has implemented a host of prostitution-related laws that are exclusively focused on girls, including the offences of: (i) permitting a girl below the age of 16 to use premises for sexual penetration; and (ii) operating or maintaining remote communication services (e.g., a website or phone service) that offer or facilitate the provision of sexual services from a woman or girl in return for payment. Comparatively, there is arguably greater protection afforded to girls (and particularly those under the age of 16) than to boys, or girls between the age of 16 and 21.

- (b) **Malaysia's** Penal Code forbids exploitation of any person for the purpose of prostitution including selling, hiring or situations where any person "*otherwise disposes of, or procures, buys or hires or otherwise obtains possession of, any person with such intention that the person is to be employed or used for the purpose of prostitution*". As such, prostitution is defined as "*the act of a person offering that person's body for sexual gratification for hire whether in money or in kind*". Under the provisions of the Malaysian Child Act, the same offences apply when carried out against a child under 18 years of age.

- (c) **Brunei's** domestic laws also place a greater focus on the prostitution of girls. While Brunei has implemented gender-neutral legislation that prohibits commercial sex with minors generally (boys or girls), it has also put in place additional offences that apply only to girls. For instance, it is an offence to take or import a girl under the age of 18 from one place to another knowing that she will or is likely to be induced to illicit intercourse. Any person keeping or managing a brothel who buys, hires, or is otherwise in possession of a female under the age of 18 shall moreover be presumed to have intended that the girl be used for the purpose of prostitution, and therefore guilty of an offence, unless evidence to the contrary is presented.
- (d) Some jurisdictions, including **Brunei, Malaysia** and **Myanmar**, and **Vietnam**, have not yet adopted a clear definition of *child* prostitution. Given that the Optional Protocol specifically seeks to criminalise child prostitution, the lack of a clear definition leaves some doubt as to the content and scope of anti-child prostitution laws in those jurisdictions.

3.17 In line with the Optional Protocol, the legislation in most ASEAN jurisdictions covers the acts of offering, obtaining, procuring, or providing a child for prostitution. Certain jurisdictions go even further, including by:

(a) holding parents or legal guardians liable for an offence	(b) separate, specific offences	(c) penalising individuals
<p>if they knowingly allow their children (or, in some cases, girls only) to participate in prostitution (e.g., Malaysia, Myanmar, and Thailand).</p>	<p>to buy the services of a child prostitute (e.g., Laos, the Philippines, Singapore, Thailand and Vietnam).</p>	<p>who own, facilitate and/or derive profits from prostitution (e.g., Laos, the Philippines and Thailand); force children, or girls more specifically, into prostitution (e.g., Laos and the Philippines); harbour children for prostitution purposes (e.g., Laos and Malaysia); and/or adverse child prostitution (e.g., Malaysia and the Philippines).</p>

3.18 **Transnational offences and extraterritoriality.** The laws of some jurisdictions expressly state that acts that would amount to child prostitution offences if committed within the relevant jurisdiction shall also be penalised where committed outside that jurisdiction. This is discussed in detail in Section 9 below.

3.19 **Child sex tourism.** **Brunei, Laos, the Philippines,** and **Singapore** have put in place specific prohibitions against child sex tourism, typically covering both the clients and

organisers of such activities. Many of the activities prohibited by such laws would also be covered, to some extent, by other offences in each of the ASEAN Member States, such as child rape and sexual abuse, human trafficking, and general prostitution. But the creation of a separate child sex tourism offence goes further, by specifically recognising this conduct and criminalising the organisers of a trip in addition to the individuals more directly connected to the prostitution offence itself.

C. Trafficking and abduction

- 3.20 All ASEAN jurisdictions have laws against the trafficking and abduction of children, whether set out in specific anti-trafficking legislation or as part of more general legislation such as child protection legislation or the national penal or criminal codes.
- 3.21 Furthermore, all ASEAN Member States are parties to the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (the **ASEAN Trafficking Convention**), and all are parties to the United Nations' Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the **Trafficking Protocol**).
- 3.22 The Trafficking Protocol and ASEAN Trafficking Convention are discussed further in Section 10 of this Report. For now, we note that both treaties require all State Parties to criminalise trafficking in persons, and provide a widely acknowledged working definition thereof. Namely, they define 'trafficking in persons' as:

- (a) **the act** of recruitment, transportation, transfer, harbouring or receipt of persons;
- (b) **by means** of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and
- (c) **for the purpose** of exploitation, which shall include – at a minimum – the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

- 3.23 Both treaties further make it clear that where the recruitment, transportation, transfer, harbouring, or receipt in question takes place in relation to a child, defined as being a person under 18 years of age, for the purpose of exploitation, this shall be considered "trafficking in persons" even if it does not involve any of the means listed in paragraph 3.22. In other words, the purported consent of the child is irrelevant.
- 3.24 Although all ASEAN Member States have implemented domestic anti-trafficking legislation, the extent to which that legislation effectively and comprehensively implements the contents of these treaties varies, including in the following respects:
- (a) **Narrower definition of trafficking in persons.** Most of the jurisdictions' legislation include definitions of 'trafficking in persons' that, although not identical to that in the Trafficking Protocol and ASEAN Trafficking Convention,

cover the same or broadly equivalent acts, means and purpose. There are, however, some notable exceptions to this. **Cambodia**, for example, criminalises the "*unlawful removal*" of persons under 18, which is defined as the removal of a person from his/her place of residence. This is narrower in scope than the definition set out in the treaties, as it would not cover receiving, harbouring, transferring from one place to another (even where neither place is a place of residence), or recruiting a child for the purpose of exploitation.

- (b) **Narrower definition of child.** Most of the anti-trafficking legislation specifically aimed at children defines a 'child' as being any person under the age of 18 – which is in line with the Trafficking Protocol and ASEAN Trafficking Convention. Exceptions include differences with respect to:
- (i) **Age:** Child-trafficking laws in **Vietnam** provide that it is an offence to traffic persons under the age of 16. While there is a general prohibition against human trafficking regardless of age, the penalties are less severe.
 - (ii) **Marital status:** In some jurisdictions, there are gaps in the protection of children that are married to the perpetrators of trafficking, for example in **Malaysia**. See Subsection I for further details.
 - (iii) **Gender:** Although none of the jurisdictions differentiate between male and female trafficking victims as a general matter, some jurisdictions have additional trafficking offences targeted specifically at girls. For instance, **Myanmar's** general anti-trafficking legislation is gender-neutral and would apply to boys under the age of 18, but there is also a specific provision of the Penal Code directed toward the trafficking of girls under the age of 18 for the purpose of inducing them to engage in illicit intercourse with another person. This suggests that there is a greater awareness and readiness to enforce these sorts of offences when the victims are girls. Similarly, in **Singapore**, there is specific legislation aimed at protecting girls and women against trafficking, which sits alongside the general and gender-neutral trafficking in persons offence, suggesting an arguably greater focus on girls and/or women as victims.
- (c) **Failure to specify that trafficking can take place both within and across national borders.** The laws in **Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore**, and **Vietnam** expressly state that trafficking is an offence regardless of whether it is done on a national or an international level. **Brunei, Myanmar**, and **Thailand** do not expressly set this out in the relevant legislation.

3.25 In addition to passing specific anti-trafficking legislation, several jurisdictions have a variety of provisions incorporated into their general legislation, such as penal or criminal codes, that supplement or complement trafficking-specific legislation. For example:

- (a) **Thailand's** Criminal Code includes offences such as dishonestly disposing of or taking a child and kidnapping or abducting a child (a child for these purposes being a person under the age of 15).
 - (b) **Laos** has incorporated certain human trading and trafficking provisions into its Penal Code, and it also has a law on the development and protection of women that specifically prohibits trafficking in women and children.
 - (c) **The Philippines** similarly has a separate law on the protection of children against abuse, exploitation, and discrimination, which covers trading and dealing in children, as well as attempting to commit child trafficking.
 - (d) **Indonesia** has a number of child protection and child slavery laws that cover the kidnapping, sale, and trafficking of children.
 - (e) In **Singapore**, it is an offence to transfer possession, custody, or control of a child for valuable consideration, and to import a child by or under false pretences.
- 3.26 In summary, there is generally a good degree of legal protection against the trafficking and abduction of children under the age of 18 across ASEAN Member States, with only limited exceptions.
- 3.27 To ensure effective enforcement of anti-trafficking laws and a reduction in the prevalence of these kinds of offences, however, work beyond legislation is needed; cooperation and coordination between governments at the international level is required. For completeness, and as noted in Section 10 below, the ASEAN Trafficking Convention goes some way toward that by creating a framework for collaboration between the ASEAN Member States in fighting international trafficking, as well as organised crime and corruption. The ASEAN Trafficking Convention moreover provides that the ASEAN Member States shall establish comprehensive policies, programmes, and other measures to prevent and combat trafficking and protect victims of trafficking from re-victimisation. The extent and effectiveness of such collaboration, or programmes and other measures, within the various ASEAN jurisdictions is outside the scope of this Report.

D. Child pornography

- 3.28 Each of the ten ASEAN jurisdictions has laws that prohibit child pornography and, as noted in paragraph 3.13 above, all except Singapore are parties to the Optional Protocol. The Optional Protocol provides that all State Parties should prohibit the production, distribution, dissemination, importation, exportation, offering, selling, and possession of child pornography. 'Child pornography' is defined in the Optional Protocol as "*any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes*", with a 'child' being any person under the age of 18.
- 3.29 The ten jurisdictions have taken different approaches to the implementation of the Optional Protocol's prohibition of child pornography.

3.30 **Definition of child pornography.** For example, with respect to the definition of child pornography:

- (a) **Indonesia, Malaysia, Myanmar, the Philippines, and Thailand** have all adopted legislation that targets child pornography, which is defined in broadly the same way as under the Optional Protocol (although note that the Philippines and Thailand do not include in their respective definitions "*any representation of the sexual parts of a child for a primarily sexual purpose*").
- (b) Some jurisdictions broaden the definition of 'child': **the Philippines**, for example, has specified that it includes not only children *actually* under the age of 18, but also persons *appearing to be* under the age of 18. The Philippines' definition moreover includes persons over 18 that are unable to take care of themselves. By contrast, **Myanmar's** prohibition extends only to children under the age of 16 and is therefore narrower than what the Optional Protocol proscribes.
- (c) **Cambodia** also prohibits child pornography; however, this has been defined narrowly to cover only the depiction of a minor's "*naked figure which excites or stimulates sexual desire*". This definition technically would not cover child pornography that involves, for example, a fully or partially dressed child engaging or being involved in sexual activity, and thus falls short of the definition in the Optional Protocol.
- (d) **Singapore** does not prohibit child pornography in the same terms as the Optional Protocol, but its Penal Code contains a range of provisions banning all manner of conduct in relation to 'child abuse material', which is broadly defined to cover a range of depictions of children being sexually abused, engaged in sexual activity, in the presence of another person who is engaged in or appears to be engaged in a sexual pose or activity, as well as material depicting certain body parts of a child (genitals and, for girls, breasts). This definition goes farther than the Optional Protocol in terms of depicted content, but falls short in terms of age, with child being defined as a person below 16 years of age (or reasonably appearing to be, or implied to be, below 16). There is, however, a related provision against "*exploitation by abusive material of minor of or above 16 but below 18*" which applies where the victim and perpetrator are in a relationship which is exploited by the perpetrator to produce or procure the production of abusive materials in respect of the victim. In addition, Singapore has prohibitions around 'obscene materials', which cover materials that are "*intended to deprave and corrupt*" and would likely also include child pornography (although it is not expressly referenced in the relevant provisions).
- (e) **Brunei** does not have any specific definitions of child pornography in its legislation and does not address the prohibition of such an offence directly. The Children and Young Persons Act (Cap. 219) provides, however, that a child or young person is sexually abused if he or she has taken part, whether as a participant or an observer, in any sexual activity for the purpose of any

pornographic, obscene, or indecent material, photograph, recording, film, videotape or performance. Section 293 of the Penal Code moreover provides some protection against child pornography. This concerns the possession of an indecent photograph of a child (s. 293A) and the taking, distributing, showing, advertising, and accessing of indecent photographs of children (s. 293B). A child for these purposes is defined as a person under the age of 18 years, and a photograph (which is broadly defined to include film and data stored digitally) is said to be 'obscene' if the effect is to deprave and corrupt persons who see or hear the matter contained or embodied in it.

- (f) **Laos** and **Vietnam** do not have any specific definitions of child pornography or obscene materials in their legislation, even though the Penal Codes of both jurisdictions include offences that arguably would capture this sort of material. For instance, **Vietnam's** Penal Code prohibits the usage of persons under 16 for pornographic purposes, as well as the distribution of pornographic and obscene materials (with obscene materials defined as the "*expression by any action, visual, sound of indecent lifestyle, vile, bad and spoiled entertainment*", which reflects "*extremely bad ethic, against pure customs and traditions of the nation*"). **Vietnam's** prohibitions against child exploitation and child sexual abuse likely would also capture at least the production of child pornography.

3.31 **Prohibited acts.** There is wide variation also in what constitutes prohibited acts relating to child pornography and obscene materials. Several ASEAN jurisdictions have adopted comprehensive prohibitions that criminalise the production, possession, sale, and distribution of child pornography.

3.32 Some jurisdictions go further and, in addition to prohibiting the production, possession, sale, and distribution of child pornography:

- (a) **The Philippines** prohibits, among others, acts that cause a child to perform in the creation or production of child pornography, and the provision of a venue for the commission of child pornography.
- (b) **Singapore** prohibits using a child for the production of child abuse material; causing, or procuring a child to be so used or having the care or custody of a child, and consenting to the person being so used, as well as advertising, seeking, or gaining access to child abuse material.
- (c) Some jurisdictions, such as **Malaysia** and **Myanmar**, expressly prohibit the importing or exporting of child pornographic content.

3.33 In contrast, other jurisdictions take a more limited approach. For example:

- (a) In **Cambodia**, possession without an intent to distribute is not a criminal offence, and distribution or dissemination is restricted to 'public places' (although it is unclear from the legislation whether such 'public places' would include the internet). **Vietnam** prohibits the 'storage' of child pornographic materials, but only where the storage is done with the intent to disseminate. In

all cases, possession purely for consumption purposes may not be captured, and intent to disseminate is difficult to prove.

- (b) **Thailand** only prohibits possession and dissemination of child pornography, which arguably leaves a gap in the law for the production and manufacture of such materials.

3.34 **Sharing and consumption of child pornography in the modern age.** The modern reality is that the majority of child pornography today is shared and consumed via the internet. In our assessment, with only certain, limited exceptions (see those identified in Subsection F), there is not nearly enough clarity in ASEAN jurisdictions as to whether and how such online sharing or consumption is caught.

- (a) Arguably, the sharing of this material may be caught under laws prohibiting the 'distribution', 'dissemination' or 'sale' of such materials, but this could be better clarified.
- (b) Even less clear is whether 'possession' captures all forms of accessing and storing child pornography, including accessing it through a live feed on the internet or over instant messaging apps, or storing it online via the cloud or shared websites. The formulation adopted by **Singapore**, which criminalises not only possession but also 'seeking' or 'gaining access to' child pornography, comes closest to this and should be considered elsewhere, as well as revising child pornography laws to expressly capture modern forms of sharing and consumption.

3.35 **Child sex dolls.** A more controversial, and less well-developed, area of the law concerns child sex dolls. Some observers argue that such dolls cause harm by promoting the sexualisation of children and fuelling paedophilic impulses, while others argue that dolls may protect children by providing an outlet for the gratification of such impulses without the abuse of an actual child. This Report does not take a position on the topic, but merely notes that some ASEAN jurisdictions have enacted measures that would prohibit or curb the use of child sex dolls.

3.36 In particular, **Singapore** has adopted legislation that criminalises the possession and distribution of child sex dolls. Under section 292A(2) of the Singapore Penal Code, a 'child sex-doll' is defined as *"an anatomically correct doll, mannequin or robot, with the features of, or with features that appear to a reasonable observer to resemble a person below 16 years of age and intended for use in sexual activities"*. The offence is broadly drafted and committed by any person who imports, exports, conveys, sells, lets to hire, distributes, puts into circulation, makes, produces, or is in possession of a child sex doll. The offence is punishable by imprisonment for up to two years, or with a fine, or both.

3.37 Although the nine remaining jurisdictions do not have specific legislation targeting child sex dolls, in a few jurisdictions, general laws relating to obscene or pornographic material would likely cover similar offences as those caught by the Singaporean legislation. For example:

- (a) **Brunei, Malaysia, and Myanmar** all have laws relating to "*obscene articles*" which may be interpreted to include child sex dolls. The common test to determine obscenity in this context is generally whether the object has the potential of depraving or corrupting a person, and such an argument could be made with respect to child sex dolls. **Brunei** prohibits the sale of obscene articles, whereas the **Malaysian** provision is broader, prohibiting their sale, lease, distribution, exhibition, circulation, production, or possession. **Myanmar** prohibits the import, export, conveyance, circulation, or advertisement of obscene articles.
- (b) The laws in **the Philippines** relating to pornographic material may capture, to an extent, the use of child sex dolls in pornography. The Philippines' Anti-Child Pornography Act criminalises the depiction of sex acts with a child. The definition of a child under the Anti-Child Pornography Act includes computer-generated, digitally, or manually crafted images or graphics of a person who is represented or who is made to appear to be a child. Further, the act defines 'child pornography' broadly to include any representation, by any means, of a child involved in real or simulated sexual activities. Pornography involving a child sex doll may, therefore, be caught under this Act. The Act does not, however, criminalise the production, importation, or possession of child sex dolls.

E. Grooming (including via electronic communications)

- 3.38 Grooming is the process by which an adult establishes or builds a relationship with a child, either in-person or through the use of the internet or related technologies, to facilitate online or offline sexual contact with the child.⁷ The establishment of grooming as its own, stand-alone offence can allow governments to intervene and bring criminal charges before abuse of the child has taken place, and it may be an increasingly important tool in an online age, as grooming often and increasingly takes place online and via social media.
- 3.39 Of the ten ASEAN jurisdictions, only four – **Brunei, Malaysia, the Philippines, and Singapore** – have laws that specifically criminalise child grooming.

Country	Age of Victim	Scope of protection
Brunei	A child under the age of 16, <i>or</i> which the perpetrator cannot reasonably believe to be over the age of 16.	Precondition: Perpetrator has previously met or communicated (including via online media) with victim on at least 2 previous occasions. Perpetration: Perpetrator aged 21 or over intentionally meets or travels to meet with and does or intends to commit a sexual offence against the child during or after that meeting.

⁷ *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*, Terminology and Semantics Interagency Working Group on Sexual Exploitation of Children, at <http://luxembourgguidelines.org/>.

Country	Age of Victim	Scope of protection
Malaysia	A child under the age of 18.	<p>Any sexual communication or encouragement to sexually communicate with the child; or</p> <p>Any of the following if done with the intention of committing or facilitating sexual offences against the child:</p> <ul style="list-style-type: none"> communicating (including through online activities, e.g., communications with a child via email and/or social media – see further Subsection F below; travelling to meet with the child; or meeting with the child.
Singapore	A child under the age of 16 <i>or</i> aged between 16 and 18 who is in an 'exploitative relationship' with the perpetrator.	<p>Precondition: Any person having previously met or communicated (including via online media) on at least 1 previous occasion.</p> <p>Perpetration: Perpetrator aged 18 or over intentionally:</p> <ul style="list-style-type: none"> meets or travels to meet with and does or intends to commit or facilitate a sexual offence against the child during or after that meeting; or engages in sexual communications with the child.
The Philippines	A child under the age of 18.	<p>Prohibits grooming and luring of children.</p> <p>Grooming offences include predatory conduct or acts establishing a relationship of trust, or emotional connection, by another, with a child or someone believed to be a child, whether in person or via electronic and other similar devices, for the purpose of perpetrating sexual abuse or exploitation or the production of any form of materials relating to child sexual abuse/exploitation.</p> <p>Luring offences relate to communicating with a child (or someone believed to be a child) for sexual activity, the production of any form of child pornography or child sexual abuse/exploitation materials.</p>

3.40 The laws of **Brunei, Malaysia, and Singapore** are preventative, in that they enable the authorities to step in before any sexual abuse has actually taken place. In all three

jurisdictions, an offence of grooming can take place without the perpetrator ever meeting the child in question.

- 3.41 Most of the other ASEAN jurisdictions, although having no specific child grooming offence, do have some protections in place that might cover at least aspects of this type of conduct. Anti-trafficking laws, in particular, tend to cover the recruitment and, in some cases, solicitation (**Cambodia**), and seduction (**Laos**) of children for the purpose of exploitation. In many cases these would cover at least some forms of child grooming conduct. **Myanmar** moreover has an offence for inducing a minor girl under the age of 18 into illicit intercourse with another person, and **Vietnam** criminalises 'child sexual abuse' which covers persuading or seducing a child to engage in sexual acts. **Indonesia's** child pornography laws – which prohibit, for example, persuading or encouraging a child to participate in child pornography – might also, arguably, cover some types of grooming conduct. **Thailand** similarly criminalises the luring of children under the age of 15, which involves "*tricking a child into sexual activities or seducing them for exploitation purposes*" (where the perpetrator has the intention to "*gratify the sexual desires*" of a person and "*take away [the child] for the purposes of indecency*", but without a need for physical sexual acts to actually take place for the offence to be committed). However, none of these laws cover the full scope of grooming conduct, and most may still require the ultimate offence (e.g., sexual intercourse, pornography, etc.) to be carried out for liability to attach.
- 3.42 Grooming legislation in these jurisdictions tends to focus on grooming for the purposes of engaging in physical sexual acts with a child, and there is currently a large gap for online grooming for the purposes of non-physical sexual offences such as pornography or other indecent acts. This is an area that has peaked during the COVID-19 pandemic and where further legislation may be required.

F. Online offences

- 3.43 Advances in information technology have given rise to a range of previously inconceivable sexual offences that can be committed against children. Supported by increasingly sophisticated computer technology for transmitting and storing information, offenders are better able to share child sexual abuse material on online platforms such as social network sites and chat forums. These same platforms are also providing a venue for offenders to collude and/or prepare for sexual offences against children (e.g., by grooming children through online communications) and, in many cases, to engage in the sexual exploitation of children on a real-time basis by way of webcams and livestreaming.
- 3.44 Several ASEAN Member States recognise this relatively novel cyber dimension to sexual offences against children and have either modified existing statutes or enacted new pieces of legislation specifically to address these emerging concerns. The clearest examples are in the **Philippines**, which enacted new legislation in July 2022 dealing specifically with online sexual abuse or exploitation of children and **Malaysia's** Sexual Offences Against Children Act (2017), which has been drafted widely to include offences committed online.

3.45 The Anti-Online Sexual Abuse or Exploitation of Children (**OSAEC**) and Child Sexual Abuse or Exploitation Materials (**CSAEM**) Act in the **Philippines** has introduced a number of offences which, regardless of the consent of the child, can be committed through online (or offline) means. The new Act introduces wide-ranging offences, including:

- (a) hiring, employing, using, engaging, coercing, permitting, or influencing a child to perform or participate in any form of OSAEC or CSAEM;
- (b) producing, directing, facilitating, or creating any form of CSAEM and selling, distributing, advertising, exporting, broadcasting, or transmitting CSAEM;
- (c) producing, directing, creating, or paying to stream or livestream, or streaming or live streaming any child sexual abuse or exploitation;
- (d) knowingly benefitting from, financially or otherwise, the commission of any of the offences under the Act;
- (e) engaging in the luring or grooming of a child (including any grooming which takes place offline as a prelude to violations taking place online);
- (f) sexualizing children by presenting them as objects of sexual fantasy, or making them conversational subjects of sexual fantasies, on any online or digital platform;
- (g) possessing any form of CSAEM (with possession of three or more CSAEMs being prima facie evidence of the intent to sell distribute, publish, or broadcast such CSAEM); and
- (h) for film distributors or IT services, individually or in cooperation with other entities, distributing any form of CSAEM.

3.46 **Malaysia's** Sexual Offences Against Children Act, makes it an offence for an Administrator of a website to make child pornography available on that website. The Act also criminalises grooming of children even in circumstances where the offender and victim only ever interacted through online communications and never met in person (see also Subsection E above). The Act provides several illustrations that make clear its applicability to online offences, e.g.:



A is an Administrator of a website showing child pornography. A is guilty of an offence by making available child pornography online.

A communicates with Z, a child, **via social media** by pretending to be a teenager and develops a love relationship with Z with the intention of using Z in the making of child pornography. A never meets Z. A is guilty of an offence.

A communicates with Z, a child, **via e-mail** and befriends Z with the intention that A's friends C and B could rape Z. A never meets Z. A is guilty of an offence.

- 3.47 Other countries have sought to address the issue by enacting new legislation or ensuring that existing legislation covers production and dissemination of child pornography, or the advertisement, or promoting of other offences (e.g., grooming or child sex tourism), by electronic means.
- (a) **Child pornography: Thailand and the Philippines** have implemented specific, standalone legislation aimed at combating cybercrimes by expressly criminalising the committing of punishable child pornography acts through computer systems. We understand that **Cambodia** and **Myanmar** are also considering new cyber laws, which are intended to contain provisions covering online child pornography.
 - (b) **Other offences: Singapore** has, in addition to ensuring that its legislation covers online conduct relating to offences such as child pornography and child sex tourism, made it an offence to operate or maintain a "*remote communication service*" for the purpose of offering or facilitating the provision of sexual services. 'Remote communication service' is defined, in this context, to include any website, web service or Internet application, as well as any service using a messaging system or any other kind of electronic or other technology for facilitating communication.
- 3.48 That said, these jurisdictions appear to be the exception in expressly addressing online offences. Although several jurisdictions' child pornography laws are likely drafted broadly enough to cover online pornography (e.g., **Indonesia's** definition of the terms pornography or child pornography include "*material in electronic form*" or iterations thereof; **Laos** criminalises the dissemination and possession of (among other things) "*any media*" containing child pornographic content), there is very little in the way of legislation expressly addressing the cyber nature of other offences that are committed against children online, such as planning or organising child sexual abuse online; online grooming offences, or advertising of child sexual services online. Prosecutors in some jurisdictions may be able to successfully argue that some of the broader legislative provisions regarding, for instance, child sex trafficking or child prostitution, capture conduct that may be committed online. However, children throughout ASEAN jurisdictions would be better protected if there were specific provisions in place targeting online offences that better capture the modern reality of child sexual abuse in ASEAN.

G. Other forms of child sexual abuse

- 3.49 Each of the ASEAN Member States have criminalised various other forms of child sexual abuse. These offences may overlap to a large extent with the offences already described, but they also capture additional kinds of sexual abuse against children.
- 3.50 **General prohibitions against child sexual abuse.** Notably, most of the ASEAN Member States prohibit some broader concept of child sexual abuse, which is capable of capturing acts that would not necessarily amount to rape, prostitution, pornography, or trafficking. For example:

- (a) **Cambodia** criminalises "*indecent acts*" (which include touching or exposing a genital or other sexual part of the victim, or touching the victim, for sexual gratification) and "*indecent assault*" (which involves touching or coercing the victim into committing sexual acts against his or her will) against children under the age of 15. Penalties are harsher where the offender is an adult holding a position of authority or trust and where the victim was particularly vulnerable by reason of age, illness, or disability.
- (b) **Laos** prohibits "*child sexual abuse*", which is defined as "*an act that has a physical or psychological effect*" on children, including sexual abuse. Sexual abuse is not defined, but the law does state that "*sexual activity*" with a child is prohibited if accomplished by means of lying, luring, persuading, buying, alluring and/or any other means to obtain consent. It is moreover prohibited in Laos to commit any action to cause sexual shame to another person without consent, and this carries an enhanced penalty where the victim is a child.
- (c) In **Malaysia**, both physical and non-physical sexual assault of a child is prohibited (e.g., uttering words to, watching or contacting a child, making the child watch a sexual activity or engaging in a sexual activity in the presence of a child).
- (d) In **the Philippines**, it is an offence to physically attack the sexual parts of a child's body and to cause or attempt to cause a child to engage in any sexual activity, whether by force, threat of force, or any other physical or other form of coercion. The Philippines moreover criminalises 'acts of lasciviousness' against children under the age of 12, and any sexual harassment, defined as treating a child as a sex object or making demeaning and sexually suggestive remarks of children. **The Philippines** also has offences relating to sexual intercourse (referred to as 'seduction')⁸ which can be carried out against minors, over 16 years of age but under 18 years of age.
- (e) **Singapore** has enacted a wide range of offences relating to the ill-treatment and sexual exploitation of children or young persons. 'Ill-treatment' includes physical or sexual abuse, whereas 'sexual exploitation' includes engaging in "*obscene or indecent acts*" with a child or causing or attempting to cause a child to engage in such acts.
- (f) **Thailand** similarly prohibits 'indecent acts' committed against any person below the age of 18, regardless of consent. 'Indecent acts' is defined very broadly to include any sexual act with sexual intent done directly to another person's body or causing sexual embarrassment without touching (e.g., taking secret compromising photographs of another person).

⁸ There are two seduction offences in the Philippines: '*Qualified seduction*' and '*simple seduction*'. Both offences may only be committed against a minor between 16 and 18 years of age. Qualified seduction relates to the seduction of a minor by any person in public authority, a priest, domestic guardian, teacher, or any person entrusted with the education or custody of the minor. Simple seduction relates to the seduction of a minor committed by means of deceit.

(g) In **Vietnam**, the offence of child abuse is defined to include the use of violence or threats of violence, the use of force, persuading or seducing a child to engage in sexual acts (though it is not necessarily clear what constitutes ‘sexual acts’ under Vietnamese law for purposes of this provision).

3.51 **Sexual acts committed in the presence of children.** Several ASEAN Member States, including **Brunei, Laos, Malaysia, the Philippines, and Singapore** prohibit acts that involve exposing children to, or forcing children to watch, sexual acts. Similarly, Brunei and Singapore specifically prohibit the offence of voyeurism, which involves observing a person doing a private act without that person’s consent.

3.52 **Molestation offences.** Some jurisdictions expressly identify molestation as a separate criminal offence, for example, in **Vietnam** and **Indonesia**, where the offence protects persons under the age of 16 and 18 respectively. Other jurisdictions list molestation as one form of a broader sexual abuse-type offence, for example, **Myanmar** lists molestation as one prohibited form of “*sexual violence against children*”.

3.53 **Special offences against girls.** Certain ASEAN Member States also have additional offences aimed only at the protection of female victims. **Brunei** and **Myanmar**, for example, prohibit acts that “*outrage the modesty of a woman*”, including physical and non-physical assaults against women and girls, which would include harassment by means of words, gestures or exhibiting objects. Brunei moreover criminalises the use or training of girls under the age of 21 for “*immoral purposes*”, which is likely to include any sexually motivated offence or sexual exploitation. **The Philippines**, criminalises “*consented abduction*”, which refers to the abduction of a virgin between the ages of 12 and 18, carried out with her purported consent and with lewd designs.

3.54 **Incest offences.** Finally, it is worth noting that many jurisdictions (e.g., **Brunei, Laos, Malaysia, and Vietnam**) criminalise incest – i.e., sexual intercourse between individuals that are related to varying degrees, by blood and/or legally. This would include the situation whereby an adult has sexual intercourse with a child to which he or she is related. Although such a situation would likely be prosecuted as a rape offence or one of the other sexual offences described in this Report, the criminalisation of incest in these countries might offer another layer of protection for children that are abused in the home by family or close relatives. However, in some countries, the protection afforded by criminal laws against incest is more limited. For example:

Cambodia	Incest offence is limited to prohibiting marriage relatives , as opposed to sexual intercourse
Singapore	Can only be committed in respect of sexual intercourse between persons aged 16 or above , meaning that children under the age of 16 that are sexually abused by a family member will instead be protected by child rape or other offences
Thailand	Incest offence is limited to prohibiting marriage between relatives, as opposed to sexual intercourse

H. Processing or receiving payments in connection with child sexual offences

3.55 Within ASEAN jurisdictions, there are currently no laws that expressly apply to financial institutions, payment platforms, or other financial providers in relation to processing

or receiving payments derived from or associated with child sexual offences. In many ASEAN Member States, any such payments would likely be covered by each jurisdiction's general laws relating to anti-money laundering, anti-terrorist financing, and proceeds of crime/unlawful activities. For example:

- (a) Under **Cambodia's** Law on Anti-Money Laundering and Terrorist Financing 2020, acquiring, converting, transferring, or processing assets known to be derived from criminal activity, are money laundering offences. As sexual offences against children comprise criminal activity under Cambodia's Criminal Code, to the extent that financial institutions or other financial providers within the scope of the Law on Anti-Money Laundering and Terrorist Financing 2020 process payments that they know to be derived from such criminal activity (i.e., sexual offences against children), that financial institution would be liable for money laundering.
- (b) In **the Philippines** the Anti-Money Laundering Act applies in relation to violations of the Anti-Child Pornography Act and violations of the law on Special Protection of Children Against Abuse, Exploitation, and Discrimination.
- (c) In **Thailand**, offences under the Anti-Trafficking in Persons Act, the Criminal Code (relating to sexual offences generally, rather than sexual offences against children) and the Prevention and Suppression of Prostitution Act are considered 'predicate offences' that could constitute money laundering offences under the Anti Money Laundering Act 1999.
- (d) In **Indonesia**, there are no specific regulations relating to processing payments or accepting funds in connection with child sexual offences other than general anti-money laundering and know your client obligations. The Financial Transaction Reporting and Analysis Centre, however, has also acknowledged the difficulty of identifying and tracking payments related to child sexual offences given the nominal value of such transactions (in comparison to other organised crime, e.g., in relation to corruption or narcotics which involve more substantial sums which are easier to identify).
- (e) In **Malaysia**, there are no specific laws imposing liability on financial institutions or payment platforms for processing payments or accepting money in relation to child sexual offences or that impose specific diligence obligations on those entities in relation to child sexual offences. However, the Malaysian Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, provides a general prohibition in that any person who engages, directly or indirectly, in a transaction that involves proceeds of an unlawful activity or of an offence, commits a money laundering offence and shall on conviction be liable to penalties. Such unlawful activities refer to any activity which constitutes any serious offence. In this regard, "*serious offences*" under the Act include, amongst others, the offence of trafficking of children under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 and offences relating to selling, procuring, detention, of a child for the purposes of prostitution under the Child Act 2001 (and attempting/assisting in such offences). However,

offences under the Sexual Offences Against Children Act 2017 are not included in the list of “*serious offences*”.

3.56 **Myanmar** is the only ASEAN country which has no legislation relating to anti-money laundering. There are compliance guidelines set by the Financial Actions Task Force for financial institutions to prevent and protect the banking system from being used for criminal purposes through activities such as money laundering, but these are not set out in the law.

I. The impact of marriage on the commission of an offence

3.57 In certain ASEAN jurisdictions, the protections afforded to married persons are different, and sometimes less robust, than those afforded to children in general. This, coupled with the prevalence of child marriage in some ASEAN jurisdictions, can significantly undermine the protections that would otherwise be available for those children.

a. Legal and minimum age of marriage

3.58 The legal age for marriage in many ASEAN jurisdictions is 18 or over. Exceptions to this are:

- (a) **Indonesia** where the legal age is 19;
- (b) **Malaysia** where the legal age is dependent on religion. For non-Muslims, the legal age is generally 18, except for non-Muslim girls, where the legal age is 16 provided there is the prior authorisation and licence granted by the Chief Minister. For Muslims, the legal age is 16 for girls, and 18 for boys, or younger than 16 or 18 with the permission of the Sharia court, though in certain states the legal marriage age has been increased to 18 for both girls and boys;
- (c) **Myanmar** where the legal age is similarly dependent on customary religious laws; and
- (d) **Thailand** where the legal age is 17.

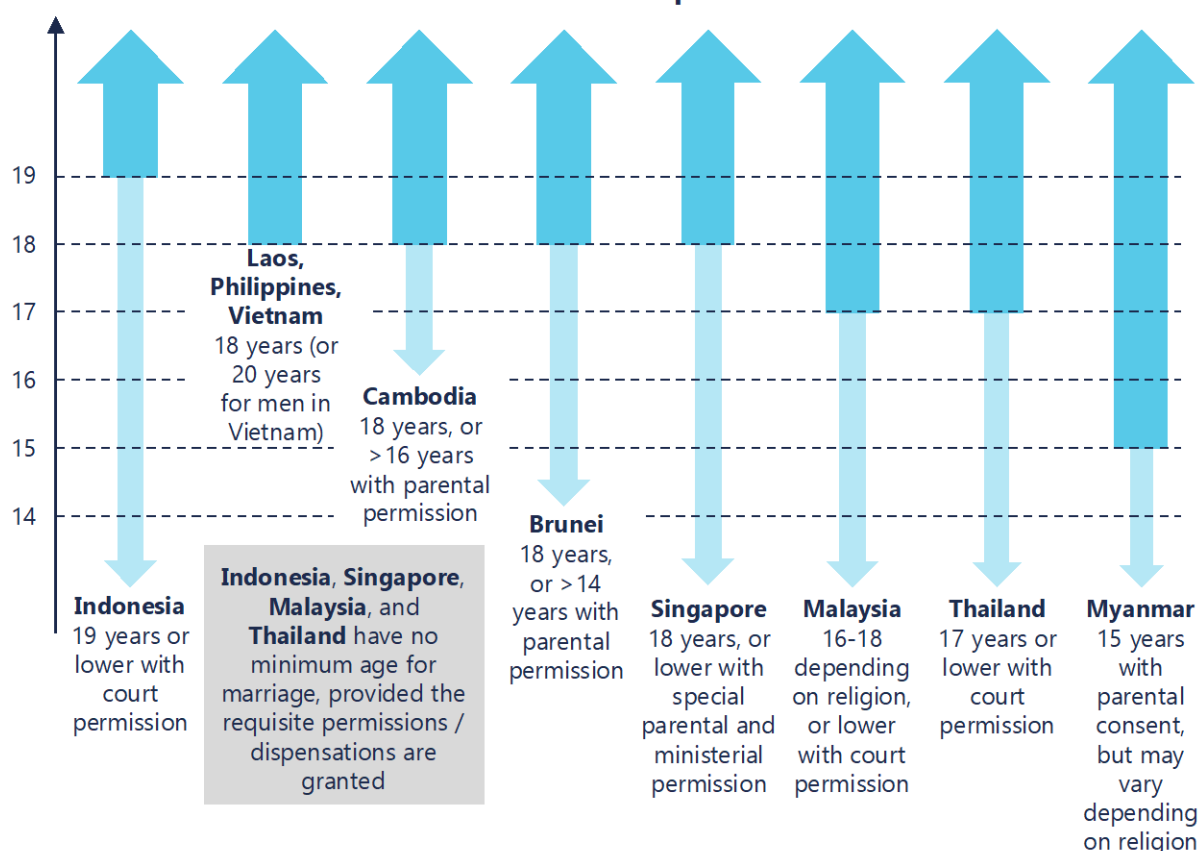
3.59 In most jurisdictions, however, it is possible for children to marry below the legal age with special permission from either their parents/guardians or the Member State (e.g., with parental permission so long as both children are at least 14 (**Brunei**) or 16 (**Cambodia**), **Thailand**, with permission of the Thai courts; **Singapore**, with a special marriage license, parental consent and ministerial permission; **Indonesia**, with a dispensation from the Indonesian courts or under very urgent circumstances). **Thailand, Singapore, Indonesia, and Myanmar** have no minimum age for marriage provided the necessary permissions are granted.

3.60 Under **Myanmar’s** Child Rights Law 2019, the legal age for marriage is 18 or over. However, in practice the age of marriage depends on the religion of the individuals entering into marriage as prescribed under various religious and customary laws. For example:

- (a) Under Hindu customary law, there is no minimum age of marriage where both parties to the marriage profess the Hindu religion.
- (b) Where both parties to a marriage profess the Buddhist religion, Myanmar customary law applies under which there is no age requirement for marriage. Myanmar customary law, however, requires a man to be 'physically capable' of sexual intercourse, and for a woman under the age of 20 to obtain parental/guardian consent.
- (c) For individuals professing the Muhammadan religion, Islamic Family Law of Myanmar applies under which the age of marriage is 15 or over for men and women.

3.61 It has been widely reported that, in practice, child marriage remains a pervasive fact of life in many places throughout Southeast Asia.⁹

The legal age for marriage in the majority of ASEAN jurisdictions is 18 or over, with some notable exceptions:



⁹ See, e.g., The ASEAN Post, Child Marriages: A Spill-over Effect, 30 December 2018, <https://theaseanpost.com/article/child-marriages-spillover-effect>; The ASEAN Post, More Indonesian Child Brides Amid Pandemic, 8 September 2020, <https://theaseanpost.com/article/more-indonesian-child-brides-amid-pandemic>.

b. The impact of marriage on the commission of an offence

3.62 In most ASEAN jurisdictions, the fact that a child is married would have no impact on the commission of an offence. Notable exceptions to this include:

- (a) **Marriage affecting the age of majority.** In **Thailand**, a person is deemed to attain majority status upon lawful marriage, regardless of age. Certain child protection laws expressly carve out from their scope children who have attained majority through marriage. For instance, the Child Protection Act B.E. 2546 (2003) expressly excludes married children from its scope. That law prohibits a range of conduct against children, including committing acts which result in "*torturing a child's physical or mental state*" (which likely would include sexual abuse), using or allowing a child to enter a brothel, or forcing, encouraging, or permitting a child to perform or act in a pornographic manner. However, the exclusion of children who have attained majority through marriage only occurs when the legislation specifically states that this is the case. This means that legislation which does not make such express provision, such as the Thai Criminal Code, will give importance to the age of the individual regardless of their marital status.
- (b) **Marriage legitimising acts otherwise amounting to rape.** In certain jurisdictions, if a person who would otherwise be deemed a child is married and is the victim of an act by his or her spouse that would otherwise amount to rape, that act might not be considered rape by virtue of the marriage. For instance:
 - (i) In **Cambodia** and **Myanmar**, if a person under 18 is legally married, the acts amounting to rape would only constitute an offence if the child is under the age of consent (which is 15).
 - (ii) In **Brunei**, marriage narrows a man's exposure to liability for committing statutory rape (defined as sexual intercourse with a child under the age of 14), as it is not an offence for a man to have sexual intercourse with his own wife provided that wife is aged 13 or above.
 - (iii) The situation is similar in **Singapore**, where a legal marriage would be a defence against certain offences under the Penal Code, such as (1) those involving sexual penetration of individuals under the age of 18, or (2) statutory rape where the wife is under the age of 14.
 - (iv) In **Malaysia**, it would not typically be considered rape for a man to have non-consensual intercourse with his wife; however, it would be an offence for a husband to cause hurt or fear of death to his wife or any other person in order to have sexual intercourse.
 - (v) In **Thailand**, a wife below the age of 15 (i.e., the age below which sexual intercourse would, outside the context of marriage, constitute a statutory offence) would be considered capable of consenting to sexual intercourse with her spouse. Non-consensual intercourse within the

marriage would, however, constitute a criminal offence regardless of the spouse's age, under section 276 of the Thai Criminal Code.

- (c) **Marriage having a mitigating effect on the offence committed.** In several jurisdictions, the lawful marriage between the victim and perpetrator could affect what offence the perpetrator is prosecuted for and/or have mitigating effects on sentencing. For example:
- (i) In **Indonesia**, sexual offences committed against a child by his or her adult spouse would likely be prosecuted as a domestic abuse case, under laws that criminalise physical, psychological, and sexual violence, as opposed to under the child protection laws that would perhaps be more appropriate (and carry harsher penalties) in many circumstances.
 - (ii) In **Laos**, there is a separate offence relating to forced sex during marriage (i.e., where the husband uses force, coercion and/or threats to have intercourse with his wife), which would likely be used instead of the rape offence in circumstances where the victim and perpetrator are married. This offence of forced sex carries much lower penalties than rape.
 - (iii) In **Malaysia**, a child being transferred temporarily or permanently for any valuable consideration in connection with a child marriage would not amount to trafficking, so long as the transfer took place pursuant to a bona fide marriage with the consent of at least one legal parent or guardian. Similarly, in **Brunei**, the offence against buying, selling, or trafficking any woman or girl for the purpose of prostitution would be excused if done for the purpose of her legal marriage or adoption.
 - (iv) In **Thailand**, the fact that the victim and perpetrator were spouses may be taken into account as a mitigating (or, indeed, aggravating) factor at sentencing (see Section 6 below).

c. **Accomplice Liability**

3.63 All ASEAN jurisdictions criminalise acts that assist in the commission of rape and other sexual offences. This is largely achieved through general criminal provisions on accomplice liability ("*aiding and abetting*" and/or other iterations, for example, "*instigating*", "*supporting*" or "*jointly offending*" in **Thailand**; "*aiding, abetting, attempting, organising and/or directing*" in **Indonesia**; "*participation*" or being an "*accomplice*" in **Laos**).

3.64 In addition to such general provisions, several jurisdictions also provide for accomplice liability in connection with specific offences against children (not necessarily limited to rape). For example:

- (a) **Malaysia** has an abetting offence specifically related to sexual offences against children: under Malaysia's Sexual Offences Against Children Act, it is an offence to aid the commission of an offence punishable under that Act (which includes, among others, sexual assault, child pornography offences and child grooming

offences). The Child Act has similarly made abetting the prostitution of a child an offence.

- (b) **Singapore** expressly criminalises causing penetration of or by a child, which includes any act that causes another person to sexually penetrate a child under the age of 16 or causing a child under 16 to sexually penetrate someone else.
- (c) In **the Philippines**, promoting or facilitating the "*prostitution or corruption of a minor to satisfy the lust of another*" – an offence which would include the rape of a person under 18 years of age – is also a crime.
- (d) **Myanmar's** Child Law 2019 contains a specific aiding and abetting provision for offences committed thereunder.
- (e) **Indonesia** specifically criminalises aiding, abetting, attempting, organising and/or directing an offence under its Human Trafficking Law (which criminalises a range of trafficking-related offences, including exploitation of children via prostitution or sexual abuse).

4. Gender-specific laws

4.1 When it comes to sexual offences against children, most ASEAN jurisdictions have at least some legislation that is specific to the gender of the victim, perpetrator, or both.

4.2 **Cambodia, Indonesia, Thailand, and Vietnam** do not have gender-specific legislation with respect to the victim or perpetrator.

4.3 **Brunei, Laos, Malaysia, Myanmar, the Philippines, and Singapore** have certain gender-specific legislation. We have set out below common trends in respect of gender-specific legislation in these jurisdictions.

4.4 On a high-level overview, these jurisdictions have some gender-specific legislation requiring the victim to be female, which is often in addition to general, gender-neutral legislation but which nevertheless provides greater protection for girls than for boys:

Offence	Brunei	Laos	Malaysia	Myanmar	Philippines	Singapore
Rape	Yes	No	Yes	Yes	No	No
Sexual intercourse	Yes	No	No	Yes	No	No
Abduction/trafficking	No	No	No	Yes	Yes	Yes
Prostitution	Yes	No	No	Yes	No	Yes
Offences to modesty	Yes	No	No	Yes	No	No

A. Rape

- 4.5 The offence of rape is the most common gender-specific offence. In **Brunei, Malaysia,** and **Myanmar**, the victim of rape must be female. This means that in circumstances where sexual misconduct similar in nature to rape is committed against a male child, the perpetrator would not, and could not, be charged with the specific offence of rape.
- 4.6 However, whilst a perpetrator would not be charged in these jurisdictions with rape itself in circumstances where a rape-like act is carried out against a male child, there are nonetheless some legal protections for male children who are the victims of such conduct:
- (a) In **Brunei**, the offence of rape is committed only by a male perpetrator against a female victim. However, Brunei also has legislation relating to "*unnatural offences*", which is not gender-specific and would extend to male children who are the victims of sexual intercourse initiated by an adult.
 - (b) In **Malaysia**, a male perpetrator commits the offence of "*carnal intercourse against the order of nature*" in circumstances where the perpetrator has sexual connection with another man, woman, or animal. The legislation itself and related commentary does not, however, provide any definition of "*against the order of nature*". We note that this is not a child-specific offence, but it can be committed against children.
 - (c) In **Myanmar**, "*sexual violence against children*" is prohibited, and this would include the rape of girls or boys.
- 4.7 In **Laos**, although the specific offence of rape is not itself gender-specific, there are increased penalties for cases where the perpetrator rapes a girl under 15 years of age or between the ages of 15 and 18. Further, there are specific offences of marital rape and coercion into sexual intercourse which require an act to be carried out by a husband against his wife.

B. Sexual intercourse with a girl

- 4.8 Several ASEAN jurisdictions have offences relating to having, or inducing, sexual intercourse with a girl (but which are distinct from rape or statutory rape provisions). For instance, in the following jurisdictions, the offence requires the victim to be female, but the perpetrator may be either male or female:
- (a) In **Myanmar**, it is an offence to induce a girl under the age of 18 to do any act where it is likely that she will be forced or seduced to illicit intercourse with the other person.
 - (b) In **Brunei**, the Unlawful Carnal Knowledge Act makes it an offence to have sexual intercourse with a girl under 16 years of age.

C. Trafficking / Abduction

- 4.9 All ASEAN Member States have laws that prohibit the trafficking of children, whether pursuant to specific anti-trafficking legislation or as part of more general legislation

(such as respective penal or criminal codes). Further, all ASEAN countries have entered into the ASEAN Trafficking Convention and the Trafficking Protocol (referred to in paragraph 3.21). The ASEAN Trafficking Convention and Trafficking Protocol do not distinguish between genders.

4.10 Nonetheless, in the following jurisdictions, certain offences relating to abduction and trafficking are gender-specific in that they require the victim to be female:

- (a) **Myanmar:** It is an offence for anyone to import a girl under the age of 21 into Myanmar with the intent that she may be forced into illicit intercourse with another person.
- (b) **The Philippines:** It is an offence to abduct a girl over the age of 12 and under 18 years of age with her consent where there is "*lewd design*" (which has been interpreted to mean an intention to have sexual interaction).
- (c) **Singapore:** The Women's Charter contains a number of offences relating to trafficking which specify that the victim must be female. These include offences relating to trafficking women and girls and importing women or girls by false pretences.

D. Prostitution

4.11 Offences relating to prostitution are difficult to categorise. A number of jurisdictions have broad offences relating to the prostitution of children or minors which are gender-neutral, but also have additional offences or features of offences which require a female victim.

- (a) **Brunei:** Under the Penal Code, offences relating to selling or buying a minor for the purposes of prostitution (sections 372 and 373) are not themselves gender-specific (the offences are drafted using the phraseology "*whoever sells, buys etc. any person...*" (emphasis added)). However, the explanatory notes in the Penal Code set out a presumption that where the minor in question is a girl under the age of 18 and is sold to or bought by a prostitute or any person who manages a brothel, the person who disposes of the girl is presumed to have disposed of her with the intent that she will be used for prostitution. In addition, the offence of importing for the purposes of prostitution (section 373A) requires the victim to be female. There are also additional gender-specific offences which apply only to women and girls under the Women and Girls Protection Act. These include: (i) selling or hiring women and girls for the purposes of prostitution; and (ii) using and training girls under the age of 21 for immoral purposes.
- (b) **Singapore:** The Penal Code contains general provisions for the protection of minors from prostitution which covers both male and female children. The Women's Charter further contains a number of sections relating to prostitution which specify a female victim. These include: (i) causing or encouraging prostitution; and (ii) trading on prostitution and communication services operated or maintained for facilitating sexual services.

- (c) **Myanmar:** In Myanmar, there is a general child prostitution offence which applies to both male and female children. There is a separate, gender-specific offence making it illegal for anyone to knowingly allow a girl living under his/her guardianship, who has not attained the age of 16, to earn a livelihood by prostitution.

E. Offences to modesty

- 4.12 **Brunei** and **Myanmar** both have provisions relating to offences against modesty which can only be carried out against a woman or girl. In **Brunei**, the offence covers non-physical acts such as words and gestures which are intended to insult the modesty of a woman. In **Myanmar**, there are two separate offences: one relates to assault or criminal force intending to outrage modesty, and the other covers words, sounds, gestures, or the exhibition of an object. Neither jurisdiction defines what amounts to an outrage to modesty.

5. Reporting obligations

- 5.1 The obligations imposed regarding the reporting of sexual offences against children vary widely between the different ASEAN jurisdictions.
- 5.2 All ASEAN Member States apart from **Brunei** have some form of mandatory reporting obligation for instances of violence or abuse against children. Although **Brunei** also has no general statutory reporting obligation, operators of childcare centres are required to report if there is reasonable cause to suspect a child is being abused. Telephone hotlines exist to assist such reporting and further help is provided by specific government departments.
- 5.3 The remaining ASEAN Member States have statutory reporting obligations, but these vary significantly in scope and applicability, as well as in respect of the effectiveness of the reporting mechanisms in place.
- 5.4 Set out below is a high-level table, followed by a more detailed overview, of the reporting obligations regarding sexual offences against children in the ASEAN Member States.

Country	What must be reported	Who must report	Reporting mechanism
Brunei	No general statutory reporting obligation (but childcare centre operators are required to report if there is reasonable cause to suspect a child is being abused)		
Cambodia	Knowledge of the mistreatment or sexual abuse of minors under 15 years of age	Any individual	Various government hotlines and NGOs

Country	What must be reported	Who must report	Reporting mechanism
Indonesia	Knowledge of sexual offences	(1) Victims or people who know, see, and/or witness events that constitute sexual offence; and (2) medical practitioners or health workers	Government bodies involved in social sector affairs (including female empowerment and child protection); NGOs; and/or the police
Laos	Wide-ranging, including, for example, knowledge of person under 18 who is at risk; knowledge of violence against children; information regarding victims of trafficking; identity of perpetrator	Individuals including but not limited to, social workers, healthcare professionals, teachers and caregivers, legal entities, and other organisations	Village authorities; dedicated government committees; charitable organisations; or the police
Malaysia	Knowledge of the commission of, or intention to commit, sexual offences against a child.	(1) Medical practitioners, childcare providers, and family members; and (2) any individual who is aware of commission or intent to commit a relevant offence	Dedicated officer at local police station; social welfare officers; various government and NGO hotlines
Myanmar	Knowledge that a child is in danger	Any individual	No formal mechanism, but can report to Ministry of Social Welfare, Relief and Resettlement
The Philippines	Wide-ranging, including, for example, knowledge of circumstances that give rise to reasonable belief that a child will, may, or has been	Individuals including but not limited to medical practitioners, government employees who	Government-issued protocols and guidelines for reporting; special reporting channels for internet service

Country	What must be reported	Who must report	Reporting mechanism
	trafficked; direct knowledge of any form of child pornography or suspected pornography materials or transactions	work with children and local officials, photo developers, IT and banking professionals, internet service providers and content hosts, credit card companies and banks	providers to report cybercrimes
Singapore	<p>(1) Awareness of a third party's commission of, or intention to commit, offences against children</p> <p>(2) Reasonable cause to suspect a case of child abuse</p> <p>(3) Discovery of cases of child abuse while processing publications under the Undesirable Publications Act</p>	<p>(1) Applicable to all individuals</p> <p>(2) Applicable to all childcare centre licensees</p> <p>(3) Applicable to all individuals processing such publications</p>	Government hotlines to relevant ministries; child protection specialist centres; and Divisional Police Headquarters
Thailand	Knowledge or suspicion that a child has been tortured, including sexual abuse	Any individual	Government agencies; police; and/or NGO social services. Government hotline established for reports
Vietnam	Knowledge of child abuse or danger of violence, exploitation, or abandonment	Educational establishments, families, and individuals	Specific number provided for such reporting by the national emergency telephone system

5.5 In slightly more detail:

- (a) **Cambodia** imposes penalties under its civil code on individuals who have knowledge of the mistreatment or sexual abuse of minors under the age of 15

and fail to inform the judicial authority, or other competent authority, of such mistreatment or sexual abuse. There is, however, no clear reporting mechanism set out under the legislation. Instead, general reporting is made through hotlines provided by government agencies (such as the Department for Anti-Trafficking Juvenile Protection) and NGOs.

- (b) **Laos** has wide mandatory reporting obligations which apply to broad categories of individuals and organisations as set out under national legislation. The Penal Code makes it a criminal offence to fail to report: (1) an individual to the authorities who has committed an offence; or (2) the identity of the perpetrator in circumstances where a person knows the identity of an individual who has committed an offence. Further, in situations relating to victims of trafficking or of domestic violence, it is a criminal offence for an individual to fail to assist victims when the individual is capable of providing such assistance.

There are also more specific obligations relating to offences against children which apply to the following:

- (i) any person or organisation that knows of or observes any situation regarding a child under the age of 18 at risk or in need of special protection;
- (ii) individuals, legal entities, or organisations that have discovered or are aware of the use of violence against children under the age of 18;
- (iii) medical doctors, other healthcare professionals, teachers, professors, care givers, or other professionals, who have witnessed or are aware of the committing of violence against children under the age of 18;
- (iv) social workers;
- (v) individuals or organisations that discover women and children who are victims of trafficking or who receive data or information concerning such trafficking; and
- (vi) any family member who discovers the committing of domestic violence against women or children.

There is some overlap between the categories of individuals listed at (i) to (vi). The scope of situations that trigger an obligation to report is broadly drafted demonstrating the wide reach of the reporting obligation.

The organisation to which a report must be made depends on the specific legislation under which the reporting obligation arises. Generally, reports can be made to a variety of bodies including village authorities; government committees (such as the Committee for Protection and Assistance to Children or the Child Protection and Assistance Network); charitable organisations; or the police. For certain offences, the organisation that receives the report is expressly required to cooperate with the appropriate government committee (e.g., Committee for Protection and Assistance to Children).

(c) In **Indonesia** there is a general obligation for medical practitioners or health workers to report allegations of sexual offences. Medical practitioners or health workers must inform (1) government institutions that carry out governmental affairs in relation to female empowerment and child protection; (2) government bodies in the social sector; (3) community-based institutions (such as NGOs); and/or (4) the police. Victims or individuals who know, see and/or witness a sexual offence *may* report such offence to the authorities mentioned, however, this is not a mandatory obligation.

(d) **Malaysia** has two types of legislative reporting obligations in relation to the relevant offences. The first is applicable to individuals who identify as medical practitioners, family members of injured children, and childcare providers. The second type is applicable to all individuals who are aware of the commission of, or the intention to commit, sexual offences against a child by any third party.

Two types of formal reporting mechanism have been established: (1) a specified officer in charge of incidents relating to sexual offences against children at local police stations; and (2) child abuse reporting hotlines that are operated by NGOs and the government through social welfare officers.

(e) In **Myanmar** there is a mandatory reporting obligation on any individual who sees a child in danger. There is no formal, established reporting mechanism, but the reporting obligation could be met by bringing the child to the Ministry of Social Welfare, Relief and Resettlement or by informing an officer at that Ministry. In addition, the relevant legislation requires the assistance of parents and guardians in child abuse investigations.

(f) In **the Philippines** (similarly to Laos) there are wide-reaching mandatory reporting obligations. These apply to:

- (i) medical practitioners;
- (ii) government officials and employees whose work involves dealing with children;
- (iii) *barangay* (a local government unit of the Philippines) officials;
- (iv) internet service providers;
- (v) mall owners or operators and owners or lessors of other business establishments;
- (vi) photo developers, information technology professionals, credit card companies, banks, and individuals who have direct knowledge of any form of child pornography activities or suspected child pornography materials or transactions;
- (vii) internet content hosts; and

- (viii) individuals who have knowledge of circumstances that give rise to a reasonable belief that a third party will be, may be, or has been trafficked.

The reporting mechanisms include protocols and guidelines issued by the government and special reporting channels for internet providers to report cybercrimes.

Recent legislation also requires any person with direct knowledge of any financial activity involving OSAEC, or CSAEM to report any suspected OSAEC and CSAEM-related activity or suspicious transactions to (i) the Department of Justice within twenty-four hours and (ii) the Anti-Money Laundering Council, within five days from discovery of such activity or suspicious transactions.

- (g) **Singapore** has an extensive reporting regime, covering a range of offences and with three types of mandatory reporting obligations.
 - (i) The first type is applicable to all individuals who are aware of a third party's commission of, or intention to commit offences against children. This covers many sexual offences against children under Singapore's Penal Code (25 in total), including in relation to sexual assault, sexual penetration, rape, commercial sex, grooming and production, distribution, or advertisement of child abuse material.
 - (ii) The second type is applicable to all childcare centre licensees who have reasonable cause to suspect a case of child abuse.
 - (iii) The third type applies to individuals who discover cases of child abuse when processing publications under the Undesirable Publications Act.

Reporting mechanisms have been established by the government in the provision of hotlines to relevant ministry services, child protection specialist centres and the Divisional Police Headquarters.

- (h) **Thailand** places a mandatory reporting obligation on any person to whom it is apparent or suspects that a child has been tortured (the definition of which includes child sexual abuse). The report should be made to: (1) a government agency; (2) the police; and/or (3) social services provided by NGOs. There is an established hotline where reports can be made to the relevant child protection agencies.
- (i) In **Vietnam** there is a mandatory obligation on educational establishments, families, and individuals to report to the relevant authorities and denounce cases where children are abused or in danger of violence, exploitation, or abandonment. There is a specific number provided for such reporting by the national emergency telephone system.

6. Penalties and sentencing

6.1 This section provides an overview of the penalties and sentences for sexual offences against children in the ASEAN region.

Subsection A introduces the different types of sentences imposed on child sex offenders and provides a summary and comparison of sentences imposed on key offences among different jurisdictions.

Subsection B sets out the maximum and minimum sentences and those aggravating and/or mitigating factors which are considered in sentencing.

Subsection C provides a summary table setting out the punishments applicable in the respective jurisdictions.

A. Types of sentences imposed on child sex offenders

6.2 A range of penalties can be imposed in sentencing child sex offenders. These include:

- (a) the death penalty;
- (b) imprisonment;
- (c) fines; and/or
- (d) corporal punishment.

6.3 **The death penalty** is clearly the most serious punishment, reserved for the most serious crimes, and is not commonly imposed as a punishment in relation to sexual offences against children. Only **Thailand** and **Vietnam** include the death penalty as a punishment for child sex offenders and only where certain aggravating factors are present (for example, death of the victim, gang rape, or rape of a child aged under 10) and for the most serious crimes (including rape, sexual assault, and child trafficking). In **the Philippines**, the death penalty is still included under law as a penalty for rape, but the application of the death penalty was suspended in 2006 by the legislature (although politicians in recent years have pushed for its reinstatement, including as a penalty for rape¹⁰).

6.4 **Imprisonment** is the most common punishment for a child sex offender. It can be further divided into three categories:

- (a) life imprisonment;
- (b) custodial sentences (i.e., imprisonment of more than five years); and
- (c) minor custodial sentences (i.e., imprisonment of no more than five years).

6.5 A life sentence is only imposed on offenders found guilty of the most serious sexual offences, such as rape, sexual assault and child trafficking. Under the laws of **Thailand**

¹⁰ See Reuters, Shoot them? Hang them? – Filipino heavyweights hanker for death penalty return, 9 September 2019.

and **Vietnam**, even the most serious offences against children might not necessarily lead to life imprisonment unless certain aggravating factors exist.

- 6.6 Custodial sentences, including minor custodial sentences of less than five years, are the most common penalty in relation to sexual offences against children in the ASEAN Member States. These generally range from 40 years (for instance, a possible sentence for a perpetrator who commits rape, child prostitution, or child trafficking in **the Philippines**) to much shorter sentences of, e.g., six days to three months (for some sexual harassment offences in **Cambodia**).
- 6.7 **Fines** are often used as a monetary penalty against child sex offences which can be imposed alone, or in combination with other penalties. Fines are commonly imposed on offenders when the respective offences against children are conducted for financial gain: more than half of the ASEAN jurisdictions have penalty fines for offenders of child trafficking, child prostitution and production and/or distribution of child pornography, in combination with custodial sentences and corporal punishments.
- 6.8 **Corporal punishments** include whipping in **Brunei** and **Malaysia** and caning in **Singapore**. Such corporal punishments are typically reserved for convicted male perpetrators under 50 years of age and can be applied to a wide range of offences, including rape, sexual assault, child grooming, child trafficking, child prostitution, and child pornography offences. However, any male perpetrators over 50 years of age convicted under the Malaysian Sexual Offences against Children Act may still be subject to whipping at the discretion of the court. Unlike other penalties which can be imposed alone, corporal punishments must be imposed in combination with other types of punishments and, in most cases, in combination with custodial sentences.
- 6.9 **Other penalties** that might apply include community service, reprimand, and revocation of corporate licenses. For instance, in **Cambodia**, if an accused is liable to imprisonment for a maximum period of three years or more, the court may order the convicted person to perform community service for a period of 30 to 200 hours without pronouncing the principal penalties. In Cambodia, if the accused is liable to a maximum sentence of imprisonment of three years or more and meets the conditions, the court may reprimand the accused without pronouncing the principal penalties provided:
- (a) the public disturbance caused by the offence has ceased;
 - (b) the harm has been repaired; and
 - (c) the accused provides guarantees of his or her social reintegration.
- 6.10 Considering the specific nature of child sexual offences, community service and reprimand may only apply to more minor offences in this category in Cambodia, such as sexual harassment.
- 6.11 Revocation of operational licenses could be imposed in **the Philippines** on any internet content host who maintains, hosts, or distributes any form of child pornography online, or any internet service provider who knows that any form of child pornography is taking place using its server or facility but fails to notify the Philippine National Police or the National Bureau of Investigation within seven days. In **Singapore**, if a person

who is a holder of a license under the Public Entertainments Act is convicted for having children take part in public entertainment of an 'immoral nature', the court may order the revocation of such license or its suspension for such period as the court may think fit.

B. Sentencing guidelines or legislative sentencing provisions

- 6.12 A high-level summary table is included on the following pages setting out the punishments applicable in different jurisdictions in relation to a range of sexual offences against children. Due to the wide range and varying iterations of offences found throughout the ASEAN region, this table is not exhaustive but intended to highlight the different penalties and levels of sentencing applicable to sexual offences against children.

Offences Against Children	Penal Fines	Corporal Punishments	Minor Custodial Sentences (≤ 5 years)	Custodial Sentences (> 5 years)	Life Imprisonment	Death Penalty
Rape	<ul style="list-style-type: none"> ✓ Indonesia ✓ Laos ✓ Myanmar ✓ Singapore ✓ Thailand 	<ul style="list-style-type: none"> ✓ Brunei ✓ Malaysia ✓ Singapore 	*	<ul style="list-style-type: none"> ✓ Brunei ✓ Cambodia ✓ Indonesia ✓ Laos ✓ Malaysia ✓ Myanmar ✓ Philippines ✓ Singapore ✓ Thailand ✓ Vietnam 	<ul style="list-style-type: none"> ✓ Laos ✓ Thailand ✓ Vietnam 	<ul style="list-style-type: none"> ✓ Thailand ✓ Vietnam
Sexual assault / acts of indecency	<ul style="list-style-type: none"> ✓ Brunei ✓ Cambodia ✓ Indonesia ✓ Myanmar ✓ Singapore ✓ Thailand 	<ul style="list-style-type: none"> ✓ Malaysia ✓ Singapore 	<ul style="list-style-type: none"> ✓ Brunei ✓ Cambodia ✓ Myanmar ✓ Vietnam 	<ul style="list-style-type: none"> ✓ Indonesia ✓ Malaysia ✓ Philippines ✓ Singapore ✓ Thailand ✓ Vietnam 	<ul style="list-style-type: none"> ✓ Thailand 	<ul style="list-style-type: none"> ✓ Thailand
Child sexual abuse and/or grooming	<ul style="list-style-type: none"> ✓ Philippines ✓ Singapore 	<ul style="list-style-type: none"> ✓ Malaysia 	<ul style="list-style-type: none"> ✓ Malaysia ✓ Singapore 	<ul style="list-style-type: none"> ✓ Philippines 	*	*
Trafficking children for sexual exploitation	<ul style="list-style-type: none"> ✓ Brunei ✓ Indonesia ✓ Laos ✓ Malaysia 	<ul style="list-style-type: none"> ✓ Singapore 	<ul style="list-style-type: none"> ✓ Brunei ✓ Indonesia 	<ul style="list-style-type: none"> ✓ Cambodia ✓ Indonesia ✓ Laos ✓ Malaysia 	<ul style="list-style-type: none"> ✓ Thailand ✓ Vietnam 	<ul style="list-style-type: none"> ✓ Thailand

Offences Against Children	Penal Fines	Corporal Punishments	Minor Custodial Sentences (≤ 5 years)	Custodial Sentences (> 5 years)	Life Imprisonment	Death Penalty
	<ul style="list-style-type: none"> ✓ Myanmar ✓ Singapore ✓ Thailand ✓ Vietnam 			<ul style="list-style-type: none"> ✓ Myanmar ✓ Philippines ✓ Singapore ✓ Thailand ✓ Vietnam 		
Child prostitution	<ul style="list-style-type: none"> ✓ Brunei ✓ Indonesia ✓ Laos ✓ Malaysia ✓ Myanmar ✓ Singapore ✓ Thailand ✓ Vietnam 	<ul style="list-style-type: none"> ✓ Brunei ✓ Malaysia 	<ul style="list-style-type: none"> ✓ Brunei ✓ Indonesia ✓ Laos ✓ Singapore ✓ Vietnam 	<ul style="list-style-type: none"> ✓ Cambodia ✓ Indonesia ✓ Malaysia ✓ Myanmar ✓ Philippines ✓ Singapore ✓ Thailand ✓ Vietnam 	✘	✘
Production of child pornography	<ul style="list-style-type: none"> ✓ Brunei ✓ Indonesia ✓ Laos ✓ Myanmar ✓ Singapore ✓ Thailand 	<ul style="list-style-type: none"> ✓ Malaysia 	<ul style="list-style-type: none"> ✓ Indonesia ✓ Laos ✓ Singapore ✓ Thailand ✓ Vietnam 	<ul style="list-style-type: none"> ✓ Brunei ✓ Cambodia ✓ Indonesia ✓ Malaysia ✓ Philippines ✓ Vietnam ✓ Myanmar 	<ul style="list-style-type: none"> ✓ Philippines¹¹ 	✘

¹¹ Life imprisonment is a penalty in the Philippines for a variety of offences relating to CSAEM and OSAEC under the Anti-Online Sexual Abuse or Exploitation of Children and Anti-Child Sexual Abuse or Exploitation Materials Act (2022).

C. Maximum and minimum sentences

- 6.13 In general, all ASEAN jurisdictions provide maximum sentences for each type of sexual offence. The most severe punishments – the death penalty and life imprisonment – are relatively rarely seen and usually saved for the most serious offences, such as rape and trafficking for sexual exploitation, and when the offence results in grave consequences such as death. In addition, most of the ASEAN countries also provide minimum sentences for each sexual offence, with the exception of **Brunei** and **Singapore**.
- 6.14 Below is a summary setting out the minimum and maximum sentences for a number of offences across the ASEAN Member States, showing the range of punishments available between different jurisdictions. Factors impacting the sentence given for offences are discussed in Subsection D below.

Offence	Minimum sentence	Maximum sentence
Rape	5 years and fines (Indonesia)	Death penalty (Thailand, Vietnam)
Grooming	1 year (Laos) ¹²	Life imprisonment and fines (The Philippines)
Trafficking	2 years (Myanmar)	Death penalty (Thailand)
Child prostitution	2 years (Myanmar)	Life imprisonment and fines (Vietnam)
Production of child pornography	6 months (Vietnam)	40 years and fines (The Philippines)
Sexual assault / acts of indecency	6 months (Laos)	Death Penalty (Thailand)

- 6.15 For details of the maximum and minimum sentences for each sexual offence in each ASEAN jurisdiction, please refer to the summary table below. Due to the wide range and varying iterations of sentences issued throughout the region, this table is not exhaustive.

¹² Cambodia, Indonesia, Myanmar and Thailand do not have specific offences related to child grooming and so there is no applicable penalty or sentencing.

Jurisdiction	Maximum/minimum	Rape	Grooming	Trafficking children for sexual exploitation	Child prostitution	Production of child pornography	Sexual assault / acts of indecency
Brunei	//	30 years and whipping ¹³	10 years, fines and whipping	5 years and fines	30 years and whipping	10 years, fines, and whipping	3 years and fine
Cambodia	Maximum:	15 years	✘	20 years	15 years	20 years	5 years and fines
	Minimum:	7 years	✘	15 years	7 years	5 years	1 year and fines
Indonesia	Maximum:	15 years and fines	✘	15 years and fines	15 years and fines	12 years and fines	15 years and fines
	Minimum:	5 years and fines	✘	3 years and fines	3 years and fines	6 months and fines	5 years and fines
Laos	Maximum:	Life imprisonment and fines	5 years ¹⁴	Life imprisonment and fines	20 years and fines	3 years and fines	3 years
	Minimum:	6 years and fines	1 year	5 years and fines	10 years and fines	1 year and fines	6 months
Malaysia	Maximum:	30 years and whipping	5 years and whipping	20 years and fines	15 years and fines	30 years and whipping	20 years and whipping
	Minimum:	10 years	-	3 years	-	-	-
Myanmar	Maximum:	20 years and fines	✘	10 years and fines	10 years and fines	7 years and fines	2 years and fines
	Minimum:	-	✘	2 years	2 years	1 year	-
Philippines	Maximum:	40 years	Life imprisonment and fines	40 years and fines	40 years	40 years and fines	6 years
	Minimum:	20 years and 1 day	20 years and fines	12 years and fines	12 years	17 years and 4 months and fines	6 months 1 day
Singapore	//	20 years and fines or caning	Grooming: 4 years and fines; abuse: 14 years and fines	15 years, fines and caning	10 years and fines	10 years and fines or caning	20 years, fine and caning
Thailand	Maximum:	Death penalty	✘	Death penalty	26.7 years and fines	10 years and fines	Death penalty
	Minimum:	4 years and fines	✘	6 years and fines	1 year and fines	3 years and fines	-
Vietnam	Maximum:	Death penalty	Life imprisonment ¹⁵	Life imprisonment and fines	Life imprisonment and fines	12 years	15 years
	Minimum:	7 years	5 years	7 years	1 year	6 months	1 year

¹³ For the offence of rape only, Brunei has a minimum sentence of 8 years and whipping

¹⁴ Although Laos does not have a specific grooming offence, seduction of a child for the purposes of sexual exploitation, is subject to sentence of 1 to 5 years in prison.

¹⁵ Similarly to Laos, Vietnam does not have a specific grooming offence, however it criminalises 'child sexual abuse' which includes persuading or seducing a child to engage in sexual acts.

D. Aggravating and mitigating factors

- 6.16 When determining sentences, the courts in most of the ASEAN jurisdictions will take certain aggravating and mitigating factors into consideration. Although the factors considered and the level of detail provided in each jurisdiction vary, the aggravating factors mainly include:
- (a) the victim's status, especially age, pregnancy, and whether grave injury or death is suffered;
 - (b) the perpetrator's condition, including age, criminal history and previous offences;
 - (c) the relationship of the offender and the victim – for example, if the perpetrator is the victim's parent, guardian, caretaker, teacher, educational staff or, in some jurisdictions (e.g., **Laos** and **the Philippines**), an administrative or governmental official;
 - (d) the circumstances of the offence, including but not limited to organised or group offences, premeditation, the number of victims, use of force and the mode or means of committing the offence; and
 - (e) various other factors, including the motives of the perpetrator, evident lack of remorse, or any attempts by the perpetrator to conceal the crime.
- 6.17 Mitigating factors that will be taken into account by the courts include:
- (a) the perpetrator's condition, including age, mental or physical well-being (such as mental disorder, illness), and pregnancy or parental status;
 - (b) the perpetrator's co-operation with the authorities, including assisting with the investigation, surrendering and/or making a guilty plea;
 - (c) rectification by the offender, including the cessation of the criminal act, mitigation of damages and/or willing and voluntary compensation for damages; and
 - (d) other factors, including unjustified force in self-defence or in urgent circumstances, display of evident remorse, consent of the victim, and crime committed due to coercion, etc.
- 6.18 The overview table at (a) provides a high-level snapshot of aggravating and mitigating factors across the jurisdictions, as expressly identified by local law experts,¹⁶ followed by a more detailed table at (b) setting out further information.

¹⁶ If these tables indicate that a factor is not relevant, this only indicates that it was not identified as such by the local law expert. It may be possible for factors indicated as not relevant to be introduced through catch-all considerations of all the circumstances of a case.

a) High-level snapshot of aggravating and mitigating factors

	Factors	Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
Aggravating	The victim's status, especially age, pregnancy, and level of injury suffered	✓	✓	✓	✗	✗	✗	✓	✓	✓	✓
	The perpetrator's condition (e.g., age, criminal history, prior record)	✗	✓	✓	✓	✓	✗	✓	✓	✓	✓
	The relationship between victim and perpetrator	✗	✗	✓	✓	✗	✗	✓	✓	✓	✓
	The circumstances of the offence	✓	✓	✓	✓	✓	✗	✓	✗	✗	✓
	Motives of the perpetrator	✗	✗	✗	✗	✗	✗	✓	✗	✗	✓
	Evident lack of remorse	✗	✗	✗	✗	✗	✗	✗	✓	✗	✗
	Attempts by the perpetrator to conceal the crime	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓
Mitigating	Voluntary surrender and/or making of guilty plea	✓	✗	✗	✓	✓	✗	✓	✓	✗	✓
	Rectification by the offender	✗	✗	✗	✓	✗	✗	✗	✓	✗	✓
	The perpetrator's condition	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓
	Unjustified force in self-defence or in urgent circumstances	✗	✗	✗	✓	✗	✗	✗	✗	✓	✓
	Display of evident remorse	✗	✗	✗	✓	✗	✗	✗	✓	✗	✓
	Consent of the victim	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗
	Cooperation during the investigation	✓	✗	✗	✓	✓	✗	✓	✓	✗	✓
Crime committed due to coercion	✗	✗	✗	✓	✗	✗	✗	✗	✓	✓	

b) **Aggravating and Mitigating Factors – Further Detail**

Jurisdictions	Mitigating factors	Aggravating factors
Brunei	<ul style="list-style-type: none"> The circumstances of the case, including the making of a guilty plea Status of the perpetrator (e.g., age) Mitigating factors are unlikely to apply in cases involving the most serious offences, such as trafficking 	<ul style="list-style-type: none"> The nature of the offence and its effects The age of the perpetrator
Cambodia	<ul style="list-style-type: none"> The nature of the offence Status of the perpetrator (e.g., age) 	<ul style="list-style-type: none"> The relevant circumstances of the offence, including organised crime, premeditation, forced/unlawful entry, and ambush Status of the perpetrator, including criminal history and age Status of the victim including age and condition The instrument used to commit the crime
Indonesia	<ul style="list-style-type: none"> Status of the perpetrator including mental wellbeing, intellectual capacity, age, and behaviour during the investigation stages Offence committed due to excessive self-defence 	<ul style="list-style-type: none"> Status of the victim, especially age, pregnancy, and grave injury (or death) suffered Relationship between the perpetrator and the victim (e.g., if the perpetrator is related to the victim; a teacher or in an educational role) Other general aggravating factors include carrying out actions as a combination of other criminal offences, repeat offending, bad behaviour during examination, giving false and complicated statements during a court hearing and abuse of power¹⁷

¹⁷ Under the Penal Code, a further general aggravating factor for sentencing is using the national flag, national anthem or state symbol when committing a criminal act.

Jurisdictions	Mitigating factors	Aggravating factors
Laos	<ul style="list-style-type: none"> Status of the perpetrator including age, pregnancy, and motherhood status, and whether the offender has shown remorse Offence committed due to coercion Offence committed due to excessive self-defence Cessation of criminal act and mitigation of the damage or willing and voluntary compensation for damages Voluntary surrender to the authority 	<ul style="list-style-type: none"> Repeat offending Offences committed by a group of perpetrators and/or involving multiple victims Relationship between the perpetrator and the victim (e.g., relatives of the offender) Status of the victim, including where the victim is seriously injured, disabled, or mentally impaired Offence causing grave harm including permanent disability or death Offence committed by administrative or governmental officers
Malaysia	<ul style="list-style-type: none"> The age of the perpetrator Record of the perpetrator Making of a guilty plea 	<ul style="list-style-type: none"> Status of perpetrator, including criminal history Frequency of the offence Use of force and means of committing the offence
Myanmar	<p>There are no mitigating or aggravating factors in Myanmar. However, due to the influence of Myanmar culture and religion, which consider crimes like rape and sexual violence to be great sins, the courts have typically handed down sentences at the higher end of the spectrum for such offences.</p>	
Philippines	<ul style="list-style-type: none"> The perpetrator had no intention to commit as serious a crime as was committed Voluntary surrender to the authority and/or guilty plea before the court prior to the presentation of the evidence for the prosecution Status of the perpetrator, including age or any illness diminishing the exercise of will-power / responsibility 	<ul style="list-style-type: none"> Relationship between the perpetrator and the victim, including relatives of the perpetrator, perpetrators in a position of power (including public officers or employees) or managers /owners of an establishment which has no licence to operate, or the licence has expired/been revoked) Repeat offending Status of the victim, including age and pregnancy

Jurisdictions	Mitigating factors	Aggravating factors
	<ul style="list-style-type: none"> Any other circumstances of a similar nature and analogous to those above 	<ul style="list-style-type: none"> The crime was committed in contempt of or with insult to the public authorities, or with abuse of confidence or obvious ungratefulness Circumstances of the offence, including premeditation, forced/unlawful entry, ambush, use of a computer system and in consideration of a price, reward, or promise
Singapore	<ul style="list-style-type: none"> Display of evident remorse Age of the perpetrator Timely plea of guilt which saves the victim the trauma of testifying in court Mental disorder or intellectual disability of the perpetrator 	<ul style="list-style-type: none"> Status of the victim, including age Repeat offending Relationship between the offender and the victim The perpetrator's criminal history Evident lack of remorse
Thailand	<ul style="list-style-type: none"> Offence committed due to coercion or threat The consent of the victim 	<ul style="list-style-type: none"> Status of the victim, including age Relationship between the offender and the victim
Vietnam	<ul style="list-style-type: none"> Offence committed due to coercion or threat Voluntary surrender to the authorities Status of perpetrator, such as pregnancy, advanced age (meaning more than 70 years of age) or existence of a serious disability limiting awareness, responsibility, or control Rectification by the perpetrator, including prevention or reduction of the harm caused by the crime, compensation for damages and relief of the consequences 	<ul style="list-style-type: none"> Abuse of position of power by the perpetrator Circumstances of the offence, including, organised crime, premeditation, use of deceit or trickery or where the offender takes advantage of war, state of emergency, natural disaster, epidemic, or other tragic incident Repeat offending Status of the victim, including where the victim is under the age of 16, pregnant, defenceless, or is a person with a serious physical disability or whose awareness is limited

Jurisdictions	Mitigating factors	Aggravating factors
	<ul style="list-style-type: none"> • The offence is the result of excessive force used in self-defence or in urgent circumstances • Offence inflicts no or insignificant damage • The crime is committed due to obsolescence (for instance, the perpetrator is not educated or resides in a deprived, rural area) • Perpetrator is cooperative during the investigation • Perpetrator is an excellent worker, soldier or student or is a parent, spouse or child of a war martyr or war veteran 	<ul style="list-style-type: none"> • Perpetrator incites a person aged under 18 to commit the crime • Perpetrator uses deceitful or violent actions to conceal the crime

7. Defences to sexual offences

- 7.1 Each of the ASEAN jurisdictions provides certain defences for accused perpetrators to many of the offences covered in this Report. A high-level summary of the defences available in each jurisdiction is included below, followed by a table setting out those defences.
- 7.2 Some jurisdictions have specific defences in relation to sexual offences, whereas other jurisdictions rely on more general legislation which relates to all manner of offences under the laws of the respective jurisdiction. For instance, **Brunei, Cambodia, Indonesia, Malaysia, Singapore,** and **Thailand** have implemented separate provisions that set out specific defences for sexual offences, whereas **Laos, Myanmar, the Philippines,** and **Vietnam** simply rely on their general legislation relating to defences, many of which are not obviously applicable to the circumstances of sexual offences.
- 7.3 It is possible to divide the defences into four main categories: (a) lack of responsibility; (b) intoxication; (c) age-related defence (including mistake as to age); and (d) marriage. In addition to these four categories, some jurisdictions provide for other, more unusual defences to certain acts of child sexual exploitation and abuse. Each of these categories is discussed in more detail below.

Lack of responsibility	<ul style="list-style-type: none">• Most commonly available defence to child sexual exploitation• E.g., "insanity" defence
Intoxication	<ul style="list-style-type: none">• Available as a defence in Cambodia and Malaysia in certain circumstances
Age-related defences	<ul style="list-style-type: none">• "Mistake as to age" is available as a defence to certain offences in Brunei, Cambodia and Singapore• In Thailand, defences are available where perpetrator is under a certain age
Marriage	<ul style="list-style-type: none">• Can act as a defence to certain offences in, e.g., Brunei, Indonesia, Malaysia, Singapore and Thailand (see Subsection 3H above for more detail)
Other (examples)	<ul style="list-style-type: none">• Singapore: accused did not intentionally come into possession of child pornography materials and took reasonable steps to cease such possession• Thailand: defence to using a prostitution establishment if accused was forced to do so

A. Lack of responsibility

This is the most prominent defence throughout the ASEAN jurisdictions. It relates to situations in which the perpetrator is deemed incapable of understanding the wrongdoing at the time of committing the crime. This is often the result of a mental illness or plea of 'insanity'. This defence is generally included in wider penal or criminal codes and so relates to a range of offences, including sexual offences. The necessary elements for a defence of 'insanity' or equivalent in respective jurisdictions are set out in the following table:

Country	Elements of the 'insanity' or equivalent defence
Indonesia	Mental disorder. A person suspected of having a 'mental disorder' ¹⁸ who commits an offence must have a medical examination to determine: <ol style="list-style-type: none"> (a) his/her ability to be responsible for the crime he/she committed; and/or (b) his/her legal capacity to go through legal proceedings
The Philippines	Mental disability or insanity. For the insanity defence, all the following must be satisfied: <ol style="list-style-type: none"> (a) the defendant's insanity must constitute a complete deprivation of intelligence, reason, or discernment; and (b) such insanity must have existed at the time of, or immediately preceding, the commission of the offence.
Singapore	All of the following must be satisfied: <ol style="list-style-type: none"> (a) unsoundness of mind; (b) any of the following: <ul style="list-style-type: none"> • incapability of knowing the nature of the act; • incapability of realising what is being committed is wrong; or • complete deprivation of any power to control his/her actions; and (c) element (b) occurs as a result of element (a).
Vietnam	All of the following must be satisfied: <ol style="list-style-type: none"> (a) a mental disease or other disease (b) loss of awareness or control of behaviour; and (c) element (b) occurs as a result of element (a).

B. Intoxication

7.4 Intoxication either due to alcohol or narcotic substances is considered a defence in certain circumstances in **Cambodia** and **Malaysia**.

- (a) **Cambodia:** Intoxication resulting in an impaired mental state may be argued as a defence but is not clearly stipulated as a defence within Cambodian laws and regulations.
- (b) **Malaysia:** The intoxication defence can only be relied on: (i) in circumstances where the state of intoxication was caused by a malicious or negligent act of another person without the consent of the offender; or (ii) if the offender by reason of intoxication was insane (temporarily or otherwise) at the time of the

¹⁸ 'Mental disorder' includes depression, bipolar, schizophrenia and personality disorders; disabilities that affect a person's social interaction skills and/or intellect.

offence. The intoxication of the offender is taken into account for the purpose of determining whether or not the person charged had formed any intention, in the absence of which he/she would not be guilty of the offence.

C. Age-related defences

7.5 **Mistake as to age.** A reasonable belief that a person has attained a certain age or mistake as to an individual's age can be used as a defence in relation to specific offences in certain jurisdictions:

- (a) **Brunei:** It is a defence to charges under the Unlawful Carnal Knowledge Act (including having or attempting sexual intercourse with a child) if the perpetrator had "*reasonable cause to believe*" that a female victim was aged 16 or above.
- (b) **Cambodia:** In relation to offences under the Law on Suppression of Human Trafficking and Sexual Exploitation, which criminalises child pornography, child prostitution and child trafficking, there is a presumption that a person who keeps a minor under his/her supervision or control knows that minor's age unless the person proves that he/she believes the minor's age to be over 18. There is therefore, arguably, a defence to offences under this law if the accused "*reasonably believed*" that the victim was over the age of 18.
- (c) **Singapore:** It is a defence for an individual charged under the Child and Young Persons Act (**CYPA**) to prove that the victim was actually of, or above, the age stipulated in the relevant offence. Relevant offences covered by the CYPA include ill-treatment of a child; sexual exploitation of a child; unlawful transfer of, possession, custody, or control of a child; and importation by false pretences. Under the Penal Code the presence of a reasonable mistaken belief that a minor was of or above the age of 18 is a valid defence to a charge for a sexual offence where the fact that a minor is aged 16 or above, but below 18, is an element of the offence (for example, exploitative sexual penetration, exploitative sexual grooming, and exploitative sexual communication). The defence is not available in instances where the person charged: (i) has been previously charged with a specified offence under the Penal Code or CYPA, including rape, sexual penetration, and child grooming; or (ii) has failed to take all reasonable steps to verify the age of the minor.

7.6 **Age of perpetrator.** In **Thailand**, defences or reduced sentences are applicable for certain offences where the offender and victim are both under a certain age. For example, where an offender is below the age of 18 and has had consensual sexual intercourse with a child over the age of 13, but under the age of 15, the court may order (taking into account relevant circumstances such as the age, behaviour, background, intelligence, education, physical and mental health and occupation of the offender, as well as the relationship between the offender and the victim) that the offender and/or victim enter into a welfare protection program in accordance with child protection law, as an alternative to punishment pursuant to the Criminal Code. Should the welfare protection program be unsuccessful, the court may impose a reduced punishment on the offender.

D. Marriage

7.7 As discussed in detail at paragraphs 3.57 to 3.62 above, a legal marriage can provide a defence by preventing an act that would otherwise be deemed to constitute rape or another sexual offence from being a crime. For example:

- (a) **Brunei:** sexual intercourse between a husband and his wife, provided the wife is not under the age of 13, does not amount to rape.
- (b) **Malaysia:** non-consensual sexual intercourse between a man and his wife does not amount to rape.
- (c) **Singapore:** if a man is married to a girl under 14 years of age and she gives her consent, the man cannot be charged with rape if he has sexual intercourse with the girl.
- (d) **Thailand:** In Thailand, the statutory offence of having sexual intercourse with a child below the age of 15 would not be committed if the sexual relations are consensual and occur within the context of marriage. Exceptions will be made for circumstances where the wife was living apart from her husband, where a court injunction was in force with the effect of restraining the husband from having sexual intercourse with his wife, where there was a protection order in force, or in case the wife was living apart from her husband and proceedings for a protection order, divorce, nullity or judicial separation have been commenced and have not been terminated or concluded.

7.8 Furthermore, in both **Malaysia** and **Singapore** there is a defence to the offence of unlawful transfer of, possession, custody, or control of a child if it is proven that these actions took place in contemplation of or pursuant to a bona fide marriage or adoption and at least one of the natural parents or guardians of the child was a consenting party to the marriage or adoption and had expressly consented to such marriage or adoption.

E. Other

7.9 Several ASEAN jurisdictions also provide additional defences that are specific to other child abuse crimes. For instance:

- (a) In **Brunei**, victims of trafficking are exempt from prosecution for the offences of prostitution and from charges of illegal migration.
- (b) In **Malaysia**, it is a defence to incest if it is proved that either: (i) the offender did not know the person with whom he/she had sexual intercourse was a person that he/she was not legally permitted to marry, or (ii) the act of sexual intercourse was without the offender's consent.
- (c) In **Singapore**, crimes relating to possession of child abuse materials and of intimate images or recordings of children have certain potential defences, which largely relate to a situation where the accused did not intentionally come into possession of the materials and having gained possession, took reasonable steps to cease such possession. There are also carve-outs for specific scenarios,

such as where the materials are for use in the conduct of court proceedings or the prevention or investigation of an offence.

- 7.10 In **Thailand**, in relation to an offence of having used the services of a prostitution establishment (which may or may not involve child prostitution), it is a defence if the accused was forced or was acting under a power that could not be avoided or resisted.
- 7.11 In jurisdictions where defences are provided on the basis of general criminal provisions only (i.e., not specifically tailored to sexual offences) the number of applicable defences is significantly lowered, since these defences are not applicable to sexual offences.

Defence	Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
Perpetrator is below a certain age	-	-	-	-	-	-	+	-	+	-
Reasonable cause to believe that the victim was above a certain age	+	+	-	-	-	-	-	+	-	-
Victim is the wife/spouse of the offender	+	-	-	-	+	+	-	+	+	-
Only general defences (i.e., no specific defences for sexual offences)	-	-	+	+	-	+	+	-	-	+
Mental illness or insanity	-	-	+	-	-	-	+	+	-	+
Intoxication	-	+	-	+	+	-	+	-	-	-

8. Registration of child sex offenders

- 8.1 Out of the ten countries surveyed, only **Malaysia** currently provides for the registration of child sex offenders in a national database. However, as set out in more detail below (and summarised in the following table), in certain jurisdictions there are other types of public or private repositories of information about sex offenders:

Country	Registration in national database
Brunei	× (But , upon conviction, a sexual offender's record of conviction remains for life)
Cambodia	× (But relevant ministries and non-governmental organisations compile information in their own respective databases, each of which are specific to their own goals)
Indonesia	× (But an independent commission called Komisi Perlindungan Anak Indonesia (KPAI) collects information related to sexual offence cases)
Laos	×
Malaysia	✓
Myanmar	×
Philippines	×
Singapore	×
Thailand	× (But , upon conviction, a sexual offender's record of conviction remains for life)
Vietnam	×

- 8.2 **Malaysia** launched the Child Registry (the **Registry**) in 2019. The Registry contains a list of the names and details of convicted child sex offenders, as well as the offence(s) committed and the punishment imposed, based on information provided by the Malaysian courts. In addition, the Registry notes when an offender is a habitual or repeat offender. Once listed in the Registry, the offender's details will remain there until his/her death.
- 8.3 Although the Registry generally is not open to the public, it is possible to make a specific request to the Social Welfare Department Director General for access. This enables, for example, child-related institutions or corporations such as nurseries, kindergartens, and schools to access this information to check the background of a potential employee. No automatic restrictions are imposed on an offender as a result of being named in the Registry.
- 8.4 In **Brunei**, there is no national database of child sex offenders but information about a conviction for child sexual offences will remain on the offender's general criminal record.

- 8.5 In **Cambodia**, there is no national database of child sexual offenders, but different institutions, such as ministries or non-governmental institutions, may collect certain information pertaining to such offences for individual purposes. For example, a Database on Sex Offences, Human Trafficking and Domestic Violence is maintained by the Cambodian Ministry of Interior. The data compiled by these institutions generally is not available to the public.
- 8.6 In **Indonesia**, the KPAI, an independent commission for the protection of children, collects and processes information related to sexual offences against children based on public sources, such as national newspaper reports or government institutions' websites, which it then publishes as a list on its website. The list provides the name or initials of the offender, his/her age, and the type of offence, and is open to the general public.
- 8.7 **Thailand** does not provide a specific sexual offenders database, but in the event that an individual is convicted of a sexual offence, information relating to the sexual offence is included in the criminal record of the offender. No restrictions are automatically imposed on an offender due solely to their criminal record; however, the court may issue certain restrictions on request of the victim.

9. Domestic laws in an international context

- 9.1 This section explores the interplay between the domestic laws discussed in this Report and the international context in which these offences often occur. In particular, this section discusses: (A) transnational offences under domestic law; (B) the extraterritorial effect of certain domestic laws; (C) trials *in absentia* where an accused cannot be brought to court; and (D) the extradition regimes in place in ASEAN jurisdictions that relate to these offences – and which may be critical to enforcement.

A. Transnational offences under domestic law

- 9.2 A transnational offence is one that is committed across national borders. The transnational effect of child protection law is therefore important, especially in combating offences such as child trafficking or child pornography, which often occur across national borders.
- 9.3 In general, a transnational law will state that the law of the relevant jurisdiction will apply if at least part of the relevant offence took place within the borders of that jurisdiction.
- 9.4 **Child trafficking.** All ASEAN Member States have transnational laws relating to child trafficking. That is unsurprising, given the inherently cross-border nature of trafficking offences.
- 9.5 **Other offences.** Transnational coverage is less robust amongst ASEAN jurisdictions when it comes to other offences. Only **Indonesia, Myanmar, Singapore, and Thailand** provide for transnational coverage with respect to non-trafficking offences against children, and these laws vary in scope:

Myanmar

- Offences under its **Penal Code** (including several offences against children, such as **rape and child prostitution**) are transnational if **committed by Myanmar citizens**.
- Offences under its **Child Law** (including, among other offences, **child pornography and prostitutions** offences) are transnational if the acts committed outside of Myanmar are committed by a **Myanmar citizen, permanent resident holding foreigner registration card or permanent resident foreigner, or on board a ship or aircraft** registered under Myanmar law and/or hoisting the Myanmar national flag.

Thailand

- Broad transnational coverage of sexual offences against children: if **part of the conduct or result** of any offence under the **Criminal Code** (including **Thailand's child protection laws**) occurs in Thailand, the offence is deemed to have been committed in Thailand and is subject to the jurisdiction of the Thai courts.
- There is **no minimum threshold** as to how much of an offence must occur within Thailand before the court can assert jurisdiction.
- In addition, Thai law expressly states that **certain prostitution offences** apply irrespective of whether some of the various acts are committed within or outside of Thailand.

Singapore

- Laws relating to **child trafficking, child pornography, sex tourism and prostitution** expressly apply even where part of the conduct takes place outside of Singapore.
- In addition, the Singapore Penal Code contains general provisions making it a crime to **abet any offence under the Penal Code** – including those that protect children – **from within or outside Singapore**. Specifically, a person is guilty of abetting a crime if: (i) from within Singapore, he or she abets any act outside of Singapore that would constitute an offence if committed in Singapore; or (ii) from outside Singapore, abets an offence committed within Singapore.

Indonesia

- Laws relating to child trafficking are expressly applicable for the trafficking of a child within or outside the territory of Indonesia.
- The law on child trafficking stipulates that it is a crime for any person to (i) provide assistance in committing the criminal act of trafficking persons and (ii) take part in planning or participate in a conspiracy to commit the criminal act of trafficking persons.

B. Extraterritorial effect of domestic laws

- 9.6 Another way of combating cross-border offences is to give child protection laws 'extraterritorial' effect. This means that a law applies even where the relevant conduct takes place *entirely* outside the geography of the relevant country (as opposed to partially outside the jurisdiction, as with transnational offences). Extraterritoriality often complements or works in tandem with transnationality.
- 9.7 All ASEAN Member States provide for extraterritorial application of at least some anti-trafficking laws and other offences discussed in this Report. Several of those jurisdictions (identified below) also require 'dual-criminality' in order for a law to have extraterritorial effect. In other words, the offence must be punishable under the laws of both the prosecuting jurisdiction and the jurisdiction in which the offence occurred. The 'dual-criminality' requirement means that a lack of harmonisation in the domestic laws across the ASEAN region can, in some cases, be a real obstacle to enforcement.
- 9.8 **Thailand** arguably provides the broadest protection in terms of the extraterritorial effect of certain child trafficking offences under its Criminal Code. With respect to trafficking, a Thai court has jurisdiction over offences under Sections 282 and 283 (procuring/seducing/taking a child for indecent purposes or hiding/receiving a child against whom these offences were committed or facilitating such offences) even if there is no connection to Thailand whatsoever (including with respect to the nationality of the perpetrator or victim or the location of the conduct). With respect to other offences against children, Thai courts have jurisdiction even if the offence occurs entirely outside of Thailand and the perpetrator is not Thai, provided that the victim is Thai and files a criminal complaint.
- 9.9 In **Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, and Vietnam** certain child protection laws have extraterritorial effect, but only to the extent that the perpetrator and/or victim is from one of those countries (with some differences as to whether the perpetrator must be a citizen, permanent resident, etc.). For example:
- (a) **Brunei's** law on commercial sex with a person under 18 years has extraterritorial effect where the perpetrator is a citizen or permanent resident of Brunei.
 - (b) In **Cambodia**, the entire Criminal Code has extraterritorial effect if the felony is committed by a Cambodian national. Dual criminality is required.
 - (c) **Indonesia's** Final Penal Code¹⁹ recognises extraterritorial effect, allowing for the prosecution of child prostitution committed outside Indonesian territory if the perpetrator is an Indonesian citizen. Dual criminality is required.
 - (d) Under **Laos's** Penal Code, Laos has extraterritorial jurisdiction over: (i) Laotian citizens who commit offences under the Penal Code outside of Laos (dual criminality is required); (ii) aliens and stateless individuals residing in Laos who

¹⁹ The final bill of the Indonesian Penal Code was passed in December 2022 and comes into force three years after the enactment date.

commit offences outside of Laos; and (iii) foreign individuals who commit offences outside of Laos which infringe the national interests of Laos or legitimate rights and interests of its citizens (e.g., where the victim is Laotian). Laos also has separate extraterritoriality provisions in relation to certain anti-trafficking offences.

- (e) The **Malaysian** Sexual Offences against Children Act recognises extraterritorial effect, whereby if an offence under the Act is committed by a Malaysian citizen against a child in any jurisdiction outside of Malaysia, the offender will be dealt with as if the offence was committed within the territory of Malaysia.
- (f) **The Philippines** gives extraterritorial effect to offences under its Expanded Anti-Trafficking in Persons Act (which criminalises trafficking and certain trafficking-related sex tourism, prostitution and pornography offences) if the accused: (i) is a Filipino citizen; (ii) is a permanent resident of the Philippines; or (iii) has committed the act against a Filipino citizen, so long as no other jurisdiction recognised by the Philippines is already prosecuting the accused for the same offence.

C. Trial *in absentia* under domestic laws

- 9.10 Given the international context of many child sex offences, even where a court has jurisdiction over the offence and the accused, it is often the case that the perpetrators will not be present in the country in which the trial is taking place. The ability to conduct trials *in absentia* is therefore an important tool for ensuring that sexual offences against children are effectively prosecuted and punished.
- 9.11 Most ASEAN jurisdictions allow for trials *in absentia* provided that the relevant statutory requirements are fulfilled. The general position (e.g., in **Vietnam, Cambodia, The Philippines, Malaysia, Singapore, Indonesia, Brunei, and Myanmar**) is that the perpetrator can be tried *in absentia* if they are overseas and fail to attend the trial. In **Thailand**, *in absentia* trials are only permitted if the offence carries significant potential penalties. In **Malaysia**, certain serious sentences cannot be imposed if the defendant is not present (e.g., death penalties or life imprisonment).
- 9.12 Notably, **Laos** and **Brunei** do not allow trial *in absentia* and require the perpetrator to be present throughout the litigation process.

D. Extradition

- 9.13 Extradition is an important part of any international criminal process, including with respect to sexual offences against children, which often have international elements.
- 9.14 Although no ASEAN jurisdiction has specific extradition arrangements in place for sexual offences against children, most of them have general extradition laws and at least some treaties that will apply to those offences.
- 9.15 **Domestic laws on extradition.** In general, ASEAN Members States' domestic laws permit extradition of an offender to another country if the relevant jurisdiction is a party to an extradition agreement with that country, and the principle of dual

criminality (i.e., that the offence is punishable under the laws of both countries) is satisfied.

9.16 There are, however, a few exceptions to this general rule:

- (a) **Indonesian** law does not appear to contemplate the principle of dual criminality (and relies purely on extradition treaties).
- (b) In **Laos**, extradition will be possible if the principle of dual criminality is satisfied, and such offence is punishable by imprisonment for a period exceeding 12 months under Laos' law and the laws of the requesting country.
- (c) In **Malaysia**, an accused perpetrator may be extradited if the Minister of Home Affairs sees fit to do so.
- (d) In **Vietnam**, extradition will be possible even absent an extradition treaty if the principle of dual criminality is satisfied.
- (e) Some jurisdictions, such as **Cambodia**, do not allow 'accessory' extradition, i.e., extradition of persons who aid and abet an offence.

9.17 **Extradition treaties.** Currently, there is incomplete extradition treaty coverage amongst ASEAN Member States. For instance, **Cambodia** has extradition treaties with only six countries: **China, Korea, Laos, Vietnam, Russia, and Thailand**. The only ASEAN Member States with which **the Philippines** has extradition treaties are **Indonesia and Thailand**.

9.18 An ASEAN-wide multilateral extradition treaty is reportedly in the works, but it has yet to be agreed. According to media reports, an ASEAN working group for senior law enforcement officials agreed on terms of reference for such a treaty in early 2021 and will continue to work on drafting a treaty over the coming years.²⁰ The treaty would then need to be signed and ratified by the respective ASEAN Member States. In the meantime, the ASEAN region has endorsed a 2019 Model ASEAN Extradition Treaty that countries may adopt on a bilateral basis.²¹

9.19 Despite these positive steps towards a multilateral extradition treaty, the principle of dual criminality (i.e., that both countries must punish the offence) may hinder the effectiveness of any such agreement. In light of the significant variations in the nature of offences as between ASEAN countries (regarding, among other things, the age and gender of the victim), dual criminality may often not be satisfied. As such, the utility of multilateral extradition treaties may rely on greater harmonisation of either the offences criminalised in ASEAN region countries, or the extent to which offences must mirror one another under the principle of dual criminality.

9.20 It is not only extradition within the ASEAN region that is important. Although most child sexual offenders in the ASEAN region are nationals of ASEAN Member States,

²⁰ See, e.g., Phnom Penh Post, ASEAN group agree to extradition treaty, 8 April 2021, available at: <https://www.phnompenhpost.com/national/asean-group-agree-extradition-treaty>.


²¹ Available at: <https://asean.org/wp-content/uploads/2021/01/ASEAN-Extradition-Treaty-by-10th-ALAWMM.pdf>

growing tourism, international business and employment of expats in the region means that, increasingly, child sex offenders are of non-ASEAN nationalities. Countries therefore should ensure that they have in place extradition treaties not only with other ASEAN Member States but also with countries from which they receive a large number of visitors and/or expatriates.

- 9.21 **Other treaties with extradition features.** It bears noting that Article 5 of the Optional Protocol (discussed further at paragraph 3.4 above and Section 10) provides that where no extradition treaty is in place between two State Parties, the Party from which extradition is requested may, at its option, treat the Optional Protocol as a legal basis for extradition of the offences covered thereunder (which includes child pornography, child prostitution and the sale of children for sexual exploitation purposes). It does not, however, oblige the requested State Party to extradite. The Optional Protocol also provides that if an extradition request is made with respect to an offence under the Optional Protocol, and the requested State Party declines to extradite on the basis that the offender is its own national, that State Party must itself prosecute the case (see also Article 4(3) of the Optional Protocol).

10. International conventions

10.1 This section provides additional detail about relevant international conventions to which ASEAN Member States are parties. The summary table sets out a range of international conventions which relate (to some extent) to the protection of children against different types of abuse:

Convention	Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
United Nations Convention on the Rights of the Child	✓ (All ASEAN Member States)									
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	✓	✓	✓	✓	✓	✓	✓	*	✓	✓
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	✓ (All ASEAN Member States)									
United Nations Convention Against Transnational Organised Crime	✓ (All ASEAN Member States)									
Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime	✓ (All ASEAN Member States)									
ASEAN Convention against Trafficking in Persons, Especially Women and Children		✓	✓	✓	✓	✓	✓	✓	✓	✓

Convention	Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
International Labour Convention on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour	✓ (All ASEAN Member States)									
United Nations Convention on the Elimination of All Forms of Discrimination Against Women	✓ (All ASEAN Member States)									
1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	✘	✍	✍	✓	✘	✍	✓	✓	✘	✘

Not a party: ✘ **Party** (signed and ratified): ✓ **Signatory only** (not ratified): ✍

10.2 The table above demonstrates that the majority of ASEAN jurisdictions are parties to the key child protection conventions. Many of those conventions do not directly address sexual offences against children and therefore fall outside of the scope of this Report (including, for example, conventions addressing issues such as child labour, armed conflict and women’s rights in relation to men). We therefore do not discuss those conventions within this Report.

10.3 The key modern treaties directly addressing sexual offences against children are:

- (a) the UN Convention on the Rights of the Child (the **UNCRC**) and the Optional Protocol;
- (b) the ASEAN Trafficking Convention; and
- (c) the UN Convention against Transnational Organised Crime (the **CTOC**) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the **Trafficking Protocol**).

10.4 Certain features of the Optional Protocol, ASEAN Trafficking Convention and Trafficking Protocol are also discussed in Section 3, in relation to specific offences.

A. UNCRC and the Optional Protocol

10.5 The UNCRC, signed in 1989, is the world’s most widely adopted and ratified human rights treaty, with more than 190 ratifications to date. It is a legally binding instrument which sets out the political, social, cultural, economic, and civil rights of all children globally.

10.6 The UNCRC bestows every child with rights irrespective of ethnicity, language, religion, or gender. It also requires governments to meet some of the basic needs of children in aiding them to attain adulthood.

10.7 The following articles relate specifically to child abuse, including sexual offences against children:

- (a) Article 19 (*Protection from violence, abuse, and neglect*)
- (b) Article 32 (*Child labour*)
- (c) Article 34 (*Sexual exploitation*)
- (d) Article 35 (*Abduction, sale, and trafficking*)

The **UNCRC** is the **world’s most widely adopted and ratified human rights protocol**, setting out the **political, social, cultural, economic and civil** rights of children globally.

Further, an Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography came into force in 2002.

10.8 The UNCRC has been used by countries to strengthen national legislation and to adopt new policies for children’s rights. In relation to the protection of children from sexual exploitation and other forms of violence and abuse, the UNCRC requires signatory countries to take appropriate legislative, administrative, social, and educational

measures to protect children and to have in place effective procedures for establishing social programmes to support children.

- 10.9 Pinpointing the exact extent and degree to which jurisdictions enact the articles of the UNCRC in national legislation is not straightforward. However, it is generally accepted that the obligations on governments to protect children from the abuses addressed by the UNCRC, as well as to promote children's health and education, have meant that, broadly speaking, children experience better childhood conditions than prior to the adoption of the UNCRC. It is also a means of holding governments to account where they have failed to comply with the UNCRC's obligations: although there is no formal enforcement mechanism in the UNCRC, the UN Committee on the Rights of the Child conducts ongoing monitoring of States' compliance with the treaty, issuing reports and making recommendations where a particular State falls short of its obligations. These reports are publicly available and often picked up by non-government organisations who raise awareness of any shortfalls in compliance.
- 10.10 All ten ASEAN Member States ratified the UNCRC between 1990 and 1995. However, certain ASEAN countries have implemented the UNCRC subject to their own constitutional laws. For example, **Brunei** has reserved its obligations to the extent that they do not contradict its constitution and/or the beliefs of Islam. **Malaysia** has also introduced a reservation with respect to a number of Articles, stating that those provisions will only be applicable insofar as they are in conformity with the Malaysian Constitution. Furthermore, **Singapore** has introduced numerous declarations and reservations to the UNCRC to ensure its consistent application with local culture and internal laws. None of the reservations imposed by these jurisdictions, however, applies to the articles listed at paragraph 10.7.
- 10.11 All ASEAN Member States, except for Singapore, have also ratified the Optional Protocol. The Optional Protocol was adopted in 2000 and entered into force in 2002.
- 10.12 The Optional Protocol requires States to prohibit the sale of children (including for sexual exploitation purposes), child prostitution, and child pornography and to take measures to ensure their enforcement. It provides definitions of these offences that have informed domestic legislation around the world (as discussed at Section 3 above) and sets out a minimum baseline.
- 10.13 The Optional Protocol further requires States to provide special protections of the rights and interests of child victims in the criminal justice process and to take other measures to, among other things, promote public awareness of the covered offences, provide assistance to victims in terms of social integration and psychological recovery and strengthening and promoting international cooperation in the prevention, detection, investigation, prosecution, and punishment of such offences (as well as combating poverty and other conditions that contribute to the vulnerability of children to such offences).
- 10.14 As with the UNCRC, enforcement of the Optional Protocol is achieved primarily through States' regular reporting obligations to the UN Committee on the Rights of the Child, which monitors its implementation.

B. ASEAN Trafficking Convention

- 10.15 The ASEAN Trafficking Convention was developed as a result of the increasing attention on issues of human trafficking in Southeast Asia. It was adopted in November 2015.
- 10.16 The ASEAN Trafficking Convention introduces detailed provisions regarding the combatting of human trafficking relating to victim protection, prevention of trafficking, and enforcement. These provisions require the ASEAN Trafficking Convention's parties to establish policies and programmes and introduce relevant measures to prevent and combat human trafficking and protect victims from re-victimisation.
- 10.17 The Convention marks the first legally cooperative and legally binding strategy by the ASEAN Member States to combat human trafficking. It is particularly encouraging to note the rapid ratification of ASEAN Trafficking Convention by all ASEAN Member States. Brunei was the last of the ASEAN Member States to ratify the Convention in January 2020.
- 10.18 However, the ASEAN Trafficking Convention has its deficiencies. Worryingly, people of 'uncertain' age are not to be presumed to be a child until so proven. Furthermore, there is ambiguity in some of the provisions regarding victim protection. Finally, and perhaps most importantly, there is no centralised enforcement body to hold ASEAN countries accountable for breaches of their obligations, similar to the function performed by the European Court of Human Rights in Strasbourg for the European Convention of Human Rights parties.

The **ASEAN Trafficking Convention** is the first **legally cooperative** and **legally binding strategy** by the ASEAN countries **to combat human trafficking**

C. CTOC and Trafficking Protocol

- 10.19 The CTOC, signed on 12 December 2000, is the leading international convention in the fight against transnational organised crime. It embodies an international recognition of the severity of issues raised by this type of criminal behaviour. An optional protocol relating to the CTOC –the Trafficking Protocol –specifically deals with the protection of women and children from human trafficking.
- 10.20 The CTOC imposes a number of obligations on parties, including the adoption of legislative measures to establish criminal offences in relation to money laundering and corruption, amongst other types of offences.
- 10.21 The Trafficking Protocol specifically deals with: (i) the prevention of trafficking in women and children; and (ii) providing protection and assistance to the victims of trafficking. The definitions adopted by the Trafficking Protocol are wide, and the term 'exploitation' includes prostitution, other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, servitude or the removal of organs. The

CTOC and Trafficking Protocol

All the ASEAN Member States have signed and ratified the CTOC, and all ASEAN Member States except Brunei have ratified the Trafficking Protocol

Trafficking Protocol, like the CTOC, requires countries to adopt legislative and other measures to establish criminal offences relating to the trafficking and exploitation of women and children.

- 10.22 The Trafficking Protocol provides suggestions to protect the victims of trafficking including: (i) confidentiality in legal proceedings relating to trafficking offences; (ii) provision of information to victims in relation to court and administrative proceedings; and (iii) implementation of measures to provide for the physical, psychological and social recovery of victims.
- 10.23 The CTOC and the Trafficking Protocol contain a number of provisions relating to international cooperation and extradition, reflecting a strong commitment to overcoming the challenges created by transnational organised crime.
- 10.24 The Trafficking Protocol further contains recommendations that Parties adopt legislative measures that enable victims of trafficking in persons to remain within the territory of another country on a temporary or permanent basis, giving due consideration to humanitarian and compassionate factors. There are further provisions relating to repatriation of the victims of trafficking to the state in which the victim is a national or in which they had a right of permanent residence. **Singapore** is the only country which has ratified the Trafficking Protocol and expressed a reservation that nothing in that protocol would impose obligations on Singapore to admit or retain persons within its territory of whom Singapore would not otherwise have an obligation to admit or retain.

11. Recommendations

- 11.1 ASEAN Member States have taken, and continue to take, important steps towards the protection of children against sexual offences. All ASEAN Member States have legislation to protect children, on at least some level, against the most serious offences, including rape, child prostitution, abduction and trafficking and child pornography. In addition, all ASEAN Member States are parties to the key global and regional conventions on the protection of children against trafficking, sexual exploitation and abuse.
- 11.2 Despite these developments, further work is needed to close gaps in protection and to better support enforcement and regional cooperation to combat sexual offences. This is due to jurisdiction-specific differences in respect of what constitutes a sexual offence, limits on the scope of protection for children (for example, due to age, marital status or gender) and the ability to impose penalties transnationally or extraterritorially.
- 11.3 Based on responses received from local counsel teams, we have identified key gaps in the current legislative framework. We recommend that ASEAN Member States take steps towards closing these gaps to ensure adequate protection for children. These are:
- (i) the online commission of offences; and
 - (ii) transnational and/or extraterritorial offences.

- 11.4 Addressing these gaps would bring ASEAN Member States one step further towards comprehensively protecting children from exposure to sexual offences.

Online commission of sexual offences

- 11.5 While providing unprecedented opportunities for children globally, the ever-advancing technological world we live in also creates new risk for children's safety online. Protecting children from sexual abuse and exploitation online is, and has been for several years, a global concern. Countries around the world, with the US and Europe taking the lead, are accordingly seeking to enact further legislation to protect children from sexual abuse online.
- 11.6 Some ASEAN Member States, most notably **Malaysia** and the **Philippines**, clearly recognise the risk of sexual offences occurring in an online environment and have implemented new legislation to address such risks. Other states have legislation that may be broad enough to cover an offence occurring online, such as distribution of child sexual abuse material. However, in the majority of ASEAN Member States there is a distinct lack of specific legislation to address the wider range and nature of potential sexual offences committed online. For example, there is limited legislation relating to child grooming in ASEAN jurisdictions and even less focus and awareness for child grooming taking place online. This is despite a rise in predatory behaviour and grooming over recent years, particularly during the COVID-19 pandemic.
- 11.7 Due to the increased propensity for child sexual abuse offences to occur online, legislators in ASEAN Member States must ensure that laws to protect children from sexual abuse adequately reflect the cyber-reality in which we live. The steps a Member State might take include:
- (a) **protecting against new offences** that might only occur online and which are currently not covered by the scope of existing legislation (e.g., online grooming, sexting and sextortion – a form of blackmail involving a threat to publish sexual photos or videos, often online);
 - (b) **updating existing legislation** to include specific terminology relevant to the online means by which offences might occur;
 - (c) **ensuring that existing terminology in legislation is updated** to reflect the evolving terminology used today to more accurately describe an offence and avoid further harm to the victim – such as amending 'child pornography' to 'Child Sexual Abuse Material' or CSAM;
 - (d) **creating programmes to increase awareness of the risks of online child sexual abuse**, including working with NGOs and charities to enable children and parents/guardians to recognise potential indicators of online sexual abuse and establishing a system for anonymous reporting; and
 - (e) ensuring there are **enforcement actions** available against individuals, social media platforms and content hosts, which could include fines, regulatory action or blocking websites.

Extradition and transnational/extraterritorial offences

- 11.8 Due to the international nature (whether physically across national borders or online) of many sexual offences against children, the ability to extradite accused offenders is a key element of enforcement and deters offenders from committing offences. The approach to extradition across ASEAN Member States is far from consistent. General extradition treaties are in place in all ASEAN Member States, which whilst not specifically related to sexual offences against children, could cover such offences by their scope. Equally, there are also international conventions (most notably the Optional Protocol) which provide a right to extradite in relation to offences committed thereunder. However, there is no obligation to extradite and so the effect is somewhat limited.
- 11.9 Although there appear to be positive steps taken towards enabling extradition, we recommend ASEAN Member States take swift action to ensure effective enforcement and deterrence. In particular:
- (a) ASEAN Member States must continue to progress the multilateral, ASEAN-wide extradition agreement;
 - (b) as the issue of extradition is not limited to ASEAN Member States, states should ensure they have appropriate bilateral extradition treaties with other countries globally, particularly countries from which the relevant jurisdiction receives a large number of tourists, business travellers and expatriates;
 - (c) ASEAN Member States must also recognise the increased occurrence of offences online and ensure that extradition treaties cover offences occurring within this environment; and
 - (d) there must be increased cooperation between states in respect of extraditing potential perpetrators and agreement to use mechanisms under international conventions to extradite

Annex – Contributors

We are extremely grateful to the firms who contributed substantial time and support in relation to their respective jurisdictions which enabled us to prepare this Report.

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