

EVIDENCE

Strengthening Child Protection Systems

Legal Protection from Violence

Analysis of Domestic Laws Related to Violence against Children
in ASEAN Member States



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Legal Protection from Violence

Analysis of Domestic Laws Related to Violence against
Children in ASEAN Member States

Legal Protection from Violence:

Analysis of Domestic Laws Related to Violence against Children in ASEAN Member States

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Coram Children's Legal Centre is an independent charity dedicated to the promotion, protection and implementation of children's rights in the UK and worldwide. It provides consultancy services to UN bodies, central and local governments, IGOs and NGOs on law, policy and practice, and undertakes quantitative and qualitative research. It has worked in over 40 countries worldwide, and has a particular expertise in violence against children.



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Foreword

The Convention on the Rights of the Child calls on governments to recognize, respect and promote children's rights in policy and law. A strong normative framework to prevent and eliminate violence reflects a society's vision for its children, and provides clear guidance about acceptable and non-negotiable treatment of children.

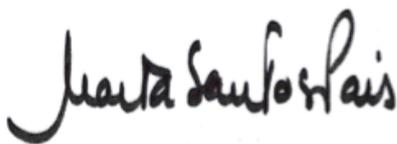
In 2006, the United Nations Study on Violence against Children drew the world's attention to the pervasiveness and profound impact of violence on children's lives, and urged States to enact laws to protect children from all forms of violence in all settings. In 2013, to assess progress on the follow-up to the Study, my office conducted a Global Survey on violence against children to which more than 100 governments contributed. The Survey showed significant progress: since 2006, for example, the number of countries with an explicit legal ban on all forms of violence against children has almost tripled. However, more must be done to prohibit violence in all its forms and safeguard the rights of survivors. The enactment of legislation to protect children from violence remains a priority concern.

In Southeast Asia, governments have shown strong commitment to strengthen their normative framework to prevent and respond to violence against children through regional initiatives and national action. In 2012, the ASEAN Commission on the Protection and Promotion of the Rights of Women and Children (ACWC) and my office agreed to collaborate on violence prevention and response along with the United Nations system. The activities foreseen included documenting and disseminating good practices on the implementation of legislation and conducting regional studies of relevant legal frameworks.

The present study, *Legal Protection from Violence: Analysis of domestic laws related to violence against children in ASEAN member States*, is a result of this collaboration between ACWC, UNICEF and my office. This study reviews national legislation on child protection in the light of international legal standards identifies areas that need strengthening and provides recommendations for action. The study shows that while ASEAN member States have laws to protect children from violence, significant gaps remain.

Strengthening child protection systems in ASEAN member States requires a multifaceted approach to law reform on violence against children. It calls for an explicit and comprehensive legal ban to convey a clear message: children's right to freedom from violence must be safeguarded everywhere and at all times. This comprehensive legal prohibition must be supported by detailed provisions in legislation. It is most likely to succeed when promoted through inclusive processes in which all relevant stakeholders take part. To be effective, law reform initiatives should include a clear plan of implementation, setting out cost estimates and the anticipated allocation of resources. Social mobilization and awareness-raising campaigns, ethical standards, capacity-building activities and guidance for professionals and institutions working for and with children can support effective law enforcement.

This study is a valuable reference document for ASEAN member States in their efforts to strengthen national child protection systems through law reform. Aligning national legislation with international legal standards provides a firm foundation for the right of every child to a life free from violence.



Marta Santos Pais
Special Representative of the UN Secretary-General on Violence against Children

Preface

The protection of children from all forms of violence is a fundamental right guaranteed by the Convention on the Rights of the Child. All 10 ASEAN member States have ratified the Convention, yet violence remains an all-too-frequent occurrence in the lives of children across the region.

A 2012 systematic review of research on violence in East Asia and the Pacific has shed light on this hitherto hidden phenomenon. Credible research estimates the prevalence of physical abuse among boys and girls in the region to range from 10% to 30.3%; sexual abuse from 1.7% to 11.6%; emotional abuse from 31.3% to 68.5%; and child labour from 6.5% to 56%. Furthermore, three out of four children in the region experience violent discipline at the hands of teachers or parents.

The review showed many negative health and wellbeing outcomes are directly attributable to violence against children. Ample evidence demonstrates links between experiences of violence and risk of mental health and behavioural disorders, adverse impacts on physical and sexual health, increased risk-taking behaviour in adolescents and long-term impacts on adult aggression, violence and criminality. In extreme situations, violence against children results in excess and chronic use of health-care services and premature mortality.

Indeed, violence against children provokes moral outrage, but it also leads to high societal costs for the region – public and private, direct and indirect. In fact, the annual economic loss due to child maltreatment has been estimated at US\$209 billion, accounting for approximately 2% of gross domestic product across East Asia and the Pacific. Preventing violence against children should be central to the human capital and economic development agenda in the region.

This study is part of the package of evidence that UNICEF East Asia and Pacific Regional Office (EAPRO) is compiling to shed light on an issue that is largely undocumented, underreported and at times condoned by social norms. The document is comprehensive, covering legislation of the 10 ASEAN member States in different settings: home and family, schools, community, justice system and institutions and workplace. The authors painstakingly analysed existing domestic laws related to child protection in these settings and compared them to international standards.

As ASEAN member States implement the Declaration on the Elimination of Violence against Women and Children, which was adopted on 9 October 2013, this study will help in the following areas identified in the Declaration:

1. Strengthen and, where necessary, enact or amend national legislations for the elimination of violence against women and violence against children.
2. Integrate legislation, policies and measures to prevent and eliminate violence against women and violence against children.
3. Strengthen the capacity of law enforcement officers, policymakers, social workers, health personnel and other stakeholders to develop, implement, monitor and evaluate gender responsive and child friendly legislation, policies and measures for women and children victims of violence.

UNICEF is committed to assist ASEAN in its resolve to eliminate all forms of violence against women and children in all settings.



Daniel Toole
Regional Director

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This study benefited from the strong support and valuable inputs made by the United Nations Special Representative of the Secretary-General on Violence against Children (SRSG) Marta Santos Pais.

The report would not have been possible without the assistance of our Child Protection colleagues from Cambodia, Lao PDR, Indonesia, Myanmar, Malaysia, Philippines, Thailand and Viet Nam.

I would like to acknowledge former EAPRO colleagues Diane Swales, Amalee McCoy and Vijaya Ratnam Raman for initiating this study; and my current colleagues Grace Agcaoili and Natcha Chitanthararuk for their efforts in seeing it through to its completion.

Much appreciation is due to the ASEAN Secretariat, and particularly to Deputy Secretary General Alicia Bala and Mega Irena; to the members of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC); and to the ASEAN Intergovernmental Commission on Human Rights (AICHR). All have shown strong support for this study.

Finally, I would like to thank the ten ASEAN Member States for coming together to issue a Declaration on the Elimination of All Forms of Violence against Children and Women; and to encourage them in their legislative reform efforts in view of eliminating all forms of violence against children in all settings.



Stephen Blight
Regional Advisor for Child Protection
UNICEF East Asia and the Pacific Regional Office

Acronyms and abbreviations

ASEAN	Association of Southeast Asian Nations
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment
CRC	Convention on the Rights of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRPD	Convention on the Rights of Persons with Disabilities
FGM/C	female genital mutilation/cutting
ICCPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communications Technology
IFLA	Islamic Family Law Act
ILO	International Labour Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPSC	Optional Protocol on the sale of children, child prostitution and child pornography
SRSR	Special Representative of the Secretary-General
STD	sexually transmitted disease
UDHR	Universal Declaration of Human Rights
UNAMA	United Nations Assistance Mission in Afghanistan
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UNRIC	United Nations Regional Information Centre
WHO	World Health Organization

Executive Summary

Violence against children occurs on a substantial scale in every country of the world. In the Asia-Pacific region, studies have shown that children are exposed to violence in all spheres of their lives, including in the home; at school; at work; in the community generally; and within institutions. This report analyses the laws of the 10 ASEAN member States (**Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam**) and assesses the compliance of national legislation with the most significant international instrument on the rights of children, including the United Nations Convention on the Rights of the Child (CRC), which has been ratified by all 10 ASEAN member States, subject to certain reservations.

This report also assesses compliance with international standards established under the following human rights instruments: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Rights of Persons with Disabilities (CRPD); Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children 1999; the International Labour Organization Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182); and the Declaration on the Elimination of Violence against Women and Elimination of Violence against Children 2013.

A colour coding system is used throughout this report to indicate compliance of domestic laws with international law (green), partial compliance (yellow) and a lack of compliance (red).

Violence against Children in the Home and Family

- **Child abuse**

The family is the most important unit for a child, holding the greatest potential for his or her protection and positive development. However, research has consistently demonstrated that the risk of violence against children is higher in the family or home environment than in any other setting. Children face both physical and non-physical forms of violence in the home from parents, siblings and other members of the family, and may also witness violence against other family members.

Child abuse includes physical and non-physical violence, infanticide, neglect and sexual violence. Non-physical violence, which includes emotional violence, can take many forms including insults, ignoring, isolation, rejection, threats, emotional indifference and belittlement. It is more prevalent than other forms of violence and also often accompanies other types of violence. Neglect involves the failure to provide for the development of the child including leaving the child alone without appropriate care, not providing the child with adequate food, clothing, medicines or health care, or the failure to properly supervise or protect children from harm.

- **Domestic violence**

Domestic violence is one of the most pervasive forms of violence affecting children and includes acts of violence perpetrated by one member of a family or household against another, including children. Domestic violence may include physical violence, verbal and emotional abuse, sexual coercion and rape, and other various controlling behaviours. Children who witness acts of domestic violence are regarded as victims of the violence.

Report card: Child abuse legislation in ASEAN member States

	Emotional abuse defined in law	Legal provisions prohibit neglect	Legal provisions criminalise incest	Offences trigger child protection response
Brunei	●	●	●	●
Cambodia	●	●	●	●
Indonesia	●	●	●	●
Lao PDR	●	●	●	●
Malaysia	●	●	●	●
Myanmar	●	●	●	●
Philippines	●	●	●	●
Singapore	●	●	●	●*
Thailand	●	●	●	●
Viet Nam	●	●	●	●

* Singapore has been rated as green as it fulfills three out of four categories fully. However, emotional abuse only triggers a child protection response where the actions of the parent or carer are willful or unreasonable. It is recommended that these terms should be reviewed as damage to a child should not be dependent upon the intention of the adult.

Report card: Protection from domestic violence

	Domestic violence recognized by law as a distinct form of violence	All acts of domestic violence recognized by law	All relationships within which domestic violence occurs recognized by law	No exception for sexual violence directed at some intimate partners	No exception for physical violence directed at some intimate partners	No exception for physical violence directed at children in a care-giving relationship
Brunei	●	●	●	●	●	●
Cambodia	●	●	●	●	●	●
Indonesia	●	●	●	●	●	●
Lao PDR	●	●	●	●	●	●
Malaysia	●	●	●	●	●	●
Myanmar	●	●	●	●	●	●
Philippines	●	●	●	●	●	●
Singapore	●	●	●	●	●	●
Thailand	●	●	●	●	●	●
Viet Nam	●	●	●	●	●	●

Harmful traditional practices

Throughout the world, acts carried out as part of a particular tradition, custom, religion or culture that have the potential to result in physical or emotional harm to a child are considered harmful traditional practices. These practices often serve the purpose of expressing and reinforcing the subordinate role and diminished value and position of children, particularly girls, within a given culture or society.

This report addresses three harmful traditional practices: child marriage, forced marriage, and female genital mutilation/cutting (FGM/C). Child marriage (marriage before age 18) disproportionately affects girls and the physical, emotional and social consequences of early marriage for girls can be severe. They include complications during pregnancy and childbirth, and increased risk of domestic violence, sexually transmitted infections, maltreatment and rape.

A marriage conducted under duress, through a variety of psychologically and physically violent means, where one or both of the parties to the marriage have not given their full and free consent is considered a forced marriage. A victim of forced marriage may suffer various consequences, including feelings of extreme isolation, estrangement from their families, being trapped in abusive and/or servile situation, limited recourse to support networks and social opportunities, the risk of honour killing if the marriage is resisted, physical, sexual and psychological abuse from the spouse, and depression, self-harm and suicide of the victim.

The World Health Organization defines FGM/C as “all procedures undertaken that involved the partial or full removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.” The practice can have a harmful effect on the victim’s sexual and reproductive health, leading to pain and health problems during intercourse, menstruation and child birth, and even death.

Report card: Protection from harmful traditional practices

	Minimum age for marriage for boys and girls	Requirement to register marriages	Prohibition on forced marriage, remedies and preventative measures	Laws against FGM/C
Brunei	●	●	●	●
Cambodia	●	●	●	●
Indonesia	●	●	●	●
Lao PDR	●	●	●	●
Malaysia	●	●	●	●
Myanmar	●	●	●	●
Philippines	●	●	●	●
Singapore	●	●	●	●
Thailand	●	●	●	●
Viet Nam	●	●	●	●

Violence against children in education settings

Corporal punishment and non-physical forms of punishment that are cruel and degrading are often used in schools to discipline children for misbehaviour, poor academic performance, or for reasons outside the child’s control, such as a parent’s failure to pay school fees on time. It may include physical punishments such as hitting children with hands or objects, as well as non-physical punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.

Report card: Protection against corporal punishment in schools

	Corporal punishment prohibited by law	Comprehensive definition of corporal punishment	Law provides penalties for corporal punishment	Law prohibits corporal punishment without exception
Brunei	●	●	●	●
Cambodia	●	●	●	●
Indonesia	●	●	●	●
Lao PDR	●	●	●	●
Malaysia	●	●	●	●
Myanmar	●	●	●	●
Philippines*	●	●	●	●
Singapore	●	●	●	●
Thailand	●	●	●	●
Viet Nam	●	●	●	●

*Assuming that an act 'Prohibiting all Corporal Punishment and All Other Forms of Humiliating or Degrading Punishment of Children And Promoting Positive and Non-Violent Discipline of Children, Appropriating Funds Therefore, and for Other Purposes' will come into effect.

Violence against children in the community

Violence against children in the community may include homicide, torture, cruel, inhuman and degrading treatment or punishment, and enforced disappearances. It also includes a wide range of sexual abuse and exploitation as well as child trafficking and abduction. Marginalized children are particularly vulnerable to violence in the community.

- Physical violence

States should have laws addressing physical violence in all contexts and should ensure that appropriate penalties are attached to violent offences against children. The most protective legal frameworks stipulate higher penalties for physical violence, including homicide, against particularly vulnerable victims.

International standards require that acts of torture, cruel, inhuman and degrading treatment or punishment are criminalized and appropriate penalties imposed on those who encourage, order, tolerate or perpetrate such acts. International law prohibits enforced disappearances in all circumstances, and requires States to criminalize persons who commit, order, solicit or induce the commission of, attempt to commit, are accomplice to, or participate in an enforced disappearance.

Report card: Protection against physical violence in the community

	Torture and other cruel, inhuman and degrading treatment	Enforced disappearances	Increased penalties for physical violence against children
Brunei	●	●	●
Cambodia	●	●	●
Indonesia	●	●	●
Lao PDR	●	●	●
Malaysia	●	●	●
Myanmar	●	●	●
Philippines	●	●	●
Singapore	●	●	●
Thailand	●	●	●
Viet Nam	●	●	●

- **Age of consent and statutory rape**

States are required to set the ‘age of consent’, the age at which a child can consent to sexual activity. States may also have an offence of statutory rape or ‘unlawful carnal knowledge’ in their criminal laws, committed when an adult has sexual intercourse with a child below the age of consent. The average age of consent internationally appears to be 16 years.

- **Child sexual abuse**

Sexual abuse is the inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity. It includes any sexual activity imposed by an adult on a child, against which the child is entitled to protection by criminal law. It encompasses a wide range of acts, including acts involving physical contact, such as vaginal, anal or oral rape, touching or fondling.

Sexual abuse also includes non-physical acts, such as showing children pornography, forcing children to engage in or watch sexual activities or encouraging children to behave in sexually inappropriate ways.

Report card: Age of consent to sexual activity

	Age of consent at or above international average	Marriage does not reduce age of consent	Same age of consent for boys and girls	Law encompass full range of sexual acts
Brunei	●	●	●	●
Cambodia	●	●	●	●
Indonesia	●	●	●	●
Lao PDR	●	●	●	●
Malaysia	●	●	●	●
Myanmar	●	●	●	●
Philippines	●	●	●	●
Singapore	●	●	●	●
Thailand	●	●	●	●
Viet Nam	●	●	●	●

Report card: Protection against child sexual abuse

	Definition of rape include all acts of penetration	Rape provisions protect boys	Rape constituted solely by a lack of consent	Other sexual offences comprehensively criminalized
Brunei	●	●	●	●
Cambodia	●	●	●	●
Indonesia	●	●	●	●
Lao PDR	●	●	●	●
Malaysia	●	●	●	●
Myanmar	●	●	●	●
Philippines	●	●	●	●
Singapore	●	●	●	●
Thailand	●	●	●	●
Viet Nam	●	●	●	●

- **Child prostitution**

The extent and nature of sexual exploitation of children in prostitution in the Asia-Pacific region is a great concern. Prostitution is the use of a child in sexual activities for remuneration of any other form of consideration and should be criminalized whether such offences are committed domestically or trans-nationally, or on an individual or organized basis. At the very least, the acts to be criminalised should include offering, obtaining, procuring or providing a child for prostitution or attempting to commit such acts or complicity or participation in any of these acts.

Report card: Protection against child prostitution

	All acts (offering, obtaining, procuring, providing) are criminalized	All children up to age 18 are protected	Boys and girls are equally protected	Law provides comprehensive definition of child prostitution	Law exempts child victims of prostitution from penalty
Brunei	●	●	●	●	●
Cambodia	●	●	●	●	●
Indonesia	●	●	●	●	●
Lao PDR	●	●	●	●	-
Malaysia	●	●	●	●	●
Myanmar	●	●	●	●	-
Philippines	●	●	●	●	●
Singapore	●	●	●	●	●
Thailand	●	●	●	●	●
Viet Nam	●	●	●	●	●

- **Child sex tourism**

Child sex tourism is the exploitation of children for sexual purposes by people who travel locally or internationally to engage in sexual activities with children. The clandestine nature of child sex tourism makes it difficult to gather data, arrest and prosecute offenders. It often involves the use of tourism infrastructure, including travel agencies, transport, accommodation and other tourist-related services, to facilitate contact with children. Child sex tourists may gain access to children directly in public areas, hotels, brothels, bars or schools. Children can also be accessed through parents, other family members or through other intermediaries, who may be connected to tourism services, including transport and accommodation. To protect children from such exploitation, States should ensure that their laws hold foreigners accountable and hold nationals accountable for crimes committed abroad. States should also criminalize preparatory acts that lead up to child sex tourism.

Report card: Protection against child sex tourism

	Territorial jurisdiction	Extraterritorial jurisdiction	Criminalization of 'preparatory acts'
Brunei	●	●	●
Cambodia	●	●	●
Indonesia	●	●	●
Lao PDR	●	●	●
Malaysia	●	●	●
Myanmar	●	●	●
Philippines	●	●	●
Singapore	●	●	●
Thailand	●	●	●
Viet Nam	●	●	●

- **Child pornography**

Child pornography is a type of sexual exploitation involving the use of children in pornographic materials or performances. To protect children from such exploitation, legislation should provide a comprehensive definition of pornography inclusive of its many forms and means of production and distribution. It is recommended that States criminalize all acts related to the production, offering, distribution/ dissemination and possession of child pornography, and impose reporting obligations on Internet service providers and other service providers who may become aware of clients exploiting children.

Report card: Child pornography

	Comprehensive definition of child pornography	All related acts (production, offering, distribution/ dissemination, possession) are criminalized	Law imposes reporting obligations
Brunei	●	●	●
Cambodia	●	●	●
Indonesia	●	●	●
Lao PDR	●	●	●
Malaysia	●	●	●
Myanmar	●	●	●
Philippines	●	●	●
Singapore	●	●	●
Thailand	●	●	●
Viet Nam	●	●	●

- **Child trafficking**

Human trafficking can be understood as a process by which a person is recruited and exploited by a trafficker or group of traffickers using deception or some form of coercion to lure and control them for the purpose of exploitation. In South-East Asia, children are trafficked for many different purposes including the following: bonded and exploitative labour, such as domestic services, factory work, agriculture, fishing and construction; sexual exploitation such as prostitution or child pornography; marriage; adoption; begging; and selling small items.

Under international law States are required to criminalize human trafficking, inclusive of recruiting, transporting, transferring, harbouring and receiving victims. Where the victim of trafficking is a child (below age 18), the law should not require proof that force or coercion (referred to as 'means') to prosecute offenders.

Report card: Protection against child trafficking

	All children (up to age 18; boys and girls) covered by trafficking provisions	All acts (recruiting, transporting, transferring, harbouring, receiving) criminalized	Can an offence be committed regardless of the means used to gain the child's consent	Law covers trafficking for all types of exploitation	Trafficking provisions have extraterritorial application
Brunei	●	●	●	●	●
Cambodia	●	●	●	●	●
Indonesia	●	●	●	●	●
Lao PDR	●	●	●	●	●
Malaysia	●	●	●	●	●
Myanmar	●	●	●	●	●
Philippines	●	●	●	●	●
Singapore	●	●	●	●	●
Thailand	●	●	●	●	●
Viet Nam	●	●	●	●	●

- **Child abduction**

Child abduction, sometimes referred to as ‘kidnapping’, is the unauthorised removal of a child from the custody of the person with whom the child lawfully lives. Strangers may abduct a child from their place of habitual residence, or a parent may remove the child unlawfully from the custody of the other parent. Both kinds of abduction is prohibited under international law.

Report card: Criminalization of child abduction

	Abduction by force criminalized	Unlawful removal from care of parent/guardian criminalized	Inter-country abduction criminalized
Brunei	●	●	●
Cambodia	●	●	●
Indonesia	●	●	●
Lao PDR	●	●	●
Malaysia	●	●	●
Myanmar	●	●	●
Philippines	●	●	●
Singapore	●	●	●
Thailand	●	●	●
Viet Nam	●	●	●

Violence against children in conflict with the law

Children in conflict with the law are highly vulnerable to suffering violence at each stage of the justice process, whether administrative, criminal or informal. The establishment of a juvenile justice system framed by the rights of the child is critical for safeguarding children's access to justice, enabling their participation in administrative and judicial proceedings in way that they can understand and effectively use, shaping a non-intimidating justice environment, and addressing incidents of violence, including when children are deprived of liberty.

This report focuses on whether the State has a juvenile justice legislative framework, the minimum age of criminal responsibility. It summarizes provisions related to key stages in the criminal process at which children are most at risk of violence, namely arrest, interrogation, conviction and detention.

Report card: Protection of children in conflict with the law

	Legislative framework	MACR	Safeguards against violence by law enforcement	Safeguards against violent sentences	Safeguards in institutions	Safeguards against violent discipline/restraint in institutions
Brunei	●	●	●	●	●	●
Cambodia	●	●	●	●	●	●
Indonesia	●	●	●	●	●	●
Lao PDR	●	●	●	●	●	●
Malaysia	●	●	●	●	●	●
Myanmar	●	●	●	●	●	N/A
Philippines	●	●	●	●	●	●
Singapore	●	●	●	●	●	●
Thailand	●	●	●	●	●	●
Viet Nam	●	●	●	●	●	●

Violence against children in the workplace

- Worst forms of child labour

Child labour deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. The difference between acceptable child work and child labour depends on the child's age, the types of work performed, the conditions under which it is performed and the objectives pursued by individual countries.

The International Labour Organization has identified the following categories of work as the worst forms of child labour: all forms of slavery or practices similar to slavery, such as debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties; and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children ('hazardous work'). States are obligated under international law to criminalize the worst forms of child labour.

Report card: Worst forms of child labour

	Criminalization of slavery and practices similar to slavery	Criminalization of the use, procurement or offering of children for illicit activities	Provisions relating to hazardous work
Brunei	●	●	●
Cambodia	●	●	●
Indonesia	●	●	●
Lao PDR	●	●	●
Malaysia	●	●	●
Myanmar	●	●	●
Philippines	●	●	●
Singapore	●	●	●
Thailand	●	●	●
Viet Nam	●	●	●

- **Minimum working age and light work**

Work that is not likely to be harmful to the health or development of a child and does not prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received – referred to as ‘light work’ – may be carried out by children from age 13, or age 12 where the economy and educational facilities are insufficiently developed. In such cases, the competent national authority must specify the activities in which employment/work is permitted, the number of working hours and the conditions in which employment/work may be undertaken.

Report card: Minimum working age and age for light work

	Minimum working age	Provisions related to light work	Exceptions to minimum working age and/or age for light work	Criminal and civil sanctions
Brunei	●	●	●	●
Cambodia	●	●	●	●
Indonesia	●	●	●	●
Lao PDR	●	●	N/A	●
Malaysia	●	●	●	●
Myanmar	●	N/A	N/A	N/A
Philippines	●	●	●	●
Singapore	●	●	●	●
Thailand	●	N/A	N/A	●
Viet Nam	●	●	●	●

Main findings and conclusions

The review of legislation for this report found the following common themes that apply across the ASEAN region:

- General criminal or penal laws, or laws designed to apply to adults, offer a lesser degree of protection than laws specifically designed to apply to children;
- Legal exceptions that apply in the context of particular relationships (parent-child, teacher-pupil, husband-wife) deny children legal protection from violence;

- Narrow and gendered definitions of sexual violence have the effect of denying legal protection to many children;
- The lack of laws on forms of violence disproportionately affecting girls or boys may result in indirect gender discrimination;
- Age-based provisions are incompatible with international law, and remove legal protections from some children;
- Children are denied legal protection from new and emerging forms of violence, or new and emerging methods of perpetrating violence against children;
- Children engaged in child labour, particularly hazardous and informal work, are not fully protected in line with international standards. Given the lack of comprehensive, up-to-date data on the prevalence of child labour, particularly in domestic work and among boys, it is possible that even where legal protections are provided by the ASEAN member States, these will need to be further strengthened in future to address emerging findings on the true scale and nature of child labour in the region

Part I: Introduction

Chapter 1. Introduction

1.1 Background

Violence against children occurs on a substantial scale in every country around the world. This violence takes a multitude of forms, which are often “deeply rooted in cultural, economic and social practices.”¹ Children are particularly vulnerable to violence, regardless of culture, class, ethnic origin, education, religion, level of development and other defining characteristics. In the Asia-Pacific region, studies have shown that children are exposed to many forms of violence in all spheres of their lives, including in the home, at school, at work, in the community generally and within institutions.²

Forms of violence experienced by children violate their basic rights as individuals, and have an extremely negative impact on their wellbeing and development. Research has consistently demonstrated that children exposed to violence are likely to have poorer physical and mental health outcomes. Violence against children can also have a negative impact on society more generally by disrupting children’s physical, emotional, social, cognitive and intellectual development. As stated in the United Nations *World Report on Violence against Children*, violence undermines children’s “ability to learn and grow into adults who can create sound families and communities.”³

Children are particularly vulnerable to violence and exploitation because of their limited physical, emotional and intellectual development and their dependence and reliance on adults for basic care. Children’s dependency and vulnerability is also a function of their legal status as minors: their parents have both rights and responsibilities over them. There has been a longstanding reluctance by States to interfere in the private sphere of the family. In addition, the law generally grants adults authority over children, and it is difficult for children to challenge and oppose such authority. These forms of vulnerability and dependence are critical to understanding the forms of violence and abuse that children experience and to addressing them in law. The World Health Organization (WHO) defines child maltreatment as “all types of physical and/or emotional ill-treatment, sexual abuse, neglect, negligence and commercial or other exploitation, which results in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power.”⁴

Children’s dependency changes the nature of their experiences of violence and, consequently, the way it must be addressed in the law. Laws should provide a protective framework that enables children to seek redress wherever acts of violence are perpetrated against them. Laws should also operate to prevent acts of violence from occurring, either through having a deterrent effect on potential perpetrators, by providing protective civil frameworks that are aimed at removing children from situations in which they are at risk of violence, or more broadly, in helping to define and shape social and cultural norms. Too often, forms of violence against children are perceived as an inevitable or normal part of childhood, and as a result go unreported or unaddressed. Laws that clearly and comprehensively address and prohibit all forms of violence against children in all settings are necessary to create an environment in which violence against children is rendered socially unacceptable as well as unlawful. Laws developed to prohibit various forms of violence against children, to protect children and to respond to violence are also essential to States’ interest in children’s healthy development and in reducing forms of violence that have destructive social impacts on communities.

¹ Pinheiro, P. (2006). *Report of the independent expert for the United Nations study on violence against children: Violence against children in the home and family*, introduction.

² UNICEF EAPRO, (2012). *Child Maltreatment – Prevalence, Incidence and Consequences in East Asia and Pacific. A systematic review of research*.

³ Pinheiro, P. (2006), preface.

⁴ WHO, *Child maltreatment*, Fact sheet No. 150. Available at: <http://www.who.int/mediacentre/factsheets/fs150/en/> [accessed 20 February 2015].

1.2 Purpose of the report

The purpose of this report is primarily to assist States with a comprehensive review of their legislation by providing an analysis of laws in the 10 ASEAN member States (Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam), in order to identify any gaps or weaknesses in protection afforded to children against all forms of violence. The report analyses the national laws in each member State in an aggregated manner so that common themes can be identified and highlighted across ASEAN member States. It also provides findings and recommendations for law reform specific to each State.

1.3 Methodology and limitations of the study

The study uses international standards as the yardstick against which all national legislation is measured; 'gaps' are defined as areas in which national laws are not consistent with international standards in the level of legal protection afforded to children against violence. Initially, international human rights treaties containing relevant standards on violence against children were examined and, in addition, 'soft law' (including, for instance, General Comments and Concluding Observations of treaty monitoring bodies) was used to elaborate the normative content of the standards.⁵ This enabled the identification of key legal provisions that international treaties oblige States to include in national laws in relation to each topic/category of violence. Where international standards are not comprehensively set out in Conventions or Covenants general best practice standards are relied upon instead.

Analytical, thematic categories were developed based on international standards, including the United Nations Convention on the Rights of the Child (CRC). The development of thematic categories was informed by information provided by the monitoring body of the Convention (the CRC Committee), particularly *General Comment No. 19* on the right of the child to freedom from all forms of violence, and the United Nations *World Report on Violence against Children* also aided in the development of thematic categories. National laws relevant to each of the categories were then analysed to determine whether, and to what extent, the laws were consistent with international standards. Criminal codes, criminal procedure codes, juvenile justice laws, sexual offences laws, family codes or children acts and other child protection laws, laws regulating educational provision, care homes, health facilities and immigration detention facilities, and any other law on specific types of violence against children were reviewed. Some subjects relating to violence against children are not covered in this report due to limitations of space.

The study focuses on national primary legislation for reasons of accessibility. Given the breadth of the study and the different languages involved, the study does not cover administrative instruments, local by-laws or provincial legislation, nor does it cover judicial decisions or rules of procedure. As it has not been possible to access all relevant statutory instruments, it is possible that amendments have been made in secondary legislation to primary legislation that have not been captured in the study.

Laws change constantly. While every attempt has been made to ensure that legal references contained in this report were current on 1 September 2014, there will inevitably have been some changes made to the laws either before or after that date that are not reflected in the chapters of the report.

Many ASEAN member States adopt *in pari materia* as the applicable rule of statutory construction, meaning each legislative Act is to be interpreted with reference to other Acts relating to the same subject matter. Where there are two statutes of equal application, the statute of later date is treated as the prevailing statute as it is regarded as a later expression of legislative will. Thus, this analysis of legislation in ASEAN member States has taken into account the date when an Act was passed. Where there is both general legislation (i.e. a Penal Code) and specific legislation (a Juvenile Justice Law) covering an issue but no indication as to which is to apply, in accordance with the general rules of statutory interpretation, the specific legislation is treated as applicable.

⁵ An overview of relevant international standards is contained in section 2.

The report did not take into account all bills that were before the legislatures at the time of writing as there was no certainty that the bills would be passed or would be passed in the form in which they were available. An exception was made to this in the case of the proposed Philippines act on corporal punishment as it serves as an excellent example of good practice in this area of law.

1.4 Structure of the report

This report is structured according to the sites or locations in which violence against children occurs in order to follow the approach taken in the United Nations *World Report on Violence against Children*. This report therefore addresses violence against children in the home or family, in schools, in the criminal justice or juvenile justice system, in the workplace and in the community generally. Children may also be exposed to violence in other locations, however, such exposure is beyond the scope of this report.

Violence against children can occur in multiple settings and particular laws can cover violence in different locations. There is, therefore, some inevitable overlap in analysis and discussion of the laws and offenses against children. The report is structured in this way to ensure that the analysis provides comprehensive coverage of all areas and to ensure that domestic laws are analysed against international standards.

The report is structured according to the following categories (parts) and subcategories (chapters) that focus on different forms of violence:

Violence against children in the home and family	<ul style="list-style-type: none"> • Child abuse (physical, emotional and sexual violence, neglect) • Domestic violence
Harmful traditional practices ⁶	<ul style="list-style-type: none"> • Child marriage, forced marriage, female genital mutilation/cutting (FGM/C)
Violence against children in education settings	<ul style="list-style-type: none"> • Corporal punishment
Violence against children in the community	<ul style="list-style-type: none"> • Physical violence (murder; torture and cruel, inhuman or degrading treatment or punishment; enforced disappearances) • Sexual violence (age of consent; rape and sexual assault) • Child prostitution • Child sex tourism • Child pornography • Trafficking • Abduction
Violence against children in conflict with the law	<ul style="list-style-type: none"> • Violence during arrest and interrogation; violent sentences; violence in juvenile justice institutions
Violence against children in the workplace	<ul style="list-style-type: none"> • Worst forms of child labour • Minimum working age and age for light work

Each chapter contains background information on the form of violence and an analysis of relevant international standards. Laws of ASEAN member States are then analysed against these international standards to identify gaps in protection. Recommendations for reform or development of laws are provided at the end of each section.

This report uses a colour coding system to indicate the degree of concordance between international standards and the laws in each State. The categories of the coding system are as follows:

- Green denotes legal frameworks that are largely compliant with international standards, and which require little or no law reform.

⁶ The report focuses on harmful traditional practices known to occur in the ASEAN region.

- Yellow denotes legal frameworks that are partially compliant with international standards. Legislation does not fully reach international standards and does not provide full protection to children. Yellow denotes the need to review and replace laws to close gaps in the protection of children from violence.
- Red denotes legal frameworks that are not compliant with international standards, and which require significant reform or development of new laws in order to comply with international standards and establish a protective framework for children.

1.5 International standards on violence against children

All children are entitled to protection from violence in international law. The most significant international instrument on the rights of children, including their rights to protection from violence, is the Convention on the Rights of the Child (CRC). Other human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) also afford children protection from violence.

1.5.1 United Nations Convention on the Rights of the Child

The most significant international instrument on the rights of children, including their rights to protection from violence, is the Convention on the Rights of the Child (CRC), which has been ratified by all ASEAN member States that are the subject of this study, subject to certain reservations, which are summarized in table 1 and discussed further where appropriate in this report.⁷

Table 1. Reservations and declarations of ASEAN member States pertaining to the Convention on the Rights of the Child

Country (date of ratification or accession)	Reservations and Declarations
Brunei (27 Dec 1995)	"[The Government of Brunei Darussalam] expresses its reservations on the provisions of the said Convention which may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the State, religion, and without prejudice to the generality of the said reservations, in particular expresses its reservation on articles 14, 20 and 21 of the Convention."
Cambodia (15 Oct 1992)	None
Indonesia (5 Sep 1990)	None
Lao PDR (8 May 1991)	None
Malaysia (17 Feb 1995)	"The Government of Malaysia accepts the provisions of the Convention on the Rights of the Child but expresses reservations with respect to articles 2, 7, 14, 28 paragraph 1 (a) and 37, of the Convention and declares that the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia.
Myanmar (15 Jul 1991)	None
Philippines (21 Aug 1990)	None

⁷ United Nations Treaty Collection, Available from https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#EndDec [15 September 2014].

Singapore

Declaration:

“(1) The Republic of Singapore considers that a child's rights as defined in the Convention, in particular the rights defined in article 12 to 17, shall in accordance with articles 3 and 5 be exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and in the best interests of the child and in accordance with the customs, values and religions of Singapore's multi-racial and multi-religious society regarding the place of the child within and outside the family.

(2) The Republic of Singapore considers that articles 19 and 37 of the Convention do not prohibit - (a) the application of any prevailing measures prescribed by law for maintaining law and order in the Republic of Singapore; (b) measures and restrictions which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or the protection of the rights and freedoms of others; or (c) the judicious application of corporal punishment in the best interest of the child”

Reservations:

“The Constitution and the laws of the Republic of Singapore provide adequate protection and fundamental rights and liberties in the best interests of the child. The accession to the Convention by the Republic of Singapore does not imply the acceptance of obligations going beyond the limits prescribed by the Constitution of the Republic of Singapore nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution.

Singapore is geographically one of the smallest independent countries in the world and one of the most densely populated. The Republic of Singapore accordingly reserves the right to apply such legislation and conditions concerning the entry into, stay in and departure from the Republic of Singapore of those who do not or who no longer have the right under the laws of the Republic of Singapore, to enter and remain in the Republic of Singapore, and to the acquisition and possession of citizenship, as it may deem necessary from time to time and in accordance with the laws of the Republic of Singapore.

The employment legislation of the Republic of Singapore prohibits the employment of children below 12 years old and gives special protection to working children between the ages of 12 years and below the age of 16 years. The Republic of Singapore reserves the right to apply article 32 subject to such employment legislation.

With respect to article 28.1(a), the Republic of Singapore - (a) does not consider itself bound by the requirement to make primary education compulsory because such a measure is unnecessary in our social context where in practice virtually all children attend primary school; and (b) reserves the right to provide primary education free only to children who are citizens of Singapore.”

Thailand
(27 Mar 1992)

“The application of articles 22 of the Convention on the Rights of the Child shall be subject to the national laws, regulations and prevailing practices in Thailand.”

Viet Nam
(28 Feb 1990)

None

The Convention sets out a framework of legal principles and standards to which States parties are obliged to adhere and which should inform all government legislation, policy and practice in relation to children. It also sets out a number of specific protections from violence, along with other general standards. The Convention and the General Comments published by the CRC Committee, set out the measures, including legislative measures, which States parties must take to ensure that children are protected from violence.

States are obliged, pursuant to CRC Article 4, to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights” contained in the Convention. Many of the Convention’s rights relate to violence against children; however, the central provision is Article 19, which provides:

- (1) “States parties shall take all appropriate legislative, administrative and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”
- (2) “Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

The CRC Committee has elaborated the legal content of Article 19 and has provided useful guidance to States parties on their obligations to ensure that children are protected from violence. The Committee has stated in *General Comment No. 13* that Governments are required to take “a broad range of measures cutting across all sectors of Government, which must be used and effective in order to prevent and respond to all forms of violence.” According to the Committee, legislative measures “refer to both legislation, including the budget, and the implementing and enforcement measures. They comprise national, provincial and municipal laws and all relevant regulations, which define frameworks, systems, mechanisms and the roles and responsibilities of concerned agencies and competent officers.”⁸

In her latest Annual Report to the United Nations Human Rights Council in 2013, the Special Representative of the Secretary-General on Violence against Children set out the obligations on States to respond to violence against children. She stated that legislation is a fundamental element in safeguarding children from violence, and that “legislation prohibiting all forms of violence is a key component of a comprehensive national strategy to children’s protection from violence.” States should pursue law reform on violence against children through a comprehensive review of national legislation, measured against international human rights standards. In particular, legislation should explicitly ban all forms of violence in all settings. This general prohibition of all forms of violence should be “supplemented by detailed provisions in relevant pieces of legislation to tackle direct manifestations of violence and the various contexts within which violence may occur.”⁹

The CRC Committee has emphasized that Article 19 is strongly linked to a broad range of provisions in the Convention, and must particularly be considered in the light of Article 5 (respect for the rights, duties and responsibilities of parents), Article 9 (right not to be separated from parents against will, unless this is in the best interests of the child), Article 18 (recognition that parents have primary responsibility for the upbringing of the child) and Article 27 (right of the child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development).¹⁰

In addition, Article 19 must be interpreted in the light of the four general principles contained in the Convention (Articles 2, 3, 6 and 12). Article 2 provides that States must respect and ensure the Convention rights to each child without any discrimination, “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” Malaysia has issued a reservation to this provision such that it is

⁸ CRC Committee, *General Comment No. 13*: The right of the child to freedom from all forms of violence, CRC/C/GC 13, 18 April 2011, paras. 39 and 40.

⁹ United Nations Human Rights Council, *Annual Report of the Special Representative to the Secretary-General on Violence against Children*, A/HRC/22/55, 4 January 2013, paras. 21 and 21(b).

¹⁰ CRC Committee, *General Comment No. 13*, para. (3)(b).

applicable “only if [it is] ... in conformity with [its] ... Constitution, national laws and national policies,” and hence could be interpreted to limit its application. Article 3 requires States to ensure “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” According to the CRC Committee, ‘best interests’ should be interpreted in the light of the rights contained in the Convention, including rights relating to violence against children.¹¹ Article 6 recognizes the child’s inherent right to life, and requires States to “ensure to the maximum extent possible the survival and development of the child.” Article 12 requires States to “assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.” Singapore has made a general declaration, which applies in particular to CRC Articles 12 to 17, that CRC provisions will be “exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and in the best interests of the child and in accordance with the customs, values and religions of Singapore’s multiracial and multireligious society regarding the place of the child within and outside the family.” Article 12 therefore could be interpreted so that it is applied restrictively in Singapore. Note also the general reservation of Brunei, which could have a similar impact.

1.5.2 Other international instruments related to violence against children

In addition to CRC, many other instruments of international law defend human rights and afford children protection from violence. This report will consider provisions for the protection of children established under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention against Transnational Organized Crime and its protocol on trafficking in persons (Palermo Protocol).

It is also worth noting that, in international law, special provisions apply to particular groups of children, who require increased protection because of marginalization or particular vulnerability. These special provisions have been taken into consideration when analysing the legal protection against all forms of violence provided to children in all settings. Due to their particular vulnerability to violence, girls enjoy special protection against violence under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the United Nations Declaration on Violence against Women. While not recognized as a human rights violation per se, the governing body of the Convention, the CEDAW Committee has described violence against women as “a form of discrimination against women that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”¹² Discrimination is prohibited in international law, and States parties have an obligation to address violence against women, pursuant to their obligation to prohibit discrimination.¹³ The CEDAW Committee recognizes gender-based violence as a form of discrimination, which is prohibited according to Article 1 of the Convention. The Committee has stated:

“The Convention in Article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence...Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention.”¹⁴

¹¹ CRC Committee, *General Comment No. 13*.

¹² Article 2, CEDAW.

¹³ CEDAW Committee, *General Comment No. 19: Violence against Women*, eleventh session (1992).

¹⁴ CEDAW Committee, *General Comment No. 19*, paras. 6 and 7. CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the

CEDAW sets out specific legislative and other measures that States are required to take to address discrimination. In addition to addressing gender-based violence by the State or agents working on behalf of the State, States are obliged to take due diligence to prevent violations or investigate and punish acts of violence not carried out by the State. This would include acts of violence in the home, for instance.¹⁵

Violence against women is also defined in the United Nations Declaration on the Elimination of Violence against Women, which also sets out State Party obligations for addressing violence against women. This is defined as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”¹⁶

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) sets out the rights of persons, including children, with disabilities and the obligations of States parties.¹⁷ Article 16(1) of the Convention requires States to “take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.” States are required, under Article 16(5), to “put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.”

There are various other international instruments which, although not strictly legally binding on States under international law, nevertheless evidence agreed practices and principles to combat violence against children, and add more context to the interpretation of binding international obligations. The most relevant of those instruments is the Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN, which was adopted on 9 October 2013 at the twenty-third ASEAN Summit. The Declaration states the intention to eliminate violence against women and children in the region by taking a series of measures, including strengthening and, where necessary, enacting or amending national legislations for the elimination of violence against women and violence against children, and to enhance the protection, services, rehabilitation, education and training, recovery and reintegration of victims/survivors. It also calls on ASEAN member States to develop and implement effective legislation, policies and measures to investigate, prosecute, punish and, where appropriate, rehabilitate perpetrators of such violence.¹⁸ While the Declaration does not define violence, it acknowledges in its opening paragraphs the importance of preventing and protecting women and children from, and responding to the following:

“[A]ll forms of violence, abuse and exploitation of women and children particularly for those who are in vulnerable situations, including domestic violence, women and children who are sexually exploited, women and children with disabilities, women and children living with and affected by HIV and AIDS, women and children in conflict with laws, cyber pornography and cyber prostitution, trafficking in women and children, women and children in disasters, women and children in armed conflict, women and children in refugee camps, women and children on the move, stateless women and children, migrant women and children, women and children belonging to ethnic and/or indigenous groups, children in early marriage, physical abuse of children, bullying, discrimination against women and children in mass and social media, and others.”

recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

¹⁵ CEDAW Committee, *General Comment No. 19*, para. 9.

¹⁶ United Nations Declaration on the Elimination of Violence against Women, Article 1.

¹⁷ Under the Convention, persons with disabilities include “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

¹⁸ Declaration on the Elimination of Violence against Women and Elimination of Violence against Children, paras. 1 and 3.

The United Nations Declaration on the Rights of Indigenous Peoples requires States to pay particular attention to the rights and needs of, inter alia, indigenous youth and children, and to “take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all form of violence and discrimination.”¹⁹

This report will also refer to Conventions established by the International Labour Organization (ILO), including the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) which apply specifically to the treatment of children in the workplace.

1.6 Systems of law in ASEAN member States

ASEAN member States follow different systems of law: some are primarily regarded as common law countries (such as Malaysia, Singapore and Brunei) due to British colonialism, while others are essentially civil law States (for instance, Indonesia, Cambodia and Lao PDR). The legal system of the Philippines is usually regarded as a hybrid system with elements of civil law (derived primarily from Spanish law) and of common law due to Anglo-American law brought by the United States during its rule of the country. Thailand is generally regarded as a civil law State but has been influenced by the common law.

Civil law has its origins in Roman law and dates back some 2,500 years. Common law is rather younger and is generally defined as the system of law originating in England. Civil law initially spread through Europe but was regarded originally as an academic system of law studied in the universities. Common law, by contrast, was developed as a practical system to enable the travelling courts within England to apply law, which was ‘common’ to the whole country.²⁰

The most obvious difference between civil law and common law lies in the main source of law. Civil law jurisdictions are described as having comprehensive written codes, which are intended to cover every area of law. If a matter arises that is not covered by the law, it will not be justiciable – in other words, it cannot be dealt with by the courts. By contrast, while common law systems make extensive use of statutes, they also treat judicial decisions as source of law and judges have an active role in developing law or reinterpreting law to address inconsistencies or to meet current social mores. In common law, judicial decisions form precedents, which the lower courts must follow, while in the civil law courts, such decisions are regarded as no more than a guide. Nowadays the differences between common law systems and civil law systems have lessened. For the purposes of this report, the distinction between civil law and common law is not considered to have a significant impact on the protection of children from violence.

In addition to the differences between those States following civil law and those following common law or a mixed system, many ASEAN member States have a pluralistic system of law, though pluralism will not necessarily apply to all aspects of the law. Pluralism means that more than one system of law operates within the country. The applicable system of law is generally dependent upon the religious or ethnic affiliation of the individual, although in some cases it depends purely on geographical location. In Malaysia, for instance, a person’s religious identity automatically determines which law governs his or her family disputes. In some systems individuals may choose whether to resolve an issue under State law or religious law. Plural legal systems are most commonly applied to matters of family law (which are regarded as being within the sphere of private law). It is rare to find plural legal systems applied to the sphere of criminal law (regarded as public law as it involves the State). The Special Rapporteur on Violence against Children noted in her annual report of 2012 that “in countries with plural legal systems, where national legislation exists alongside with customary and religious law, legal interpretation and implementation face greater complexities, tensions and challenges that may seriously compromise children’s best interests.”²¹ In particular the process of law reform to eliminate violence against children can be more complicated in a pluralist system, as changes must be made to national

¹⁹ Article 22, Declaration on the Rights of Indigenous Peoples.

²⁰ See Fordham, M. ‘Comparative Legal Traditions – Introducing the Common Law to Civil Lawyers in Asia. Available from law.nus.edu.sg.

²¹ Annual Report of the Special Rapporteur to the Secretary-General on Violence against Children A/67/230, 3 August 2012, p. 7.

law, customary law and possibly also to the interpretation of religious law. The issue raised by plural legal systems are addressed where relevant in the report, particularly in chapter 4 which addresses harmful traditional practices.

1.7 Legislative responses to violence against children

States are obliged under international law to use a range of legal responses, including criminal and civil measures, to ensure that children are protected from violence in domestic laws.

1.7.1 Criminalization

International law obliges States to prohibit all acts of violence against children in all settings. According to the CRC Committee, the Convention imposes an obligation on States to “review and amend domestic legislation in line with Article 19 and its implementation within the holistic framework of the Convention, establishing a comprehensive policy on child rights and ensuring absolute prohibition of all forms of violence against children in all settings and effective and appropriate sanctions against perpetrators.”²²

Legal definitions of violence against children in national law must cover all types of violence in all settings. CRC Article 19 requires States to prohibit all forms of physical or mental violence against children, and that “frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence.” It also provides that legal definitions of violence “must in no way erode the child’s absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.” Where acts of violence are criminalized, the criminal law should not allow any defences or justifications to violence against children in any setting.²³ For instance, a defence or reasonable chastisement of a child by a person who has rights or responsibilities for a child should not be permitted, as this fails to give children protection against assault. In addition, States need to be sure that their legislation contains suitable and appropriate penalties for perpetrators of violence against children. Brunei’s general reservation to the Convention and Singapore’s general and specific declarations, in particular relating to CRC Article 19, could limit the application of this provision.

1.7.2 Civil measures

In addition to criminalization, civil measures should be used by States as a legal response to violence against children. Civil measures are very important as a form of prevention by removing children from situations in which they are at risk of violence. While CRC Article 5 entrenches the principle that parents and extended family have primary legal responsibility for a child’s wellbeing and upbringing, it also obliges States under Article 19(2) to have systems in place for children at risk of harm when in the care of parents and family, or for children whose parents or family are unable to care for them. This includes children experiencing or at risk of “all forms of mental violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse” while in the care of their parents, family or carers. States must ensure that effective systems are in place for “identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment.” The CRC Committee has provided guidance on the legal content of each of these elements in *General Comment No. 13*.²⁴

Article 20(1) provides that “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.” States are obliged to ensure that a child in this situation receives alternative care, including, inter alia, “foster placement, *kafala* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children.”²⁵ Brunei has made a reservation to this provision.

²² CRC Committee, *General Comment No. 13*, para. 41.

²³ CRC Committee, *General Comment No. 13*, paras. 17 and 30.

²⁴ CRC Committee, *General Comment No. 13*, paras. 49–53.

²⁵ Article 20(2) and 20(3), CRC.

The United Nations Guidelines on the Alternative Care of Children, while not legally binding, set out in detail the measures and procedures that States should follow in identifying and responding to violence against children who are removed from their primary carers. The general principles and perspectives of the Guidelines state:

“Where the child’s own family is unable, even with appropriate support, to provide adequate care for the child, or abandons or relinquishes the child, the State is responsible for protecting the rights of the child and ensuring appropriate alternative care, with or through competent local authorities and duly authorized civil society organizations.”

The Guidelines include provisions on how the decision should be made to remove a child from their home environment and under which circumstances. The section on preventing family separation begins as follows:

“Proper criteria based on sound professional principles should be developed and consistently applied for assessing the child’s and the family’s situation, including the family’s actual and potential capacity to care for the child, in cases where the competent authority or agency has reasonable grounds to believe that the well-being of the child is at risk.”

Children and young people at risk of intimate partner violence, including violence within a child marriage, should also be protected by civil protection measures. These could include, for instance, legal orders to restrict the contact that a person can have with the child or young person who is at risk of violence.

A United Nations Working Group on good practices in legislation on violence against women requires that States ensure that police and courts have the power to issue protective orders to address violence against women, for instance, barring orders or orders to require a person to stay away from the vicinity of the victim.²⁶

1.7.3 Redress for child survivors of violence

States have an additional obligation: to ensure that children who have experienced violence have access to legal redress and recovery and reintegration measures. CRC Article 39 provides:

“States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

Domestic law should therefore provide for legal redress and effective remedies, including compensation, for child survivors of violence and for recovery and social reintegration. Legal redress for survivors of violence against women and girls, is also an obligation under the United Nations Declaration on Violence against Women, which provides that States must:

“develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered.”²⁷

²⁶ UN Women, *Good practices in legislation on ‘harmful practices’ against women*, Expert group meeting, Addis Ababa, 26–29 May 2009: Report of group meeting, para. 30.

²⁷ United Nations Declaration on the Elimination of Violence against Women, Article 4(d).

According to the recent Annual Report of the Special Representative to the Secretary-General on violence against children, ‘child-friendly remedies’ are an indispensable component of a State’s response to violence against children.²⁸

Recommendation

Withdrawal of the reservations and declarations to CRC, particularly those relating to Article 19 (Brunei, Malaysia and Singapore).

²⁸ United Nations General Assembly, Human Rights Council, *Annual Report of the Special Representative to the Secretary-General on Violence against Children*, A/HRC/22/55 paras. 27–28.

Part II: Violence against Children in the Home and Family

Chapter 2. Child Abuse

2.1 Context: Understanding child abuse

The family is often seen as the most important unit for a child, holding the greatest potential for their protection and positive development. However, research has consistently demonstrated that the risk of violence to children is higher in the family or home environment than in any other setting.¹ Children face both physical and non-physical forms of violence in the home from parents, siblings and other members of the family, and may also be victims or witnesses to violence against other family members.

Violence in the home or family is often hidden and often goes unreported or unidentified. It is difficult to collect accurate data on the extent and nature of violence in this setting. However, a UNICEF study in 2005–2006 carried out across over 30 countries found that an average of 75 per cent of children experienced violent discipline, including physical punishment and/or psychological aggression. Collecting the same data in 2010–2011, researchers found that these figures remained high with, for example, 74 per cent of children in Viet Nam and 83 per cent in Nepal experiencing this type of violence.²

A UNICEF report that analysed research into child maltreatment in East-Asia and the Pacific in 2012 found violence in the home to be prevalent across the whole region. Overall, one in ten children reportedly experienced violence and 30.3 per cent of children were found to have experienced physical abuse.³

Violence may also have a gender element. Save the Children found that in South Asia, boys are more at risk of physical violence in the home than girls. Girls, on the other hand are more likely to be punished with verbal abuse or with increasing household chores.⁴

Emotional violence, which takes many forms such as insults, ignoring, isolation, rejection, threats, emotional indifference and belittlement. It has been found to be more prevalent than other forms of violence and it also often accompanies other types of violence.⁵

Another form of violence that children can be exposed to in the home or family is neglect, which involves the failure to provide for the development of the child. Forms of neglect include leaving children alone, failing to provide adequate food, clothing, medicines or health care, or failing to properly supervise or protect children from harm.⁶ Neglect is an important contributor to death and illness especially in young children and in many instances it can be difficult to draw the line between harm caused deliberately as opposed to harm caused by

¹ Covell, Katherine and Becker, Jo, (2011). *Five years on: A global update on violence against children. A report from the NGO Advisory Council for follow-up to the United Nations Secretary-General's Study on Violence against Children*, p. 9.

² Global Initiative to End All Corporal Punishment of Children (2012). *Ending legalised violence against children: Global Report 2012*, p. 20. Available from <http://reliefweb.int/report/world/corporal-punishment-ending-legalised-violence-against-children-global-report-2012> [accessed 1 August 2013].

³ UNICEF EAPRO, (2012). *Child Maltreatment*, p. xii.

⁴ Save the Children Sweden (2005). *What children say: Results of comparative research on the physical and emotional punishment of children in Southeast Asia and the Pacific*, p. 75.

⁵ Pinheiro, P. (2006), pp. 60–61; Covell, Katherine and Becker, Jo (2011), p. 9.

⁶ Covell, K., and Becker, J. (2011), p. 9.

ignorance or lack of care.⁷ Emotional neglect may include feeling unloved or feeling that parents wished they had not been born.⁸

Violence against children includes sexual violence. Incest is one form of sexual violence that can occur within the home, and is addressed in section 2.6 below. Other forms of sexual violence are addressed in Chapter 3 (Domestic Violence) as well as Part III (Harmful Traditional Practices) and Part VI (Sexual Violence against Children in the Community).

Experiencing violence in childhood may have lasting impact, following a person through youth and into adulthood, with lifelong negative impacts on the person's mental and physical health and well-being. The most apparent and serious consequences of violence to children are severe injuries, disability or even death. Indeed, the United Nations report on Violence indicates that when a young child dies as a result of violence, the most likely perpetrator is a close family member. Even where physical injuries do not result, in all cases physical violence has an impact on the child's development and health.⁹

2.2 International standards on child abuse

CRC Article 19 is the key provision relating to violence against children in their primary care setting. This provision obliges States to ensure legal protection to children from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse." This applies to children "while in the care of the parent(s), legal guardian(s) or any other person who has the care of the child." According to the CRC Committee, the definition of 'caregivers' contained in Article 19 should be interpreted broadly by States. It covers:

"those with clear, recognized legal, professional-ethical and/or cultural responsibility for the safety, health, development and well-being of the child, primarily: parents, foster parents, adoptive parents, caregivers in *kafalah* of Islamic law, guardians, extended family and community members; education, school and early childhood personnel; child caregivers employed by parents; recreational and sports coaches – including youth group supervisors; workplace employers or supervisors; and institutional personnel (governmental or non-governmental) in the position of caregivers, for example responsible adults in health-care, juvenile-justice and drop-in and residential-care settings. In the case of unaccompanied children, the State is the de facto caregiver."¹⁰

The types of violence covered by Article 19 should also be interpreted widely, to include physical and non-physical forms of violence, and acts as well as omissions (neglect). The definition of 'child maltreatment' or 'child abuse' used by WHO is similarly broad and includes "all forms of physical and emotional ill-treatment, sexual abuse, neglect, and exploitation that results in actual or potential harm to the child's health, development or dignity." In terms of violence by parents and caregivers, the WHO has identified the following types of child maltreatment: physical abuse, sexual abuse, emotional abuse and neglect.

2.3 Legislation in ASEAN member States: Infanticide

Infanticide refers to the killing of children who are less than 12 months old, and this form of physical violence occurs specifically in the context of the family. In many countries parents or family members commit infanticide after the birth of 'undesirable' infants, such as those born female, out of wedlock or with disabilities. Infanticide may also be committed by mothers whose mental or psychological health is disturbed by the birth of the child. Indeed, legal provisions prohibiting infanticide prescribe reduced penalties for crimes of infanticide in

⁷ Pinheiro, P. (2006), p. 54.

⁸ UNICEF EAPRO (2012), *Child Maltreatment*, p. xii.

⁹ Pinheiro, P. (2006), pp. 51, 52 and 64.

¹⁰ CRC Committee, 2011, *General Comment No. 13*, para. 33. Article 19 therefore applies across other settings examined in this paper.

comparison to other types of homicide. As demonstrated by the analysis below, in most countries this reduced penalty is meant to apply to mothers whose mental state has been disturbed by giving birth, and does not imply that murdering a child under 12 months is a lesser crime. However, studies have shown that difficult circumstances, such as social pressure arising from giving birth outside marriage, are just as likely as mental illness to motivate parents to commit infanticide.¹¹

Cambodia, Lao PDR, Myanmar and Thailand do not have specific provisions addressing infanticide in their laws. The **Philippines** Penal Code defines infanticide as the killing of a child less than 3 days of age (Section 255). **Brunei's** Penal Code and Article 310 of Singapore's Penal Code contain identical provisions on infanticide, which provide for a reduced penalty where the mother's mental state was affected by the birth. Article 255 of Brunei's Penal Code provides:

“(1) Any woman who, by any wilful act or omission, causes the death of her child being a child under the age of 12 months, but if at the time of such act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon such birth, shall notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, be guilty of the offence of infanticide.

(2) Whoever commits the offence of infanticide shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.”

Article 311 of Singapore's Penal Code, however, gives the judge more discretion when deciding on the appropriate sentence:

“Whoever commits the offence of infanticide shall be punished at the discretion of the court with imprisonment for life, or with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.”

Malaysia's Penal Code contains a similar provision;

“When any woman by any wilful act or omission causes the death of her newly-born child, but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child, and by reason thereof the balance of her mind was then disturbed, she shall, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, be guilty of the offence of infanticide.”¹²

Singapore's Penal Code also contains a provision which serves to reduce the charge from murder to infanticide, with a lesser sentence, in a case where the mother's mind was disturbed:

‘When culpable homicide is not murder’ Exception 6: “Culpable homicide is not murder if the offender being a woman voluntarily causes the death of her child being a child under the age of 12 months, and at the time of the offence the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child.”¹³

While these provisions establish reduced penalties for infanticide (murder of a newborn child by his or her mother) and may seem to contradict international standards calling for increased protection for children based on their vulnerability, they do so in order to take into account that a mother may have impaired judgement and capacity for sound decision-making.

¹¹ Child Rights International Network, *Forms of Violence: Infanticide*. Available at: <http://www.crin.org/violence/search/closeup.asp?inoid=24433> [accessed 9 June 2013].

¹² Section 309A, Penal Code (Malaysia).

¹³ Article 300, Penal Code (Singapore).

2.3.1 Justifications for reduced penalties for infanticide

The Penal Codes in **Indonesia**, the **Philippines** and **Viet Nam** include provisions that reduce penalties for infanticide, for reasons other than the mental state of the mother. For instance, the Penal Code of Viet Nam reduces penalties when infanticide as follows:

“Any mother who, due to strong influence of backward ideology or special objective circumstances, kills her newborn or abandons such baby to death, shall be sentenced to non-custodial reform for up to two years or to between three months and two years of imprisonment.”¹⁴

Article 341 of the **Indonesian** Penal Code states “The mother who, driven by fear of the discovery of her confinement, with deliberate intent takes the life of her child at or soon after its birth, shall, being guilty of infant-manslaughter, be punished by a maximum imprisonment of seven years,” and Article 342 states “The mother who, for the execution of a decision driven by fear of the discovery of her forthcoming confinement, with deliberate intent takes the life of her child at or soon after its birth, shall, being guilty of infanticide, be punished by a maximum imprisonment of nine years.”

The **Philippines** Penal Code provides a defence to infanticide but defines infanticide only as the killing of a child less than 3 days of age. A reduced sentence is possible where the mother or the maternal grandparents kill the child to preserve the mother or family’s dishonour:

“If the crime penalized in this Article be committed by the mother of the child for the purpose of concealing her dishonour, she shall suffer the penalty of *prision correccional* in its medium and maximum periods, and if said crime be committed for the same purpose by the maternal grandparents or either of them, the penalty shall be *prision mayor*.”¹⁵

This provision raises some issues, in that it would appear to reduce the seriousness of the murder of a child when it is committed to evade social stigma. Arguably, provisions that provide for a reduced penalty for infanticide should apply only when the mother can show either that her psychological or mental health has been negatively affected either by the birth of the child or the threat of social stigma.

Recommendation

Consideration should be given to reviewing the laws on infanticide to remove any lawful excuse for infanticide, other than that of mental disturbance due to the birth or other external pressures (**Indonesia**, the **Philippines**, **Thailand** and **Viet Nam**).

2.4 Legislation in ASEAN member States: Emotional violence

General Comment No. 13 issued by the CRC Committee emphasises the importance of including non-physical harm within the definition of violence. The Committee has detailed that non-physical forms of violence include the following:

“all forms of persistent harmful interactions with the child, for example, conveying to children that they are worthless, unloved, unwanted, endangered or only of value in meeting another’s needs; scarring, terrorizing and threatening; exploiting and corrupting; spurning and rejecting; isolating, ignoring and favouritism; denying emotional responsiveness; neglecting mental health, medical and educational needs; insults, name-calling, humiliation, belittling, ridiculing and hurting a child’s feelings; [and] exposure to domestic violence.”

¹⁴ Article 94, Penal Code (Viet Nam).

¹⁵ Article 255, Penal Code (Philippines).

Non-physical forms of violence are not included as criminal offences in the Penal Codes of ASEAN member States, but are criminalized to a limited extent in the Child Acts and Child Protection laws of some States. The following table analyses existing provisions relating to non-physical forms of violence in ASEAN member States. In particular it considers whether provisions relating to non-physical forms of violence are classified as a criminal offence, or whether they trigger a response from the child protection system. The link between non-physical forms of violence and the child protection system is also addressed in the last section of this analysis, which focuses on the child protection system.

Table 2 outlines laws of ASEAN member States related to emotional violence. The table uses the coding system described in the introduction. Green denotes laws that provide a comprehensive definition of non-physical violence and make such conduct a criminal offence. Those laws which address non-physical violence, but not to the extent required by international standards are coded yellow. Countries without provisions addressing non-physical violence are coded red.

Table 2. Laws on emotional violence in ASEAN member States

<p>● Brunei: Section 2(2), Children and Young Persons Order 2006</p> <p>Non-physical violence covered by the law</p> <p>‘Emotional injury’: A child or young person is emotionally injured if there is a substantial and observable impairment of his mental or emotional functioning that is evidenced by among other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development.</p> <p>Consequences</p> <p>Not a criminal offence. Triggers child protection proceedings as child is deemed to be in need of protection</p>
<p>● Cambodia: Article 6, Law on Prevention of Domestic Violence and Protection of Victims 2005. (Note: Cambodia does not have a child protection law.)</p> <p>Non-physical violence covered by the law</p> <p>Torture or cruel acts which include: harassment causing mental, psychological, emotional or intellectual harm; mental, psychological and physical harms exceeding morality and the boundaries of the law.</p> <p>Consequences</p> <p>Domestic violence can be a criminal offence and can trigger child protection proceedings under Article 28.</p>
<p>● Indonesia: Child Protection Law No. 23, 2002; Law Regarding Elimination of Violence in Household No. 23, 2004</p> <p>Non-physical violence covered by the law</p> <p>Article 1.15, Child Protection Law No. 23, 2002, mental violence; Articles 1, 2 and 5, Law Regarding Elimination of Violence in Household No. 23, 2004, cover psychological violence against any person in the household, including children, and negligence</p> <p>Consequences</p> <p>Criminal offence under Article 79 Child Protection Law No. 23, 2002 and Article 45 Law Regarding Elimination of Violence in Household No. 23, 2004.</p> <p>Child victims are entitled to special protection, however this is defined as “dissemination and/or socialisation of the laws and regulations relating to the protection of children from violence or monitoring, reporting and the imposition of penalties as well as the prohibition of using such violence” (Articles 59 and 69, Child Protection Law No. 23, 2002).</p> <p>Victims are entitled to protection from the family, police, district attorney’s office, social institution or another party either temporarily or based on the ruling of the protection instruction of the court (Article 10, Law Regarding Elimination of Violence in Household No. 23, 2004). Breach of protection instruction can trigger arrest (Article 35, Law Regarding Elimination of Violence in Household No. 23, 2004).</p>
<p>● Lao PDR: Law on Development and Protection of Women 2004; Decree on Adoption of Children 2014</p> <p>Non-physical violence covered by law: Article 31, Law on Development and Protection of Women 2004: the use of violence to cause mental impact is an act of any individual in the family that causes damage to the mental health of women and children in the same family, such as: coercion, insults, defamation, scorn [and] putting up obstacles against the performance of different kinds of activities ... especially social activities.</p> <p>Article 56(3), Decree on Adoption of Children 2014: Adoptive parents must not commit a ‘mental...violation’ of their adoptive child.</p>

<p>Note: In December 2014 the National Assembly passed a new law on Preventing and Combatting Violence against Women and Children, and the law is awaiting enactment.</p> <p>Consequences: Article 50, Law on Development and Protection of Women 2004: Any individual committing domestic violence against women and children, as provided in Articles 30, 31 and 32 of this law, shall be re-educated and receive an [official] warning. In a case where the domestic violence constitutes an offence the offender shall be punished according to the Penal Law.</p> <p>Article 74, Decree on Adoption of Children 2014: Violation only results in a civil or criminal penalty if it is prescribed by other laws.</p>
<p>● Malaysia: Sections 17, 30 and 31, Child Act 2001</p> <p>Non-physical violence covered by law: Emotional injury which includes where there is such a conflict between the parent and the guardian that family relationships are seriously disrupted, thereby causing him emotional injury (17(h));</p> <p>Emotional injury occurs if there is substantial and observable impairment of the child’s mental or emotional functioning that is evidenced by ... a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development.</p> <p>Consequences: Criminal offence (see Section 31); Triggers child protection proceedings (Section 30).</p>
<p>● Myanmar: None</p>
<p>● Philippines: Article I, Sections 3 and Articles 6 and 10, Special Protection of Children against Abuse, Exploitation and Discrimination Act 1992</p> <p>Non-physical violence covered by law: Psychological abuse, neglect, cruelty and emotional maltreatment; any act which by deeds of words debases, degrades, or demeans the intrinsic worth and dignity of a child, unreasonable deprivation of basic needs for survival, including food and shelter, failure to give medical treatment resulting in serious impairment to growth or development, incapacity or death (section 3(b))</p> <p>Consequences: A criminal offence under section 10; Triggers child protection proceedings under Article XI, section 28.</p>
<p>● Singapore: Section 5, Children and Young Persons Act 2011</p> <p>Non-physical violence covered by the law: Any action that causes or is likely to cause unnecessary suffering, emotional injury, or any injury to health or development. Any form of neglect, abandonment or exposure that is likely to cause the child or young person physical pain, suffering or injury, or emotional injury, or injury to health or development by neglecting to provide adequate food, clothing, medical aid, lodging, care or other necessities of life for the child or young person.</p> <p>Consequences: Prohibited under Section 5(4) but only if wilful and unreasonable (Section 5(2)); violations could lead to incarceration or fines under Section 5(5); triggers child protection proceedings.</p>
<p>● Thailand: Section 26, Child Protection Act 2003</p> <p>Non-physical violence covered by law: Includes placing a child in physical or mental danger or actions contrary to good morals</p> <p>Consequences: Such behaviour is prohibited under section 26 of the Act and violations are criminalized under section 78 of the Act; triggers child protection proceedings under the Act.</p>
<p>● Viet Nam: Article 2(1)(b) and (c), Domestic Violence, Prevention and Control Law 2007</p> <p>Non-physical violence covered by the law: Not child specific, covers reviling or other intentional acts that offend another persons’ honour or dignity and ‘isolating, driving away or frequently imposing psychological pressures that cause serious consequences’.</p> <p>Consequences: May trigger administrative sanctions (Article 42).</p>

There are no provisions regarding non-physical forms of violence in the criminal or child protection laws in **Myanmar** or **Viet Nam**, though there is some coverage of children in the Domestic Violence Law in Viet Nam in the provisions providing for the protection of adults.

- In **Brunei and Cambodia** definitions of non-physical forms of violence are included in Child Protection Laws (and in the case of Cambodia, the Law regarding Domestic Violence), however non-physical forms of violence are not listed as a specific offence. According to the law in **Brunei**, “A child or young person is emotionally injured if there is substantial and observable impairment of his mental or emotional functioning that is evidenced by, amongst other things, a mental or behavioural disorder,

including anxiety, depression, withdrawal, aggression or delayed development.”¹⁶ It is worth noting that Brunei’s law defines violence in terms of the outcome, rather than the act.

- **Cambodia’s** Law on Prevention of Domestic Violence and Protection of Victims defines “Tortures or cruel acts [to] include: Harassment causing mental/psychological, emotional, intellectual harms to physical persons within the households” in the context of its definition of domestic violence. “Mental/psychological and physical harms” are considered to be those “exceeding morality and the boundaries of law.”¹⁷
- In **Indonesia**, the Child Protection Law includes mental violence in the context defining a child in need of ‘special protection’, but does not define it specifically.¹⁸

The child protection laws in **Malaysia, Singapore** and **Thailand** establish that non-physical forms of violence are offences that carry penalties. According to the Thai Child Protection Act, “no person shall, irrespective of the consent of a child, act as follows: (1) act or omit to act any manner which torture physical or mental condition of the child; (2) wilfully or neglectfully withhold a child under his or her care from things and such manner is likely to harm the physical or mental condition of a child.”¹⁹

Singapore’s Children and Young Person’s Act also specifies that emotional injury constitutes an offence of ill-treatment, though only when it is considered to be ‘wilful’ or ‘unreasonable’:

“Section 5 (2) For the purposes of this Act, a person ill-treats a child or young person if that person, being a person who has the custody, charge or care of the child or young person –

- a) Subjects the child or young person to physical or sexual abuse;
- b) Wilfully or unreasonably does, or causes the child or young person to do, any act which endangers or is likely to endanger the safety of the child or young person or which causes or is likely to cause the child or young person-
 - (i) any unnecessary physical pain, suffering or injury;
 - (ii) any emotional injury; or
 - (iii) any injury to his health or development ...”²⁰

The Special Protection of Children against Abuse, Exploitation and Discrimination Act 1992 of the **Philippines** covers a wide range of acts, including psychological abuse, neglect, cruelty and emotional maltreatment

“(3)(b) ‘Child abuse’ refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

- (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
- (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.”

¹⁶ Section 2, Children and Young Person’s Order 2006 (Brunei).

¹⁷ Article 6, Law on Prevention of Domestic Violence and Protection of Victims 2005 (Cambodia).

¹⁸ Article 1, Child Protection Law 2002 (Indonesia).

¹⁹ Section 26, Child Protection Act 2003 (Thailand).

²⁰ Section 5, Children’s and Young Persons Act 2001 (Singapore).

Malaysia's Child Act (2001) is an example of **good practice** with regard to non-physical forms of violence. The Act both **defines** emotional injury in a reasonably comprehensive way, and specifies that it is an **offence**.

Section 17: "A child is emotionally injured if there is substantial and observable impairment of the child's mental or emotional functioning that is evidenced by, amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development."²¹

Section 31: "(1) Any person who, being a person having the care of a child – (a) abuses, neglects abandons or exposes the child in a manner likely to cause him physical or emotional injury or causes or permits him to be so abused, neglected, abandoned or exposed ... commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding 10 years or to both."²²

Recommendations

- Consider including a comprehensive definition of emotional violence in domestic legislation. This form of violence should be classified as a criminal offence (**Indonesia, Lao PDR, Myanmar and Viet Nam**).
- Ensure that non-physical (emotional) forms of violence which are included in the law are classified as a criminal offence (**Brunei and Cambodia**).

2.5 Legislation in ASEAN member States: Neglect

As discussed in the introduction to this section, neglect is a critical form of violence against children given their particular vulnerability and dependence on adult caretakers. The CRC Committee defines neglect as "the failure to meet children's physical and psychological needs, protect them from danger, or obtain medical birth registration or other services when those responsible for children's care have the means, knowledge and access to do so."²³ It is worth noting that, according to the CRC Committee, whether (absence of) care amounts to neglect depends on a caretaker's "means, knowledge and access." Thus, according to international standards, neglect that is a result of poverty or deprivation is not considered to be violence perpetrated by caretakers, while neglect that occurs when the caretaker has the knowledge, means and access necessary to prevent it is considered to be a form of violence.

In *General Comment No. 13*, the CRC Committee distinguished between five types of neglect:

- **Physical neglect:** "failure to protect a child from harm, including through lack of supervision, or failure to provide the child with basic necessities including adequate food, shelter, clothing and basic medical care."
- **Emotional neglect:** "lack of any emotional support and love, chronic inattention to the child, caregivers being "psychologically unavailable" by overlooking young children's cues and signals, and exposure to intimate partner violence, drug or alcohol abuse."
- **Neglect of children's physical or mental health:** "withholding essential medical care."
- **Educational neglect:** "failure to comply with laws requiring caregivers to secure their children's education through attendance at school or otherwise."
- **Abandonment:** "a practice which is of great concern and which can disproportionately affect, inter alia, children out of wedlock and children with disabilities in some societies."

²¹ Section 17, Child Act 2001 (Malaysia).

²² Section 31, Child Act 2001 (Malaysia).

²³ CRC Committee, *General Comment No. 13*.

Neglect is addressed in both the Penal Codes and Child Protection Laws of ASEAN member States. Generally, the definitions of neglect that constitute an offence within the Penal Code are narrower than definitions that constitute offences in child protection laws. Abandonment, which is an extreme form of neglect, is included as an offence in Penal Codes more frequently than other forms of neglect. Table 3 lists the provision of the Penal Code and laws on child protection that address neglect in each ASEAN member State.

Table 3. Laws on neglect in ASEAN member States

<p>Brunei Penal Code: Section 317 Child Protection Law: Sections 28 and 30, Children and Young Person Order 2006</p>
<p>Cambodia Penal Code: Article 321, 337–338 Child Protection Law: None</p>
<p>Indonesia Penal Code: Article 304–307 Child Protection Law: Articles 1.6, 7, 13, 55 and 57 and 77, Child Protection Law 2002; Articles 7, 9 and 27, Law Regarding Elimination of Violence in Household 2005</p>
<p>Lao PDR Penal Code: Penal Law 2005: Article 127 Child Protection Law: Article 2, Law on Protection of Rights and Interests of Children 2007; Articles 3(6)–(7), 10, 56, 66, 67(2)–(3), 68(3) and 74, Decree on Adoption of Children 2014; Articles 33, 35, 43–45 and 53, Family Law 2008 (as amended).</p>
<p>Malaysia Penal Code: Section 317 Child Protection Law: Section 88 Child Act 2001; Education Act 1996</p>
<p>Myanmar Penal Code: Section 317 Child Protection Law: None</p>
<p>Philippines Penal Code: Article 276, 277 Child Protection Law: Articles 59 and 141, Child and Youth Welfare Code 1974; Sections 3, 10 and 28, Special Protection of Children against Abuse, Exploitation and Discrimination Act 1992.</p>
<p>Singapore Penal Code: Section 317 Child Protection Law: Sections 3 and 5, Children and Young Person’s Act 2011; Section 3 (chapter 51) Compulsory Education Act 2003</p>
<p>Thailand Penal Code: Section 306–308 Child Protection Law: Section 25, Child Protection Act 2003</p>
<p>Viet Nam Penal Code: None Child Protection Law: Article 7, Child Protection, Care and Education Law 2004; Article 12(1)(a) which covers neglect of health, Article 13 which covers abandonment and physical neglect and Article 20 which covers educational neglect, Decree 114/2006/ND-CP on Handling of Administrative Violations in the Area of Population and Children. Article 25(3), Law on Adoption 2010 permits the termination of adoption where adoptive parents “are convicted of one of the offences of deliberately violating their adopted child’s life, health, dignity and honour; [or] maltreating of the adopted child.” Note also Article 37(1) of the Constitution 2013: “Children shall be protected, cared for and educated by the State, family and society; Maltreating, abandoning or abusing children ... or other acts that violate children's rights are prohibited.”</p>

Table 4 analyses the criminal offence of neglect in the Penal Codes and child protection laws of ASEAN member States and assesses whether the State's law criminalizes the different forms of neglect as defined by the CRC Committee.

Table 4. Criminalization of neglect in ASEAN member States

Brunei
<p>Physical neglect: “(1) Any person who, being a person having the care of a child or young person – (a) ...neglects, abandons or exposes him in a manner likely to cause him physical or emotional injury or who causes or permits him to be ..., neglected, abandoned or exposed; ... is guilty of an offence.” Section 28, Children and Young Persons Order 2006.</p> <p>Emotional neglect: Section 28, Children and Young Persons Order 2006</p> <p>Neglect of health: None</p> <p>Educational neglect: None</p> <p>Abandonment: Section 317 of the Penal Code criminalizes abandonment; however the definition of the offence only applies to children under 12 years of age. Also criminalized in relation to children under the age of 14 (Section 28, Children and Young Persons Order 2006).</p>
Cambodia
<p>Physical neglect: “The acts of any person who has authority over a minor of less than 15 (fifteen) years of age to deprive him/her of foods or cares to a certain extent where his/her health is endangered are punishable...” (Article 337, Penal Code). The penalty increases if the offence results in the death of the victim. (Article 338, Penal Code)</p> <p>Emotional neglect: None</p> <p>Neglect of health: Article 337, Penal Code, but only up to age 15. Conviction can result in a fine and imprisonment of 2–5 years.</p> <p>Educational neglect: None</p> <p>Abandonment: Abandonment of a minor under the age of 15 is punishable by imprisonment of between 1 and 5 years and a fine if the abandonment puts the health or the security of the minor in danger (Article 321, Penal Code). Incitement to abandonment is also an offence whether to abandon an already born or still to be born child (Article 330, Penal Code).</p>
Indonesia
<p>Physical neglect: “Neglecting a child with the result that the child falls ill or suffers physically, mentally or socially” is an offence (Article 77, Child Protection Law 2002).</p> <p>Emotional neglect: Article 77, Child Protection Law 2002. Anyone committing a psychic act of violence within the scope of Article 5.b shall be punished (Article 45, Law Regarding Elimination of Violence in Household 2004).</p> <p>Neglect of health: Article 77, Child Protection Law 2002.</p> <p>Educational neglect: None</p> <p>Abandonment: “The person who deliberately brings or leaves someone, to whose sustenance, nursing or care he is obliged by virtue of law applicable to him or by virtue of an agreement, in a helpless state, shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of three hundred rupiahs.” (Article 304, Penal Code) The Penal Code also stipulates a higher penalty for abandonment of those under 7 (Article 305, Penal Code). If the mother, driven by fear or discovery of the birth of her child abandons the child, the maximum sentence shall be mitigated by half (Article 308, Penal Code).</p>

<p>Lao PDR</p> <p>Physical neglect: None</p> <p>Emotional neglect: None</p> <p>Neglect of health: None</p> <p>Educational neglect: None</p> <p>Abandonment: “Any person who intentionally abandons a child shall be punished by six months to two years imprisonment and fined from 600,000 Kip to 7,000,000 Kip” (Article 88, Law on Protection of Rights and Interests of Children 2007). The penalty increases if the crime results in the death of the child. “If the abandonment results in disability or death to the child, [such person] shall be punished by imprisonment from three years to seven years and fined from 3,000,000 Kip to 7,000,000 Kip.”</p>
<p>Malaysia</p> <p>Physical neglect: “(1) Any person who, being a person having the care of a child or young person – (a) abuses, assaults, neglects, abandons or exposes him in a manner likely to cause him physical or emotional injury or who causes or permits him to be abused, assaulted, neglected, abandoned or exposed; or... is guilty of an offence” (Section 31, Child Act 2001).</p> <p>Emotional neglect: Section 31, Child Act 2001</p> <p>Neglect of health: None</p> <p>Educational neglect: Education Act 1996 provides that parents who fail to send their children to compulsory primary school are liable to fine not exceeding RM5000 or imprisonment not exceeding 6 months or both</p> <p>Abandonment: “Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, exposes or leaves such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both’ (Article 317, Penal Code) any person who ‘abandons .. the child in a manner likely to cause him physical or emotional injury or causes or permits him to be so abandoned” shall be fined or imprisoned for a term not exceeding 10 years (Article 31, Child Act 2001).</p>
<p>Myanmar</p> <p>Physical neglect: None</p> <p>Emotional neglect: None</p> <p>Neglect of health: None</p> <p>Educational neglect: None</p> <p>Abandonment: Criminalized (Section 317, Penal Code) but the offence only applies to children “under 12 years of age.”</p>
<p>Philippines</p> <p>Physical neglect: “There is physical neglect when the child is malnourished, ill clad and without proper shelter” (Article 141, Child and Youth Welfare Code 1974). Child abuse refers to the maltreatment, whether habitual or not, of the child which includes physical neglect. Any person who commits any act of child abuse commits criminal offence (Sections 3(b) and 10, Special Protection of Children against Abuse, Exploitation and Discrimination 1992).</p> <p>Emotional neglect: Sections 3(b) and 10, Special Protection of Children against Abuse, Exploitation and Discrimination 1992</p> <p>Neglect of health: Child abuse includes “failure to give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.” Sections 3(b) and 10, Special Protection of Children against Abuse, Exploitation and Discrimination 1992</p> <p>Educational neglect: “The same penalty should be imposed upon parents who shall neglect their children by not giving them the education which their station in life require and financial conditions permit.” Article 277, Penal Code.</p>

<p>Abandonment: Article 276, Penal Code establishes penalties for abandonment, which apply to all minors but imposes more severe penalties if the child is less than 7 years of age.</p>
<p>Singapore</p> <p>Physical neglect: “The parent or guardian...shall be deemed to have neglected the child or young person in a manner likely to cause him physical pain, suffering or injury or emotional injury or injury to his health or development if the parent or guardian wilfully or unreasonably neglects to provide adequate food, clothing, medical aid, lodging, care or other necessities of life for the child or young person.” Section 5, Children and Young Persons Act 2011.</p> <p>Emotional neglect: Section 5, Children’s and Young Person’s Act 2011 (but only if wilful and unreasonable (Section 5(2)(b)).</p> <p>Neglect of health: Section 5, Children’s and Young Person’s Act 2011 (but only if wilful and unreasonable (Section 5(2)(b)).</p> <p>Educational neglect: Under Section 3, Compulsory Education Act 2003, a child shall attend regularly as a pupil at a national primary school. Should a child fail to do so, parents could be found guilty of an offence punishable under Section 7.</p> <p>Abandonment: Ill-treatment of a young person includes “c) wilfully or unreasonably neglects, abandons or exposes the child or young person with full intention of abandoning the child or young person or in circumstances that are likely to endanger the safety of the child or young person.”(Section 5(c), Children and Young Persons Act 2011). Anyone found guilty of an offence under Section 5, Children and Young Persons Act may face imprisonment or fines upon conviction.</p> <p>Article 317, Penal Code, criminalizes abandonment of children age 12 with a more severe penalty of up to 7 years imprisonment and/or a fine.</p>
<p>Thailand</p> <p>Physical neglect: “The guardian shall not...(3) wilfully or neglectfully withhold a child from things that are necessary for the livelihood or health of a child and such manner is likely to harm physical or mental condition of a child; (4) treat a child in any manner which obstructs his or her growth or development...” (Section 25, Child Protection Act 2003).</p> <p>Emotional neglect: Section 25, Child Protection Act 2003</p> <p>Neglect of health: Section 25, Child Protection Act 2003</p> <p>Educational neglect: None</p> <p>Abandonment: The penal code prohibits the act of “abandon[ing] a child not over nine years of age in any place, with intent to wholly abandon such child in a manner so that such child shall be without a person to take care of him.” (Articles 306 and 307, Penal Code). Article 306, Penal Code, stipulates higher penalties according to the harm experienced by the victims; serious physical injury, or death. Article 307 provides an increased penalty if the offender is the child’s mother or father. Penalties are also applied to “...any person who being charged with the surveillance of a child, leaves it unguarded so that by so doing the child itself or others may be endangered.” (Article 491, Penal Code).</p> <p>Finally, “The guardian shall not ... (1) neglect a child, with an intention not to take the child back, at a nursery or infirmary or with a person contracted to look after a child or at a public or any other places; (2) abandon a child at any place without appropriate welfare protection or raising.” (Section 25, Child Protection Act 2003).</p>
<p>Viet Nam</p> <p>Physical neglect: Article 13, Decree 114/2006/ND-CP on Handling of Administrative Violations in the Area of Population and Children.</p> <p>Article 37(1), Constitution 2013: “Children shall be protected, cared for and educated by the State, family and society.... Harassing, persecuting, maltreating... or abusing children... or other acts that violate children's rights are prohibited.”</p> <p>Article 25(3), Law on Adoption 2010 refers to “the offences of deliberately violating their adopted child’s life, health, dignity and honour; [or] maltreating of the adopted child’ but does not appear to prescribe these acts as offences under this law.”</p>

Emotional neglect: None

Neglect of health: Article 12I(a), Decree 114/2006/ND-CP on Handling of Administrative Violations in the Area of Population and Children; Article 25(3), Law on Adoption 2010.

Educational neglect: Article 7(8), Law on Child Protection, Care and Education 2004, prohibits ‘Obstructing children’s study’. Article 20, Decree 114/2006/ND-CP on Handling of Administrative Violations in the Area of Population and Children.

Abandonment: Article 7(1), Law on Child Protection, Care and Education 2004, addresses abandonment. Article 37(1), Constitution 2013.

2.5.1 Abandonment

Laws in all ASEAN member States contain provisions that prohibit abandonment; however, in six States, provisions only partially address this form of neglect. For instance, the Penal Codes in **Brunei, Malaysia, Myanmar** and **Singapore**²⁴ all include definitions of abandonment; but these definitions only apply to children under age 12. Similarly, the Penal Code in **Cambodia** applies only to children under age 15. **Lao PDR’s** Law on the Protection of the Rights and Interests of Children also has an incomplete provision, which only proscribes ‘intentional abandonment’.

Indonesia, the Philippines, Thailand and **Viet Nam** have strong provisions that address abandonment as an offence. In the **Philippines**, the Penal Code establishes penalties for abandonment, and imposes more severe penalties if the child is under age 7.²⁵ **Thailand** sets a similar threshold at age 9: “Whoever, abandons a child not over nine years of age in any place, with intent to wholly abandon such child in a manner so that such child shall be without a person to take care of, shall be punished with imprisonment not exceeding three years or fined not exceeding six thousand Baht, or both.”²⁶ However the Code also applies to all minors through a broader provision on care.²⁷ **Indonesia’s** Penal Code provides a good example of a provision penalizing abandonment, given that it focuses on the vulnerability of the victim and the relationship of dependence upon the caretaker:

“The person who deliberately brings or leaves someone, to whose sustenance, nursing or care he is obliged by virtue of law applicable to him or by virtue of an agreement, in a helpless state, shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of three hundred rupiahs.”

The Penal Code also stipulates a higher penalty for abandonment of those under age 7.²⁸

2.5.2 Physical and emotional neglect

Laws in **Lao PDR, Myanmar** and **Viet Nam**, do not address physical forms of neglect as an offence. **Cambodia** does have a provision on physical neglect in its Penal Code, but it only applies to minors under age 15.²⁹ This provision does not, at the present time, meet the international standard as set out in CRC Article 1, which defines a child is anyone under age 18. While it is likely that children under age 15 may be more vulnerable than older children, criminalization of violent acts should apply to all under age 18, not just young children.

Four ASEAN member States – **Cambodia, Lao PDR, Myanmar** and **Viet Nam** – do not appear to include provisions on emotional neglect in their laws. It is worth noting that States that lack provisions criminalizing physical or emotional neglect may nevertheless have provisions within their child protection laws or family laws to protect children from such acts. For instance, while **Lao PDR’s** Law on the Protection of Rights and Interests

²⁴ Section 317, Penal Code (Singapore).

²⁵ Article 276, Penal Code (Philippines).

²⁶ Article 306, Penal Code (Thailand).

²⁷ Article 308, Penal Code (Thailand).

²⁸ Articles 304 and 305, Penal Code (Indonesia).

²⁹ Article 337, Penal Code (Cambodia).

of Children does not contain a provision that makes neglect a criminal offence, the definition of neglect in the Law is very comprehensive, and perhaps comes closest in breadth to the definitions developed by the Committee. Article 2 of the Law, defines neglected children as:

“children whose parents or guardians do not provide care, education, encouragement, and conditions necessary for the development of the children, such as: health, sufficient and hygienic nutrition, safe shelter, education, and moral development, based on the economic conditions of the family; Abandoned children means children whose parents or guardians do not provide guardianship, care and upbringing.”³⁰

Consideration could be given to strengthening this provision by the introduction of criminal penalties for serious physical and emotional neglect.

2.5.3 Neglect of health and education

Much of health and educational neglect in the ASEAN region is due to poverty and low levels of parental education. If children are to have a realistic chance of the right to health and education, however, provisions establishing neglect of health and educational neglect as offences are necessary. Such provisions are not found in the laws of all ASEAN member States. **Brunei, Lao PDR, Myanmar, and Viet Nam** lack provisions that directly prohibit neglect of health.³¹ **Indonesia, Singapore and Thailand** have provisions relating to neglect of health but these are contained in the same provisions that prohibit physical and emotional neglect, and are not detailed. Neglect of health seriously undermines children’s physical well-being and basic survival.

In **Singapore**, Section 5(3) of the Children and Young Persons Act 2011 states that the parent or guardian of a child could be found guilty of an offence if there is neglect in providing adequate food, clothing, medical aid, lodging, care or other necessities of life for the child or young person.

Only the **Philippines** out of all the ASEAN States addresses both neglect of health and educational neglect (as defined by the CRC Committee) as a criminal offence. “Failure to give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death” appears to be a criminal offence under the Special Protection of Children against Abuse, Exploitation and Discrimination 1992, section 3(b) and 10.³² The Penal Code also criminalizes educational neglect, stating that “The same penalty should be imposed upon parents who shall neglect their children by not giving them the education which their station in life require and financial conditions permit [sic].”³³ It is important that States strengthen their legal provisions on neglect to include educational neglect as this is an important element of neglect impacting on children and, as discussed in the introduction of this section, is considered to be a form of violence by the CRC Committee.

Singapore has a very clear provision relating to education: the Compulsory Education Act implemented in 2003 states that if a child of compulsory school age fails to attend regularly as a pupil at a national primary school as required, each parent of the child shall be guilty of an offence. Any person who is guilty of an offence shall be

³⁰ Article 2, Law on Protection of Rights and Interests of Children (Lao PDR).

³¹ Note that while the Lao Family Law 2008 (as amended) imposes obligations on parents to educate their children, protect their rights and interests and care for their children (see articles 32, 33 and 35), violations of these obligations may only be criminally prosecuted pursuant to the provisions of other Lao laws (Article 53).

³² The Act is not entirely clear as to whether the acts of endangering health as specified in section 3 (b) are criminalized, as Article 6, section 10 provides that “(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child’s development including those covered by Article 59, Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.” The endangerment of health is, however, mentioned in Article 1 section 3 (b). This may be an issue of translation, or the correct interpretation may be that the Act only makes endangerment of health a matter calling for child protection measures.

³³ Article 277, Penal Code (Philippines).

liable on conviction to a fine not exceeding S\$5,000 or to imprisonment for a term not exceeding 12 months or to both.³⁴

Recommendations

- Consideration should be given to including physical neglect of a child as a criminal offence (**Lao PDR, Myanmar and Viet Nam**³⁵).
- Consideration should be given to including emotional neglect as an offence in domestic legislation (**Cambodia, Lao PDR, Myanmar and Viet Nam**).
- Consideration should be given to the following:
 - a) Including neglect of health as a criminal offence (**Brunei, Cambodia, Lao PDR, Malaysia, Myanmar and Viet Nam**³⁶);
 - b) Including educational neglect as a criminal offence (**Brunei, Cambodia, Indonesia, Lao PDR, Myanmar and Thailand**); and
 - c) Increasing the age in criminal provisions on abandonment, so that the offence applies to all children under age 18. (**Brunei, Cambodia, Malaysia, Myanmar and Singapore**).
- The Law on the Protection of the Rights and Interests of Children has a comprehensive definition of emotional neglect, but consideration should be given to classifying neglect as a criminal offence (**Lao PDR**).
- The definition of abandonment in the Law on the Protection of the Rights and Interests of Children should be expanded to include unintentional forms of abandonment (**Lao PDR**).

2.6 Legislation in ASEAN member States: Incest

This section addresses the criminalization of incest, the most serious form of sexual abuse likely to occur within the home, and one that many States in the world have been slow to criminalize. Incest has traditionally been defined as sexual intercourse with a family member. If all children in the family are to be protected, the definition needs to be wider to include sexual penetration of boys as well as girls and in the context of both heterosexual and homosexual acts. Intra-familial sexual abuse, which does not fall within the definition of incest is nearly always charged as a general criminal offence which does not discriminate between a family perpetrator and a ‘stranger’ perpetrator. These offences are, therefore, examined in Chapter 10.

Incest is a particularly damaging crime of violence with the potential to cause long-term physical and emotional harm to children. Table 5 indicates whether incest is contained as an offence in the Penal Code in each ASEAN member State, and which sexual acts are included within the definition of incest.

Table 5. Legal provisions on incest in ASEAN member States

Brunei: Article 377A, Penal Code
<ul style="list-style-type: none"> ● Definition: “Whoever — <ol style="list-style-type: none"> (a) being a male has sexual intercourse with a female who to his knowledge is his grandmother, granddaughter, daughter, sister, half-sister, or mother; or (b) being a female has sexual intercourse with a male who to her knowledge is her grandfather, grandson, son, brother, half-brother, or father, is said to commit incest and shall be punished with imprisonment for a term up to 10 years and a fine.” It is not clear whether a child can commit the offence of incest. ● Status: Covers both boys and girls in heterosexual incest, does not cover homosexual incest.
Cambodia: ● No provision on incest within the Penal Code

³⁴ Sections 3 and 7, Compulsory Education Act 2003.

³⁵ At the present time it is an administrative offence but not a criminal offence to physically neglect a child: cf. Article 13, Decree 114/2006/ND-CP on Handling of Administrative Violations in the Area of Population and Children.

³⁶ At the present time it is an administrative offence to neglect the health or education of a child and not a criminal offence, Articles 13 and 20, Decree 114/2006/ND-CP on Handling of Administrative Violations in the Area of Population and Children.

<p>Indonesia: Article 294, Penal Code; Article 8, Law Regarding the Elimination of Violence in Household 2004</p> <ul style="list-style-type: none"> ● Definition: The Penal Code criminalizes commission of “an obscene act by a father with his under-age child, step child or foster child.” Article 8 (2004) does not mention of incest, but criminalizes forced sexual intercourse carried out against an individual living within the scope of the household. ● Status: Article 294 appears to cover both boys and girls and heterosexual and homosexual incest but this depends upon interpretation of ‘obscene acts’. The definition does not explicitly mention incest and does not cover any relative of the child other than the father. Maximum term of imprisonment is 7 years. Article 8 (2004) appears to cover both boys and girls and heterosexual and homosexual intercourse but requires ‘force’.
<p>Lao PDR: Article 135, Penal Law</p> <ul style="list-style-type: none"> ● Definition: “Any person engaging in sexual intercourse with a biological parent, parent by adoption, step-parent, grandparent, parent in law, biological child, adopted child, step-child, grandchild or sibling shall be punished.” ● Status: Covers both boys and girls and heterosexual and homosexual incest. Low penalty.
<p>Malaysia: Section 376A, Penal Code</p> <ul style="list-style-type: none"> ● Definition: “A person is said to commit incest if he or she has sexual intercourse with another person whose relationship to him or her is such that he or she is not permitted, under the law, religion, custom or usage applicable to him or her, to marry that other person” NB This offence can be committed by the child but a female under 16 and a male under 13 shall be deemed unable to consent and therefore have a defence to such a charge (Penal Code, Article 376B(2) and explanation). ● Status: Covers both boys and girls and heterosexual and homosexual incest.
<p>Myanmar: Section 377, Penal Code</p> <ul style="list-style-type: none"> ● Definition: “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished ...” No specific mention of child in the definition and not clear whether the child would also be charged. ● Status: A very general offence which appears to have wide coverage but it is unclear who is covered as there is no definition of ‘order of nature’.
<p>Philippines: Article 266A and B, Penal Code</p> <ul style="list-style-type: none"> ● Definition: Rape is committed “by a man who shall have carnal knowledge of a woman a) though force or intimidation; c) by means of a fraudulent machination or grave abuse of authority; By means of fraudulent machination or grave abuse of authority; and (d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. Rape is also committed by any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault 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.” and the penalty will be increased “when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim” ● Status: Can be committed by “any person”, against “another person” regardless of sex and/or gender.
<p>Singapore: Section 376G, Penal Code</p> <ul style="list-style-type: none"> ● Definition: Any man of or above 16 who sexually penetrates the vagina or anus of a woman (B) with a part of A’s body (other than A’s penis) or anything else; or penetrates the vagina, anus or mouth of a woman (B) with his penis with or without B’s consent where B is to A’s knowledge A’s grand-daughter, daughter, sister, half-sister, mother or grandmother (whether such relationship is or is not traced through lawful wedlock), shall be guilty of an offence. Any woman of or above the age of 16 years who, with consent, permits her grandfather, father, brother, half-brother, son or grandson (whether such relationship is or is not traced through lawful wedlock) to penetrate her in the manner described above knowing him to be her grandfather, father, brother, half-brother, son or grandson, as the case may be, shall be guilty of an offence.

<ul style="list-style-type: none"> ● Status: Only covers heterosexual incest between a man and a girl up to the age of 16 after which a girl may be treated as a principal. Boys over 16 are also criminalised if they commit an offence under section 376G Penal Code.
Thailand: ● No provision on incest within the Penal Code
Viet Nam: Article 150, Penal Code
<ul style="list-style-type: none"> ● Definition: “Those who have sexual intercourse with other persons of direct blood lines, with sisters or brothers born of common parents, with half-brothers or half-sisters, shall be sentenced to between six months and five years of imprisonment.” The Penal Code does not clarify whether the child would also be charged with an offence. ● Status: The definition is wide enough to cover both boys and girls and heterosexual and homosexual acts but this depends upon the interpretation of the provision.

At present the Penal Codes in **Cambodia, Indonesia, the Philippines and Thailand** do not contain a specific offence of incest. However, Article 294 of Indonesia’s Penal Code would appear to cover incest between a father and his child, dependent upon how ‘obscene acts’ are defined by the Courts. Although the Philippines does not have a specific offence of incest, the definition of rape is wide enough to include incestuous acts. Article 266B(1) of the Philippines Revised Penal Code provides that “when the victim is under eighteen (18) years of age, and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim” then the penalty is death (commuted to *reclusion perpetua* as the death penalty is no longer applicable).

Myanmar’s definition of incest also suffers from being very general. It is an offence for “any man, woman or animal” to commits sexual acts “against the order of nature”³⁷ with “another person whose relationship to him or her is such that she or he is not permitted, under the law, religion, custom or usage applicable to him or her, to marry that other person.”³⁸ It is unclear whether this was intended originally to cover incest or whether the intention was to cover homosexual acts. While the provision could cover incest, it lacks clarity as to the extent of the relationships which would be covered.

At the other end of the spectrum, the definition of incest is rather narrow in the case of some States. **Brunei, Lao PDR, Malaysia, Singapore and Viet Nam** have the widest definitions, though in the case of Singapore the definition only applies to girls under age 16. **Lao PDR’s** definition of incest includes sexual intercourse with a child by a “parent by adoption, step-parent, grand-parent or parent in law.” Other States would benefit by replicating this provision and including non-biological child/parent relationships within their definition. Of the six ASEAN member States with provisions on incest, four have gender neutral provisions. However the laws in Singapore and Brunei distinguish between genders. In **Brunei**, the construction of the provision applies equally to men committing acts against women (girls) and women committing acts against men (boys), however the provisions are constructed in a heterosexual manner and do not address acts of incest committed between members of the same sex.

Last, it is not clear from the provisions on incest that currently exist, whether a child under age 18 is to be treated as a victim or whether he or she could be charged: either as a principal or as an accessory to an offence of incest. Article 376B of the Penal Codes of Malaysia provides explicitly that a female child under 16 and a male child under 13 cannot consent to incest and therefore cannot be charged. Article 294 of the Penal Code of Singapore makes it clear that a girl or boy engaged in incest can be charged as a principal from age 16. In other States, the law appears to be silent on this issue. CRC Article 19 requires that all children under age 18 should be protected from maltreatment and sexual exploitation, and while it has not made a clear statement on the issue of incest, the CRC Committee would undoubtedly require that the child be treated as a victim when a family member is charged with incest. Incest between sibling children requires careful handling, but in these cases, it is frequently better to treat this as a child abuse issue rather than to criminalize it, unless there is a clear abuse of authority by an older child against a younger child.

³⁷ Section 377, Penal Code (Myanmar).

³⁸ Section 376A, Penal Code (Malaysia).

Recommendations

- Where a State does not already have a specific offence of incest, it should consider enacting such a provision (**Cambodia, Indonesia, the Philippines and Thailand**).
- Consider reviewing existing provisions on incest with a view to expanding the definition to specifically include sexual intercourse or sexual penetration by:
 - a) step-parents and adoptive parents (**all ASEAN member States³⁹ other than Lao PDR**); and
 - b) Siblings (**Indonesia, Malaysia and Myanmar**).
- Consider reviewing existing provisions on incest with a view to expanding the definition to specifically include homosexual acts of penetration (**all ASEAN member States other than Lao PDR**).
- Clarify in legislation that a child under age 18 who is the subject of incest shall not be considered to be either a principal or accessory to the offence (**all ASEAN member States**).

2.7 Civil remedies in domestic laws related to violence in the home/family in ASEAN member States

While the analysis has focussed on laws prohibiting violence, and particularly criminalization of violence, civil remedies and responses are fundamentally critical to protecting children against violence. Furthermore, CRC Article 39 provides that “States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts.” Article 19(2) holds that States must ensure that effective systems of “identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment” are in place.⁴⁰

Because this analysis examines laws which address violence against children rather than the child protection systems, it does not include an in depth assessment of the child protection response set out in each country’s law. However in order to assess the adequacy of laws on violence against children, it is critical to understand whether various forms of violence ‘trigger’ a child protection response.

Table 6 assesses the child protection mechanisms for each of the categories of violence analysed in this section: physical violence; emotional (non-physical) violence; sexual violence; and neglect. Where a response (or partial response) is included in the law, the relevant article is indicated in the chart.

Table 6. Child protection response to forms of violence in ASEAN member States

Brunei: Children and Young Persons Order 2006	
● Physical violence	Section 2(a), 2 (b)
● Emotional violence	Section 2(a), 2 (b)
● Sexual violence	Section 2(a), 2 (b)
● Neglect/abandonment	Section 2 (c) – 2(f)
Cambodia: Law on Prevention of Domestic Violence and Protection of Victims 2005	
● Physical violence	Articles 3, 5
● Emotional violence	Articles 3, 6
● Sexual violence	Articles 3, 7
● Neglect/abandonment	None

³⁹ Indonesia prohibits forced sexual intercourse between a wide range of household members but the offence relates only to ‘forced’ sexual intercourse, whereas incest has a wider definition.

⁴⁰ Article 19(2), CRC.

Indonesia: Child Protection Law 2002	
● Physical violence	Article 59
● Emotional violence	Article 59
● Sexual violence	Article 59
● Neglect/abandonment	Article 59
Lao PDR: Law on the Protection of the Rights and Interests of Children 2007; Law on the Development and Protection of Women 2004; Decree on Adoption of Children 2014; Amended Family Law 2008	
● Physical violence	Article 2 (2007); Article 32 (2008); potentially Article 10 (2014)
● Emotional violence	Article 31 (2004); potentially Article 10 (2014) and Article 32 (2008)
● Sexual violence	Article 2 (2007); potentially Article 10 (2014) and Article 32 (2008)
● Neglect/abandonment	Article 2 (2007); Article 10 (2014); potentially Article 32 (2008)
Malaysia: Child Act 2001	
● Physical violence	Section 17(a) – 17(b)
● Emotional violence	Section 17(a) – 17(b)
● Sexual violence	Section 17(a) – 17(b)
● Neglect/abandonment	Section 17(c) – 17(f)
Myanmar: Child Law 1993	
● Physical violence	Section 32(d)
● Emotional violence	Section 32(d)
● Sexual violence	Section 32(d)
● Neglect/abandonment	None
Philippines: Child and Youth Welfare Code 1974; Special Protection of Children against Abuse, Exploitation and Discrimination 1992	
● Physical violence	Article 6 section 10 (1992)
● Emotional violence	
● Sexual violence	
● Neglect/abandonment	Article 4(a) (1974)
Singapore: Children and Young Persons Act 2011	
● Physical violence	Sections 4(d) and 5(1) and (2)
● Emotional violence	Sections 4(d) and 5(2)
● Sexual violence	Sections 4(d), 5(1) and 5(2)
● Neglect/abandonment	Sections 4(b), 4(c), 4(e) and 5
Thailand: Child Protection Act 2003	
● Physical violence	Section 25(4)
● Emotional violence	Section 25(4)
● Sexual violence	Section 25(4)
● Neglect/abandonment	Section 32(2)

Viet Nam: Child Protection, Care and Education Law 2004; Domestic Violence Prevention and Control Law 2007; Law on Adoption 2010; Decision Approving the Scheme on Community-Based Care 2013; Decree Regulating the Social Assistance Policy for Social Protection Beneficiaries 2013	
● Physical violence	Article 26 and 36 (2004); Articles 20 and 21 (2007)
● Emotional violence	banning contact; Article 25(3) (2010)
● Sexual violence	Article 26, 36 and 40 (2004); Articles 20 and 21 (2007) banning contact
● Neglect/abandonment	Article 26, 36, 40 and 41 (2004); Article 25(3) (2010)

All four forms of violence adequately trigger a protection response in **Brunei, Indonesia, Malaysia** and the **Philippines**. In **Myanmar, Thailand** and **Viet Nam**, physical violence is partially included in the child protection laws, and these laws lack (satisfactory) provisions on emotional violence at present. Laws in **Myanmar** and **Thailand** would also benefit from stronger provisions on sexual violence. Additionally, laws in **Cambodia, Myanmar** and **Viet Nam** do not at present establish clearly that all forms of neglect should trigger a child protection response.

Recommendation

It is recommended that States should review their legislation and ensure that all forms of violence are specifically contained within the law. They should enact provisions to provide protection to child victims of all forms of violence discussed in this analysis.

Viet Nam has a weak provision, which could be read to cover all forms of neglect, though this is not clear. Article 26(2) of the Law on Child Protection, Care and Education Law 2004 provides: "All acts of infringing upon children's life, body, dignity and honor shall be handled in time and strictly according to law provisions." Article 36(1) headed 'Responsibility of Law Defending Bodies', provides that their role is: "To protect or coordinate with the concerned agencies and organizations in the protection of, children's legitimate rights and interests; to take initiative in preventing and promptly detecting, stopping and handling acts of violating the legislation on child protection, care and education." This lacks clarity and does not specify what action must be taken, by whom, and in what circumstances.

Article 40 provides a little more clarity for certain, restricted groups of children. It indicates that a child protection intervention or response must include:

"orphans having no one to rely on, abandoned children; defective and disabled children; children being victims of toxic chemicals; children infected with HIV/AIDS; children doing hard or hazardous jobs or contacting noxious substances; children working far from their families; street children; sexually-abused children; children addicted to narcotics and juvenile offenders."

This definition does not however appear to trigger the same child protection response where a child is being neglected, or subject to physical or emotional violence.

The **Malaysia** Child Act provides an example of **good practice** for States attempting to develop stronger provisions on protecting children from violence. The Malaysia Child Act thoroughly addresses (including through comprehensive definitions) physical, emotional and sexual violence, and abandonment and neglect. The Act applies not only to children who have experienced violence, but to children who face a 'substantial risk' of exposure to violence. It provides protection when the child's parents have failed to protect him or her from injury, abuse or the risk of injury or abuse (as well as when they have subjected him or her to injury, abuse, and so on). Finally, the Act contains comprehensive definitions of abuse, injury and neglect and refers directly to criminal offences that should trigger a child protection response. The full text of the act is available in the box below.

17. (1) Malaysia Child Act

A child is in need of care and protection if—

- (a) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused by his parent or guardian or a member of his extended family;
 - (b) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused and his parent or guardian, knowing of such injury or abuse or risk, has not protected or is unlikely to protect the child from such injury or abuse;
 - (c) the parent or guardian of the child is unfit, or has neglected, or is unable, to exercise proper supervision and control over the child and the child is falling into bad association;
 - (d) the parent or guardian of the child has neglected or is unwilling to provide for him adequate care, food, clothing and shelter;
 - (e) the child—
 - (i) has no parent or guardian; or
 - (ii) has been abandoned by his parent or guardian and after reasonable inquiries the parent or guardian cannot be found, and no other suitable person is willing and able to care for the child;
 - (f) the child needs to be examined, investigated or treated—
 - (i) for the purpose of restoring or preserving his health; and
 - (ii) his parent or guardian neglects or refuses to have him so examined, investigated or treated;
 - (g) the child behaves in a manner that is, or is likely to be, harmful to himself or to any other person and his parent or guardian is unable or unwilling to take necessary measures to remedy the situation or the remedial measures taken by the parent or guardian fail;
 - (h) there is such a conflict between the child and his parent or guardian, or between his parents or guardians, that family relationships are seriously disrupted, thereby causing him emotional injury;
 - (i) the child is a person in respect of whom any of the offences specified in the First Schedule or any offence of the nature described in sections 31, 32 and 33 has been or is suspected to have been committed and his parent or guardian—
 - (i) is the person who committed such offence or is suspected to have committed such offence; or
 - (ii) has not protected or is unlikely to protect him from such offence;
 - (j) the child is—
 - (i) a member of the same household as the child referred to in paragraph (i); or
 - (ii) a member of the same household as the person who has been convicted of the offence referred to in paragraph (i), and appears to be in danger of the commission upon or in respect of him of a similar offence and his parent or guardian—
 - (aa) is the person who committed or is suspected to have committed the offence;
 - (bb) is the person who is convicted of such offence; or
 - (cc) is unable or unwilling to protect him from such offence;
 - (k) the child is allowed to be on any street, premises or place for the purposes of—
 - (i) begging or receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale; or
 - (ii) carrying out illegal hawking, illegal lotteries, gambling or other illegal activities detrimental to the health and welfare of the child.
- (2) For the purposes of this Part, a child is—
- (a) physically injured if there is substantial and observable injury to any part of the child's body as a result of the non-accidental application of force or an agent to the child's body that is evidenced by, amongst other things, a laceration, a contusion, an abrasion, a scar, a fracture or other bone injury, a

dislocation, a sprain, hemorrhaging, the rupture of a viscus, a burn, a scald, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth;

- (b) emotionally injured if there is substantial and observable impairment of the child's mental or emotional functioning that is evidenced by, amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development;
- (c) sexually abused if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of—
- (i) any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance; or
 - (ii) sexual exploitation by any person for that person's or another person's sexual gratification.

2.8 Recommendations for law reform: Child abuse

Recommendations

- Consider reviewing the current child protection law so that a child protection response is triggered (which may involve criminal prosecution or civil action) when there is:
 - Physical violence against a child (**Myanmar, Thailand and Viet Nam**);
 - Emotional forms of violence against children (**Myanmar, Lao PDR, Singapore and Viet Nam**);
 - Sexual abuse of children (**Myanmar, Thailand and Viet Nam**); and
 - Neglect (**Cambodia, Myanmar and Viet Nam**).

Table 7. Report card: child abuse legislation in ASEAN member States

	Emotional abuse defined in law	Legal provisions prohibit neglect	Legal provisions criminalise incest	Offences trigger child protection response
Brunei	●	●	●	●
Cambodia	●	●	●	●
Indonesia	●	●	●	●
Lao PDR	●	●	●	●
Malaysia	●	●	●	●
Myanmar	●	●	●	●
Philippines	●	●	●	●
Singapore	●	●	●	●*
Thailand	●	●	●	●
Viet Nam	●	●	●	●

* Singapore has been rated as green as it fulfills three out of four categories fully. However, emotional abuse only triggers a child protection response where the actions of the parent or carer are willful or unreasonable. It is recommended that these terms should be reviewed as damage to a child should not be dependent upon the intention of the adult.

Chapter 3. Domestic Violence

3.1 Context: Understanding domestic violence

Domestic violence, commonly referred to as violence in the home or violence between family members, is one of the most pervasive forms of violence affecting children, and occurs in all cultures and societies. It is also historically one of the most unrecognized and unreported forms of violence. The term incorporates acts of violence perpetrated by one member of a family or household on another. While domestic violence is often understood to refer to violence perpetrated against cohabiting partners, it also includes violence directed at other members of the household such as children, domestic workers or elderly members of the family. Further, the term is also understood to incorporate violence directed at previous partners and spouses including those no longer living in the same house.¹

Acts of domestic violence may include: physical violence, especially in the context of punishment; verbal and emotional abuse; sexual coercion and rape; and other various controlling behaviours, such as isolating a partner from friends and family members and restricting their access to financial and other resources, information and assistance.² Children who witness acts of domestic violence are also generally taken to be victims of the practice, requiring protection and redress under the law.

Exposure to domestic violence violates a wide range of human rights contained in international instruments including the right to life; the right to health; the right to security of person; protection of the family; and prohibitions against torture or cruel, inhuman or degrading treatment or punishment and slavery.

This chapter reviews national laws that address domestic violence, the extent to which national laws criminalize domestic violence and violence against children and intimate partners, and explores child protection measures and civil remedies triggered by domestic violence offences. In addition, the analysis focuses on the requirement of international law to remove legislation that provides immunity for acts of violence directed at a female intimate partner, and legislation that permits the defence of honour to be pleaded as a mitigating factor in regard to the assault or murder of a female family member.³

3.2 International standards on domestic violence

While domestic violence is often understood to be a form of gender-driven violence that is primarily directed at women and girls, it also includes all corporal punishment of children. Article 19 of the UN Convention on the Rights of the Child (CRC) requires States to protect children against all forms of violence and Article 37 CRC prohibits torture, cruel, inhumane and degrading treatment and punishment. The CRC Committee has consistently reiterated that all physical punishment of children in the home is prohibited under the Convention. International standards that specifically address violence within intimate relationships, family and household settings generally refer exclusively to women and girls. It is important to recognize, however, that boys (especially young boys) are also highly vulnerable to domestic violence. In rarer cases, adult men may be victims. Some evidence suggests, for example, that domestic violence occurs as frequently within homosexual relationships as it does within heterosexual ones.⁴

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a key international instrument that recognizes and addresses the rights of women and girls to be protected from

¹ Douglas, H., and Godden, L. (2003) *The Decriminalisation of Domestic Violence: Examining the Interaction between the Criminal Law and Domestic Violence*. *Criminal Law Journal* 27 (February), pp. 32–43.

² WHO (2002) *Intimate Partner Violence*. Available at:

http://www.who.int/violence_injury_prevention/violence/world_report/factsheets/en/ipvfacts.pdf [accessed 7 June 2013].

³ CEDAW Committee, *General Recommendation No. 19*, 1992, para. 24.

⁴ http://www.sp2.upenn.edu/ortner/docs/factsheet_ipvinsamesexrelationships.pdf [accessed 1 August 2013].

domestic violence. The Convention holds States parties accountable for all forms of discrimination against women, including those that take place within private, domestic or family life. CEDAW does not explicitly refer to violence against women and girls, however, in *General Recommendation No. 19*, the CEDAW Committee affirmed that the term ‘discrimination’ as defined in Article 1⁵ must be interpreted to include “violence that is disproportionately directed against a woman because she is a woman or that affects women disproportionately,” and noted that “under general international law and specific human rights covenants, States may ... be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.” The CEDAW Committee calls on States to adopt measures necessary to overcome family violence including the provision of criminal penalties for perpetrators, civil remedies for survivors and other preventative measures.⁶ In addition, the United Nations Declaration on the Elimination of Violence against Women (1993) states “violence against women constitutes a violation of the rights and fundamental freedoms of women.”⁷ Article 2 addresses the elimination of violence occurring in the family including physical, sexual, and psychological violence, and marital rape.

Significantly, ASEAN member States adopted a regional Declaration on the Elimination of Violence against Women in the ASEAN region in 2004. Although the declaration does not specifically refer to domestic, family or partner violence, it does acknowledge “that violence against women...violates and impairs...human rights and fundamental freedoms,” and calls on its members to amend and reform national laws to eliminate all forms of violence against women and girls.

3.3 Legislation in ASEAN member States: Domestic violence

Prohibiting corporal punishment of children in the home or within the family

The Committee defines corporal punishment in General Comment No 8⁸

“The Committee defines ‘corporal’ or ‘physical’ punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”

The Committee distinguishes between violence and humiliation as forms of punishment, which it rejects, and discipline of children in the form of “necessary guidance and direction”, which is essential for healthy growth of children. The Committee also differentiates between punitive physical actions against children and physical interventions aimed at protecting children from harm.

General Comment No 8 provides that “[A]ll provisions which allow a “reasonable” degree of corporal punishment – whether in statute or in case/common law – should be repealed, as should all legislation which specifically regulates the administration of corporal punishment, for example in schools and other

⁵ “Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Article 1, Convention on the Elimination of All Forms of Discrimination against Women (entered into force 3 September 1981).

⁶ CEDAW Committee, *General Recommendation No. 19* and *General Recommendation No. 20*, 1992.

⁷ United Nations Declaration on the Elimination of Violence against Women, A/RES/48/104, 20 December 1993.

⁸ General Comment No. 8 CRC/GC/8 (2006) para. 11.

institutions. But the law must also explicitly prohibit corporal punishment in all settings, as the Committee explains in paras. 34 and 35):

“In the light of the traditional acceptance of violent and humiliating forms of punishment of children, a growing number of States have recognized that simply repealing authorization of corporal punishment and any existing defences is not enough. In addition, explicit prohibition of corporal punishment and other cruel or degrading forms of punishment, in their civil or criminal legislation, is required in order to make it absolutely clear that it is as unlawful to hit or ‘smack’ or ‘spank’ a child as to do so to an adult, and that the criminal law on assault does apply equally to such violence, regardless whether it is termed discipline or ‘reasonable correction’”.

“Once the criminal law applies fully to assaults on children, the child is protected from corporal punishment wherever they are and whoever is the perpetrator. But in the view of the Committee, given the traditional acceptance of corporal punishment, it is essential that the applicable sectoral legislation clearly prohibits its use in the relevant settings.

None of the ASEAN States have an express provision prohibiting all corporal punishment of children in the home or in the family. As will be seen below, however, some of the ASEAN States provide protection to children who are subject to violence in the same way as an adult in protected: for instance, by prosecution of the perpetrator for assault etc. This is not seen as sufficient by the CRC Committee who have recommended that State pass legislation that expressly provides for the prohibition of any form of corporal punishment, including actions that may not reach the threshold of ‘assault’ or do not cause any bodily harm.

3.3.1 Recognizing domestic violence as a distinct form of violence in legislation

As mentioned above, international standards require States to pass legislation to protect individuals from violence committed in the home, in a relationship or in the family. The United Nations Special Rapporteur on Violence against Women has developed a guidance framework for model legislation on domestic violence. This model legislation has recommended that States “establish specific legislation prohibiting violence against women within interpersonal and family relationships” as well as recognizing that domestic violence is a form of ‘gender specific’ violence ‘occurring within the family and within interpersonal relationships’, that is often directed at women and girls, constituting a serious violation of their individual rights. Further, domestic violence laws must ensure maximum protection against all acts of gender-based physical, psychological and sexual abuse.⁹

In (partial) compliance with these principles, all ASEAN member States, with the exclusion of **Myanmar**, have passed specific provisions in law that define and address (forms of) domestic violence (table 8). **Cambodia, Indonesia, Malaysia, the Philippines, Thailand and Viet Nam** have all passed Acts that specifically address domestic or household violence. **Brunei, Lao PDR and Singapore**, have established provisions that address domestic violence within the context of broader legislation pertaining to women or adoption.

⁹ United Nations Economic and Social Council, A Framework for Model Legislation on Domestic Violence, 1996, Articles 2 and 11.

Table 8. Domestic violence laws/provisions in ASEAN member States

<p>Brunei: Articles 25–29, Married Women Act 1999</p> <p>Status: No comprehensive definition of domestic violence. The (narrow) focus of the law appears to be on the threat or act of causing <i>physical</i> harm.</p>
<p>Cambodia: Law on the Prevention of Domestic Violence and the Protection of Victims, 2005</p> <p>Status: Addresses acts committed against family members and others in the home, including homicide, physical violence, mental/psychological, emotional and intellectual harm, and acts of '<i>sexual aggression</i>' including violent sex, sexual harassment and indecent exposure.</p>
<p>Indonesia: Elimination of Violence in the Household, No. 23, 2004</p> <p>Status: Defines domestic violence as a form of discrimination and a human rights violation. Acknowledges that survivors of household violence are predominantly women. Defines violence as the perpetration of acts that cause physical, sexual, psychological misery or suffering, negligence or unlawful interference with freedom. Acts of sexual violence are understood to include: forcing sexual intercourse including for a commercial purpose or otherwise.</p>
<p>Lao PDR: The Law on the Protection and Development of Women, 2004; Part IV (The Protection of Women and Children against Trafficking and Domestic Violence), Chapter 2 addresses domestic violence; Decree on Adoption of Children 2014</p> <p>Status: Addresses acts of violence directed at women and children in the family that cause physical, mental or economic harm. 'Rape' is recognized as a form of domestic violence, but only in the case that it causes death or physical injury. The 2014 Decree also includes specific obligation on individuals or organizations that have identified a child who has been 'domestically violated' to notify or report the case to the authorities.</p>
<p>Malaysia: Domestic Violence Act, 1994</p> <p>Status: Addresses acts committed against family members including physical injury, forced/coerced sexual acts '<i>from which the victim has a right to abstain</i>', unlawful detention and the destruction of property.</p>
<p>Myanmar: None.</p>
<p>Philippines: Anti-Violence Against Women and Their Children Act of 2004</p> <p>Status: Addresses (comprehensive forms of) physical, sexual, psychological and 'economic' abuse of women and children in an intimate partner, family, or home setting. (Penalties are only established, however, for '<i>forcing sexual activity that does not constitute rape</i>'). Applies to child of the woman or a child in her care. Where rape has been committed this is punished under Anti-Rape Law (1997).</p>
<p>Singapore: Section 64, Part VII (protection of the family), Women's Charter, 2009,</p> <p>Status: Prohibits wilfully or knowingly placing or attempting to place a family member in fear of hurt; causing hurt to a family member by such act which is known or ought to have been known to result in hurt; wrongfully confining or restraining a family member against his will; and causing continued harassment with intent to cause or knowing that it is likely to cause anguish. 'Hurt' is defined as constituting bodily pain, disease, or infirmity. Family member means a spouse, former spouse, a child of the person or adopted child, father or mother, father or mother in-law; brother or sister; any other relative or an incapacitated person who should in the opinion of the court be regarded as a member of the family.</p>

<p>Thailand: Section 3, Domestic Violence Victim Protection Act, B.E. 2550, 2007,</p> <p>Scope: Domestic violence means any act committed with an intention to cause bodily, mental or health harm of a family member of any coercion or undue influence conducted with a view to make a family member to do something, or refrain from doing something or accept any act illegally, but not including an act committed through negligence. ‘Family member’ means a spouse or ex-spouse, a person who cohabits or used to cohabit as husband and wife without marriage registration, legitimate child, adopted child, member of the family including the persons who live mutually in the same household. There is no mention of sexual violence in the law.</p>
<p>Viet Nam: a) Article 2, Law on Domestic Violence Prevention and Control 2007;</p> <p>b) Article 10(3), Law on Gender Equality 2006;</p> <p>c) Article 26(3), Constitution 2013.</p> <p>a) Addresses intentional acts by a family member which cause, or have the potential to cause, physical, spiritual and financial damage to other members of a family, including persecution, maltreatment, beating, psychological pressure with serious consequences, forcing sex, forcing (early) marriage and divorce, damage of property, forced excessive labour, and illegal expulsion/eviction from the home.</p> <p>b) Prohibits violence for gender reason.</p> <p>c) General prohibition against gender discrimination.</p>

As shown in table 8, laws on domestic violence in all ASEAN member States address physical violence, and all except Brunei also address psychological or emotional violence. **Cambodia, Indonesia, Malaysia, the Philippines, Thailand** and **Viet Nam** have all passed Acts that specifically address domestic or household violence. **Brunei, Lao PDR** and **Singapore**, have established provisions that address domestic violence within the context of broader legislation pertaining to women or adoption. **Viet Nam** and **Indonesia** are the only States whose definition of domestic/family violence is broad enough, however, to provide comprehensive protection to victims from acts of sexual violence.

3.3.2 Defining sexual violence within domestic violence legislation

Cambodia, Lao PDR, Malaysia and the **Philippines** all refer to sexual violence in their domestic and family law and anti-violence against women laws. Each of these States, however, limits the legal definition of sexual violence as it applies within interpersonal and family relationships.

The **Philippines** defines sexual violence as a form of violence directed against a woman or her child in interpersonal and family relationships, and specifies that the term includes the following (highly comprehensive) list of acts:

“rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim’s body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser.”¹⁰

However, the law then proceeds to define certain acts of violence against women more specifically as ‘crimes’ and establishes penalties for each. This more limited list of crimes with concomitant penalties includes “causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family.”¹¹

¹⁰ Section 3B(a), Anti-Violence Against Women and Their Children Act of 2004.

¹¹ Section 5(g), Anti-Violence Against Women and Their Children Act of 2004.

Although the rape of family member has been included within the definition of family violence, it appears to be explicitly excluded from the list of acts understood to be criminal and warranting a penalty. It may be the case that rape has been excluded because the crime of rape is addressed separately in the earlier 1997 Anti-Rape law. Unfortunately, however, the 1997 Anti-Rape Law does not fully protect individuals from rape within the context of intimate partner and family relationships, as it provides that legal marriage may serve as an ‘effect of pardon’ for rape. This is discussed further in section 3.3.2.3.

Malaysia and **Cambodia** have somewhat vague provisions relating to sexual violence. **Malaysia’s** law defines domestic violence as including: “compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain.” This caveat calls into question the nature and extent of a victim’s right to abstain: the law is not entirely clear about which individuals under which circumstances are understood in law to have the right to abstain from which types of forced/coerced (sexual) activity. For instance it is unclear whether the provision is sufficient to protect women and children from rape within the context of marriage.

Cambodia’s law addresses acts of ‘sexual aggression’ defined as including violent sex, sexual harassment and indecent exposure. The law contains no definition of ‘violent sex’; it is reasonable, however, to expect that the commonplace interpretation of this term would understand it to refer to forced sex that involves physical assault. The fact that the Act does not specifically require that there be free and voluntary consent to the sexual acts means that the provision may not be sufficient to address the wide variety of contexts and circumstances within which rape and sexual abuse occur; especially in the context of intimate partner and family relationships, and in cases where the victim is a child. Somewhat similarly, in **Laos PDR**, the definition of rape’ is limited. It is recognized as a form of domestic violence within the law, but only in the case that it causes death or physical injury.

Finally, the domestic violence laws/provisions of **Brunei**, **Singapore** and **Thailand** do not appear to recognize sexual violence, abuse and rape as a form of violence that may be committed in an intimate partner or family setting. The Penal Codes of each, however, do address the specific crime of incest discussed in section 2.6 above. The Penal Code of Singapore does not recognise the concept of rape within marriage, unless the parties are living apart, when sexual penetration without the consent of the wife maybe treated as rape.

3.3.2.1 Defining emotional violence to include witnessing acts of domestic violence

International best practice suggests that domestic violence legislation should explicitly recognize the impact of witnessing domestic violence on children, and define this as a form of emotional violence and abuse. While, as demonstrated in table 2, all ASEAN member States with the exception of **Myanmar**, do recognize emotional or mental harm as a form of violence, the **Philippines** is the only ASEAN State whose domestic violence law specifically States that ‘psychological violence’ is understood to include “allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victims belongs, or to witness abusive injury to pets.”¹² The laws of all other States do not at present mirror this provision and, therefore, it can be argued that the laws fail to afford appropriate protection to child witnesses of abuse.

3.3.2.2 Relationships regulated/protected by domestic violence laws

International standards require that States adopt laws that recognize the broadest possible range of relationships within which domestic violence occurs, and protect individuals within the contexts of these relationships.¹³ This means protecting all former and/or current intimate partners, including those not living in the same house, and all children within the household and family setting including (legitimate and illegitimate) offspring, relatives, adopted children and child household workers (who are overwhelmingly female). Section B of the Special Rapporteur’s framework for model legislation on domestic violence, entitled ‘Relationships to be Regulated’ states:

¹² Section 3(c), Anti-Violence Against Women and Their Children Act, 2004 (Philippines).

¹³ United Nations Economic and Social Council, *A Framework for Model Legislation on Domestic Violence*, 2 February 1996, E/CN.4/1996/53/Add.2, Article 2, section B, Article 3.

“The relationships which come within the purview of legislation on domestic violence must include: wives, live-in partners, former wives or partners, girl-friends (including girl-friends not living in the same house), female relatives (including but not restricted to sisters, daughters and mothers) and female household workers.”

Table 9. Relationships protected under domestic violence legislation in the ASEAN member States

	Spouse	Former spouse	Cohabiting partner (even if not married)	Former cohabiting partner (even if not married)	Intimate partners not cohabiting	Child family member /relative	Children adopted /cared for in family home	Domestic worker
Brunei	●	●	●	●	●	●	●	●
Cambodia*	●	●	●	●	●	●	●	●
Indonesia	●	●	●	●	●	●	●	●
Lao PDR	●	●	●	●	●	●	●	●
Malaysia	●	●	●	●	●	●	●	●
Myanmar	●	●	●	●	●	●	●	●
Philippines	●	●	●	●	●	●	●	●
Singapore	●	●	●	●	●	●	●	●
Thailand	●	●	●	●	●	●	●	●
Viet Nam	●	●	●	●	●	●	●	●

Note: Green: relationships are regulated/protected; Yellow: unclear whether relationships are regulated/protected; Red: relationships are not regulated/protected in the State’s domestic violence laws.

The legislation of the **Philippines** and **Thailand** sets out the widest range of relationship in their definition of ‘domestic violence’. Similar to the domestic violence laws of other ASEAN member States, **Thailand’s** Domestic Violence Victim Protection Act defines domestic violence as an act of violence directed at a family member. However, Section 3 clearly elaborates that a family member should be understood to include: a spouse or former spouse; a person who cohabits or used to cohabit in the absence of marriage registration; and a child who lives in the same household (whether related or not). The law, however, fails to mention the situation of intimate partners who do not, and have never cohabited.¹⁴

The **Philippines** is the only ASEAN member State with specific legislation (the Anti-Violence against Women and Their Children Act) that provides protection for all intimate partners at risk of violence including wives, former wives, or “against a woman with whom the person has or had a sexual or dating relationship.” Section 3 of the Act also prohibits violence against “[a woman’s] child whether legitimate or illegitimate, within or without the family abode.”¹⁵ The law does not mention the situation of child domestic workers/employees of the household, but domestic workers are now covered by the Domestic Workers Act 2013.¹⁶ This new law includes measures to protect domestic workers against abuse, harassment, violence, economic exploitation and performance of work that is hazardous to their physical and mental health.

Cambodia’s domestic violence legislation applies to intimate partners who are spouses and those living in the same household. The law also protects dependent children and other children living “under the same roof” who

¹⁴ Section 3, Domestic Violence Victim Protection Act, B.E. 2550, 2007 (Thailand).

¹⁵ Section 3, Anti-Violence Against Women and Their Children Act, 2004 (Philippines).

¹⁶ Republic Act No. 10361.

are dependents of the household. Although child domestic workers are not specifically mentioned, it seems likely that this provision is broad enough such that it should be interpreted to include such children.

Malaysia and **Singapore** specify that domestic violence provisions protect a spouse or former spouse as well as other relatives or members of the family. Section 2 of the Domestic Violence Act in **Malaysia** specifies that this includes children under age 18 who are “living as a member” of the family. It is likely that this would include children under the care of the family (whether legitimate, illegitimate, fostered or adopted), however it is less clear whether this would be interpreted to include child domestic workers or employees. **Singapore’s** provisions are narrower: Section 64 of the Women’s Charter specifies that the definition of domestic violence should include any person who the court “should, in the circumstance ... regard as a member of the family” but only if they are a relative or an incapacitated person.¹⁷ This would exclude unrelated child domestic workers, although the general criminal law continues to apply.

The laws of **Brunei, Lao PDR and Viet Nam** state that their domestic violence laws apply to family members, or children of the family (Brunei) but do not provide any definition of the types of relationships that should be understood to constitute family. This leaves the situations of many intimate partners and children in the home unclear, including intimate partners, illegitimate children and domestic workers.¹⁸

Indonesia’s law on the Elimination of Violence in the Household is the only one in the region to specifically address the situation of domestic workers. The law is comprehensive in its application to children in the home, including children who have a blood relationship to the perpetrator, or a relationship defined by: marriage, breast-feeding, care and guardianship, as well as children living within the house and those working to assist the household. The law is less comprehensive, however, in its coverage of intimate partners protected against domestic violence, appearing to exclude former partners, and individuals in intimate relationships who do not cohabit.¹⁹

3.3.2.3 Exclusions, exceptions and defences for acts of domestic violence

International law requires that children are protected from violence, regardless of their relationship to the perpetrator. Unfortunately, however, laws in many ASEAN member States include exceptions, exclusions and defences for acts of violence committed against family members and intimate partners (table 10). The most common of these are: provisions that exclude non-consensual/forced sex that takes place within the context of marriage from legal definitions of rape; and clauses that permit physical violence directed at children within the context of family and care-giving relationships. More rarely there are provisions that permit or excuse physical violence directed at partners in the context of intimate relationships.

¹⁷ Section 64, Women’s Charter, Section VII: Protection of Family, 2009 (Singapore).

¹⁸ Section 25 (2), Women and Girls Protection Act Rev, 1984 (Brunei); Article 29, Law on the Protection and Development of Women, 2004 (Lao PDR); Article 1, Domestic violence prevention and control law, 2007 (Viet Nam).

¹⁹ Article 2, Elimination of Violence in the Household, No. 23, 2004 (Indonesia).

Table 10. Laws in ASEAN member States: exclusions, exceptions and defences for acts of violence directed against children within intimate partner and family relationships

Brunei
<ul style="list-style-type: none"> ● Physical violence, care context: Section 89 of the Penal Code provides that any injury or harm caused to a child under age 12 perpetrated by, or with the consent of, the child’s guardian (or person with lawful charge of a child) is not considered an offence, with the exception of the intentional cause of ‘grievous’ harm or death. ● Physical violence, intimate partner: None. ● Sexual violence, intimate partner: Section 375 of the Penal Code provides an exception that sexual intercourse whether consensual or not “by a man with his own wife, the wife not being under thirteen years of age, is not rape.”
Cambodia
<ul style="list-style-type: none"> ● Physical violence, care context: Article 1045, Civil Code, provides that a parent, or person who holds ‘parental power’, may discipline a child ‘to the extent necessary’. Article 1079 provides that this also applies to guardians. Article 1045, Law on the Prevention of Domestic Violence and Protection of Victims 2005 provides that discipline of a child promoted through ‘appropriate measures’, enacted to promote good behaviour and dignity, and conducted with ‘compassion’ and ‘pity’ are excluded from the definition of domestic violence. ● Physical violence, intimate partner: Article 8, Law on the Prevention of Domestic Violence and Protection of Victims 2005, provides that discipline of a spouse promoted through ‘appropriate measures’, enacted to promote ‘good’ behaviour and dignity, and conducted with ‘compassion’ and ‘pity’ are excluded from the definition of domestic violence. Article 44 (4) of the domestic violence law provides drastically reduced penalties for physical violence committed against a spouse (as long as the violence does not result in sickness or obstruction of livelihood). ● Sexual violence, intimate partner: None.
Indonesia
<ul style="list-style-type: none"> ● Physical violence, care context: None. ● Physical violence, intimate partner: None. ● Sexual violence, intimate partner: Article 285, Penal Code defines rape as forced sexual intercourse that takes place outside of marriage.
Lao PDR
<ul style="list-style-type: none"> ● Physical violence, care context: Article 25, Penal Code provides that no criminal proceedings may be brought in respect of offences that “are not dangerous for society” and if the damaged party does not lodge any complaint including with respect to physical violence between ‘close relatives’ without serious injury or physical disability. The Law on Prevention and Combatting Violence against Women and Children, which was passed in 2014, however, gives victims of violence a choice between mediation, if the offence carries a term of imprisonment of no more than one year, or judicial proceedings.

<ul style="list-style-type: none"> ● Physical violence, intimate partner: Article 25, Penal Code provides that no criminal proceedings may be brought in respect of offences that 'are not dangerous for society' and if the damaged party does not lodge any complaint, including with respect to physical violence between 'close relatives' without serious injury or physical disability. ● Sexual violence, intimate partner: Article 128, Penal Code provides an exception to the definition of rape where the offender is the woman's spouse.
Malaysia
<ul style="list-style-type: none"> ● Physical violence, care context: Section 89, Penal Code provides that any injury or harm caused to a child under 12 years of age perpetrated by, or with the consent of, the child's guardian (or person with lawful charge of a child) is not considered an offence, with the exception of the intentional cause of 'grievous' harm or death. ● Physical violence, intimate partner: None. ● Sexual violence, intimate partner: Section 375, Penal Code provides an exception that sexual intercourse whether consensual or not "by a man with his own wife, the wife not being under thirteen years of age, is not rape." Section 375a creates an additional crime entitled "husband causing hurt in order to have sexual intercourse" which prohibits a man from causing hurt or fear of death in order to force sex with his wife.
Myanmar
<ul style="list-style-type: none"> ● Physical violence, care context: Section 375, Penal Code provides that any injury or harm caused to a child under 12 years of age perpetrated by, or with the consent of, the child's guardian (or person with lawful charge of a child) is not considered an offence, with the exception of the intentional cause of 'grievous' harm or death. ● Physical violence, intimate partner: None. ● Sexual violence, intimate partner: Section 375, Penal Code provides that sexual intercourse whether consensual or not "by a man with his own wife, the wife not being under thirteen years of age, is not rape."
Philippines
<ul style="list-style-type: none"> ● Physical violence, care context: Article 247, Penal Code exempts a man from punishment for inflicting physical injuries on his daughter under 18 years if he catches her having sexual relations (unless he consented to or facilitated the sexual activity). Article 255 provides a reduced sentence for infanticide if it is committed by the mother or maternal grandparents of the child for the purpose of concealing 'dishonour'. ● Physical violence, intimate partner: Article 247, Penal Code provides that a man may inflict physical injuries on his legal wife if he catches her having sexual relations with another man (unless he consented to or facilitated the sexual activity). ● Sexual violence, intimate partner: Article 344, Penal Code provides that <i>subsequent</i> legal marriage (of the victim) is a remedy/defence for a range of sexual offences including 'seduction', abduction, 'acts of lasciviousness' and rape'. The marriage can only take place once the girl reaches the age of marriage (18) but this could still prevent a prosecution. Article 266-C, Anti-Rape Law reiterates this principle, and additionally provides that in the case of rape within marriage, subsequent 'forgiveness' by the wife (as the offended party) extinguishes any criminal responsibility for the action.

<p>Singapore</p> <ul style="list-style-type: none"> ● Physical violence, care context: Section 64 (addressing domestic violence), Women’s Charter, excludes from its definition of ‘family violence’ any “force lawfully used in self-defence, or by way of correction, towards a child below 21 years of age.” <p>Section 89, Penal Code provides that nothing done in good faith to a child under 12 years of age perpetrated by, or with the consent of, the child’s guardian (or person with lawful charge of a child) is not considered an offence, by reason of any harm it may cause or intend to cause, with the exception of the intentional cause of ‘grievous’ harm or death.</p> <ul style="list-style-type: none"> ● Physical violence, intimate partner: None. ● Sexual violence, intimate partner: Section 375 (4), Penal Code, provides that no man shall be guilty of rape for forcing penetrative sex with his wife without her consent, as long as she is at least 13 years of age. (Except in the cases that they are separated, divorced or subject to a restraining order). Section 376A(5) exempts a person from the crime of ‘sexual penetration of a minor’ in the case that a man penetrates the vagina of his wife with his penis and she has reached the age of 13 years.
<p>Thailand</p> <ul style="list-style-type: none"> ● Physical violence, care context: Article 1567, Civil and Commercial Code, provides that those with parental authority over children have a right to impose ‘reasonable’ punishment for the purpose of discipline. ● Physical violence, intimate partner: None. ● Sexual violence, intimate partner: Section 276, Criminal Code, provides an exception to the definition of rape where the victim is the perpetrators wife. Section 277 provides an exception to the definition of statutory rape in the case of legal marriage and a remedy for statutory rape of a girl over 13 years if the man subsequently marries her.
<p>Viet Nam</p> <ul style="list-style-type: none"> ● Physical violence, care context: None. ● Physical violence, intimate partner: None. ● Sexual violence, intimate partner: None.

In the laws of ASEAN member States, the most common exceptions, exclusions and defences for acts of violence committed against family members and intimate partners are: provisions that exclude non-consensual/forced sex that takes place within the context of marriage from legal definitions of rape; and clauses that permit physical violence directed at children within the context of family and care-giving relationships. More rarely there are provisions that permit or excuse physical violence directed at partners in the context of intimate relationships.

3.3.2.4 Exceptions allowing sexual violence within marriage, intimate partner relationships and family relationships

International law requires that provisions related to sexual assault, including rape, apply irrespective of the nature of the relationship within which sexual violence occurs, and that “no marriage or other status can constitute a defence to charges of rape or sexual assault.”²⁰ In contravention of these standards, eight ASEAN member States have laws that exclude or provide defences for the crime of rape and other sexual crimes that take place in the context of marriage (table 10). These States are: **Brunei, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore and Thailand.**

²⁰ United Nations Division on the Advancement of Women, *Handbook for Legislation on Violence against Women*, p. 26.

In its Concluding Observations to Malaysia in 2006 the CEDAW Committee wrote:
 “While noting the various initiatives taken by the State party to address violence against women, the Committee is concerned about the reluctance of the State party to criminalize marital rape. In particular, the Committee is concerned that the proposal before Parliament on this issue is narrowly tailored to criminalize sexual assault based on use of force and death threats by the husband, rather than marital rape based on lack of consent of the wife. The Committee requests the State party to enact legislation criminalizing marital rape, defining such rape on the basis of lack of consent of the wife.”

Source: Committee on the Convention on the Elimination of all forms of Discrimination against Women, Concluding Observations: Malaysia, 2006, (CEDAW/C/MYS/CO/2), paras. 21–22.

The laws of **Brunei**, **Myanmar** and **Singapore** fail to criminalize rape. Each of these States shares a common article within their Penal Code, Section 375, which addresses the crime of rape and provides an exception that “sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.”²¹ The Penal Code of **Malaysia** contains an additional Article, Section 375a, which creates a separate crime entitled “husband causing hurt in order to have sexual intercourse.” This provision prohibits a man from forcing sexual intercourse with his wife through “causing hurt or fear of death.” The offence attracts a significantly reduced sentence compared to the crime of rape as defined in Malaysia’s Penal Code.²² While this additional Article is to be welcomed and provides a minimal degree of legal protection for victims of rape within the context of marriage, it is likely to be regarded as insufficient to bring Malaysian law fully in line with international human rights obligations.²³

Thailand’s Criminal Code defines rape as forced sexual intercourse, perpetrated through violence, deception or any other means, with a woman who is not the perpetrators wife. Furthermore, statutory rape is defined as sexual intercourse, with or without consent, of a girl under age 15, as long as the girl is not the perpetrators wife.²⁴ In addition the law also contains a provision that subsequent marriage of a rape victim as young as 13 years old, can exempt the perpetrator from any punishment for the action.²⁵

Similarly, Article 344 of Penal Code of the **Philippines** provides that a man can avoid punishment for a range of sexual crimes including abduction and rape if he subsequently marries the victim. This provision is confirmed in Article 266-C of the 1997 Anti-Rape Law, which also provides that (in the case of existing marriage) “[if] it is the legal husband who is the offender [of rape], the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty.” The age for marriage in the Philippines is 18, thus in theory this exception should not apply to any child. However, given the time that it takes to prosecute and try a case it is possible that a child age 17 or even 16 could be subject to rape and then marry the perpetrator at age 18, causing any prosecution to cease.

Indonesia’s Penal Code fails to recognize as crimes “using force or threat to have sexual intercourse, having sexual intercourse with an unconscious or helpless woman, and having sex with a child under the age of 15” when they take place within the context of legal marriage.²⁶ However, the Law Regarding the Elimination of Violence 2004 goes some way to ameliorating this by making forced sexual violence against any individual living within the scope of the household a criminal offence.²⁷ The relationship between these laws is not clear, but it is assumed that the Penal Code takes precedence. Similarly Article 128 of the **Lao PDR** Penal Code provides that using force, armed threats, drugs, and other means, “to place a woman in a state of helplessness” in order to have sexual intercourse with her is only a crime outside of legal marriage. As mentioned above, however, the

²¹ This is despite the fact that the legal age for marriage is set above 13 years.

²² The crime of rape incurs a sentence of up to 20 years, while ‘husband causing hurt to have sexual intercourse’ incurs a sentence of up to five years. See Section 376 Penal Code.

²³ United Nations Division on the Advancement of Women, *Handbook for Legislation on Violence against Women*, p. 26.

²⁴ Sections 276 and 277, Criminal Code Amendment Act (No. 17), B.E. 2547, 2003 (Thailand).

²⁵ This is discussed in greater depth in section 2.6 concerning early and forced marriage.

²⁶ Articles 285–287, Penal Code (Indonesia).

²⁷ Articles 8(b) and 47.

Lao PDR 2004 law on the Protection and Development of Women does recognize marital rape as a crime, but only in the case that it results in death or physical injury.

Cambodia and **Viet Nam** are the only States that provide no exceptions to the crime of rape within the context of marriage. Cambodia's Penal Law, however, (similar to the 2005 Law on the Prevention of Domestic Violence discussed above) does not appear to provide comprehensive protection as it defines rape as an act committed through force or violence, rather than an act that is committed against an individual without consent.

Clauses which establish exceptions and defences to charges of rape and sexual assault within the context of legal marriage suggest that this type of violence is construed as being more of an offence against public decency, morality and social order, and places great weight on family privacy and rather less on the individual's right to be protected from all forms of violence as required by international standards.

Section 376 (3) of **Malaysia's** Penal Code illustrates this approach. This provision establishes more severe penalties if a man "commits rape on a woman whose relationship to him is such that he is not permitted under the law, religion, custom or usage, to marry her." This suggests that it is not so much the offence against the individual woman/girl that attracts the aggravated penalty, but the perpetrator's violation of religious and customary rules and norms.

3.3.2.5 Exceptions allowing physical violence within marriage, intimate partner relationships and family relationships

The majority of ASEAN member States have provisions in law that allow physical violence and injury to be inflicted on children, usually in the context of punishment, or for purposes of protecting (family) 'honour' (**Brunei, Cambodia, Malaysia, Myanmar, the Philippines, Singapore and Thailand**).

Encouragingly, as far as is observable in the context of this review, **Indonesia**,²⁸ **Lao PDR**²⁹ and **Viet Nam** appear to have no provision that explicitly permits or condones physical violence directed at children in the context of a care-giving or intimate partner relationships. However, the Penal Code of **Lao PDR**, does stipulate that no criminal proceedings may be brought in respect of offences that "are not dangerous for society" if the damaged party does not lodge any complaint, including with respect to physical violence between close relatives without "serious injury or physical disability." Furthermore, Article 33 of the Law on the Protection and Development of Women provides that victims only have the right to report violence to the police in the case that domestic violence results in 'serious impact'. This provision will, however, be removed by the new Law on Preventing and Combatting Violence against Women and Children, which was passed in December 2014 and will come into force in 2015. The new law places no limitation on reporting cases to the police and allows the victim to decide whether to resolve the matter through mediation (where the offence carries a sentence of imprisonment for no more than one year) or through judicial proceedings.³⁰ It is not clear whether the new provisions in the Law on Preventing and Combatting Violence will take precedence over the Penal Code. The provisions of the Lao PDR Penal Code, in relying upon mediation as the remedy to less serious domestic violence is unlikely to satisfy international standards,³¹ and may send a message that physical violence between close relatives (i.e.

²⁸ The CRC Committee and the Global Initiative to End All Corporate Punishment of Children have stated that while there are a range of provisions in the Law on Domestic Violence, the Penal Code, the Law on Child Protection and the Law on Human Rights which protect children from violence and abuse (including by parents), none of these provisions have been interpreted as prohibiting all corporal punishment in childrearing, and therefore the practice is still lawful. See <http://www.endcorporalpunishment.org/pages/progress/reports/indonesia.html> [accessed 5 July 2013].

²⁹ While there is no explicit exception permitting the rights of parents and other carers to inflict corporal punishment, there is no specific and explicit prohibition of the practice either. According the CRC Committee and the Global Initiative to End All Corporate Punishment of Children this has led to an interpretation of the law as permitting 'reasonable' chastisement of children in the home. Given the widespread cultural acceptance of the practice it is felt that there is a need for explicit prohibition to be enacted within all legislation pertaining to the care and protection of children, especially in the family. See <http://www.endcorporalpunishment.org/pages/pdfs/States-reports/Lao%20PDR.pdf> [accessed 5 July 2013].

³⁰ Articles 31 and 47.

³¹ Article 11, United Nations Economic and Social Council, *A Framework for Model Legislation on Domestic Violence*, 2 February 1996, E/CN.4/1996/53/Add.2.

domestic/family violence) is not necessarily ‘dangerous for society.’ This could be result in societal acceptance of low level domestic violence in practice.

Brunei, Malaysia, Myanmar and Singapore all have a common provision in their Penal Codes, Section 89, which provide that no injury or harm caused (intentionally or otherwise) to a child under age 12 by their caregiver, or with consent of their caregiver, is an offence under the law, with the exception of the intentional causing of ‘grievous’ harm or death. In **Singapore**, the **Women’s Charter** excludes any “force lawfully used ... by way of correction ... towards a child below 21 years of age” from the definition of family violence. Finally, Article 1567 of the Civil and Commercial Code of **Thailand**, provides that those with parental authority over children have a right to impose ‘reasonable’ punishment for the purpose of discipline.

These provisions (also discussed in chapter 5, addressing violence in schools) are not compatible with CRC provisions, most particularly Article 19 addressing all forms of violence against children and Article 37 prohibiting torture, cruel, inhumane and degrading treatment and punishment. The fact that ‘grievous’ harm is prohibited is unlikely to be regarded as sufficient from the perspective of international human rights law. The CRC Committee has consistently reiterated that all physical punishment of children in the home is prohibited under the Convention. It has singled out for particular criticism legislation in many countries that allows a degree of physical punishment, under the guise of ‘reasonable chastisement’, or infliction of injury that is ‘not serious’ or not severe. As the Vice Chair of the Committee noted in a Concluding Statement to the General Discussion on Children’s Rights in the Family:

“Certain States have tried to distinguish between the correction of children and excessive violence. In reality the dividing line between the two is artificial. It is very easy to pass from one stage to the other. It is also a question of principle. If it is not permissible to beat an adult, why should it be permissible to do so to a child? One of the contributions of the Convention is to draw attention to the contradictions in our attitudes and cultures.”³²

In its Concluding Observations to **Malaysia** in 2007 the CRC Committee expressed “concern that corporal punishment in the home is lawful ... The Committee urges the State party to ... Prohibit by law all forms of corporal punishment in the home and conduct a comprehensive study to assess the nature and extent of this phenomenon” (paras. 57 and 58).

In its Concluding Observations to **Singapore** in 2011 the CRC Committee reiterated:

“its deep concern that corporal punishment, including caning, is still considered a lawful form of discipline in the family ... The Committee recommends that the State party: prohibit unequivocally by law, without any further delay, all forms of corporal punishment, including caning, in all settings ... [and] continue to sensitize and educate parents, guardians and professionals working with and for children on the harmful effects of corporal punishment with a view to changing the general attitude towards this practice” (paras. 39–40).

In its Concluding Observations to **Brunei** in 2003 the CRC Committee expressed its concern “that corporal punishment is not prohibited at home...and remains acceptable in society... The Committee strongly recommends that the State party prohibit corporal punishment at home” (paras. 37–38)

In its Concluding Observations to **Myanmar** in 2012 the CRC Committee wrote:

“While noting the legal provisions prohibiting corporal punishment in schools ... the Committee is concerned that corporal punishment is still lawful within the family and in alternative care settings ... the Committee ... urges the State party to ... withdraw provisions of the Penal Code authorizing corporal punishment” (paras. 53–54).

In its Concluding Observations to **Thailand** in 2012, the CRC Committee noted its concern that “corporal punishment remains lawful in the home,” and recommended that the State of Thailand “prohibit explicitly

³² Available at: http://www.endcorporalpunishment.org/pages/hrlaw/crc_session.html [accessed 1 August 2013].

by law corporal punishment of children in the home and alternative care settings, including for disciplinary purposes” (paras. 47–48).

In addition, both **Cambodia** and the **Philippines** have several provisions in law that permit and excuse physical violence directed at children, not only within the context of a care-giving relationship, but also within the context of an intimate partner relationship.

Article 247 of the Revised Penal Code in the **Philippines** entitled “Death or physical injuries inflicted under exception circumstances” provides:

“Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of *destierro* [banishment]... If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.”

Furthermore, the Article establishes that “these rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducer, while the daughters are living with their parents.”

This Article provides immunity for adult men who are physically violent towards their wives and/or daughters in the context of intimate partner and family settings. Even the infliction of serious physical injuries or murder only invites the penalty of *destierro*, which is primarily directed at protection of the survivor rather than punishment of the accused. By way of comparison, the infliction of serious physical injuries or death in the context of any other relationship or circumstance attracts a lengthy prison sentence.

While the **Philippines** Anti-Violence Against Women and their Children Act (2004) establishes penalties for inflicting serious injuries on a wife or child (including the imposition of a prison sentence for serious injuries), Section 6 (a) provides that “acts constituting attempted, frustrated or consummated parricide or murder ... acts that result in mutilation ... shall be punished in accordance with the Revised Penal Code.” This suggests that in the particular circumstances referred to in the Penal Code above (that a man finds his wife or daughter having sexual intercourse with another person) the exemption from punishment may still apply.

Interestingly, Article 263 of the Revised Penal Code addressing physical assault provides that (in other circumstances than the one specified above) causing severe physical injury/harm or death of a parent, child, spouse or descendent automatically attracts the maximum available penalty (as established for different degrees of injury under the Article). The Article then, however, proceeds to exempt these (automatically) increased penalties from applying in a case where a parent “inflicts physical injuries up his child by excessive chastisement,” implying that causing serious harm or death of a child is less severe or reprehensible if it is effected in the context of punishment.

Finally Article 255 of the Revised Penal Code provides a reduced sentence for infanticide if it committed by the mother or maternal grandparents for the purpose of concealing the mother’s ‘dishonour’. While provisions that provide a reduced sentence for infanticide by a mother are often based on the principle that women commit infanticide because of temporary mental instability or insanity caused by giving birth,³³ this provision is somewhat different. Rather than drawing attention to the state of mind of the mother, it focuses on the issue of her ‘honour.’ Infanticide of an illegitimate child is one type of murder that is typically perpetrated to avoid shame brought upon a family or community through the transgression of social norms that regulate sexual activity. The Revised Penal Code of the Philippines has a provision that (to some degree) excuses this type of

³³ CRC Committee, Concluding Observations: Cambodia, 2011, (CRC/C/KHM/CO/2), paras. 40–41.

practice. In *General Recommendation No. 19* the CEDAW Committee explicitly calls on States parties to legislate “to remove the defence of honour in regard to the murder of a family member.”³⁴

Articles 1045 and 1079 of the Civil Code in **Cambodia** provide that a parent, guardian, or other person who holds parental power may discipline a child “to the extent necessary.” In addition Article 8 of the Law on the Prevention of Domestic Violence and the Protection of Victims contains a rather cryptic provision:

“Every disciplining by giving advice or reminding or appropriate measures taken to allow spouses or children or dependent persons to follow the good ways of living with dignity and the nation’s good customs and traditions, if the disciplining and teaching are conducted with the noble nature (consisting of compassion, pity, joy at other’s happiness, and sincerity) and in accordance with the principles of the United National Conventions on Human Rights and Child Rights recognized by the Kingdom of Cambodia, shall not be included as the use of violence or domestic violence.”

Although this Article does not mention physical or corporal punishment explicitly, the use of the words ‘discipline’, ‘violence’, and the allusion to the application of ‘appropriate measures’, suggests that physical chastisement may fall within ‘appropriate measures’. Furthermore, since domestic violence is defined under Article 2 of the Law on the Prevention of Domestic Violence and the Protection of Victims as acts affecting life, physical integrity, torture (and other cruel acts) and acts of sexual aggression, the explicit exclusion of certain types of discipline from the definition of domestic violence logically implies that the forms of discipline alluded to under the exception granted in Article 8 of the Law on Prevention of Domestic Violence and the Protection of Victims would include actions appearing to fall within the scope of this definition. Although Article 8 states that the forms of discipline used must be compatible with international child rights standards, the CRC Committee itself has expressed the view that this proviso is not sufficient to exclude forms of corporal punishment, interpreting Article 8 as “implicitly authorizing corporal punishment of children for disciplinary purposes,” and calling on Cambodia to repeal this provision within its domestic violence law.³⁵

In addition, Article 44(4) of the **Cambodian** Law on Prevention of Domestic Violence and Protection of Victims provides radically reduced penalties in a case where physical violence is committed ‘by a husband against his wife or vice versa’ (as long as the violence does not result in sickness or obstruction of livelihood activities). Physical violence directed against any other member of a family gives rise to a maximum five-year prison term. Physical violence directed against a wife or husband, however, gives rise to a maximum of only four months’ incarceration.

In its Concluding Observations to **Cambodia** in 2012, the CEDAW Committee wrote: “While welcoming the adoption of the Law on Prevention of Domestic Violence and Protection of Victims and the on-going reform of the Criminal Code, the Committee is concerned that provisions remain in the law that may limit its application in cases of spousal abuse” (para. 15).

The caveats, ambiguities and provisos written in these laws for acts of violence directed against children in the home and against intimate partners leave gaps in the protection of children in specific cases. The lack of criminalization of the specific acts of violence detailed above also leaves open the possibility that even those acts of violence which are prohibited will be interpreted as not so serious, and attract only low penalties and a low level of social condemnation. In other words, there is a risk that allowing certain acts of violence against children will result in all acts of violence against children being regarded as less serious than acts against adults, and this is particularly so in the context of punishment or intimate partner relationships. The exceptions,

³⁴ CEDAW, Article 24 (r) (ii).

³⁵ CRC Committee, Concluding Observations: Cambodia, 2011, (CRC/C/KHM/CO/2).

exclusions and defences summarized above have the potential to reinforce immunity for acts of domestic violence even in cases which may appear to violate the written letter of the law.³⁶

For these reasons, legal provisions must specifically, explicitly and absolutely prohibit all forms of domestic violence within all relationships, without exception, to bring States in line with international human rights obligations, and to reduce the prevalence of this pervasive form of violence against children.

3.4 Penal and civil remedies for domestic violence

International standards require that States legislate to ensure a wide range of flexible remedies for survivors of domestic violence, in order to discourage and prevent violence within interpersonal and family relationships, as well as to protect and support survivors. These remedies should include both criminal/penal and civil measures, including protection and restraining orders. Legislation should also establish a requirement that a prompt and appropriate range of social and health services are made available to survivors of domestic violence by State authorities.³⁷

As can be seen in table 11, all ASEAN member States, with the exception of **Myanmar** (which has no domestic violence provision), have provided for civil orders and measures to address and prevent cases of domestic violence. These include: injunctive civil orders, such as protection orders/instructions, and restraining orders/‘forbidden contact’ orders, as well as measures for financial compensation, maintenance orders and custody arrangements. The laws of **Malaysia** and **Singapore** commendably establish a protective ‘balance of probabilities’ standard in the granting injunctive or other reliefs for survivors of violence.

Table 11. Criminal penalties, civil remedies and provision of services established in domestic violence laws in ASEAN member States

Brunei
<p>Criminal penalties: No penalties established in Married Women Act 2000, however, a court may attach a power to arrest to a protection order in the case of breach of that order. (Section 27)</p> <p>Civil remedies: Married Women Act 2000, Section 25 provides for protection and restraining orders for a spouse or child at risk of family violence.</p> <p>Services: None.</p>
Cambodia
<p>Criminal penalties: Articles 35 and 36, Domestic Violence Law 2005, provide that penalties for domestic violence are imposed in line with Penal Law.</p> <p>Civil remedies: Domestic Violence Law 2005 provides for protection orders, custody of children arrangements, and financial assistance.</p> <p>Services: None.</p>

³⁶ For example, in Indonesia the Law on Child Protection 2002 States that parents and other carers must protect the child from “harsh treatment violence and abuse” (Article 13), that every child shall be entitled to protection from “abuse, torture or inhuman punishment” (Article 16) and that every person who commits or threatens violence against a child shall be punished (Article 80); the Law on Human Rights 1999 States that children, defined as unmarried persons under age 18 (Article 1 (5)), have the right “to protection by parents, family, society, and State” (Article 52), to “protection before the law against all forms of physical and mental violence, neglect, mistreatment and sexual assault while under the care of his parents, guardian, or any other party responsible for his care” (Article 58), and “not to be the object of oppression, torture, or inhuman legal punishment” (Article 66 (1)). In practice, however, these provisions and provisions against violence and ill-treatment in the Penal Code 1918, the Law on Domestic Violence 2004, the Law on Youth 2009 and the Constitution 1945 are not interpreted as prohibiting all corporal punishment in the home.

³⁷ United Nations Economic and Social Council, *A Framework for Model Legislation on Domestic Violence*, 2 February 1996, E/CN.4/1996/53/Add.2.

Indonesia
<p>Criminal penalties: Chapter VIII of Law on the Elimination of Violence in the Household 2004 establishes penalties for physical, psychic and sexual violence.</p> <p>Civil remedies: Law on the Elimination of Violence in the Household 2004 provides for protection and additional orders.</p> <p>Services: Chapter VII of the Law on the Elimination of violence in the Household 2004, titled 'Recovery of the victim' provides for social and 'spiritual' services for survivors of domestic violence.</p>
Lao PDR
<p>Criminal penalties: 'Serious' cases of violence may result in criminal proceedings, depending however on whether there is '<i>reliable evidence</i>', to launch an investigation. Article 48, Law on Development and Protection of Women 2004, establishes that "individuals or organisations that violate this law will be subject to measures such as re-educational measures and penal measures, depending on the gravity of the violation, including civil compensation for damages." Specific penal measures are only established for the crime of trafficking (Article 49). The new Law on Preventing and Combatting Violence against Women and Children, which will come into force in 2015. Article 29 provides that individuals, entities or organizations that have found or seen the use of violence against women or children shall immediately notify or report the incident (and may notify the police (Article 57) The police are under a duty to respond (Article 58). Settlement of violence against children may be by way of mediation or judicial proceedings, and for violence that does not cause much harm either form of settlement may be used, but if the violence is serious it must be settled by judicial proceedings (Article 48). The choice of remedy is that of the victim.</p> <p>Civil remedies: Domestic violence legislation doesn't provide for civil orders. Article 36, Law on Development and Protection of Women 2004 provides for reconciliation measures if the violence is 'not serious'. Article 52 provides for compensation for damages. The new Law on Prevention and Combatting Violence against Women and Children however, allows a civil claim for damages to be made and to be heard at the same time as the criminal proceedings. Under Article 10, Decree for Adoption of Children 2014, any individual or organization that sees a child who, inter alia, has been 'domestically violated' must notify or report the case to the authorities so that the social welfare sector can conduct an assessment of the child and his/her family circumstances in order to provide primary assistance to the child and consider alternative care options for the child. Alternative care options comprise: (i) returning the child to his/her family or extended family; (ii) placing the child in foster care as an intermediary measure before returning the child to his/her (new) (extended) family; (iii) domestic adoption; (iv) adoption of a child by a foreign national; or (v) placement of the child in a centre or institution (Articles 9 and 10).</p> <p>Services: Article 34, Law on Development and Protection of Women 2004, provides that a family member who discovers any domestic violence against a child which threatens their life or physical health, liberty, mental health or dignity shall assist them according to the nature and gravity of the offence by intervening, impeding the violence, offering conciliation, educating the parties or requesting assistance to be provided to the child by other people or organizations. Persons nearby, individuals or organizations who discover domestic violence or are asked to assist shall give assistance to survivors as stated above. The new Law on Prevention and Combatting Violence against Women and Children also provides a good range of protection measures for victims (Articles 42-44) and gives the victim a right to services including counselling, safe accommodation, medical assistance, legal assistance, etc.</p>

<p>Malaysia</p> <p>Criminal penalties: Part I of the Domestic Violence Act 1994 clearly establishes that the provisions of the Act should be read together with the provisions of the Penal Code.</p> <p>Civil remedies: Part II of the Domestic Violence Act 1994 provides for a range of different protection and restraining orders to prevent violence, including violence against children, and Part III establishes a survivor’s right to compensation and damages. Protection orders, however, may only be granted on the ‘balance of probabilities’.</p> <p>Services: Domestic Violence Act 1994, Section 19 provides that enforcement officers duties include providing and arranging transportation for the survivor to an alternative residence, safe place or shelter, and to the nearest hospital or medical facility (if necessary).</p>
<p>Myanmar</p> <p>Criminal penalties: None, except those acts which would be generally covered by the penal code.</p> <p>Civil remedies: None.</p> <p>Services: None.</p>
<p>Philippines</p> <p>Criminal penalties: Anti Violence Against Women and their Children Act 2004, Section 6 establishes penalties for acts of domestic violence (except for rape).</p> <p>Articles 266-B, Anti-Rape Law 1997, establishes penalties for rape.</p> <p>Civil remedies: Section 8, Anti Violence Against Women and their Children Act 2004, provides for protection orders. Section 38 establishes survivors’ rights to receive payment for damages, as well as orders for maintenance and custody orders.</p> <p>Services: Section 40, Law on Development and Protection of Women 2004, establishes mandatory programmes and services for survivors (including shelters, counselling, psychosocial services, and other recovery and rehabilitation programmes). Section 41 provides for counselling and treatment of offenders.</p>
<p>Singapore</p> <p>Criminal penalties: The only penalties that are established under the section of the Women’s Charter 2011 that addresses violence in the family are penalties imposed for breach of a protection order (including a fine and short prison term).</p> <p>Civil remedies: Women’s Charter 2011, Sections 65–67 provide for protection orders in cases of domestic violence where ‘on the balance of probabilities’ it is necessary for the personal safety of the applicant.</p> <p>Services: Women’s Charter 2009, Section 65(5)(b) states that a protection order may also include orders “referring the person against whom the order is made or the protected person or both or their children to attend counselling...”</p>
<p>Thailand</p> <p>Criminal penalties: Domestic Violence Victim Protection Act 2007, Section 4 establishes that whoever conducts any act that is domestic violence shall be liable to a compoundable penalty of not exceeding six months or to a fine of not exceeding six thousand Baht. (This provision also stipulates that the provision should have no effect as to any penalty for an action that is <i>also</i> an offence under the penal code).</p> <p>Civil remedies: Domestic Violence Victim Protection Act 2007, Section 10 authorises a competent official to impose ‘provisional remedial measures’ during investigations, including forbidding contact, financial assistance and child custody arrangements. The law also provides for mediation (sections 15 and 16).</p> <p>Services: None.</p>

Viet Nam
<p>Criminal penalties: Article 42, Law on Domestic Violence Prevention and Control 2007, provides that <i>‘depending on the nature and severity of their violations, [perpetrators shall] be administratively sanctioned, disciplined or examined for penal liability; if causing damage, they shall pay compensation according to law.’</i></p>
<p>Civil remedies: Articles 19–22, Law on Domestic Violence Prevention and Control 2007 provide measures for forbidding contact.</p>
<p>Services: Articles 23–25, Law on Domestic Violence Prevention and Control 2007, establish the need to provide services to survivors including health care, counselling and emergency support.</p>
<p>Regulating the Social Assistance Policy for Social Protection Beneficiaries 2013: Survivors of domestic violence or sexual abuse may be entitled to state support including community-based foster care.</p>

As can be seen in table 11, all ASEAN member States, with the exception of **Myanmar** (which as mentioned has no domestic violence provisions) and (until recently) **Lao PDR**, have provided for civil orders and measures to address and prevent cases of domestic violence. These include: injunctive civil orders, such as protection orders/instructions, and restraining orders/‘forbidden contact’ orders, as well as measures for financial compensation, maintenance orders and custody arrangements. The laws of **Malaysia** and **Singapore** commendably establish a protective ‘balance of probabilities’ standard in granting injunctive or other reliefs for victims of violence. Specific and detailed laws that provide a range of options for victims of violence are useful because they assist courts in decision-making and have the best potential to provide protection, relief and a remedy for survivors in a range of different circumstances.

In some ASEAN member States, criminal sanctions and penalties are established in specific legislation pertaining to domestic violence, (for example in **Indonesia** and the **Philippines**); in other States penalties are covered within the scope of more general provisions in the penal or criminal code.

Where no specific penalties are established within domestic violence legislation, it is important that the domestic violence law contain a provision which stipulates that acts of domestic violence constitute criminal offences and should be punished in accordance with penal law, as is the case in **Cambodia, Malaysia** and **Thailand**. Unfortunately in **Brunei, Lao PDR** and **Singapore**, the special legislation on domestic violence does not contain penalties for domestic violence as defined in the law, nor reference to the relevant penal/criminal law. The law in **Viet Nam** is vague as to when ‘domestic violence’ as defined by special law can be understood to be relevant to penal law: Article 42 of the Domestic Violence Prevention and Control Act in **Viet Nam** generally states that “those who commit acts of violation of the law on domestic violence prevention and control shall, depending on the nature and severity of their violations, be administratively sanctioned, disciplined or examined for penal liability; if causing damage, they shall pay compensation according to law.”

3.5 Recommendations for law reform: domestic violence

Recommendations
<ul style="list-style-type: none"> • Enact legislation that explicitly prohibits corporal punishment/ all use of physical violence in the home or in the family (all ASEAN states) • Consider establishing specific legislation prohibiting violence perpetrated within the context of interpersonal and family relationships. Legislation should recognize that domestic violence is a form of gender-based violence that is most commonly directed at women and girls. However, legislation should also recognize the circumstances of boys who suffer domestic violence (all ASEAN member States, particularly Brunei and Malaysia). • Assure survivors of domestic violence maximum protection from all types of violence including physical, emotional and, critically, sexual violence and abuse (all ASEAN member States, particularly Brunei, Cambodia, Lao PDR, Malaysia, Myanmar, the Philippines and Thailand).

- Afford recognition to all relationships within which domestic violence may occur, including all current and former partners (whether married, cohabiting or otherwise) and all children within the household (whether legitimate, illegitimate, related or not and domestic workers) (**all ASEAN member States**).
- Consider abolishing all exceptions and defences to acts of physical, emotional and sexual violence directed at children in the context of an intimate partner or care-giving relationship (**all ASEAN member States, apart from Viet Nam**).
- Consider specifically criminalizing marital rape within the law. Ensure that legislation provides that no marriage or other relationship status constitutes a defence for a charge of sexual assault (**Brunei, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore and Thailand**).
- Consider removing any provisions allowing a defence of honour for the assault or murder of any family member, including intimate partners and children (the **Philippines**).
- Consider prohibiting within law, all forms of corporal punishment and physical assault of children within the home. Ensure that there is no exception to assault provisions allowing for ‘reasonable chastisement’ of children in the context of discipline or punishment (**Brunei, Cambodia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore and Thailand**).
- Define sexual assault, including within the context of legal marriage (or any other relationship status) as a violation of bodily integrity and sexual autonomy (**all ASEAN member States**).
- Consider removing any requirement that sexual assault be committed by force or violence; define sexual assault and rape as sexual activity that is perpetrated without the consent of the victim (**Cambodia and Lao PDR**).
- Consider creating a wide range of flexible civil and penal remedies, including under special domestic violence legislation, to prevent domestic violence, and provide redress for survivors where such violence occurs (**all ASEAN member States, especially Brunei, Lao PDR, Myanmar and Viet Nam**).

Table 12. Report card: Protection from domestic violence

	Domestic violence recognized by law as a distinct form of violence	All acts of domestic violence recognized by law	All relationships within which domestic violence occurs recognized by law	No exception for sexual violence directed at some intimate partners	No exception for physical violence directed at some intimate partners	No exception for physical violence directed at children in a care-giving relationship
Brunei	●	●	●	●	●	●
Cambodia	●	●	●	●	●	●
Indonesia	●	●	●	●	●	●
Lao PDR	●	●	●	●	●	●
Malaysia	●	●	●	●	●	●
Myanmar	●	●	●	●	●	●
Philippines	●	●	●	●	●	●
Singapore	●	●	●	●	●	●
Thailand	●	●	●	●	●	●
Viet Nam	●	●	●	●	●	●

Part III: Harmful Traditional Practices

Chapter 4. Harmful Traditional Practices

4.1 Context: Understanding harmful traditional practices

The term ‘harmful traditional practices’ refers to acts carried out as part of a particular tradition, custom, religion or culture that have the potential to result in physical or emotional harm to a child. These practices are usually carried out without consent of the child, and often serve the purpose of expressing and reinforcing the subordinate role and diminished value and position of children, most especially girls, within a given culture or society.¹ They may be implemented as methods of social control, to affirm rigid, hierarchical norms and identities associated with certain social relationships such as adult/child, man/woman, boy/girl. The term can be applied to a wide variety of different practices within a wealth of different cultures and traditions. These include: corporal punishment, female genital mutilation/cutting (FGM/C), violent and degrading initiation rites (including virginity inspection), forced and early marriage, so-called ‘honour’ crimes, accusations of witchcraft (and associated rituals), and binding, scarring, burning and branding parts of the body.²

In order to protect children effectively, national legislation needs to include a clear and comprehensive prohibition of all harmful practices against children. The overall prohibition in the legislation should be supported by detailed provisions, including enforcement provisions, to ensure protection for both girls and boys. There should be no exemptions from the protection, including no exemptions on the ground of culture, tradition, honour or religion. It is recognized that this may be difficult within a pluralistic legal system where religious or customary law may tolerate or support harmful traditional practices, but States need to ensure that any legal reform results in the total prohibition of such practices. This may mean criminalizing such acts, since the criminal law, as a rule, applies to all persons present in the State regardless of their ethnic or religious affiliation or their citizenship.

This chapter analyses the national laws of ASEAN member States relating to three particular and highly prevalent types of harmful practice: child marriage, forced marriage and FGM/C. This analysis does not encompass the full range of harmful traditional practices that occur or are emerging within the ASEAN region, but for reasons of length and space, the report focuses only on these three areas.

4.1.1 Child marriage

For the purposes of this analysis, marriage is defined as a culturally sanctioned union made between two or more people that establishes certain rights and obligations between them, their children, and their broader families (in-laws).³ Child marriage is defined as marriage where a party is below age 18. Although neither the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) nor the Convention on the Rights of the Child (CRC) establish a specific minimum age for marriage, the Committees of both treaty bodies have recommended that the minimum age for marriage for both men and women should be set no lower than 18 years.⁴

Child marriage may affect both girls and boys, however, girls are disproportionately affected by the practice.⁵ It is estimated that some 400 million women aged 20–49 years around the world were married while they were

¹ CEDAW, ActionAid UK and the International Planned Parenthood Federation, *Harmful Traditional Practices Affecting Women and Girls*.

² CRC Committee, *General Comment No. 13*.

³ Haviland et al. (2010). *Cultural Anthropology: The Human Challenge*, edition 13, Cengage Learning, p. 209.

⁴ CEDAW Committee, *General Recommendation No. 21*, 1994, A/47/38.

⁵ UNICEF, (2010). *Progress for Children*. Available at: http://www.unicef.org/protection/Progress_for_Children-No.9_EN_081710.pdf [accessed 6 June 2013].

children, and that an estimated that 18 per cent of women aged 20–24 in East Asia and the Pacific were married before age 18.⁶

4.1.1.1 Impact of child marriage

The physical, emotional and social consequences of early marriage for girls can be severe. Research has demonstrated that girls aged 15–19 are twice as likely to die of complications during pregnancy and childbirth compared to women aged 20–24;⁷ and that new brides are often under pressure to ‘prove’ their fertility by becoming pregnant as quickly as possible.⁸ Furthermore, multiple studies have indicated that young brides are relatively less able to negotiate power within different facets of married and domestic life, including sexual relations, condom use, childbearing and others. They are likely to suffer an increased risk of domestic violence, sexually-transmitted infections, maltreatment and rape;⁹ and are more likely to internalize the idea that such treatment is acceptable and justified.¹⁰ Correlations between early marriage and incidents of domestic violence are stronger when there is a (significant) age difference between the child bride and her spouse.¹¹

4.1.1.2 Child marriage risk factors

Girls who experience poverty, live in rural areas, and/or have limited access to education are at increased risk of early marriage.¹² This is exacerbated in societies where girls and women are exchanged during marriage through the payment of a ‘dowry’ or ‘bride price’ to the family of the husband or girl, respectively, and where cultural norms value brides according to their youth and virginity. These factors combine to provide strong economic incentives on parents to marry their daughters early, often for the purpose of resolving debts and disputes.¹³ Furthermore, marrying younger siblings at the same time as older ones can reduce wedding costs, as well as the (perceived) economic burden of girl children on their parents.¹⁴

In its Concluding Observations to Viet Nam in 2012 the CRC Committee note that societal discrimination against girls is linked to high drop-out rates of girls from education and a widespread practice of early marriage, especially in mountainous areas.

Source: CRC/C/VNM/CO/3-4, para. 29 (d).

Much of the literature on child marriage within South-East Asian cultures attributes the demand for young brides to the value placed on girls’ virginity; as well as a widespread perception that there are fewer girls and

⁶ UNICEF (2012) *Program Brief: Child Marriage*. Available at: http://www.un.org/en/events/girlchild/pdf/UNICEF_Child%20Marriage%20Programme%20Brief.pdf [accessed 23 May 2013].

⁷ Save the Children (2012), *Every Woman’s Right, How Family Planning Saves Children’s Live*, p. 7.

⁸ UNFPA (2012), *Marrying too young*. Available at: <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf> [accessed 26 June 2013].

⁹ Save the Children (2012), *Every Woman’s Right*, p. 7.

¹⁰ Jenson, R. and Thornton, R. (2003). *Early female marriage in the developing world*, Gender and Development, vol. 11, No. 2, pp. 9–19.

¹¹ WHO, *Child Marriages*. Available at:

http://www.who.int/mediacentre/news/releases/2013/child_marriage_20130307/en/ [accessed 26 June 2013].

¹² UNICEF (2005) *Early Marriage a Harmful Traditional Practice*. Available at:

http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf [accessed 26 June 2013].

¹³ UNFPA (2012), *Marrying too young*.

¹⁴ Plan Asia Regional Office (2013) *Asia Child Marriage Initiative: Summary on Research in Bangladesh, India and Nepal*. Available at: <http://www.icrw.org/files/publications/PLAN%20ASIA%20Child%20Marriage-3%20Country%20Study.pdf> [accessed 26 June 2013].

women available for marriage compared to boys and men.¹⁵ Parents may marry their daughters early to reduce the perceived risk of promiscuity and consequent loss of honour to the girl and her family. Meanwhile men might prefer to marry young girls, judging that they are less likely to have had previous sexual contact. Where a young bride is a virgin, this raises the status of the family and the dowry to be paid by the husband.¹⁶ In some cases, girls are subjected to efforts by female relatives to verify the girl's virginity before marriage (another example of a harmful traditional practice which has received attention in human rights literature).¹⁷ Other problematic constructions of femaleness, which contribute to child marriage in East Asia include the alleged inability of women to work for an income, and the shorter reproductive life cycle of women relative to men.¹⁸

4.1.2 Forced marriage

Forced marriage is defined as a marriage that is conducted under duress, where one or both of the parties to the marriage have not given their full and free consent.¹⁹ In much of human rights literature, the terms 'child marriage' and 'forced marriage' are used interchangeably, on the basis that meaningful or valid consent to marriage cannot be given by anyone under age 18. This theoretical position fails to account for the potential differences between forced and early marriage from the perspective and experience of the child involved, and the steps that need to be taken by States to prevent such marriages. For this reason, this analysis draws a distinction between the terms: forced marriage (which usually involves violence or coercion) and child marriage (which may not). This is done with recognition that the two concepts are intimately related such that, depending on the context, it may be difficult to distinguish between the two.

As with child marriage, forced marriage largely affects young women and girls, although there are cases of young men and boys being forced to marry, especially if there are concerns about their sexual orientation.²⁰

4.1.2.1 Impact of forced marriage

The element of duress that is present whenever a forced marriage takes place causes it to be regarded as an act of violence.²¹ Forced marriage may be effected through a variety of psychologically and physically violent means, including the exertion of emotional pressure by family members, blackmail, intimidation, abduction, imprisonment, assault and sexual violence. Attempted forced marriages may accidentally or intentionally result in the death of a child. Young women who resist are often at risk of 'honour' killing (the murder of a woman or girl by a close family member to preserve the family's reputation).²²

¹⁵ Council of Europe, *Forced Marriages and Child Marriages*, Resolution 1468 (2005). Available at: http://www.aic.gov.au/documents/0/1/B/%7b01B01E30-2D3F-44EC-A3F6-713A85400134%7dtandi415_001.pdf [accessed 6 June 2013].

¹⁶ Larsen J., (2011) *The Trafficking of Children in the Asia-Pacific*, Trends and Issues in Crime and Criminal Justice No. 415, Canberra: Australian Institute of Criminology. Available at: http://www.aic.gov.au/documents/0/1/B/%7b01B01E30-2D3F-44EC-A3F6-713A85400134%7dtandi415_001.pdf [accessed 6 June 2013].

¹⁷ Fact Sheet No. 23, *Harmful Traditional Practice Affecting the Health of Women and Children, Convention on the Elimination of all forms of Discrimination against Women* (Article 5 (a)), adopted by General Assembly resolution 34/180 of 18 December 1979.

¹⁸ ILO. (2008). *Work, Income and Gender Equality in East Asia*, 2008. Available at: http://www.ilo.int/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_101719.pdf [accessed 5 June 2013].

¹⁹ Council of Europe, *Forced Marriages and Child Marriages*, Resolution 1468 (2005).

²⁰ Advocates for Human Rights, *Prevalence of Forced and Child Marriage*. Available at: http://www.stopvaw.org/prevalence_of_forced_and_child_marriage [accessed 23 May 2013]. Research from the United Kingdom has estimated that around 15 per cent of child marriages involve boys, cf. <http://www.familylawweek.co.uk/site.aspx?i=ed24572> [accessed 6 June 2013].

²¹ United Nations, 2006, Report of the Secretary-General: In-depth study on all forms of violence against women, A/61/122/Add.1.

²² ACCM, *Forced Marriage*. Available at: http://www.accmuk.com/?target=forced_marriage&menuitem=Campaigns&submenuitem=Forced%20Marriage [accessed 6 June 2013].

Once married, victims of forced marriage may experience feelings of extreme isolation; they may be estranged from their families, trapped in abusive and/or servile situations, and they may lack recourse to support networks and social opportunities. The power imbalance that is implicit within a forced marriage can exacerbate the likelihood that a young bride will be exposed to extreme physical, sexual and psychological abuse from her partner.²³ Furthermore, attempting to escape a forced marriage is likely to incur severe negative repercussions (sometimes even including violent attack and murder) either from the spouse, from the bride's family or from her spouse's family.²⁴ Forced marriage has been associated with depression, self-harm and suicide among victims.²⁵

4.1.2.2 Forced marriage risk factors

The risk factors related to forced marriage are similar to those related to child marriage; poverty, early removal from education, harmful social and cultural gender norms and structural gender inequalities within society all play a role. Survivors of sexual violence are at particular risk of forced marriage. In many cultures, rape is perpetrated as a means of 'dishonouring' a girl in the eyes of the family and community. In such circumstances, a girl who has been labelled 'worthless' and 'ruined' through rape may be left with no option other than to marry her abuser.²⁶

Research has demonstrated that forced marriage becomes more likely in situations of conflict and humanitarian crisis for a variety of reasons, including: an overall increase of the level of violence in society; experiences of acute poverty due to losses in capital and livelihood; or because families may fear that unmarried daughters are a greater risk of becoming victim to sexual violence.²⁷ Militias in **Myanmar** have been documented as forcing girls into marriage, both as a weapon of war and tool to suppress local resistance, as well as a means for securing immunity from rape. There have also been reports of Militias trafficking girls from Myanmar into forced marriages abroad.

Source: Network for Human Rights Documentation – Burma, *Documenting Forced Marriage in Burma*. Available at: http://www.aapbb.org/nd_burma_Forced%20Marriage.pdf [accessed 25 June 2013].

There is evidence that, in many contexts, girls with mental and physical disabilities are at increased risk of forced marriage; as are girls of a sexual orientation or identity deemed deviant or unacceptable by their family and culture. As mentioned above, young men may also be forced to marry girls as a 'preventative' measure against homosexuality.²⁸

4.1.3 Female genital mutilation/cutting

Female genital mutilation/cutting (FGM/C) is one of the most widely recognized and discussed harmful traditional practices.²⁹ The World Health Organization (WHO) has defined the practice as "all procedures undertaken that involved the partial or full removal of the external female genitalia or other injury to the female genital organs for non-medical reasons."³⁰

²³ Social Care Institute for Excellence, *Investigating abuse of adults: forced marriage*. Available at: <http://www.scie.org.uk/publications/adultsafeguardinglondon/investigatingadultabuse/forcedmarriage.asp> [accessed 6 June 2013].

²⁴ BMA. (2008). *Victims of Forced Marriage, Guidance for Professionals*.

²⁵ *What is Forced Marriage*. Available at: <http://www.forcedmarriage.net/whatis.html>.

²⁶ ECPAT, *Forced Marriage*. Available at: http://www.ecpat.net/ei/Csec_forced.asp [accessed 25 June 2013].

²⁷ Global Justice Initiative, *Forced Marriage Resources*. Available at: <http://globaljusticeinitiative.wordpress.com/forced-marriage-2/forced-marriage-resources/> [accessed 25 June 2013].

²⁸ *What is Forced Marriage*, <http://www.forcedmarriage.net/whatis.html>.

²⁹ International NGO Council on Violence against Children, *Violating Children's Rights: harmful traditional practice based on tradition, culture, religion or superstition*, p. 26.

³⁰ WHO. (2012). *Fact Sheet No. 241, Female genital mutilation*. Available at: <http://www.who.int/mediacentre/factsheets/fs241/en/index.html> [accessed 1 August 2013].

There are many different types of FGM/C, varying in levels of severity and harm from total removal of the clitoris and labia, to the infliction of a small incision or cut on the clitoris.

It is estimated that around 140 million girls around the world have undergone FGM/C, most of them before their fifteenth birthday.³¹ The majority of these girls are living in Africa, the Middle East and South Asia. While FGM/C is generally less common in South-East Asian countries, it is nonetheless practiced in some minority communities in **Brunei**, **Indonesia** and **Malaysia**. Even countries that do not have FGM/C as a cultural tradition are recommended to forbid the practice in legislation to protect those who migrate from areas where it is a common practice.

4.1.3.1 Impact of FGM/C

The practice of FGM/C is likely to have a profound, harmful effect on the sexual and reproductive health of women and girls, leading to pain and health problems during intercourse, menstruation and childbirth, which in some cases may even result in death. FGM/C also has a severe psychological and social impact. The practice violates numerous human rights provisions, including the rights to health and to protection from violence, the prohibition against discrimination against women and girls, and the prohibition against torture and other cruel, inhuman or degrading treatment.³²

4.1.3.2 FGM/C risk factors

Explanations for FGM/C often refer to religious principles and the desire to preserve tradition and perpetuate cultural and local practices. Other reasons include the desire to control female sexuality (to prevent women and girls from experiencing excessive sexual urges), to make girls suitable for marriage, and respectable within the context of the wider community. In many cases FGM/C may be associated with cleanliness and the avoidance of infection or disease.³³

Several recent studies in **Indonesia** have noted the ‘medicalization’ of the practice of FGM/C. A 2009 study, published by the Institute of Population and Gender Studies at Yarsi University, found that 18 per cent of all general hospitals, women and children’s hospitals and maternity clinics perform FGM/C, and concluded that the practice “continues to this day without showing any tendency of a downward trend.”³⁴ Research conducted by Amnesty International in 2010 found many women who reported having chosen to have FGM/C performed on their baby girls for religious reasons. While some of these women felt that the procedure constituted no more than a ‘symbolic scratch’, others reported that it resulted in bleeding.³⁵

Prevalence rates of FGM/C in **Brunei** and **Malaysia** are unknown, although it is thought that a few communities practice the most extreme form (type IV).³⁶ As recently as August 2012, the Ministry of Religious Affairs in Brunei issued a statement declaring that circumcision for Muslim females is an obligatory rite under Islam, and

³¹ Ibid.

³² CRC, Articles 9 and 24.

³³ Amnesty International. (2012) *Indonesia: Briefing to the Committee on the Elimination of All forms of Discrimination against Women, 52nd Session, July*. Available at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AmnestyInternationalForTheSession_Indonesia_CEDAW52.pdf [accessed 1 August 2012].

³⁴ Uddin, J. et al. (2010) *Female Circumcision: A Social, Cultural, Health and Religious Perspective*, Institute of Population and Gender Studies, Yarsi University, Jakarta. p. 162.

³⁵ Amnesty International. (2012) *Indonesia: Briefing to the Committee on the Elimination of All forms of Discrimination against Women, 52nd Session July*; Population Council. (2003) *Female Circumcision in Indonesia: Extent, Implications and Possible Interventions to Uphold Women’s Health Rights*, Jakarta, September, p. 39.

³⁶ Rahman Isa A, Shuib R, Shukri Othman M (1999). *The practice of female circumcision among Muslims in Kelantan, Malaysia. Reproductive Health Matters* 7 (13): 137–144.

distinguished between the religious practice constituting the removal of the hood of the clitoris and the practice as condemned by WHO of the full or partial removal of the genitalia.³⁷

4.2 International standards on harmful traditional practices

CRC Article 24(3) requires States to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”³⁸ In *General Comment No. 13* the CRC Committee provided a list of acts that are considered as falling within the category of ‘traditional practices’ referred to in Article 23, although this list is not intended to be exhaustive.

CEDAW sets out obligations on States parties to address harmful practices that predominantly affect girls and women. Pursuant to Article 2(f) of the Convention, States are obliged to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices” to address discrimination against women, including acts defined as violence against women. The CEDAW Committee has found that practices like “forced marriage, dowry deaths, acid attacks and female circumcision” are forms of gender-based violence, perpetuated by “traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles.”³⁹ In *General Recommendation No. 14*, the Committee recommended that States take appropriate and effective measures to eradicate ‘female circumcision’.⁴⁰ In *General Recommendation No. 24* on the right to health, the CEDAW Committee called for “the enactment and effective enforcement of laws that prohibit female genital mutilation and marriage of girl children.”⁴¹

‘Son preference’ has also been defined as a harmful traditional practice, to the extent that it may be harmful to daughters. The United Nations Committee on Economic, Social and Cultural Rights defined the preferential feeding and care of male children as a harmful traditional practice that negatively affects the health of female children.⁴²

4.3 Legislation in ASEAN member States: Age for marriage

4.3.1 Establishing a minimum age for marriage

It is clearly established in international law that States must set a minimum age for marriage.⁴³ The earliest international instruments that addressed the issue are the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964 and the (non-binding) Recommendation, 1964 related to the same treaty. Signed by only 49 States, these instruments never gained widespread acceptance, and have been widely discredited for setting the minimum threshold for marriage far too low. The Convention requires the elimination of the marriage of girls under the age of puberty,⁴⁴ while the Declaration calls for States to establish a minimum age for marriage of no less than 15 years. However, this can be reduced further if agreed by a ‘competent authority’, on the grounds of ‘serious reasons’, and ‘in the interests of the intended spouses’.⁴⁵

³⁷ Brunei Times, *Circumcision for females is a religious rite*, 16 June 2012. Available at: <http://www.bt.com.bn/news-national/2012/08/29/circumcision-muslim-females-religious-rite-mora> [accessed 1 August 2012].

³⁸ Article 24 (3), CRC.

³⁹ CEDAW Committee, *General Recommendation No. 19*, para. 11.

⁴⁰ CEDAW Committee, *General Recommendation No. 14: Female Circumcision*, 1990, A/45/38.

⁴¹ CEDAW Committee, *General Recommendation No. 24: Women and health: The right to health*, 1999, para. (d).

⁴² United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health* (2000) E/C.12/2000/4, para. 22.

⁴³ Article 16 (2), CEDAW.

⁴⁴ United National Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (adopted 7 November 1962, entered into force 9 December 1964) Doc 1763 A (XVKK).

⁴⁵ Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, General Assembly resolution 2018 (XX), 1 November 1965.

More recently, human rights treaty bodies have established a stronger and more child-rights-appropriate standard for the minimum age for marriage, setting the threshold at no lower than 18 years. Although (as mentioned above) neither CEDAW nor CRC explicitly state a specific minimum age for marriage, both Committees have clarified that treaty provisions should be understood as prohibiting marriage of a child under age 18. Article 16 (2) of CEDAW provides that “the betrothal and the marriage of a child shall have no legal effect.” While there is no definition of the term ‘child’ in the Convention, the CEDAW Committee issued its interpretation of Article 16(2) in *General Recommendation No. 21*, specifying that a child is understood under international law to be a person under age 18 and, therefore, this Article should be read as prohibiting marriage for both girls and boys under age 18. Furthermore, in *General Comment No. 4* on Adolescent Health and Development, the CRC Committee strongly recommended that “States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.”⁴⁶ This recommendation is also referred to in the Committee’s *General Comment No. 13* on violence against children.⁴⁷

All ASEAN member States have a minimum age for marriage set out in law, with the exception of Myanmar, which has no minimum age for marriage for boys (table 13). The minimum age for marriage varies widely from 14 years in Myanmar (girls) and Brunei (both boys and girls) to 20 years (boys) in Viet Nam.

The age for marriage in **Brunei, Indonesia, Malaysia, Myanmar** and **Thailand** is below the threshold of 18 years recommended by international human rights treaty bodies. Of particular concern are the ages of marriage in Brunei and Myanmar, which set the minimum age for marriage as young as 14 years. Furthermore, in Myanmar there is no minimum age for marriage for boys.

Table 13. Minimum age for marriage in ASEAN member States

	Female	Male
● Brunei: Marriage Act 1984, Section 3		
	14	14
Notes: Exceptions permitted on the ground of religion or custom		
● Cambodia: Article 5, Law on Marriage and the Family 1989		
	18	20
Notes: Except in the case of pregnancy with parental consent for both boys and girls		
● Indonesia: Articles 1(1) and 26, Law on Marriage 1974; Law on Child Protection 2002		
	16	19
Notes: Parental consent required until the age of 21. Parents may also ‘petition’ a ‘judge or other competent authority’ and be granted permission for a marriage of a girl under age 16 or a boy under age 19 (Law on Marriage 1974). Law on Child Protection 2002 appears to set the minimum age of marriage at 18.		
● Lao PDR: Article 9, Amended Family Law (2008)		
	18	18
● Malaysia: Section 10, Law Reform Marriage and Divorce Act 1976		
	18	18
Notes: Parental consent required until 21 years. Females can marry at age 16 if authorized by a license granted by the chief minister.		
● Federal Territories of Kuala Lumpur and Labuan:		
	16	18
Notes: A <i>Syariah</i> judge may grant permission in writing for an exception in certain circumstances		

⁴⁶ United Nations CRC Committee, *CRC General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, 1 July 2003, CRC/GC/2003/4.

⁴⁷ Footnote 13, para. 33.

● Myanmar: Marriage Act		
14		No minimum age
Notes: Girls must have parental consent. Based on CRC Committee, Concluding Observations to Myanmar, 2012, (CRC/C/MMR/3-4) para. 3.3. The Marriage Act from Myanmar was not available in English.		
● Philippines: Article 5 and 14, Family Code 1987		
18		18
Notes: Parental consent required from age 18 until 21.		
● Thailand: Article 1448 and 1436, Civil and Commercial Code 2008		
17		17
Notes: A judge may grant an exception for an 'appropriate reason'. Parental consent required until 20.		
● Singapore: Article 9 and Schedule 2, Women's Charter 2009		
18		18
Note: Parental consent required until 21 years. The Minister of Social and Family Development may, in his discretion, grant a special marriage license to parties who are below the age of 18 if there is parental consent. Women's Charter 2009, Article 9, 13 and 21 and Schedule 2. The Administration of Muslim Law Act 2009 Section 96(4) provides that a Kadi may in special circumstances solemnize the marriage of a girl who is below the age of 18 years but has attained the age of puberty.		
● Viet Nam Article 9, Marriage and Family Law 2000		
18		20

4.3.2 Exceptions to the minimum age for marriage

As shown in table 14, the majority of ASEAN member States (**Brunei, Cambodia, Indonesia, Malaysia, Singapore** and **Thailand**) have legalized exceptions to the general minimum age for marriage. Exceptions may be granted for a wide range of reasons which vary from State to State but are generally based on the grounds of religion, ethnicity or custom; physical signs of puberty; parental consent; pregnancy; or for other, broadly defined or undefined reasons related to the personal circumstances of children, couples and families.

The CRC Committee and the CEDAW Committee have consistently expressed concern about exceptions in law to the general minimum age for marriage.⁴⁸

4.3.3 Exceptions on the basis of culture and religion

In some cases marriage laws explicitly exclude jurisdiction over particular religious or ethnic groups. As can be seen from table 14, Section 1(2) of the Marriage Act in **Brunei** states that the law does not apply to Muslims, Hindus, Buddhists, Dayaks and "other persons governed by their own laws or customs of marriage which are recognized by Brunei law." Section 3 of the Women's Charter, **Singapore**, provides that particular sections of the act, including section (III) that establishes the minimum age for marriage, do not apply to persons married under Muslim law. Similarly, Section 3 of the Law Reform (Marriage and Divorce) Act 1976, **Malaysia**, stipulates the law does not apply to Muslims and those married under Islamic Law, any native of Sabah or Sarawak, or any aborigine of Peninsular Malaysia (unless "he elects to marry under this act", or contracted marriage under the Christian Marriage Ordinance or the Church and Civil Marriage Ordinance).

⁴⁸ Cf. CEDAW Committee, Concluding Observations: Lao PDR, 2005, (CEDAW/C/LAO/1-5), para. 37; CEDAW Committee, Concluding Observations: Thailand, 2006, (CEDAW/C/THA/CO/5), para. 19; CRC Committee, Concluding Observations: Malaysia, 2007, (CRC/C/MYS/CO/1), para. 29; and CRC Committee, Concluding Observations: Thailand, 2012, (CRC/C/THA/CO/3-4) para. 31.

Table 14. Exclusions to the minimum age for marriage on the grounds of religion, ethnicity or culture

Country	Law	Provision	Excluded groups
Brunei	Marriage Act 1984	Section 1(2)	Muslims, Hindus, Buddhists, Dayaks, and others
Cambodia	None		
Indonesia	None		
Lao PDR	None		
Malaysia	Law Reform (Marriage and Divorce) Act 1976	Section 3	Muslims and persons married under Islamic law, natives of Sabah or Sarawak, aborigines of Peninsular Malaysia
Myanmar	None		
Philippines	See note.		
Singapore	Women's Charter 2009	Section 3	Muslims
Thailand	None		
Viet Nam	None		

Note: The Code of Muslim Personal Laws (CMPL) applies to the Muslim population. A regional gender and development code has been enacted to discourage marriage below 18 years and provides for mechanisms to verify the age of the contracting parties.

In its concluding observations to Malaysia in 2007, the CRC Committee expressed concern about “the contradictions between the provisions of the civil law and the *Syariah* law,” particularly mentioning that “the Law Reform (Marriage and Divorce) Act 1976 (Act 164) and the Islamic Family Law Act (Federal Territory) 1984 (IFLA) define the minimum age for marriage inconsistently.”

Source: CRC/C/MYS/CO/1 25 June 2007

4.3.4 Exceptions granted for other reasons

In other cases, States' provisions permit a competent administrative or judicial authority to authorize the marriage of persons below the minimum age for marriage under particular or special circumstances (usually also requiring parental consent). Although such provisions may prima facie appear to satisfy a due process condition, it is problematic that there is no absolute minimum age below which a young person cannot be married. Furthermore, the conditions under which an exception can be decided by a competent authority tend to be general and vague (see table 15).

Table 15. Exceptions to the minimum age for marriage due to personal circumstances of the applicants

Country	Law	Provision	Personal circumstances
Brunei	None		
Cambodia	Law on the Marriage and Family 1989	Article 5	In special cases if the woman becomes pregnant, the minimum age for marriage may be lowered.
Indonesia	Law on Marriage (1974)	Article 7	Parents may petition the court or other authority to grant marriage.
Lao PDR	None		

Malaysia	N/A Law Reform (Marriage and Divorce) Act, 1976		
	Islamic Family Law, 1984 (Kuala Lumpur and Labuan)	Section 9	<i>Syariah</i> judge may grant permission for children to marry in certain circumstances.
Myanmar	None		
Philippines			Code of Muslim Personal Law applies to the Muslim population
Singapore	Women's Charter 2009	Section 21	Minister may grant permission for children to marry at his/her discretion.
	Administration of Muslim Law 2009	Section 96	A Kadi may in special circumstances solemnize the marriage of a girl who is below the age of marriage but has attained the age of puberty.
Thailand	Civil and Commercial Code 2008	Section 1448	Court may authorize marriage below 17 years in case of having an 'appropriate reason'.
Viet Nam	None		

For example, Section 1448 of the Civil and Commercial Code, **Thailand**, specifies that “the court may, in case of having appropriate reason, allow [marriage applicants] to marry before attaining such age [the minimum legal age for marriage],” however, there is no further clarification of what this ‘appropriate reason’ may be. The **Singapore** Women’s Charter (2009) provides that a Minister from the Ministry of Social and Family Development may, in his discretion, grant a special marriage license to parties who are below age 18 if there is parental consent. Section 9 of the Islamic Family Law (Federal Territories) **Malaysia** (which applies to Kuala Lumpur and Labuan territories only) provides that “no marriage may be solemnized where a man is under eighteen or a woman is under the age of sixteen except where the *Syariah* Judge has granted him permission in writing in certain circumstances.” A similar provision applies in Singapore under the Administration of Muslim Law Act.⁴⁹ Again no information is provided as to what such ‘certain circumstances’ are understood to be. Finally, in **Indonesia**, in cases where a boy is below 19 years, or a girl is below 16 years, the parents of the couple may petition the court to allow the marriage to proceed.

It is arguable that a degree of flexibility within the law concerning the minimum age for marriage may serve the best interests of individual children in particular cases (providing, of course, that the free and full consent of the marriage applicant is clearly established). Where, for example, a 17 year old child becomes pregnant in a community where sexual relationships outside marriage are highly taboo and heavily sanctioned, it may be in the best interests of the child, providing, of course, that she gives free and full consent to the marriage, to allow her to marry. The general and vague provisions presented above, however, are unlikely to be sufficient to guarantee appropriate protection of children, and could be applied to permit early marriage in a wide array of circumstances that are not in the best interests of children. The establishment of parental consent to early marriage is not sufficient to satisfy the ‘best interests’ principle and ensure protection of children.⁵⁰ Furthermore, there should be an age below which it can never be understood to be in the best interests of children to be married. The absence of this minimum threshold within the laws of **Brunei, Cambodia, Indonesia, the Philippines, Singapore** and **Thailand** and the Islamic family law of **Malaysia** could serve to undermine a claim that exception provisions are serving a protective purpose for children.

The limited circumstances under which exceptions may be made to the minimum age for marriage should be clearly defined within law, in line with the best interests of children. **Cambodia** provides an example of (potentially) better practice in this regard, specifying in the Family Law that an exception may be made to the

⁴⁹ Administration of Muslim Law Act Section 96(5).

⁵⁰ The lack of relevance of parental consent to early marriage is recognized by the CRC Committee in *General Comment No. 4*, para. 20: “The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.”

minimum age for marriage in the specific case of pregnancy (and with parental consent). **Malaysia's** Law Reform Act allows an exception to the generally established minimum age for marriage, but specifies that the minimum age can never be lowered beyond an absolute minimum threshold of 16 years. Without analysing the impact of these laws in practice, however, it is not possible to determine whether they are, in fact, serving the best interests of children.

4.3.5 Verification of age of marriage applicants

Despite the fact that all ASEAN member States have provisions that establish a general minimum age for marriage (albeit with exceptions), only the **Philippines** has elaborated clear rules that govern how registration officials should determine or verify the age of marriage candidates in their Family Code.

While it is good practice that the Philippines has established such provisions in their primary legislation, the rules permit a degree of flexibility that is unlikely to be sufficient to protect children from early marriage. Article 12 of the Family Code instructs local civil registrars to request the presentation of candidates' birth or baptismal certificates (originals or copies) on receipt of an application for marriage. If such documentation cannot be produced, however, a sworn testament as to the identity and age of the candidates, either made by the next of kin, or two persons of 'good reputation', will suffice. It is also a matter of concern that the law additionally provides:

“The presentation of the birth certificate shall not be required if the parents of the contracting parties appear personally before the local civil registrar concerned and swear to the correctness of the lawful age of said parties, or when the local civil registrar shall, by merely looking at the applicants upon their personally appearing before him, be convinced that either or both of them have the required age.”

Malaysia requires a 'sworn declaration' from candidates attesting to a range of personal information, including their age.⁵¹ Under Rule 2 of the Women's Charter (Registration of Marriages) in **Singapore**, a notice of an intended marriage must be given to the Registrar, which includes a statutory declaration that the parties to the marriage have attained age 21 and are not below age 18.

Brunei, Cambodia, Indonesia, Malaysia, Myanmar and **Thailand** have no discernible rules for proving the age of marriage applicants within their marriage and family legislation. Without regulation and instruction in law provided to staff on the ground as to how they should verify the age of marriage candidates, it is unlikely that children will be sufficiently protected from early marriage in practice.⁵²

4.3.6 Sex discrimination and the age for marriage

International law requires that the minimum age for marriage should be the same for both men and women. In *General Recommendation No. 21* the CEDAW Committee called on States to abolish provisions that establish different ages of marriage on the basis of sex. Further, in *General Comment No. 4*, the CRC Committee elaborated that Article 2, which prohibits discrimination, should be interpreted as requiring the minimum ages for marriage and sexual consent to be the same for both boys and girls.⁵³ Both Committees have continuously reiterated this principle in their concluding observations to States parties.

⁵¹ Law Reform (Marriage and Divorce) Act, 1976 (Malaysia).

⁵² Such provisions may be contained in secondary legislation, regulations or guidance that have not been reviewed during this mapping.

⁵³ CRC Committee, *General Comment No. 4*, para. 9.

Concluding Observations of the CEDAW Committee:

Cambodia: “[the Committee is] concerned about the difference in the age at which women and men may enter into marriage.”

Source: CEDAW/C/KHM/CO/3

Viet Nam: “the Committee is concerned about the differential minimum legal age for marriage for women and men.”

Source: CEDAW/C/VNM/CO6

Philippines: The CEDAW Committee recommends the review of the Code of Muslim Personal Laws and the abolition of child marriage among the populations covered by the Special Law.

Concluding Observations of the CRC Committee to **Indonesia:** “The Committee also specifically recommends that the State party.... ensure that no discrimination based on sex remains, and that the age for marriage for girls is the same age as that for boys.”

Source: CRC/C/15/Add223

Table 16. Age of consent compared to age for marriage in ASEAN member States

Country	Female		Male	
	Age for marriage	Age of consent	Age for marriage	Age of consent
Brunei	14	16 (13 if married)	14	–
Cambodia	18 (15 “special and necessary cases”)	15	20	15
Indonesia	16 under the Law on Marriage 1974, but 18 according to Articles 1(1) and 26 Law on Child Protection 2002.	15 (Only if it is not obvious that the girl is ‘not marriageable’. Minimum age does not apply to marriage) Article 287, Penal Code.	19 under the Law on Marriage 1974 (18 according to Articles 1 and 26, Law on Child Protection 2002).	19 (18 for homosexual acts)
Lao PDR	18	15 (sexual intercourse with a girl under 15 years of age is a crime punishable with 1–5 years’ imprisonment and a fine; Article 129, Penal Code 2005).	18	15 (sexual intercourse with a boy under age 15 is a crime punishable with 1–5 years’ imprisonment and a fine; Article 129, Penal Code).
Malaysia	18 (16 with Chief Minister’s authorization)	16 (unless married)	18	–

Myanmar	14	14 (unless married, in which case 13). Rape of a child age 12 has a reduced sentenced if it takes place in the context of marriage.	–	–
Philippines	18	12	18	12
Singapore	18	16 (13 if married)	18	16 (13 if married)
Thailand	17	15 (13 if married)	17	15 (unless married)
Viet Nam	18	13 (16 if partner is an adult)	20	13 (16 if partner is an adult)

In contravention of international standards **Cambodia, Indonesia, Malaysia, Myanmar** and **Viet Nam** have all established different legal ages for marriage on the basis of sex (table 16).⁵⁴ In each case, the minimum age for legal marriage for girls is set lower than that for boys (except for Myanmar, where there is no legal minimum age for marriage for boys). This is done despite the fact that the potential harm of early marriage is likely to be greater for girls than boys for a multitude of reasons related to social and biological gender differences as explored above.

Establishing different ages of marriage on the basis of sex is a form of direct, de jure discrimination against girls, which violates principles of international law found in a range of human rights treaties⁵⁵ and established most explicitly within CEDAW. As the CEDAW Committee has noted, the notion that girls are ‘marriageable’ at an earlier age than boys derives from harmful, stereotypical ideas about gender and sexuality; and the differently perceived roles of men and women in society: “such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial.” Such provisions also institutionalise and entrench a norm that older men marry younger women. As discussed above, research has demonstrated that the risks of early marriage for girls are exacerbated when there is a wider age gap between the young wife and her husband; some research indicates that men might select a younger bride in order to condition her into submissive and subservient behaviour.⁵⁶

The fact that many States have set a minimum age for marriage with is lower for girls compared to boys reveals something important about laws that regulate marriage: they are established, at least in part and often for historical reasons, for the purpose of arranging social institutions to describe and prescribe particular ideas and norms related to gender and childhood/adulthood, rather than with a protective or human rights purpose in mind.

Comparing the minimum ages for marriage and sexual consent in ASEAN member States reveals inconsistencies in law, which it can be argued, fail to provide adequate protection for children from child marriage in line with international standards. In some States there is a wide discrepancy between the minimum age of consent to sexual activity and the minimum age for marriage. It is hard to understand why this is so. For example, in the

⁵⁴ Law on the Marriage and Family, 1989 (Cambodia).

⁵⁵ UDHR, ICCPR, ICESCR, CRC.

⁵⁶ UNICEF. (2001). *Early Marriage: Child Spouses* – Innocenti Digest No. 7, 2; Amnesty International. (1998). *Children in South Asia: Securing Their Right – Chapter 2: Children in the Community and Family*. Available at: <http://www.amnesty.org/en/library/asset/ASA04/001/1998/en/cc36b9c1-e827-11dd-9deb-2b812946e43c/asa040011998en.html> [accessed 8 February 2015].

Philippines the minimum age for marriage is set at 18 years in accordance with international standards while the minimum age of consent remains very low at age 12.⁵⁷

Brunei, by contrast, has established a minimum age of consent for girls that is higher than the minimum age for marriage. From a rights-based perspective, it is difficult to justify a minimum age for marriage that is set lower than the minimum age of consent to sexual activity. If a young person is not understood to possess the competency and autonomy to consent to sexual activity, it follows that they should not be considered ready to consent to marriage. It is a matter of concern that the age of consent for girls is set at 16 years with an exception for girls who are already married, in which case the age of consent is set at 13 years. Meanwhile, the minimum age for marriage in Brunei is established at 14 years.⁵⁸

Indonesia, Malaysia, Myanmar, Singapore and Thailand all have exceptions to the age of consent for girls who are married, even though these girls have not reached the minimum age for legal marriage. In **Malaysia** the minimum age of consent for girls is 16 years, but if the girl is married there is no minimum age of consent. In **Singapore** and **Thailand**, the minimum age of consent is established at 16 years and 15 years respectively. If a girl is married, however, the age of consent is 13 years, despite the fact that the minimum age for marriage is 17 in **Thailand** and 18 in **Singapore**.⁵⁹ Finally, in **Myanmar** the minimum ages for both consent and marriage are set at 14 years. The Penal Code states, however, that a person cannot be prosecuted for rape for having sexual intercourse with a child age 13 to whom they are married. Any sexual intercourse with a person under age 13 is defined as rape. There is a reduced sentence, however, for sex with a child age 12 if it takes place within the context of marriage.⁶⁰

The problem with such rules is their potential to undermine the meaning and enforceability of laws establishing the minimum age for marriage. Such laws send contradictory messages about the meaning of underage marriage and statutory rape within the law; and can lead to impunity for adults who have sexual relationships with children. From a human rights perspective these loopholes and inconsistencies are grounds for concern. Rather than serving a protective purpose, these laws may be more accurately understood as derived from a desire to regulate/prohibit the sexual activity of children, particularly girls, outside of marriage. These laws appear to condone and normalize within the context of marriage what would otherwise be regarded as sexual exploitation of girls.

4.4 Legislation in ASEAN member States: Marriage registration

Several international instruments place obligations on States to ensure that official or formal marriage registration is made compulsory under national laws. Principle 3 of the 1965 Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages asserts that “all marriages shall be registered by a competent authority.” Article 16 (2) of CEDAW requires that States take all necessary action, to make “the registration of marriages in an official registry compulsory.” In *General Recommendation No. 21* the CEDAW Committee elaborated on Article 16, emphasizing that to comply with the provisions of the Convention, all marriages should be registered, regardless of whether they are contracted civilly or according to custom or religious laws.

In accordance with these standards, all ASEAN member States have set out rules and regulations concerning formal registration of marriages (table 17). However, many States fall short of international legal standards because the registration of marriages is not compulsory in all cases.

Myanmar is the only ASEAN member State that provides for voluntary registration only. The law specifies that according to customary principles, a couple are presumed married from the point at which they are living

⁵⁷ Family Code, 1987 (Philippines); Article 266-A(1)(d) Penal Code (Philippines).

⁵⁸ Section 2, Unlawful Carnal Knowledge Act 1984 (Brunei).

⁵⁹ Section 277, Penal Code (Thailand); Article 376, Penal Code (Singapore).

⁶⁰ Section 375, Penal Code (Myanmar).

together. This provision is not compatible with the principle of international law that marriage registration should be compulsory for all legal marriages. Nevertheless, it is important to recognize that this provision has been understood as facilitating the protection of the legal rights of women during separation.⁶¹

Table 17. Requirement to register a marriage and excluded/exempted groups in ASEAN member States

Brunei: Marriage Act 1984, Sections 4 and 9–25
<ul style="list-style-type: none"> No registration required for marriages of Muslims, Hindus, Buddhists, Dayaks and (unspecified) other recognized cultural minorities.
Cambodia: Articles 11 and 12, Law on the Marriage and Family 1989
<ul style="list-style-type: none"> All marriages must be registered and details of all marriage arrangements shall be ‘made public’, through a publicized notice announced through the Registrar Office.
Indonesia: Article 50, Law on Marriage 1974
<ul style="list-style-type: none"> All marriages must be registered. Separate procedures for the registration of civil and religious marriages.
Lao PDR: Article 11, Family Law 2008; Article 11, Family Law 1990; Article 19, Law on Family Registration (amended) 2009
<ul style="list-style-type: none"> All marriages must be registered. Article 19 (2009) provides further details on registering marriages.
Malaysia: Section 3 (3), Law Reform Marriage and Divorce Act 1976
<ul style="list-style-type: none"> Marriages where one person is a Muslim are not registered under the Act.
Myanmar: Section 21*, Buddhist Women’s Special Marriage and Succession Act (1954)
<ul style="list-style-type: none"> A man and woman are presumed married from the moment they live together. They can register their marriage or live together under customary law.
Philippines: Section 4, Law on Registry of Civil Status No. 3753; Articles 81 and 82, Presidential Decree No. 1083
<ul style="list-style-type: none"> The local registrar must keep and preserve a marriage register in which solemnized marriages are recorded (Section 4). <p>Articles 81 and 82 require the Clerk of the Sharia District Court to act as Direct Registrar of Muslim Marriages and keep copies of every certificate of marriage.</p>
Singapore: Section 22, Women’s Charter 2009
<ul style="list-style-type: none"> Marriages of Muslims are not governed by the Women’s Charter. They are regulated under the Administration of Muslim Law Act 2009. Section 102 of the Act requires Muslim marriages to be registered.
Thailand: Section 1457, Civil and Commercial Code 2008
<ul style="list-style-type: none"> Can only be effected through registration.
Viet Nam: Article 11, Marriage and Family Law 2000
<ul style="list-style-type: none"> All marriages must be registered.

* Uta Gartner and Jens Lorenz, (1994). *Tradition and Modernity in Myanmar: Culture, Social Life and Languages*, p. 249.

⁶¹ Uta Gartner and Jens Lorenz, (1994). p. 249.

The Family Code in the **Philippines** allows exceptions to the general rules for the registration of marriages for Muslims or other members of ethnic and cultural communities. Article 33 provides that these groups may perform valid marriages without the necessity of a marriage licence, as long as these are solemnized in accordance with their customs, rites or practices. It is unclear from the legislation whether there is a legal requirement to register such a marriage.⁶² The law does, however, create rules for those wishing to marry in particularly remote locations, or who are unable to register their marriage in person due to serious illness. In such cases, Articles 29 and 30 require that a sworn statement together with the marriage contract, be sent to the nearest marriage registrar within 30 days.⁶³

As stated previously, the statutory marriage legislation in **Brunei** and **Malaysia** excludes certain religious and cultural minority groups, thereby also excluding them from any provisions that mandate registration of marriage. **Brunei's** Marriage Act fails to mandate registration of marriages for Muslims, Hindus, Buddhists, Dayaks and other recognized cultural minorities; and Section 3(3) of **Malaysia's** Law Reform (Marriage and Divorce) Act excludes "any person who is married under Islamic law and no marriage of one of the parties which professes the religion of Islam shall be ... registered under this Act." Section 3(4) of the **Singapore** Women's Charter provides that "no marriage between persons who are Muslims shall be registered under this Act." Registration of Muslim marriages is required under the Administration of Muslim Law Act.

Cambodia, Indonesia, Lao PDR, Thailand, Singapore and **Viet Nam** make registration of all marriages compulsory. **Indonesia** provides a good practice example of a law that allows for variations in procedures in line with religious and cultural differences, but still mandates the formal registration of all marriages. Article 50 of the 1974 Marriage Law provides that "all individuals, who intend to enter into matrimony with one another, shall notify the official of the Civil Registry." However, the Marriage Registrar Office of the Department of Religious Affairs is responsible for registration of Muslim marriages and the Civil Marriage Registrar Office of the Department of Internal Affairs is responsible for all other marriages.

4.5 Legislation in ASEAN member States: Forced marriage

The principle that marriage can only be established through the full and free consent of persons entering the marriage is a fundamental tenet of international law, which has been consistently reiterated in numerous international treaties and instruments. The 1948 Universal Declaration of Human Rights was the first international document to provide that "both potential spouses should free and fully consent to the marriage" (Article 16). This is echoed in the 1964 Convention on Consent to Marriage, and Article 23 of the ICCPR, Article 10 of the ICSECR and Article 16 of CEDAW.

The Human Rights Committee has noted in relation to Article 23:

"Men and women have the right to enter into marriage only with their free and full consent, and States have an obligation to protect the enjoyment of this right ... Many factors may prevent women from being able to make the decision to marry freely ... the State ... should ensure women's capacity to make an informed and uncoerced decision."⁶⁴

Similarly, in *General Recommendation No. 21*, the CEDAW Committee provides:

"A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States Parties' reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be

⁶² Article 33, Family Code, 1987 (Philippines).

⁶³ Articles 29 and 30, Family Code, 1987 (Philippines).

⁶⁴ Human Rights Committee, *General Comment No. 28, Equality of rights between men and women (article 3)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000). para. 23.

arranged for payment or preferment ... a woman's right to choose when, if, and whom she will marry must be protected and enforced at law."⁶⁵

In the view of both Committees place an obligation on States to ensure through enacting and enforcing legislation, a girl or woman's right to marry free from coercion.

Finally, Article 1 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery has defined "any institution ... whereby ... a woman, without the right to refuse, is promised or given in marriage" as a practice akin to slavery that must be abolished. States Parties are under an obligation to "take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment" of institutions defined in Article 1(a). Article 2 provides that, in order to fulfil this obligation, States should "undertake to prescribe, where appropriate, suitable minimum ages for marriage" and "encourage the registration of marriages."⁶⁶

The marriage and family laws of ASEAN member States specify that marriage should be made on the basis of free consent, and some explicitly prohibit coerced or forced marriage. It is interesting to note however, that the most detailed provisions on 'consent' to marriage relate to the need for parental (or other) consent required to facilitate the marriage of a child, rather than the consent of the child herself.⁶⁷

In the case of **Indonesia**, **Malaysia**⁶⁸, the **Philippines** and **Thailand**, consent provisions are included as elements of procedure, within the practical arrangements for ensuring the legal validity and solemnization of a marriage. For example, the Family Code of the **Philippines** provides that "consent [shall be] freely given in the presence of a solemnizing officer," before the marriage is confirmed.⁶⁹ The Civil Code of **Thailand** provides that a man and woman must publicly state their agreement to the marriage before the Registrar, and that this statement of agreement should be recorded.⁷⁰

Section 22 of the Women's Charter in **Singapore** specifies that "no marriage shall be solemnized unless the person solemnizing the marriage is satisfied that both parties to the marriage freely consent [to it]." The law in **Myanmar** promulgates a very general, positive principle that all marriages shall be based on mutual consent. **Brunei** has an interesting provision, stating that "no two persons shall be capable of contracting a valid marriage unless...the parties to the intended marriage freely consent to marry each other."⁷¹ However, the law then excludes fraud as a sufficient condition to prove absence of consent.

It is unlikely that such rules would be considered sufficient to ensure that children are protected from forced marriage. Laws that simply, and in very general terms, state that marriage should be made on the basis of consent, or that consent should be declared in front of a solemnizing officer, fail to account for the variety of different and nuanced ways in which consent to marriage can be understood. For example, a wealth of literature has emphasized the importance of recognizing and understanding the distinction between marriages that are arranged, and those that are forced. In many cultures marriage is traditionally understood as a family

⁶⁵ CEDAW Committee, 1994, *General Recommendation No. 21*, para. 16.

⁶⁶ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 30 April 1956, entered into force 30 April 1957) ESC Res 608 (XXI).

⁶⁷ Cf. Thailand, Sections 1448, and 1454–1456; Singapore, Article 13.

⁶⁸ Law Reform (Marriage and Divorce) Act, 1976 (Malaysia), Article 22 (6): No marriage shall be solemnized unless the Registrar is satisfied that both the parties to the marriage freely consent to the marriage; Article 28. To enter into a marriage, the voluntary consent of the prospective spouses shall be required.

⁶⁹ Family Code 1987, Article 1(2) (Philippines).

⁷⁰ Section 1458, Civil and Commercial Code, Book 5, (No.18), B.E. 2551, 2008 (Thailand).

⁷¹ Article 3 (1)(f), Marriage Act 1984.

and group concern, rather than a matter of individual choice. This does not mean, however, that it is considered acceptable to force a person to marry against their will.⁷²

An arranged marriage becomes forced when “one or both of the parties do not consent to it, and the non-consenting party becomes the victim of duress or coercion to enter into the unwanted marriage.”⁷³ It is the violence element present in situations of forced marriage, and the circumstances within which this takes place, that need to be recognized and addressed in the law, in order for these provisions to be relevant and meaningful for addressing forced marriage within the contexts in which it takes place.

Cambodia, Lao PDR and Viet Nam have stronger provisions condemning forced marriage. Article 4 of the 1989 Law on Marriage and Family in **Cambodia** provides that no party may force another party to marriage against his or her will, and Article 2 specifies that “a marriage of a too young couple and marriage by force shall absolutely be prohibited.” Article 3 of the Amended Family Law 2008 of **Lao PDR** states that “men and women who are 18 years old and above have the freedom to choose their bride/fiancé by both sides on the basis of mutual consent and love, fine customs and traditions” and that “the State does not allow any individual, family or organisation to force or break the marriage of their son or daughter.” Finally, Articles 2, 4 and 9 of the Marriage and Family Law 2000 and Article 36(1) of the Constitution 2013 in **Viet Nam** all contain provisions that emphasise the voluntary and consensual nature of the institution of marriage and/or forbid forcing or deceiving persons into marriage.

Such provisions are only meaningful, however, if they can be enforced. In order to do so the law must, either through criminal or civil measures, establish rules for protecting individuals at risk of forced marriage, and means of remedy and redress for those who are victims of the practice, including potentially imposing penalties for perpetrators.

4.6 Legislation in ASEAN member States: Forced and underage marriage

Brunei, Malaysia, Myanmar and Singapore all have a provision in the Penal or Criminal Code (Section 366) that criminalizes forced marriage of a woman in the specific circumstance that it is effected through kidnapping and abduction, with a penalty of up to 10 years imprisonment and a fine or caning. This provision is arguably too narrow to address forced marriage in the wide variety of contexts in which it occurs, however, it presents an understanding, albeit limited, of forced marriage as a violent and serious crime within the State’s primary legislation. While **Cambodia** and **Lao PDR** prohibit forced marriage, neither State has laws that impose any penalty for perpetrators of forced marriage.

The Marriage and Family Law 2004 in **Viet Nam** along with the law in the Philippines, state that a marriage conducted through force is voidable at the request of the victim. Furthermore, Articles 146 and 148 of the Penal Code of Viet Nam contain provisions that make it a criminal offence to repeat the act of forcing an individual to marry or organizing the marriage of an underage person. Penalties may include a warning, a non-custodial sentence or a prison term of up to three years.

In addition to the criminal provisions, **Malaysia** and **Singapore** have penalties within civil legislation for forcing a marriage. Article 37 of the Law Reform (Marriage and Divorce) Act in **Malaysia** and Section 36 of the Women’s Charter, **Singapore**, provide that a person who uses force or threat to compel a person to marry against their will (or who unlawfully prohibits a valid marriage) shall be guilty of an offence and shall, on conviction, be liable to imprisonment, or to a fine. It is interesting to note that these provisions treat forcing marriage and inhibiting marriage as symmetrical offences, suggesting that the offence of forcing a marriage is understood to be a

⁷² UNAMA and OHCHR. (2010) *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, p. 9.

⁷³ Council of Europe, Parliamentary Assembly, Forced Marriage and Child Marriages, Explanatory Memorandum Section II.A.1.b.16-17 Doc. 1059020, June 2005.

violation of (the principles of) the institution (of marriage), rather than as an act of violence perpetrated against an individual victim.

The **Philippines** and **Thailand** provide perhaps the least effective penalties relating to forced marriage (despite the fact that the Civil and Family Codes of both States emphasize that marriage should be consensual). There is no discernible remedy for forced marriage in the law of **Thailand**. Article 350 of the Penal Code in the **Philippines** provides a weak protective provision that if one of the contracting parties to a marriage obtains the consent of the other by means of violence, intimidation or fraud, he shall be punished through a fine and/or *arresto mayor* (the lowest level of penalty for a criminal offence). Both States also have provisions in their laws that could be seen as condoning forced marriage. Chapter 1 of the Penal Code of the **Philippines** provides that “criminal liability is totally extinguished ... by the marriage of the offended woman as provided in Article 344 of this Code.” Article 344 refers to crimes of seduction, abduction, acts of lasciviousness and rape, providing that “the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him.” The principle that marriage absolves criminal responsibility for rape is also reiterated in the 1997 Anti-Rape Law. Article 266-C provides that “the subsequent valid marriage between the offended party shall extinguish the criminal action or the penalty [for rape].” It must be noted though, that in the Philippines a valid marriage can only take place where both parties have reached age 18. Section 277 of the Criminal Code in **Thailand** similarly provides that an offender may be pardoned for having sexual intercourse for a girl as young as 13 years old “if the court grants them to marry together afterwards.”

A summary of criminal and civil penalties for forced and underage marriage are provided in table 18.

Table 18. Penalties for forced and underage marriage in ASEAN member States

Brunei
Marriage or family law: None.
Penal law and criminal code: Penal Code, Section 366 criminalizes forced marriage of a woman where it is effected through kidnapping and abduction.
Cambodia
Marriage or family law: None.
Penal law and criminal code: None.
Indonesia
Marriage or family law: Article 26(2), Law on Child Protection 2002, provides that if the parent is unable to fulfil his obligation to prevent the marriage of a child, the obligation may be assigned to another family
Penal law and criminal code: Article 332, Penal Code, provides that abducting a minor without the consent of her parents within or outside marriage is a punishable offence. A complaint can only be brought by the child or her parents (otherwise no prosecution can proceed) and the marriage must be annulled before a sentence can be given.
Lao PDR
Marriage or family law: None, except that the marriage is nullified (Article 17(2)).
Penal law and criminal code: None.
Malaysia
Marriage or family law: Section 37, Law Reform (Marriage and Divorce) Act, provides that “any person who uses any force or threat – to compel a person to marry against his will shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand ringgit or to both.”
Penal law and criminal code: Section 366, Penal Code, criminalizes forced marriage of a woman where it is effected through kidnapping and abduction.

<p>Myanmar</p> <p>Marriage or family law: Unavailable for review</p> <p>Penal law and criminal code: Section 366, Penal Code, criminalizes forced marriage of a woman where it is effected through kidnapping and abduction. Penalty includes imprisonment of up to 10 years, and possibly a fine.</p>
<p>Philippines</p> <p>Marriage or family law: None except annulment of the marriage.</p> <p>Penal law and criminal code: Article 350, Penal Code, provides that if one of the ‘contracting parties’ to a marriage obtains the consent of the other by means of violence, intimidation or fraud, he shall be punished through a fine and/or <i>Arrestor Mayor</i>. However, several other articles of the Penal Code and the Anti Rape Law can be viewed as actively encouraging or promoting forced marriage (explained below).</p>
<p>Singapore</p> <p>Marriage or family law: Section 36, Women’s Charter, provides that any person who uses force or threat to compel a person to marry against their will shall be liable to a fine of \$3,000 and/or imprisonment up to 3 years.</p> <p>Penal law and criminal code: Section 366, Penal Code, criminalizes forced marriage of a woman where it is effected through kidnapping and abduction. Penalties include imprisonment up to 10 years, and fine or caning.</p>
<p>Thailand</p> <p>Marriage or family law: None.</p> <p>Penal law and criminal code: Section 277, Criminal Code, actively condones and incentivises forced marriage of a minor (explained below).</p>
<p>Viet Nam</p> <p>Marriage or family law: The victim of forced marriage may request an annulment (Article 15, Marriage and Family Law,). Under Article 107, any “violation of the marriage and family legislation, shall, depending on nature and seriousness of their violations, be administratively sanctioned or examined for penal liability; if causing damage, they must pay compensation.”</p> <p>Penal law and criminal code: Under Articles 146 and 148, Penal Code, it is a criminal offence to repeat the act of forcing an individual to marry or organizing the marriage of an underage person. Penalties may include a warning, a non-custodial sentence or a prison term up to three years.</p> <p>In its Concluding Observations to Thailand the CRC Committee wrote:</p> <p>“While welcoming that the legal minimum age of marriage is 17 years for both boys and girls, the Committee expresses concern that this age limit can be lowered to 13 years in cases where children are sexually abused and may consequently marry the perpetrators, who in turn avoid any criminal prosecution for the crime.</p> <p>The Committee recommends that the State party consider raising the minimum age of marriage to 18 years and maintain it under all circumstances, in particular in cases where children have been sexually abused. It recommends that the State party prosecute and punish perpetrators of sexual abuse against children without any exceptions.”</p> <p>Source: CRC/C/THA/CO/3-4, para. 31.</p>

The idea that marriage can provide a remedy for rape is incompatible with international human rights law. Marrying a (child) victim of rape to her abuser is perceived as a restorative measure that can preserve the respectability of the girl and mitigate the shame brought upon her family, despite other harmful consequences that ensue. This practice, which is prevalent in many societies across the world, has been characterized as

indicative of a ‘rape culture’: a condition of society in which dominant norms and values excuse, tolerate and even condone rape of women and girls.⁷⁴

4.6.1 Remedies and preventative measures

While forced marriage is a serious and violent breach of an individual’s rights, recent research and policy work on this issue from across the world has drawn attention to the complications associated with criminalizing the practice. As noted above, perpetrators of forced marriage are usually the parents or other close family members of the victim. A child or young person, reliant on her/his family for love, support and other needs, may be reluctant to come forward if they understand that their parents may be prosecuted and face criminal sanctions. They may also be unwilling to give evidence during criminal proceedings.

Due to this, States around the world have explored range of alternative non-punitive or civil law options for preventing forced marriage, protecting those at risk, and ensuring release and recovery of victims. These include annulment of the marriage, habeas corpus petitions⁷⁵ and the imposition of protection and restraining orders.⁷⁶ The Special Rapporteur on Violence against Children has recommended that legislation should render a forced marriage null and void, while at the same time allowing the child to retain or inherit property by virtue of marriage, as well as housing, maintenance and the custody of children.⁷⁷

Recommendation

Lao PDR, the Philippines and Viet Nam provide for the civil remedy of annulment of forced marriage. Adding such measures in other ASEAN member States would provide added protection to children against early and forced marriage, and allow national laws to reflect international standards and best practice.

4.7 Equal rights within marriage

This chapter has focused on an analysis of how laws in ASEAN member States treat the issues of child marriage and forced marriage. This chapter has not yet discussed the requirement established by international standards that girls and women enjoy their full human rights on an equal basis with boys and men, both within the context of marriage, and regardless of their marriage or relationship status.⁷⁸ To meet that requirement, all forms of discrimination within marriage laws must be abolished. Crucially, all forms of domestic and sexual violence (including rape) must be criminalized, regardless of whether they take place within the context of a marriage. While the discussion above has touched on some of these issues, a more detailed exploration is provided in chapter 3 on domestic violence.

4.8 Legislation in ASEAN member States: FGM/C

In recognition of the harm that female genital mutilation/cutting (FGM/C) causes to girls, and in response to the obligation in international law for States to prohibit the practice, States are increasingly adopting specific legislation to criminalize FGM/C. The trend to pass legislation making the carrying out of FGM/C a crime is

⁷⁴ Flintoft, R., *Sexual Assault*, in Nicoletti et al., eds. (2001) *Violence Goes to College: The Authoritative Guide to Prevention and Intervention*. Charles C Thomas Publisher Ltd. USA, p. 134.

⁷⁵ For example in Bangladesh, Pakistan and India. Cf. Sara Hossain and Suzanne Turner, *Abduction for Forced Marriage – Rights and Remedies*, available at: <http://www.soas.ac.uk/honourcrimes/resources/file55687.pdf> [accessed June 2013].

⁷⁶ For example, the United Kingdom, cf. Forced Marriage (Civil Protection) Act, 2007.

⁷⁷ Special Representative on Violence against Children and Plan International: *Protecting Children from Harmful Practices in Plural Legal Systems*, NY 2012, p. 41.

⁷⁸ Article 16, CEDAW.

particularly strong in Africa and Europe.⁷⁹ Penalties range from a minimum of six months incarceration to life imprisonment and in several countries also include fines.⁸⁰

Criminal laws prohibiting FGM/C do not necessarily result in successful prosecutions. There are significant barriers to the enforcement of laws criminalizing FGM/C, including problems with detection, reporting and gathering usable evidence. As such, it is recommended that States adopt and implement a range of measures aimed primarily at preventing and protecting girls from being subject to the practice in the future. These should include criminal measures, as well as a range of civil provisions including injunctive orders, child protection orders, support services, compensation and specialized training for health professionals, teachers, police and social workers to identify girls at risk and provide appropriate protection and support.

Although FGM/C is only known to be prevalent in **Indonesia, Brunei** and **Malaysia**, it is important that all ASEAN member States have legal provisions to address this practice, even where there is no practice of FGM/C within the local culture. By so doing, migrants from countries that practice FGM/C will be expressly forbidden from carrying out FGM/C in ASEAN member States.

Indonesia is the only ASEAN member State that has addressed the practice in domestic law, and this has been done through regulations rather than primary legislation. In 2006 the Director General of Community Health in Indonesia signed Government Circular, No. HK.00,071.3.1047a, warning about the negative health effects on women of FGM/C.⁸¹ Read together with law prohibiting violence directed against women and children, this regulation was reported by many to be tantamount to a ban on the practice.⁸²

In 2010, the Ministry of Health introduced a new regulation, No. 1636/Menkes/Per/XI/2010, which established procedures for the performance of female cutting within medical facilities. This regulation legitimized the practice of FGM/C and authorized certain medical professionals, such as doctors, midwives and nurses, to perform it. This regulation was entirely incompatible with international standards which prohibit FGM/C in all its forms, regardless of whether the practice is carried out at a medical institution or otherwise. In 2014, the Ministry of Health Decree on FGM was revoked.

This review was unable to identify provisions relating to the practice of FGM/C within the laws of **Brunei, Cambodia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam.**

⁷⁹ In September 2001, the European Parliament adopted a resolution on female genital mutilation. The resolution calls on the member States of the European Union to pursue, protect and punish any resident who has committed the crime of FGM/C even if committed outside the frontier ('extraterritoriality') and calls on the Commission and the Council to take measures in regard to the issuing of residence permits and protection for survivors of the practice. The resolution also calls on the member States to recognize the right to asylum of women and girls at risk of being subject to FGM/C.

⁸⁰ UNICEF (2010), *Legislative Reform to Support the Abandonment of Female Genital Mutilation*.

⁸¹ Minister of Health of the Republic of Indonesia, 2010, Regulation Number 1636/MENKES/PER/XI/2010 on Female Circumcision.

⁸² Batha, E (2013). *Trust Law: Activists press Indonesia to ban genital mutilation*. Available at: <http://stopFGM/C/Cmiddleeast.wordpress.com/2013/02/12/artikel-4-project-update/> [accessed 1 August 2013]; Amnesty International (2012); *End FGM/C European Campaign, Indonesia: Government regulation on female circumcision must be repealed*. Available at: <http://www.endFGM/C/C.eu/en/news-and-events/news/press-releases/indonesia-government-regulation-on-female-circumcision-must-be-repealed-0052> [accessed 1 August 2013].

4.9 Recommendations for law reform: Harmful traditional practices

Recommendations

- Establish a minimum age for marriage for both boys and girls in line with international standards (18 years or above) (**Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Singapore, Thailand and Viet Nam**).
- Consider removing any exceptions in law to the minimum age for marriage, except for those which are clearly defined in law, strictly regulated and in line with the ‘best interests’ principle and the principle of ‘evolving capacities’ of the child. Parental consent should be removed as a basis on which to warrant an exception to the minimum age for marriage (**Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Singapore and Thailand**).
- Consideration should be given to eliminating all exceptions to the minimum age of consent (statutory rape) for children who are already married (**Brunei, Indonesia, Myanmar, Malaysia, Singapore and Thailand**).
- Establish clear rules for verifying the age of marriage candidates (**all ASEAN member States**).
- Consider requiring the compulsory registration of all marriages, including religious and customary marriages (**Brunei, Cambodia, Indonesia, Malaysia, Myanmar and Thailand**).
- Consider explicitly prohibiting forced marriage and underage marriage within the law and ensure that this overrides any customary or religious law permitting such marriages (**Brunei, Indonesia, Malaysia, Myanmar, Philippines, Singapore and Thailand**).
- Consider developing a context-appropriate specialized set of legal provisions for addressing forced and underage marriage (through revisions to the Family, Marriage or Civil Codes; through the development of a specialist Act; or within gender-based violence legislation) in line with the objectives of providing the most effective protection for individuals subject to or at risk of forced and/or underage marriage (**all ASEAN member States**).
- Consider criminalizing forced and underage marriage and introducing penalties within criminal law. This should be done, however, with careful consideration of its potential to result in prosecutions leading to the elimination of these practices (**all ASEAN member States**).
- Consider removing all provisions that absolve offenders of criminal responsibility for sexual violence in the circumstance that they are married to, or subsequently marry their victim (**Brunei, Indonesia, Myanmar, Malaysia, Philippines, Singapore and Thailand**).
- Introduce provisions prohibiting and criminalizing FGM/C within primary legislation, while establishing a range of other civil procedures and initiatives aimed primarily at preventing continuation of the practice (**all ASEAN member States**).

Table 19. Report card: Protection from harmful traditional practices

	Minimum age for marriage for boys and girls	Requirement to register marriages	Prohibition on forced marriage, remedies and preventative measures	Laws against FGM/C
Brunei	●	●	●	●
Cambodia	●	●	●	●
Indonesia	●	●	●	●
Lao PDR	●	●	●	●
Malaysia	●	●	●	●
Myanmar	●	●	●	●
Philippines	●	●	●	●
Singapore	●	●	●	●
Thailand	●	●	●	●
Viet Nam	●	●	●	●

Part IV: Violence against Children in Education Settings

Chapter 5. Violence against Children in Education Settings

5.1 Context: Understanding violence against children in education settings

Corporal punishment and non-physical forms of punishment that are cruel and degrading are often used in schools to discipline children for misbehaviour, poor academic performance, or for reasons outside the child's control, such as a parent's failure to pay school fees on time.¹ In many situations, corporal punishment is conducted arbitrarily and serves as a way to control students by instilling them with fear. This form of violence is a prime example of the way in which power relations within communities can be expressed through institutionalised and physical forms of violence. While corporal punishment has historically been a legally institutionalised practice in schools in many countries, its use has been increasingly prohibited by States. According to the *World Report on Violence against Children* published by UNICEF:

“A series of regional reports developed for the study demonstrate a clear trend away from corporal punishment in schools in all regions, most notably in Europe. Of the 223 States and dependent territories tracked by the Global Initiative to End All Corporal Punishment of Children, 106 now have laws banning corporal punishment in all schools.”²

However even where laws banning corporal punishment exist, they are often not effectively enforced, especially where they conflict with established social norms and attitudes.

Corporal punishment in schools may include hitting children with hands or objects, kicking, shaking or throwing children, forcing them to maintain uncomfortable positions, burning, scalding or forced ingestion (such as washing children's mouths out with soap or forcing them to swallow hot spices). Although corporal punishment is the most frequent physical form of punishment “there are many other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the CRC. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”³

According to *General Comment No. 13* of the Committee on Economic, Social and Cultural Rights, States must prohibit corporal punishment of children in order to comply with obligations to respect, protect and fulfil the right to education and legal provisions prohibiting corporal punishment in schools must include non-physical forms of punishment, such as public humiliation and belittling.

This chapter analyses how national laws address violence against children in schools. Many acts of violence in schools (including child to child violence) fall within general legal provisions that prohibit assault and other forms of abuse: these are analysed in Chapter 2 on violence in the home and family. This chapter focuses on legal provisions that apply directly to violence and disciplinary practice in schools with a particular concentration on violence committed by teachers against children. As specific provisions on child against child violence in schools tend to be written into regulations or guidance rather than in primary legislation, they will not be included in this analysis.

¹ UNICEF, 2006, *World Report on Violence against Children*, p. 117.

² UNICEF, 2006, *World Report on Violence against Children*, p. 117.

³ UNICEF, 2006, *World Report on Violence against Children*, p. 117.

5.1.1 Nature and extent of corporal punishment

Information on the nature and extent of violence in schools in the ASEAN region is limited. However several studies have been conducted on the practice of corporal punishment in schools in countries in the region, which provide a useful context for an analysis of legal provisions.⁴

There is a reportedly high prevalence of corporal punishment in schools in **Cambodia**. According to research conducted in 2007, 29.2 per cent of children aged 12–15 reported having received physical punishment by a teacher.⁵ Physical punishments mentioned by children participating in research included being hit with a variety of implements, including a stick, cane, electric cable, belt, whip, or chain, the use of sharp implements (such as a knife) and sharp-edged domestic items (brooms, shoes), kicking, punching, pinching, pulling and twisting joints.

In **Indonesia** one study reported that 25 per cent of children surveyed had experienced direct physical punishments by teachers, and another found that physical and psychological punishment was widespread in childcare institutions, including pinching children’s stomachs, caning, shaving of heads and throwing dirty water on them.⁶

According to a survey administered in **Malaysia** over half of children who participated said that caning was a frequent occurrence in their school.⁷ In **Myanmar** a UNICEF study conducted in 2002 found that 17 per cent of children surveyed reported unhappiness at school due to beatings they received from their teachers.⁸

In 2009, a study in the **Philippines** revealed that violence in schools was frequently inflicted as a form of discipline. The study found that “the most common form of violence by adults was pinching, experienced by 18% of children aged 6 – 13 years. This was closely followed by forms of verbal violence such as shouting, and spanking with hands or an object, experienced by 16% of 6 – 10 year olds and 13% of 9 – 13 year olds.”⁹

5.1.2 Impact of corporal punishment in schools

A compilation of research assembled by the Global Initiative to End Corporal Punishment demonstrates the range of harmful consequences corporal punishment can have for children and young people.¹⁰ Corporal punishment causes direct physical harm; it results in the deaths of thousands of children each year and causes short and long-term injury including lasting impairments and physical illnesses. All 12 studies included in the compilation, which addressed the impact of corporal punishment on mental health, found that corporal punishment has significant effects on mental health that last into adulthood. Associations between corporal

⁴ While this section addresses corporal punishment in schools, studies on the nature and extent of corporal punishment in the home have been included in this contextual section due to the limited available data on corporal punishment in schools.

⁵ Miles, G. and Thomas, N. (2007), ‘Don’t grind an egg against a stone’ – *Children’s rights and violence in Cambodian history and culture*, *Child Abuse Review* Vol. 16 No. 6, pp. 383–400.

⁶ Initiative to End all Corporal Punishment of Children (2013) *Indonesia*. Available at: <http://www.endcorporalpunishment.org/pages/progress/reports/indonesia.html> [accessed 23 July 2013]. See also Indonesia Ministry of Health, WHO and the United States Centres for Disease Control and Prevention (2007) *Global School-based Health Survey Country Report, Indonesia*.

⁷ Initiative to End all Corporal Punishment of Children (2013) *Malaysia*. Available at: <http://www.endcorporalpunishment.org/pages/progress/reports/malaysia.html> [accessed 23 July 2013].

⁸ Initiative to End all Corporal Punishment of Children (2011). Briefing for the CRC Committee, Pre-Sessional Working Group, June 2011. Available at: <http://www.burmalibrary.org/docs12/CRC2012-Myanmar-NGO-GI.pdf> [accessed 8 February 2015].

⁹ Plan Philippines (2009) *Toward a Child-Friendly Education Environment – A Baseline Study on Violence Against Children in Public Schools*. Available at: <http://www.endcorporalpunishment.org/pages/pdfs/States-reports/Philippines.pdf> [Accessed 8 February 2015].

¹⁰ Global Initiative to End All Corporal Punishment of Children, 2013, *Summary of research on the effects of corporal punishment*. See also Office of the Special Representative of the Secretary-General on Violence against Children, October 2013, *Towards a World Free from Violence, A Global Survey on Violence against Children*.

punishment and children’s cognitive development have also been demonstrated by research, and corporal punishment has been shown to be associated with increased aggression and antisocial behaviour.

Not only does corporal punishment have serious and detrimental effects and involve a violation of a child’s rights, but studies have also found it to be ineffective at achieving its so-called aims.¹¹ According to the summary research by Global Initiative to End Corporal Punishment, 13 out of 15 studies showed that while corporal punishment may result in immediate compliance, it does not contribute to children’s long-term compliance with the behaviour it is intended to promote. Corporal punishment also normalizes violent behaviour. It has been shown to be associated with criminal behaviour and domestic/intimate partner violence in adulthood.¹²

5.2 International standards on violence against children in education settings

States have an obligation to develop laws prohibiting violence in schools (and violent forms of punishment) under the Convention on the Rights of the Child (CRC). Article 28(2) requires States to “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.” Doing so entails upholding obligations under the Convention, including protecting the child against “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse” (Article 19) and from “cruel, inhuman or degrading treatment or punishment” (Article 37). The Special Representative to the Secretary-General on Violence against Children has called upon States to ensure “children’s legal protection from violence in education settings, which must be achieved through an unambiguous legal prohibition of all forms of violence.”¹³

It is important that, in accordance with CRC Article 37, laws prohibiting violence in schools specifically address violent forms of punishment, including corporal punishment. Corporal punishment, defined by the CRC Committee as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light,” is a prominent form of violence perpetrated against children in schools and educational institutions. According to the CRC Committee corporal punishment “does not respect the inherent dignity of the child nor the strict limits on school discipline” and thus conflicts with Articles 28 and 29 of the Convention.¹⁴ The CRC Committee’s *General Comment No. 1* on the Aims of Education holds that corporal punishment is contrary to the purposes of education. In the words of the Committee:

“Children do not lose their human rights by virtue of passing through the school gates and education must be provided in a way that respects the inherent dignity of the child ... Education must also be provided in a way that respects the strict limits on discipline reflected in Article 28(2) and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline ...”¹⁵

When violent, abusive or degrading punishment is legally sanctioned, this serves to fundamentally undermine children’s rights.

5.3 Legislation in ASEAN member States: Corporal punishment

Many forms of violence in schools are outlawed by general legal provisions, which prohibit broad categories of violence against children such as assault and sexual assault (see chapter 2 on violence in the home and family).

¹¹ See Office of the Special Representative of the Secretary-General on Violence against Children, 2012, *Tackling Violence in Schools: A Global Perspective, Bridging the Gap between Standards and Practice*.

¹² Global Initiative to End All Corporal Punishment of Children, 2013, *Summary of research*.

¹³ United Nations General Assembly, Human Rights Council, *Annual Report of the Special Representative to the Secretary-General on Violence against Children*, para. 33(e). See also Office of the Special Rapporteur on Violence against Children, 2012, *Report on Tackling Violence in Schools*.

¹⁴ CRC Committee, *General Comment No. 1: The aims of education*, para. 8.

¹⁵ Pinheiro, P. (2006), p. 114.

The explicit prohibition of corporal punishment in schools (even where it would appear to fall within general legal provisions) is especially important given the historical prevalence of the practice. However, many countries have exceptions written into the law, which permit violent forms of discipline and punishment when they are inflicted by a person with responsibility for the child (such as a parent or teacher) or when such punishment is determined to be in the child's interest.

Six out of 10 ASEAN member States have specific provisions that prohibit violent punishment of children in schools. For three of these countries, the prohibitions are contained in education laws or regulatory guidance to education laws. In Lao PDR the prohibition is contained in the Law on the Protection of the Rights and Interests of Children 2007 and the Decree on Implementing the Law on the Protection of the Rights and Interests of Children. In the Philippines it is written into the Family Code.

Table 20 provides an overview of legal provisions that address corporal punishment in schools in the ASEAN member States. In the ASEAN region, education laws explicitly state that corporal punishment is lawful in schools in **Singapore** and **Malaysia**. In Singapore, according to regulations under the Education Act (1957), "corporal punishment shall be administered to boys only, on the palms of the hand or the clothed buttocks, and by the principal or authorised person."¹⁶ In Malaysia, regulations under the Education Act establish that corporal punishment of boys is lawful in schools.

Table 20. Overview of prohibitions on corporal punishment in law in ASEAN member States

<p>Brunei</p> <p>Corporal punishment in schools prohibited in law: None.</p> <p>Exception/defence of corporal punishment in law: Penal Code 2001, Section 89: "Nothing which is done in good faith for the benefit of a person under twelve years of age ..., of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person."</p> <p>Penalty for corporal punishment in law: None.</p>
<p>Cambodia</p> <p>Law against corporal punishment in schools: Article 35, Education Act 2007: Learners have "the right to be respected and paid attention on human rights, especially the right to dignity, the right to be free from any form of torture or from physical and mental punishment."</p> <p>Exception/defence of corporal punishment in law: Article 8, Law on the Prevention of Domestic Violence and Protection of Victims 2005: "Every disciplining by giving advice or reminding or appropriate measures taken to allow spouses or children or dependent persons to follow the good ways of living with dignity and the nation's good custom and tradition, if the disciplining and teaching are conducted with the noble nature (consisting of compassion, pity, joy at other's happiness and sincerity) and in accordance with the principles of the United Nations Conventions on Human Rights and Child rights recognised by the Kingdom of Cambodia, shall not be included as the use of violence or domestic violence."</p> <p>Penalty for corporal punishment in law: None.</p>
<p>Indonesia</p> <p>Law against corporal punishment in schools: Article 54, Law on Child Protection 2002: A child attending school must be protected against violence and abuse from teachers, school managers and schoolmates both in schools and other educational institutions.</p> <p>Exception/defence of corporal punishment in law: None.</p> <p>Penalty for corporal punishment in law: None.</p>

¹⁶ Regulation No. 88, Schools Regulation Act (1957) (Singapore).

<p>Lao PDR</p> <p>Law against corporal punishment in schools: Article 27, Act on the Protection of the Rights and Interests of Children in Lao PDR 2006: “The State has the policy to create child-friendly schools that are popular for children and attract them to learn. A child-friendly school is a place... where [children] are protected from the use of violence, physical punishment or inappropriate words or acts that affect the dignity of children.”</p> <p>Exception/defence of corporal punishment in law: None.</p> <p>Penalty for corporal punishment in law: Article 82, Act on the Protection of the Rights and Interests of Children in Lao PDR 2006: “Individuals or organisations that violate this law will be subject to various sanctions, such as: re-educational, administrative or penal measures, based on the nature of the violation, including compensation of civil damages.”</p>
<p>Malaysia</p> <p>Law against corporal punishment in schools: None.</p> <p>Exception/defence of corporal punishment in law: Section 89, Penal Code: “Nothing, which is done in good faith for the benefit of a person under twelve years of age ... by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person: Provided that this exception shall not extend to (a) the intentional causing of death, or to the attempting to cause death; (b) the doing of anything which the person doing it knows to be likely to cause death for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity; (c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity; (d) the abetment of any offence, to the committing of which offence it would not extend.”</p> <p>Penalty for corporal punishment in law: None.</p>
<p>Myanmar</p> <p>Law against corporal punishment in schools: None.</p> <p>Exception/defence of corporal punishment in law: Section 89, Penal Code: “Nothing which is done in good faith for the benefit of a person under twelve years of age ..., of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person.”</p> <p>Child Law 1993: Under prohibition of maltreatment of children, contains an exception for “the type of admonition by a parent, teacher or a person having the right to control the child that is for the benefit of the child.”</p> <p>Penalty for corporal punishment in law: None.</p>
<p>Philippines</p> <p>Law against corporal punishment in schools: Family Code Article 223: “...In no case shall the school administrator, teacher or individual engaged in child care exercising special parental authority inflict corporal punishment upon the child.”</p> <p>Exception/defence of corporal punishment in law: None</p> <p>Penalty for corporal punishment in law: May be criminal, civil or administrative under existing laws. At the time of writing, Philippine Congress was considering a Bill on ‘Prohibiting all Corporal Punishment and All Other Forms of Humiliating or Degrading Punishment of Children And Promoting Positive and Non-Violent Discipline of Children, Appropriating Funds Therefore, and for Other Purposes’. Section 4 states responsible persons “shall be liable in accordance with existing penal laws, provided that the penalty shall be imposed in the maximum period, except where a higher penalty is provided under ... the Revised Penal Code, ... the Special Protection on Children Against Child Abuse, Exploitation and Discrimination Act, ... the Anti-Violence Against Women and their Children Act, and the penalty shall be arresto mayor in its maximum period.”</p>

<p>Singapore</p> <p>Law against corporal punishment in schools: None.</p> <p>Exception/defence of corporal punishment in law: Section 89, Penal Code: “nothing, which is done in good faith for the benefit of a person under 12 years of age ... is an offence by reason of any harm it may cause...”</p> <p>Penalty for corporal punishment in law: None.</p>
<p>Thailand</p> <p>Law against corporal punishment in schools: Partially: Article 6, Ministry of Education Regulation on Student Punishment of 2005, does not list corporal punishment among permitted disciplinary measure that may be taken in schools. Article 6 provides “it is prohibited to punish pupils and students with violent methods or with harmful angry or revengeful intention ...”</p> <p>Exception/defence of corporal punishment in law: None.</p> <p>Penalty for corporal punishment in law: None.</p>
<p>Viet Nam</p> <p>Law against corporal punishment in schools: Article 75, Education Law: prohibits teachers from behaviours that “disrespect the honour and dignity of learners, hurt or abuse them physically.”</p> <p>Article 20(1), Constitution 2013, also provides that “no one shall be subjected to torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health or offending his or her honour and dignity.”</p> <p>Exception/defence of corporal punishment in law: None.</p> <p>Penalty for corporal punishment in law: Article 118, Education Law: “A person who commits one of the following violations shall, depending on the nature and extent of the breach, be subject to a disciplinary penalty, administrative sanction on penal liabilities; if the violation causes damages, compensation must be paid according to regulation laws.”</p>

5.3.1 Legal defences to the use of corporal punishment in schools

The **Malaysian** Penal Code Section 89 includes a broad legal defence for corporal punishment. It states:

“Nothing, which is done in good faith for the benefit of a person under twelve years of age ... by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person: Provided that this exception shall not extend to (a) the intentional causing of death, or to the attempting to cause death; (b) the doing of anything which the person doing it knows to be likely to cause death for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity; (c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity; (d) the abetment of any offence, to the committing of which offence it would not extend.”

In essence, this article gives anyone with lawful charge of a child under 12, or anyone with the consent of that person (including teachers), the right to inflict harmful punishment on a child as long as he or she does not intend to cause death or grievous hurt. The provision would appear to undermine a child’s basic human right under CRC Article 19, to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. Similarly, Section 89 of **Singapore’s** Penal Code also provides that “nothing, which is done in good faith for the benefit of a person under 12 years of age ... is an offence by reason of any harm it may cause ...”

Section 350 (i) of **Malaysia’s** Penal Code, which prohibits criminal force, contains an exception which stipulates that caning of a student by a head teacher does not amount to criminal force: “A, a head teacher, in the reasonable exercise of his discretion as head teacher, canes B, one of his scholars. A does not use criminal force to B because, although A intends to cause fear and annoyance, he does not use force illegally.”

These provisions appear to give unreserved power to guardians and teachers to inflict physical violence on children according to their discretion. Even when corporal punishment is not legally prescribed as a form of punishment to be used in schools, these provisions may effectively legalize the practice in all of its forms as they could serve to provide a broad legal protection for anyone who uses it. These provisions would appear to contradict Singapore and Malaysia's commitments under CRC to protect children from harm, torture and cruel and unusual punishment.

5.3.2 No explicit prohibition of corporal punishment in the law

Corporal punishment in schools is not legally authorized, but is not explicitly prohibited in **Brunei, Indonesia and Myanmar**.

While the CRC Committee's Concluding Observations to Myanmar issued in 2012 refer to legal directives that prohibit corporal punishment in schools,¹⁷ these do not appear to be written into primary legislation.

Brunei's laws also do not contain an explicit prohibition of corporal punishment. Disciplinary measures are covered by Article V of the Education Act, which establishes:

"The chief executive shall be responsible for the discipline and behaviour of the pupils in a higher educational institution ... In the discharge of his duties under subsection (1), the chief executive shall comply with and carry out any directions issued from time to time by the Registrar General in relation to the discipline and behaviour of the pupils within that higher education institute."¹⁸

Indonesia's Law on Child Protection (2002) states that "a child attending school must be protected against violence and abuse from teachers, school managers and schoolmates both in schools and in other educational institutions," yet corporal punishment is not explicitly prohibited, nor does the law contain a specific definition of violence or abuse. While the law provides that every person who commits or threatens violence against a child shall be punished,¹⁹ according to a report by the Global Initiative to End all Corporal Punishment of Children, "neither these provisions nor provisions against violence and ill-treatment in the Penal Code (1982), the Law on Human Rights (1999), the Law on Domestic Violence (2004) and the Constitution (1945) are interpreted as prohibiting all corporal punishment in childrearing" in **Indonesia**.²⁰

5.3.3 Legal defences where corporal punishment is not explicitly prohibited

Article 89 of the Penal Codes of both **Brunei** and **Myanmar** provides the same defence for corporal punishment as that included in the Penal Codes of **Malaysia** and **Singapore**:

"nothing which is done in good faith for the benefit of a person under twelve years of age ..., of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person."

Thus in **Brunei** and **Myanmar** while there is no explicit confirmation in the Education Act or Children and Young Person's Order of a 'right' to administer 'reasonable punishment' or similar, Article 89 of the Penal Code effectively legalizes corporal punishment by providing legal protection for physical harm that is "done in good faith for the benefit of a person under 12 years of age" by guardians or others having lawful charge of the child. Again, this provision appears to conflict with international standards.

¹⁷ CRC Committee, Concluding Observations: Myanmar, 2012, para. 3–4.

¹⁸ Article 44, Education Act (Brunei).

¹⁹ Articles 54 and 80, Law on Child Protection (Indonesia).

²⁰ Initiative to End all Corporal Punishment of Children (2013) *Indonesia*. Available at: <http://www.endcorporalpunishment.org/pages/progress/reports/indonesia.html> [accessed 23 July 2013].

Myanmar's Child Law (1993) contains another defence for corporal punishment; Article 66 which prohibits maltreatment of children, includes an exception for “the type of admonition by a parent, teacher or a person having the right to control the child that is for the benefit of the child.”

In order to comply with international standards, all exceptions or defences for corporal punishment in schools should be removed from the law.

5.3.4 Laws on corporal punishment apply differently to boys and girls

In some States the laws on corporal punishment apply differently to different genders. Regulations pursuant to Education Acts in Singapore and Malaysia provide that corporal punishment shall be administered against boys only. While it is a positive development that the law does not suggest the use of corporal punishment against girls, laws which dictate that corporal punishment (or other forms of cruel or degrading punishment) apply differently to boys and girls reflect what Pinheiro calls “a ‘hidden curriculum’ that promotes gender inequality and stereotyping ... The implicit messages are that males should be tough, generally and sexually assertive ... but females should be passive, sheltered, and unassertive, particularly sexually.”²¹ Gender specific laws of this kind contradict CRC Article 2, which prohibits discrimination, including gender discrimination, between children.

5.3.5 Prohibitions on corporal punishment

Cambodia, Lao PDR, the Philippines, Thailand and Viet Nam have laws that prohibit corporal punishment in schools, either explicitly or implicitly. The definitions of corporal punishment in the regulations vary significantly. For instance, in **Thailand**, the Ministry of Education Regulation on Student Punishment of 2005 does not list corporal punishment among the permitted disciplinary measure that may be taken in schools, but according to Article 6 of the Regulation, “it is prohibited to punish pupils and students with violent methods or with harmful angry or revengeful intention ...” The regulation does not address all forms of punishment that are viewed under CRC as incompatible with the right to education. For instance, the Regulation does not address non-physical forms of violence such as humiliation, belittling or verbal abuse. **Thailand's** regulation also fails to define ‘violent methods’. It is important that the definitions of prohibited forms of punishment include all forms of physical force (see good practice example below) as well as verbal abuse, humiliating or belittling to ensure that teachers understand what forms of punishment are not authorized by law.

Article 75 of the Education Law of **Viet Nam** prohibits teachers from behaviours that “disrespect the honour and dignity of learners, hurt or abuse them physically.” It is good practice that Viet Nam contains such a broad prohibition on violence against children in the text of its Education Act (as opposed to guidance). However, while this definition may be broad enough to encompass all forms of corporal punishment, it requires subjective interpretation. One person’s understanding of disrespect might differ from another. Guidance on interpretation of the law might be necessary to ensure that its application is sufficiently broad. Furthermore, the law does not emphasize that prohibited behaviours cannot be used as a form of punishment. Although, the Constitution includes an explicit prohibition against corporal punishment, as explored in the introduction of this section, it is important to explicitly prohibit cruel, inhuman or degrading punishment, and not just the use of force or harmful treatment generally, given the historical prevalence of institutionalised forms of violence and violent punishment.

Cambodia's Education Law effectively prohibits corporal punishment in public and private schools: according to Article 35 on the Rights and Obligations of Learners, learners have: “[t]he right to be respected and paid attention on human rights, especially the right to dignity, the right to be free from any form of torture or from physical and mental punishment.”

However **Cambodia's** Law on the Prevention of Domestic Violence and the Protection of Victims states:

²¹ Pinheiro, P. (2006), *Report of the independent expert for the United Nations study on violence against children: Violence against children in schools and education settings*, p. 114.

“Every disciplining by giving advice or reminding or appropriate measures taken to allow spouses or children or dependent persons to follow the good ways of living with dignity and the nation’s good custom and tradition, if the disciplining and teaching are conducted with the noble nature (consisting of compassion, pity, joy at other’s happiness and sincerity) and in accordance with the principles of the United Nations Conventions on Human Rights and Child Rights recognised by the Kingdom of Cambodia, shall not be included as the use of violence or domestic violence.”²²

The translation of this Law is a little unclear, but it appears that while all discipline must be conducted according to CRC provisions, it suggests that some forms of violent punishment are compatible with CRC and thus are legally justifiable. It is recommended that the provision be reviewed and if necessary clarified, to make clear that no form of violent punishment is permissible under CRC.

5.3.6 Breach of prohibition on corporal punishment

General Comment No. 8 issued by the CRC Committee in 2006 calls for the prohibition of corporal punishment in schools, and notes that criminal penalties may be necessary to achieve this. The Committee noted that the purpose of the General Comment is “to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take.” Moreover, “where, despite prohibition and positive education and training programmes, cases of corporal punishment come to light outside the family home – in schools, other institutions and forms of alternative care for example – prosecution may be a reasonable response.” Applying legal sanctions to those who inflict corporal punishment in schools (including dismissal of a teacher from his or her post) will clearly establish the illegality of the practice and may act as an effective deterrent.

In several countries, the law that prohibits corporal punishment is not supported by penalties for violation of the provision. Education laws in **Thailand** and **Cambodia** fail to establish penalties for perpetrators of corporal punishment (the law in Cambodia sets out penalties for other violations, but not for corporal punishment).

Other laws include general penalties. The Education Law of **Viet Nam**, which prohibits teachers from engaging in behaviours that “disrespect the honour and dignity of learners, hurt or abuse them physically,” sets out penalties for violations of the act in Article 118 as follows: “A person who commits one of the following violations shall, depending on the nature and extent of the breach, be subject to a disciplinary penalty, administrative sanction on penal liabilities; if the violation causes damage, compensation must be paid according to regulation laws.”

The provision applies to several violations, including actions that “maltreat or persecute learners’ and ‘other violations of the Educational Law.” Given that corporal punishment is a violation of the Education Law and could potentially be defined as maltreatment or persecution of learners, the penalties set out above should apply. Is not entirely clear, however, and it would be helpful if the Education Law explicitly set out penalties that are applicable to violations of Article 75.

In other countries, penalties are provided in law, but are arguably, insufficient. As mentioned in the previous section, Article 27 of the Act on the Protection and of the Rights and Interests of Children in **Lao PDR** states the Government’s policy of eradicating corporal punishment in schools. “The State has the policy to create child-friendly schools that are popular for children and attract them to learn. A child-friendly school is a place ... where [children] are protected from the use of violence, physical punishment or inappropriate words or acts that affect the dignity of children.” However no specific penalties for teachers who use corporal punishment to discipline students have been developed in the law. For instance, Articles 81–90 of the Act on the Protection and of the Rights and Interests of Children, which address measures against violators of the Act defines specific penalties for use of child labour, sexual relations with children and other violations. Corporal punishment is only included in Article 82 in a catch-all provision which states: “Individuals or organisations that violate this law will

²² Article 8, Law on the Prevention of Domestic Violence and the Protection of Victims (2005) (Cambodia).

be subject to various sanctions, such as: re-educational, administrative or penal measures, based on the nature of the violation, including compensation of civil damages.”

Good practice

The law in the Philippines provides an example of good practice in relation to violence against children in schools. In the Philippines corporal punishment is prohibited under Article 233 of the Family Code, which states: “in no case shall the school administrator, teacher or individual engaged in child care exercising special parental authority inflict corporal punishment upon the child.” While the Family Code does not explicitly define corporal punishment, the Bill on ‘Prohibiting all Corporal Punishment and All Other Forms of Humiliating or Degrading Punishment of Children And Promoting Positive and Non-Violent Discipline of Children, Appropriating Funds Therefore, and for Other Purposes’, which was being considered in the Congress of the Philippines at that time of writing this Report, contains an example of a thorough definition which explicitly prohibits all forms of corporal punishment that are inconsistent with CRC.

5.4 Recommendations for law reform: Corporal punishment in schools

Recommendations

- Consider the removal of any provisions in law or guidance that permit corporal punishment (and other forms of cruel and degrading punishment) (**Malaysia and Singapore**).
- Consider amending the law and adding an explicit prohibition on the use of corporal punishment in schools within laws on education, including regulatory laws on disciplinary practice in schools, (**Brunei, Indonesia, Malaysia, Myanmar and Singapore**) and in criminal law (**Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand and Viet Nam**).
- Ensure that legal definitions specifically prohibit emotional and mental as well as physical forms of abuse (**Thailand**, as well as **Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore and Viet Nam**).²³
- It is recommended that States should distinguish in the law between prohibitions on behaviour used for punishment and behaviour used for other purposes (**Viet Nam**, as well as **Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore and Thailand**).
- Consider removing all exceptions and provisions that could be used to defend corporal punishment from legislation (**Brunei, Cambodia, Lao PDR, Malaysia, Myanmar and Singapore**). Any justification of the use of force motivated by the need to protect a child must be distinguished from force used to punish, and must be the minimal amount of force necessary to contain the harm and for the shortest possible period of time.
- Consider developing preventative measures, including awareness-raising and educational measures and enshrining them in legislation (**Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar and the Philippines**) and ensure measures are enforced once the Act is passed (**Singapore, Thailand and Viet Nam**).
- Link prohibitions on corporal punishment to penalties and legal sanctions; including rehabilitative measures and remedies for victims (**Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines**) and ensure measures are enforced (**Singapore, Thailand and Viet Nam**).
- Consider introducing a law based on the Philippines Bill, ‘Prohibiting all Corporal Punishment and All Other Forms of Humiliating or Degrading Punishment of Children And Promoting Positive and Non-Violent Discipline of Children, Appropriating Funds Therefore, and for Other Purposes’ (2013) (**all ASEAN member States**).

²³ It may be useful for countries to issue guidance that lists specific practices that are in violation of the law so that there cannot be misinterpretation of its provisions.

Table 21. Report card: Protection against corporal punishment in schools

	Corporal punishment prohibited by law	Comprehensive definition of corporal punishment	Law provides penalties for corporal punishment	Law prohibits corporal punishment without exception
Brunei	●	●	●	●
Cambodia	●	●	●	●
Indonesia	●	●	●	●
Lao PDR	●	●	●	●
Malaysia	●	●	●	●
Myanmar	●	●	●	●
Philippines*	●	●	●	●
Singapore	●	●	●	●
Thailand	●	●	●	●
Viet Nam	●	●	●	●

* Assuming that 'An Act Prohibiting all Corporal Punishment and All Other Forms of Humiliating or Degrading Punishment of Children And Promoting Positive and Non-Violent Discipline of Children, Appropriating Funds Therefore, and for Other Purposes' will come into effect.

Part V: Violence against Children in the Community

Chapter 6. Homicide, Torture, Cruel, Inhuman and Degrading Treatment and Enforced Disappearance

6.1 Introduction

This chapter is concerned with national legislation relating to homicide and other non-fatal forms of violence against children; the use of torture and other cruel, inhuman and degrading treatment or punishment; and enforced disappearances. Criminal laws relating to homicide and other non-fatal forms of physical violence apply in any context, but this chapter examines child-specific provisions within the legislation.

In the context of torture, this chapter focuses primarily on provisions that protect children from torture by State-actors. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) establishes international standards and requires parties to the Convention to enact relevant laws.¹ The governing body of the Convention, the Committee against Torture, made it clear in *General Comment No. 2*:

“where State authorities or others acting in an official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts.”²

The Committee against Torture has applied this principle to the failure of States parties to prevent and protect child victims from gender based violence, such as rape, domestic violence, FGM/C and trafficking. This chapter will also examine the right of victims to a remedy or redress. In the context of enforced disappearances, while recognizing the immensely harmful impact of the enforced disappearance of a particular adult on a child’s life, this chapter focuses on the prohibition, criminalization and response to enforced disappearance of a child by a State-actor or other person acting with the support of the State.

There is some contextual overlap between this chapter and the chapter on violence against children in conflict with the law. For example, torture and other cruel, inhuman or degrading treatment or punishment is a key theme in discussing violence against children in conflict with the law. Such treatment or punishment may occur as a result of violent police interactions, violent sentences and the use of discipline or restraint in institutions. Additionally, safeguards that protect children in conflict with the law from violence by law enforcement officials, such as notification of parents and record keeping, may contribute to the prevention of enforced disappearances, but are dealt with in the chapter on children in conflict with the law.

¹ This chapter focuses on criminalization of these forms of violence, rather than on preventative measures, or measures for redress or remedy outside of criminal prosecution. Issues beyond the scope of this section include: (1) The right to legal personality (i.e. the right to have rights); (2) Timely notification of arrest (of parents/guardians, families and legal representation, for example); (3) Access to legal or other appropriate representation upon arrest; (4) Registers/record keeping relating to arrest and detention; (5) Access to effective complaints mechanisms for children and families; and (6) Access to compensation and rehabilitation services for child survivors and their families.

² The Convention against Torture applies to State actors and by non-State actors (see CAT General Comment 2 (CAT/C/GC/2) para 18. See also, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/13/39/Add.5.

6.2 Context: Understanding physical violence in the community

Children in the ASEAN region are vulnerable to many forms of physical violence in the community, perpetrated by acquaintances, members of the community and even by State agents, such as law enforcement officials. Marginalized children are particularly vulnerable to violence perpetrated by law enforcement officials and other public officials as recognized by the World Report on Violence against Children. The report notes:

“Community violence affects marginalized groups of children. Violence by police against street children — from verbal harassment and beatings to rape and other sexual violence, torture and ‘disappearance’ — is a common theme in the study reviews and consultations. Children from all regions report cruel and gratuitous violence by police for petty offences.”³

6.2.1 Homicide

It is estimated that globally there are around 468,000 homicides a year, a global average rate of approximately 6.9 per 100,000 people. The rate in Asia is significantly lower, the average of 20 Asian countries falling between 2.4 and 4.3 per 100,000 people.⁴ Young males are most at risk of homicide, representing around 90 per cent of homicide victims globally. Boys and men are particularly affected in countries in which the majority of homicides occur in public places (in the community generally, rather than in the home environment). This is likely to be due to the higher prevalence of boys and men in activities such as street crime, gang membership, drug consumption and so on.⁵ However, in Asia, the aggregated ratio of homicide victims is 79 per cent male and 21 per cent female; indicating that in this region, the proportion of female victims is significantly higher than the global average.⁶ The proportion of homicide victims by gender in ASEAN member States varies considerably. For instance, based on statistics compiled in 2008 in Singapore, 34.6 per cent of homicide victims were female, whereas in the Philippines, 8.2 per cent of victims were women and girls.⁷

6.2.2 Torture and other cruel, inhuman and degrading treatment

In *General Comment No. 13* on the right of the child to freedom from all forms of violence, the CRC Committee discussed the right to protection from torture and other cruel, inhuman or degrading treatment or punishment and explained:

“Victims are often children who are marginalized, disadvantaged and discriminated against and who lack the protection of adults responsible for defending their rights and best interests. This includes children in conflict with the law, children in street situations, minorities and indigenous children, and unaccompanied children.”

As the Committee notes, it is the most vulnerable and disadvantaged children who are most at risk of suffering torture or other cruel, inhuman or degrading treatment or punishment. Such acts may be perpetrated by law enforcement, the army, militia or others acting with state authority, or by other members of the community.

6.2.3 Enforced disappearances

The Enforced Disappearances Information Exchange Centre describes enforced disappearance as when “a person is taken away, by persons acting on behalf of the State, who then deny it or hide the truth.”⁸ The Working Group on Enforced or Involuntary Disappearances issued a General Comment on children and

³ Pinheiro, P. (2006), para. 76.

⁴ United Nations Office on Drugs and Crime (UNODC). (2011) *Global Study on Homicide*, pp. 19–21.

⁵ UNODC. (2011) *Global Study on Homicide*, p. 63.

⁶ UNODC. (2011) *Global Study on Homicide*, p. 66.

⁷ UNODC. (2011) *Global Study on Homicide*, p. 123.

⁸ EDIEC. (2009) *Using Law against Enforced Disappearances*, p. 19.

enforced disappearances in 2012, in which it recognized that children may be victims of enforced disappearance:

“The first involves children who are themselves subjected to enforced disappearance, as it is defined in the Declaration. A second particular situation occurs when children are born during the captivity of a mother subjected to enforced disappearance. In this case, children are born in secret detention centres and, most of the time, documents attesting to their true identity are suppressed or altered. Finally, children are victimized by the fact that their mother, father, legal guardian or other relative is subjected to enforced disappearance. An enforced disappearance creates a network of victims that extends far beyond the individuals that are directly subjected to this human rights violation.”⁹

In this General Comment, the Working Group noted that certain groups of children are particularly at risk of enforced disappearance, including of the sort conducted by private actors but supported/facilitated by the State: “Children living and/or working on the street and children placed in care institutions may also be in a particularly vulnerable situation, potentially becoming victims of enforced disappearance. The forced recruitment of child soldiers also places them in a potential situation of enforced disappearance.”¹⁰

As indicated earlier, this chapter focuses on legal provisions relating to the first category of children: those who are themselves subjected to enforced disappearances.

6.2.4 Impact of violence by public officials

It is clear that the impact of torture and other cruel, inhuman and degrading treatment or punishment and of enforced disappearances can be grave for children. The CRC Committee explained in *General Comment No. 13*: “The brutality of such acts often results in life-long physical and psychological harm and social stress.”

Similar concerns over enforced disappearances were expressed by the Working Group on Enforced or Involuntary Disappearances, which has stated:

“Children’s evolving stages of physical and mental maturity, as well as their reliance on adults, places them in a situation of particular vulnerability. As such, the specific nature of the violation of rights and the specific obligations of the State in cases of child victims of enforced disappearance must be properly understood and underscored.”¹¹

A 2010 research report for the Innocenti Research Centre discussed the physiological effect of torture emphasizing its ‘traumatic’ impact upon children:

“Torture is a traumatic interruption of the process of psychosocial maturing and social integration. In different parts of the world, in different cultural, political and economic conditions, with or without social or armed conflicts, one fact must be recognized: the vulnerability of children is intimately related to the degree of protection provided by the family and daily exposure to an environment of social exclusion and violence. Certain circumstances – living on the street; being a victim of trafficking, commercial sexual exploitation or other forms of economic exploitation; being accused of a violation of criminal law – are some of the predominant types of vulnerability to traumatic contact with State officials, persons acting on their behalf or other accomplices in the crime of torture.”¹²

⁹ General comment on children and enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (31 October – 9 November 2012), A/HRC/WGEID/98/1, 14th February, 2013, para 2.

¹⁰ General comment on children and enforced disappearances, para 3.

¹¹ General comment on children and enforced disappearances, para. 91.

¹² O’Donnell and Liwski (2010) *Child Victims of Torture and Cruel Inhuman or Degrading Treatment*, Innocenti Research Centre, p. 25.

6.3 International standards on physical violence in the community

6.3.1 Impact of violence by public officials

According to the CRC Committee, States should not only have laws addressing physical violence in all contexts, including those forms occurring in the community, but should also ensure that appropriate penalties are attached to violent offences against children.¹³ The most protective legal frameworks will contain higher penalties for physical violence, including homicide, where the victim is particularly vulnerable.

6.3.2 Torture and other cruel, inhuman or degrading treatment or punishment

International law requires States to prohibit torture and other cruel, inhuman or degrading treatment or punishment in all circumstances. CRC Article 37(a) provides: “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” A similar prohibition is also set out in CAT and the International Covenant on Civil and Political Rights (ICCPR).¹⁴ These provisions apply to children as well as adults.

Under CAT, States must make efforts to prevent and criminalize torture and attempted torture, and these offences must be met with ‘appropriate penalties’.¹⁵ Furthermore, States must ensure that victims of torture have the right to complain and to obtain redress, which includes a right to fair and adequate compensation.¹⁶

The ICCPR also contains a prohibition against cruel, inhuman or degrading treatment or punishment in Article 7. The Human Rights Committee has said it does not consider it necessary “to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.”

The Human Rights Committee, in similar vein to the Committee against Torture, has also noted that State obligations under Article 7 of ICCPR apply regardless of whether the acts covered by Article 7 are committed by public officials, other persons acting on behalf of the State, or private persons.¹⁷ The Committee has set out the following obligations relating to legal protection against torture or cruel, inhuman or degrading treatment or punishment:

- Domestic criminal law must prohibit torture or other cruel, inhuman or degrading treatment or punishment;
- Those held responsible for acts of torture or other cruel, inhuman or degrading treatment or punishment should include those who encourage, order, tolerate or perpetrate such acts;
- Prohibitions against torture or other cruel, inhuman or degrading treatment or punishment must include acts that cause both physical pain and mental suffering; and
- In addition, national legal systems must have appropriate redress for victims, including the right to lodge complaints against maltreatment prohibited by Article 7.¹⁸

In relation to children, the CRC Committee has discussed whether the use of corporal punishment amounts to inhuman or degrading punishment. The CRC provisions do not explicitly state that corporal punishment amounts to inhuman or degrading treatment or punishment, and there is no mention of corporal punishment in the *travaux préparatoires* of the Convention. However, the CRC Committee has noted that corporal punishment clearly conflicts with children’s right to respect for their dignity and worth and amounts to cruel

¹³ CRC Committee, *General Comment No. 13*.

¹⁴ Article 7, ICCPR.

¹⁵ Articles 2 and 4(1)–4(2), CAT.

¹⁶ Article 14, CAT.

¹⁷ CAT Committee, *General Comment No. 20: prohibition of torture and cruel treatment or punishment*, 10 March 1992, para. 13.

¹⁸ CAT Committee, *General Comment No. 20*, paras. 13 and 14.

and degrading treatment and punishment.¹⁹ The Committee has consistently called for prohibition of all forms of corporal punishment within the judicial system and, in particular, its use as a judicial sanction. Legislation should therefore contain a clear and absolute prohibition on the use of corporal punishment, at least by the State or a State supported actor.

6.3.3 Enforced disappearances

Enforced disappearances are explicitly prohibited in international law.²⁰ The International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED) sets out States' legal obligations for prohibiting and responding to acts of enforced disappearance in their national law. An 'enforced disappearance' is defined under Article 2 of the Convention as follows:

“the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

Under the Convention, enforced disappearances must be prohibited in all circumstances, and no exceptional circumstances can be used to justify the use of enforced disappearances.²¹ States Parties to the Convention are obliged to ensure that enforced disappearance is an offence under its criminal law.²² States are also obliged to ensure that the following categories of persons are criminally responsible:

- Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;
- A superior who: knew, or consciously disregarded information which clearly indicated that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance; exercised effective responsibility or control over activities which were concerned with the crime of enforced disappearance; and failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution²³

6.4 Legislation in ASEAN member States: Higher penalties for homicide and other violence offences against children

As set out above, the most protective legal frameworks will contain higher penalties for physical violence, including homicide, where the victim is particularly vulnerable. Laws may include an 'aggravated circumstances' clause that applies to all provisions included in the Penal Code, or as a sub-clause to a particular article such as murder, homicide and so on. These provisions serve to communicate that physical violence against particularly vulnerable groups, including children, are more serious crimes. They may also have a deterrent effect.

Table 22 summarizes and analyses provisions in Penal Codes that apply to violence against children in ASEAN member States. The table indicates where there is an increased penalty for crimes of physical violence committed against children (and thus addresses children's increased vulnerability).

¹⁹ CRC Committee, *General Comment No. 8*, paras. 20 and 21.

²⁰ Article 1(1), ICCPED.

²¹ Article 1(2), ICCPED.

²² Article 4, ICCPED.

²³ Article 6(1), ICCPED.

Table 22. Increased penalties for murder and physical violence against children in ASEAN member States

Country	Increased penalties for murder of children	Increased penalties for violence against children
Brunei	None	None
Cambodia	Article 202, Penal Code	Article 219, Penal Code
Indonesia		Article 356, Penal Code (see analysis of Article 246, Philippines Penal Code)
Lao PDR	Article 41, Penal Law	Article 41, Penal Law
Malaysia	None	None
Myanmar	None	None
Philippines	Article 246, Penal Code	Article 263, Penal Code
Singapore	None	None
Thailand	None	None
Viet Nam	Article 93, Penal Code	Article 48, Penal Code

6.4.1 Blanket provisions establishing increased penalties for crimes against children

The penal codes of **Lao PDR** and **Viet Nam** contain blanket provisions that attract aggravated penalties or increase penal responsibility for all criminal acts. This includes where victims are particularly vulnerable, and also applies to children.

- In **Lao PDR** raised penalties may be applied to “offences towards minors, aged persons, vulnerable persons, or persons materially or in other ways dependent on or under the charge of the offender.”²⁴
- In **Viet Nam** circumstances aggravating penal liability include, “h) committing crimes against children, pregnant women, aged persons, persons unable to defend themselves or persons dependent on offenders in material and/or moral conditions, work or other ways.”²⁵

These provisions are good practice in that they mark out society’s concern and the need to provide special protection to vulnerable groups.

6.4.2 Specific provisions establishing increased penalties for crimes against children

The Penal Codes in both **Cambodia** and **Viet Nam** contain specific provisions that increase the penalty for both murder and physical abuse where these crimes are committed against children.

- Article 202 of Cambodia’s Penal Code, which addresses murder with aggravating circumstances in relation to victims, provides that “The murder is punishable by an imprisonment from 15 (fifteen) to 30 (thirty) years [a higher penalty] when it is committed...on a person particularly vulnerable due to his/her age.”
- Article 202 also establishes a higher penalty which may serve to address children’s particular vulnerability to violence; “The intentional violence is punishable by an imprisonment of between 2 (two) and 5 (five) years and a fine of between 4,000,000 (four million) Riels and 10,000,000 (ten million) Riels when it is committed: on a person particularly vulnerable due to his/her age.”

²⁴ Article 41, Penal Law (Lao PDR).

²⁵ Article 48, Penal Code (Viet Nam).

- Article 93 of **Viet Nam's** Penal Code (1999), which addresses murder, contains a provision that establishes 'aggravated penal liability' for crimes committed against certain categories of persons, including children. It states that "1. those who commit murder in one of the following cases shall be sentenced to between 12 and 20 years of imprisonment, life imprisonment or capital punishment: ... c) Murder of children."

Viet Nam's Penal Code is perhaps even stronger than Cambodia's given that it specifies that crimes against children should receive increased penalties and is not open to interpretation.

Indonesia's Penal Code does not have enhanced penalties for murder of children. However it does increase penalties for maltreatment (physical abuse). According to Article 356, "The punishments laid down in articles 351, 368, 354 and 355 may be enhanced [by] one third: ... in respect of the offender who commits the crime against his mother, his lawful father, his spouse or his child ... " This provision only partially addresses children's increased vulnerability to physical violence as it increases penalties only in relation to those who perpetrate an act against their own child, and not towards any other child. The implication (particularly given that the penalty is increased when maltreatment is committed against other family members) is that it is the nature of the relationship that increases the severity of the crime rather than the vulnerability of the victim.

The Penal Code in the **Philippines** contains a similar provision, which applies to both murder and physical abuse. Article 15, which addresses alternative circumstances, establishes that these are:

"The relationship, intoxication and the degree of instruction and education of the offender. The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender."

Similarly, the Penal Code establishes parricide as a separate crime from murder/homicide with increased penalties. According to Article 246 an increased penalty shall apply to "Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death." The Penal Code also applies increased penalties when physical injuries are inflicted upon anyone listed in Article 246.

While the Penal Code provides for increased penalties in relation to murder of any family member, the Special Protection of Children against Abuse, Exploitation and Discrimination Act 1992 also provides increased penalties in the case of homicide, other intentional mutilation and serious physical injuries where the child victim is under age 12, providing a partial protection to all children.²⁶

Brunei, Malaysia, Myanmar and **Singapore** do not have increased penalties for physical forms of violence against children and neither do their penal laws address children's particular vulnerability.

Thailand's Penal Code also fails to establish increased penalties for children. However it does substantially increase penalties for those who cause death or physical harm to their ascendants.²⁷

6.5 Legislation in ASEAN member States: Torture and other cruel, inhuman or degrading treatment or punishment

ASEAN member States must ensure acts that torture and other cruel, inhuman or degrading treatment or punishment is comprehensively criminalized. ICCPR and CRC do not provide a definition of 'torture and other cruel, inhuman or degrading treatment or punishment', however, the Convention against Torture provides the following definition:

²⁶ Law No. 7610, section 10.

²⁷ Section 289 and 298, Penal Code (Thailand).

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

States that have ratified the Convention against Torture are required to enshrine a definition of torture into domestic law that is no less restrictive than that provided in the Convention. Any definition of torture contained in domestic legislation should therefore, contain the following elements: acts or omissions that cause pain or suffering with the intention to cause pain or suffering and for a specific purpose, such as obtaining information, and are committed by public officials and persons acting in an official capacity.²⁸

The acts that will constitute torture may differ for a child as opposed to an adult. In deciding whether a particular act or course of behaviour constitutes torture, it is necessary to examine and take into account the individual circumstances of the victim, including the fact that the victim is a child. It has been argued that actions that constitute ill treatment (rather than torture) for an adult, such as prolonged solitary confinement, may constitute torture if inflicted on a young child.²⁹

Each of the treaties recognizes a distinct difference between torture and the other forms of prohibited treatment or punishment, but takes a different approach in defining the acts that fall within this part of the prohibition. Article 16 of the CAT requires States to prevent acts which do not meet the severity threshold of torture but which amount to cruel, inhuman or degrading treatment or punishment, where these acts are committed by, at the instigation of, or with the consent or acquiescence of a public official.

There has been little discussion of the terms ‘inhuman and degrading treatment or punishment’ by the CRC Committee. In order to constitute inhuman or degrading treatment, a ‘minimum level of severity’ must be reached. The assessment of this minimum depends on all the circumstances of the case, such as the duration, its physical and mental effects and, in some cases, the age and state of health of the child. As with torture, an action that might not be inhuman or degrading for an adult may be for a child, such as being denied contact with the family for a specified period of time.

Prohibited forms of treatment for children that could amount to torture, cruel, inhuman or degrading treatment or punishment should be set out in legislation. These should include the use of solitary confinement, the use of pain techniques to restrain children, corporal punishment, deprivation of food and deprivation of contact with the family.³⁰

²⁸ Cf. World Organisation Against Torture (OMCT), *Seeking remedies for torture victims: a handbook on the individual complaints proceedings of the United Nations treaty bodies*; United Nations Committee against Torture. 2006, Concluding Observations on the United States, Doc. CAT/C/USA/CO/2, § 29.

²⁹ Man, N. (2000). *Report on Children: Torture and Power*, OMCT and Save the Children, p. 14.

³⁰ Rule 67 of Havana Rules. See also the section on sentencing.

Table 24. Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

Country	Signature, ratification or accession
Brunei	●
Cambodia	● Acceded 15 October 1992
Indonesia	● Signed: 23 October 1985; Ratified: 28 October 1998
Lao PDR	● Signed: 21 September 2010; Ratified: 26 September 2012
Malaysia	●
Myanmar	●
Philippines	● Acceded 18 June 1986
Singapore	●
Thailand	● Acceded 2 October 2007
Viet Nam	●

Note: Red indicates that the State has not signed, ratified or acceded.

While all ASEAN member States are parties to CRC, **Brunei, Malaysia, Myanmar** and **Singapore** are parties to neither ICCPR nor CAT, and **Viet Nam** is not party to CAT (table 24). In the context of torture and other cruel, inhuman or degrading treatment, these States have agreed to be bound only by the provisions of CRC Article 37.

6.5.1 The right to protection from torture and other cruel, inhuman or degrading treatment

Some ASEAN member States have made a formal statement relating to the rights of an individual to be protected from torture in the Constitution, while others include a direct provision prohibiting torture, within a Code or Law. Full legal protection from torture and other cruel, inhuman or degrading treatment is most effectively realized through making such acts criminal offences.

Table 25. Legislative provisions on the criminalization of, and right to protection from, torture and other cruel, inhuman or degrading treatment in ASEAN member States

<p>Brunei</p> <ul style="list-style-type: none"> ● Explicit legal protection from torture etc.: (The Government has taken note of recommendations to sign and ratify CAT and agreed to respond at a future time. UPR Working Group Report: Brunei Darussalam, 2009, A/HRC/13/14, paras. 90–91.) ● Criminalization of acts that amount to torture: Under the Penal Code, public servants can be prosecuted for causing hurt to extort a confession or to compel restoration of property (Section 330). This is illustrated as follows: “(a) A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.” <p>Other legal provisions that can be used to prosecute torture etc.: Penal Code Section 166 establishes a criminal offence for a public servant to perpetrate an act by which he or she intends to cause or causes injury to a person.</p> <p>Sections 319 and 320 of the Penal Code criminalize hurt and grievous hurt.</p>
<p>Cambodia</p> <ul style="list-style-type: none"> ● Explicit legal protection from torture etc.: The Constitution of Cambodia declares that “Every Khmer citizen shall have the right to life, personal freedom and security” (Article 32) and that “The law guarantees there shall be no physical abuse against any individual” (Article 38)

<ul style="list-style-type: none"> ● Criminalization of acts that amount to torture: The main provision is found within the Penal Law 2011, Section 166, which states that “Tortures or barbarous acts against any individual is punishable by imprisonment for between 7 (seven) and 15 (fifteen) years” Torture is also prohibited as a crime against humanity in Article 188(6) and as a war crime in Article 193(2). Further, torture is considered an aggravating factor that incurs additional penalties when committed in addition to murder under the Article 205, Penal Law. <p>Other legal provisions that can be used to prosecute torture etc.: N/A</p>
<p>Indonesia</p> <ul style="list-style-type: none"> ● Explicit legal protection from torture etc.: The Constitution provides that “Every person shall have the right to be free from torture or inhumane and degrading treatment...” (Article 28G(2)) “The rights to life, freedom from torture ... are all human rights that cannot be limited under any circumstances.” (Article 28I(1)) <p>Article 4, Human Rights Law (No. 39/1999) provides “...the right to not to be tortured...cannot be diminished under any circumstances whatsoever” and, in Article 33(1), that ‘everyone has the right to freedom from torture, or cruel, inhuman and degrading punishment or treatment.’</p> <p>Article 16, Child Protection Law 2002, provides: “every child is to be entitled to protection from abuse, torture or inhuman punishment under the law” and Article 3(e), Law on Child Criminal Justice System No. 11 Year 2012, to enter into force in 2014, provides children with the right to be freed from torture, punishment or other cruel, inhuman [punishment or treatment].”</p> <ul style="list-style-type: none"> ● Criminalization of acts that amount to torture: (It is possible to prosecute a gross violation of the right to protection from torture under Article 1(3), Law on Human Rights Courts, Law No. 26/2000.) <p>Other legal provisions that can be used to prosecute torture etc.: Articles 351–355, Penal Code relate to ‘maltreatment’. Article 421, Penal Code states “any official who by misuse of power forces someone to do, not to do or to tolerate something” commits an offence.</p>
<p>Lao PDR</p> <ul style="list-style-type: none"> ● Explicit legal protection from torture etc.: Article 42, Constitution, 2003 states “the right of Lao citizens in their bodies, honour and houses are inviolable”. <p>Article 3(8), Law on the Protection of Rights and Interests of the Children, 2007 goes beyond this to state that children have a right “To be protected from all forms of physical and moral abuse”.</p> <ul style="list-style-type: none"> ● Criminalization of acts that amount to torture: Under Article 62, Penal Procedure Code, torture of an accused person is prohibited. <p>Article 171, Penal Law, provides that “Any person using physical violence and torture, or measures or other acts inconsistent with the laws, against suspects or prisoners during arrest, trial or serving of sentence shall be punished by three months to three years of imprisonment or re-education without deprivation of liberty and shall be fined...”</p> <p>Other legal provisions that can be used to prosecute torture etc.: Article 90, Penal Law, refers to ‘battery’.</p>
<p>Malaysia</p> <ul style="list-style-type: none"> ● Explicit legal protection from torture etc. ● Criminalization of acts that amount to torture: Public servants could be prosecuted under the Penal code for causing hurt in order to extort a confession or to compel restoration of property (Section 330). This provision is accompanied by an illustration: ‘(a) A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.’

<p>Other legal provisions that can be used to prosecute torture etc.: A public servant can be punished under the Penal Code for an act by which he or she intends to cause or causes injury to a person (Section 166). The Penal Code also contains provisions relating to ‘hurt’ (Section 319) and ‘grievous hurt’ (Section 320).</p> <p>Under the Child Act 2001, an individual can be prosecuted for “ill-treatment, neglect, abandonment or exposure of children’ if that person was considered to be ‘having the care of a child” (Section 31).</p>
<p>Myanmar</p> <ul style="list-style-type: none"> ● Explicit legal protection from torture etc. ● Criminalization of acts that amount to torture: A public officer can be prosecuted under the Penal Code for causing hurt in order to extort a confession. The illustrations to Section 330 provide several examples of how police torture to elicit a confession or property would meet the requirements of the Article. <p>Other legal provisions that can be used to prosecute torture etc.: Under the Penal Code, a public servant can be punished, criminally, for an act by which he or she intends to cause or causes injury to a person (Section 166).</p> <p>Sections 319 and 320 of the Penal Code criminalize hurt and grievous hurt.</p>
<p>Philippines</p> <ul style="list-style-type: none"> ● Explicit legal protection from torture etc.: The Constitution of 1987 provides that “No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him [a person accused of an offence]” (Section 12). Protection is also provided by the Anti-Torture Act 2009 (Republic Act No. 9745). ● Criminalization of acts that amount to torture: Anti-Torture Act 2009 <p>Other legal provisions that can be used to prosecute torture etc.: N/A</p>
<p>Singapore</p> <ul style="list-style-type: none"> ● Explicit legal protection from torture etc. ● Criminalization of acts that amount to torture: Section 330, Penal Code, provides that public servants can be prosecuted for causing hurt in order to extort a confession or to compel restoration of property and illustrates this with the examples: “A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section. (b) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section. (c) A, a customs officer, tortures Z in order to compel him to confess to a pretended offence against the customs laws. A is guilty of an offence under this section.” <p>Other legal provisions that can be used to prosecute torture etc.: Section 166, Penal Code amended 2007, provides that a public servant who disobeys a direction of law with the intent to injure commits an offence. The Penal Code also contains provisions relating to ‘hurt’ (Section 319) and ‘grievous hurt’ (Section 320).</p> <p>In addition, ill-treatment of a child by a person with care, custody or control of the child is an offence under Section 5, Children and Young Persons Act 2001.</p>
<p>Thailand</p> <ul style="list-style-type: none"> ● Explicit legal protection from torture etc.: Section 32, Constitution 2007, provides that “a person shall enjoy the right and liberty in his life and person. A torture, brutal act or punishment by a cruel or inhumane means shall not be made; provided that punishment under judgments of the Courts or by virtue of the law shall not be deemed the punishment by a cruel or inhumane means under this paragraph”

<ul style="list-style-type: none"> ● Criminalization of acts that amount to torture: Torture is an aggravating factor in the offence of murder (Section 289(5), Criminal Code), battery (Section 296), assault and battery causing grievous bodily harm (Section 298), kidnapping for ransom (Section 313(2)), and gang-burglary (Section 340(4) and (5)). <p>Other legal provisions that can be used to prosecute torture etc.: Chapter 2 of the Criminal Code covers the issue of bodily harm and Section 135, Criminal Procedure Code, prohibits the use of torture in inducing a subject to give a statement.</p>
<p>Viet Nam</p>
<ul style="list-style-type: none"> ● Explicit legal protection from torture etc.: The Constitution provides: “Everyone has the right to inviolability of his or her body and to the protection by law of his or her health, honour and dignity; no one shall be subjected to torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health or offending his or her honour and dignity” (Article 20(1)). ● Criminalization of acts that amount to torture <p>Other legal provisions that can be used to prosecute torture etc.: Under Article 6(2), Law on Care, Education and Protection of the Child 2004, provides that “All acts of infringing upon children’s rights, causing harms to the normal development of children shall be severely punished by law.” This is followed by Article 7(6) which lists torture as a ‘prohibited act’.</p> <p>Article 104, Penal Code criminalizes intentional infliction of injury, Article 107 criminalizes infliction of injury or causing harm while performing official duty and Article 110 criminalizes ill-treatment of others. In addition, Article 6, Criminal Procedure Code prohibits the use of coercion of all forms and corporal punishment, and Article 12 provides that officials who in the course of administration of justice and law enforcement violate the law could be punished, criminally, for their action.</p>

Table 25 considers legislative provisions in ASEAN member States relating to the right to protection from torture, and the provisions within domestic law that criminalize torture, or that could be used to prosecute acts of torture. Other than in the Philippines, which has a specific act that seeks to incorporate CAT into domestic legislation, domestic laws do not explicitly include provisions relating to other cruel, inhuman or degrading treatment.

Table 25 shows a divide in the way that different legal systems address torture. In **Brunei, Malaysia, Myanmar** and **Singapore**, which shared a common legal history, though there may not be a ‘right’ to protection from torture and other cruel, inhuman or degrading treatment or punishment, the Penal Laws include a specific crime that describes the act of torture (extorting information by causing hurt). These laws use the term ‘torture’ to illustrate circumstances in which the offence would apply. However, the term is not explicitly defined.

In **Cambodia, Indonesia, Lao PDR, the Philippines, Thailand** and **Viet Nam**, the Constitution either prohibits torture explicitly, or, in the case of **Lao PDR**, provides for the inviolability of the body, a provision that could be interpreted to prohibit torture and other cruel, inhuman or degrading treatment or punishment. The laws vary as to criminalizing the use of torture and other forms of cruel, inhuman and degrading treatment or punishment. The **Philippines** has the strongest legal framework for the protection of children through its Anti-Torture Act 2009, which incorporates the provisions of the Convention against Torture into domestic law. Likewise, **Cambodia** and **Lao PDR** have strong legal frameworks, explicitly criminalizing respectively “torture and other barbarous acts” (Article 210, Penal Law) and “physical violence and torture” in the course of law enforcement interactions (Article 171, Penal Code).

In **Viet Nam**, the Constitution forbids “torture, violence, coercion, corporal punishment or any form of treatment harming [the person’s] ... body and health or offending [the person’s] ... honour and dignity” (Article 20(1)). The Law on Care, Education and Protection of the Child provides that torture (and other prohibited rights violations) shall be “severely punished by law” (Article 6(2)) but there is no criminal provision relating to these rights. Article 6 of the Criminal Procedure Code comes closest: it prohibits the use of coercion of all forms and Article 12 provides that officials who violate the law in the course of their work can be punished for their actions. More broadly, Articles 104 and 111 criminalize intentional injury and ill-treatment of others. In

Indonesia, a gross violation of the right to protection from torture could be prosecuted under the Law on Human Rights Courts (2000) but, otherwise, torture and other cruel, inhuman or degrading treatment or punishment could only be addressed through Penal Code provisions relating to maltreatment or providing that officials who misuse power commit an offence (Article 421).

Within the legal framework in ASEAN member States there are general provisions that prohibit and criminalize torture, and that could be applied to other cruel, inhuman and degrading treatment or punishment. Indeed, though the term ‘torture’ is only defined in legislation of Indonesia and the Philippines, legislation in all States mentions the term ‘torture’ in some context. This is interesting because only five ASEAN member States have ratified the Convention against Torture. Overall, the inclusion of provisions relating to torture, and the near universal criminalization of torture (all except **Indonesia**, **Thailand** and **Viet Nam**) is a positive finding.

6.6 Legislation in ASEAN member States: Enforced disappearances

Only four ASEAN member States have signed the International Convention for the Protection of All Persons from Enforced Disappearance and only one (**Cambodia**) has ratified the Convention (table 26). The Convention is relatively new (it opened for signature in 2006 and entered into force in 2010).

Table 26. Ratification of the Convention for the Protection of All Persons from Enforced Disappearance

Country	Signature, ratification or accession
Brunei	●
Cambodia	● Acceded 27 June 2013
Indonesia	● Signed 27 September 2010 but not yet ratified
Lao PDR	● Signed 29 September 2008 but not yet ratified
Malaysia	●
Myanmar	●
Philippines	●
Singapore	●
Thailand	● Signed 9 January 2012 but not yet ratified
Viet Nam	●

Note: Red indicates that the State has not signed, ratified or acceded.

Only Cambodia has ratified the Convention for the Protection of All Persons from Enforced Disappearance at the time of writing. However, as enforced disappearance is regarded as a form of violence, it can be argued that CRC Article 19 already requires States parties to provide protection to children subject to or at risk of enforced disappearance.³¹ It should be noted that the CRC Committee does not mention enforced disappearances explicitly in *General Comment No. 13* on the right to protection from all forms of violence, though the Committee does describe extrajudicial punishment of children as a form of torture, cruel, inhuman and degrading treatment or punishment.³² This section of the report uses the Convention for the Protection of All Persons from Enforced Disappearance as the key reference point for international best practices, taking into

³¹ Article 19(1) reads: ‘States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.’

³² CRC Committee, *General Comment No. 13*, para 26.

account that those States that have not ratified the Convention may have obligations to child victims of enforced disappearances under CRC.

Table 27. Legal provisions on and criminalization of enforced disappearances

<p>Brunei</p> <ul style="list-style-type: none"> ● Penal Code Section 346 criminalizes “wrongful confinement in secret: whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment for a term which may extend to 5 years in addition to any other punishment to which he may be liable for such wrongfully confinement.”
<p>Cambodia</p> <ul style="list-style-type: none"> ● Article 188, Penal Code, which relates to crimes against humanity includes a provision that criminalizes forced disappearance, when committed “within the framework of a generalized or systematic attack carried out against civilian population.” <p>In a stronger provision of wider application, Articles 253 to 255, Penal Code, criminalizes illegal arrest, detention and confinement. Article 588 criminalizes the infringement of individuals’ rights, while Article 589 criminalizes the refusal to release an unlawfully detained person.</p> <p>Article 38, Constitution, requires that detention and arrest must be done in accordance with the law and Article 32 provides the right to personal freedom.</p>
<p>Indonesia</p> <ul style="list-style-type: none"> ● Constitution protects the right to life (Article 28G). Under Article 4, Human Rights Law 1999, the right to freedom of the individual cannot be infringed, while, under Article 33(2), “Everyone has the right to freedom from abduction and assassination.” This is further strengthened by Article 34, which states “no one shall be subject to arbitrary arrest, detention, torture or exile.” <p>Under Articles 4 and 9, Human Rights Court Act, 2000, where enforced disappearance is a ‘gross violation’ of a human right (either genocide or a crime against humanity), a case could be prosecuted in that Court.</p>
<p>Lao PDR</p> <ul style="list-style-type: none"> ● Constitution provides, in Article 42 that “the right of Lao citizens in their bodies, honour and houses are inviolable. Lao citizens cannot be arrested or searched without the order of the Public Prosecutor or the people’s courts, except if otherwise provided by the laws.” The Penal Law criminalizes unlawful arrest and detention in Article 99: ‘Any person unlawfully arresting or detaining another person shall be punished by six months to two years of imprisonment and shall be fined’ with any damage to the individual an aggravating factor.
<p>Malaysia</p> <ul style="list-style-type: none"> ● Section 346, Penal Code, states: “Wrongful confinement in secret: whoever wrongfully confines any person in such a manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.”

<p>Myanmar</p> <ul style="list-style-type: none"> ● Constitution states “Every citizen shall enjoy the right of equality, the right of liberty and the right of justice, as prescribed in this Constitution” (Section 21(a)). <p>Penal Code criminalizes wrongful confinement in secret: “Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement” (Section 346).</p>
<p>Philippines</p> <ul style="list-style-type: none"> ● Anti-Enforced and Involuntary Disappearances Act of 2012 effectively incorporates the Convention into domestic law (Republic Act No. 10353). Constitutional provisions (including Chapter III, Section 1 also protect the right to life and liberty).
<p>Singapore</p> <ul style="list-style-type: none"> ● Penal Code contains the same provision as in Brunei, Malaysia and Myanmar relating to wrongful confinement in secret (Section 346). <p>Constitution also provides that “No person shall be deprived of his life or personal liberty save in accordance with law” (Section 9(1)) and that “Where a complaint is made to the High Court or any Judge thereof that a person is being unlawfully detained, the Court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the Court and release him” (Section 9(2)). Although it should be noted that one of the key components of enforced disappearance is that it is secret and, therefore, it would be difficult for an interested party to raise a complaint under Section 9(2).</p>
<p>Thailand</p> <ul style="list-style-type: none"> ● Constitution states: “Section 32. “A person shall enjoy the right and liberty in his life and person....Arrest and detention of person shall not be made except by order or warrant issued by the Courts or there is a ground as provided by the law” <p>Sections 310 and 311, Penal Code, do not criminalize enforced disappearances, but criminalize unlawful detention: “whoever detains or confines the other person, or by any other means whatever, deprives such person of liberty of person, shall be punished...”</p>
<p>Viet Nam</p> <ul style="list-style-type: none"> ● Constitution includes provisions relating to arrest, but not enforced disappearance: “The citizen shall enjoy inviolability of the person and the protection of the law with regard to his life, health, honour and dignity. No one can be arrested in the absence of a ruling by the People's Court, a ruling or sanction of the People's Office of Supervision and Control except in case of flagrant offences. Taking a person into, or holding him in, custody must be done with full observance of the law.” (Article 71) Constitution also provides a right to redress in the event of unlawful arrest: “Any person who has been arrested, held in custody, prosecuted, brought to trial in violation of the law shall be entitled to damages for any material harm suffered and his reputation shall be rehabilitated.” (Article 72). <p>Under Article 123, Penal Code, the illegal arrest, custody or detention is a criminal offence, which is aggravated if committed as an abuse of power.</p>

As table 27 shows, enforced disappearances are explicitly criminalized only in the **Philippines**, through the Anti-Enforced and Involuntary Disappearances Act, although the Philippines is not a party to the Convention. Within the penal law traditions in **Brunei, Malaysia, Myanmar and Singapore**, wrongful confinement in secret is a criminal offence. Although it is unlikely that this was intended to cover enforced disappearance when the original 1860 Indian Act was drafted, the provisions could nevertheless be used to penalize enforced

disappearance. Interestingly, despite having provisions protecting the right to liberty within their Constitutions, the legislative frameworks in **Lao PDR, Thailand** and **Viet Nam** fail to criminalize enforced disappearances. In each of these States, illegal or unlawful arrest is a crime, though secrecy surrounding arrest, which is a key component of enforced disappearance, is not an explicit component of this crime. Of course, secrecy is likely to be illegal and, therefore, such provisions could nonetheless be used to prosecute enforced disappearance, but the legal framework would need to be strengthened to meet international best practice.

6.7 Recommendations for law reform: Physical violence against children in the community

Recommendations

- Consideration should be given to raising the penalties for crimes of physical violence against children in order to afford them additional protection and strengthen deterrence (**Brunei, Indonesia, Malaysia, Myanmar, the Philippines, Singapore** and **Thailand**).
- It may be useful to have a blanket provision within Penal Codes providing that when crimes are committed against children this should count as an ‘aggravated circumstance’ (**Brunei, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore** and **Thailand**).
- It is also useful for legislation to contain specific provisions within relevant articles/sections of the law that raise penalties for crimes of physical violence committed against children (**Brunei, Indonesia, Malaysia, Myanmar, the Philippines, Singapore** and **Thailand**).
- Consideration should be given to adding a provisions that increases the penalty to be applied not only when a crime is committed against a child within a relationship (i.e. father to child) but also when committed against children who are not members of the family (the **Philippines**).
- Consideration should be given to removing all exceptions/justifications of physical violence against children for any reason (e.g. for punishment) from the law.
- States that have not done so should consider becoming States parties to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (**Brunei, Malaysia, Myanmar, Singapore** and **Viet Nam**) and should ratify the International Convention for the Protection of All Persons from Enforced Disappearance (all **ASEAN** States except **Cambodia**).
- States should strengthen the legislative frameworks to:
 - a) Explicitly define, prohibit and criminalize all forms of torture and other cruel, inhuman or degrading treatment and punishment (**Indonesia, Thailand** and **Viet Nam**); and
 - b) Explicitly define, prohibit and criminalize enforced disappearance (**Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand** and **Viet Nam**).

Table 28. Report card: Protection against physical violence in the community

	Torture and other cruel, inhuman and degrading treatment	Enforced disappearances	Increased penalties for physical violence against children
Brunei	●	●	●
Cambodia	●	●	●
Indonesia	●	●	●
Lao PDR	●	●	●
Malaysia	●	●	●
Myanmar	●	●	●
Philippines	●	●	●
Singapore	●	●	●
Thailand	●	●	●
Viet Nam	●	●	●

Chapter 7. Age of Consent Provisions and Statutory Rape

7.1 Introduction

This chapter analyses the national laws of ASEAN member States relating to sexual abuse of children in the community. This chapter covers provisions on rape, sexual abuse and age of consent.

Sexual violence against children occurs in many settings. Reports indicate that the nature of a child's risk of sexual violence varies according to their age, with younger children being particularly vulnerable to such abuse at home or in other care settings, while older children are more vulnerable to sexual violence inflicted outside the home by strangers, friends or acquaintances.¹ Studies carried out in the Asia-Pacific region have found that children are increasingly at risk of abuse by peers and friends. A randomized school-based and household survey of 9,388 young people in all 24 provinces and municipalities of Cambodia, found that 6.1 per cent of youth (2.4 per cent of girls and 7.5 per cent of boys) reported forcing someone to have sex with them.² Children who are exposed to sexual exploitation are particularly vulnerable to sexual and other forms of violence.

7.2 Context: Understanding sexual violence in the community

Child sexual abuse is defined by the CRC Committee as “the inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity.”³ This includes “any sexual activities imposed by an adult on a child, against which the child is entitled to protection by criminal law.” The World Health Organization (WHO) uses a rather wider definition where child sexual abuse is defined as:

“the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person.”⁴

Sexual abuse encompasses a wide range of acts, including acts involving physical contact, such as vaginal, anal or oral rape, touching or fondling. Sexual abuse also includes non-physical acts, including showing children pornography, forcing children to engage in or watch sexual activities or encouraging children to behave in sexually inappropriate ways. An abuser may use force, coercion, threats, trickery or pressure to inflict sexual abuse on children, and may also use a tactic called ‘grooming’, whereby they befriend a child in order to lower his or her inhibitions and inflict sexual abuse on him or her.⁵

Child sexual abuse can be distinguished from child sexual exploitation, which involves an element of commercial gain. Child sexual exploitation comprises “sexual abuse by the adult and remuneration in cash or kind to the child or third persons. The child is treated as a sexual object and as a commercial object.” It is important to note that this definition, included in the Stockholm Agenda for Action, includes remuneration in kind. This includes sexual exploitation in exchange for a non-financial gain, such as for protection, a place to sleep, higher school grades, food, alcohol or drugs. In these cases, children can be the victim of manipulation and abuse of a position of power or responsibility by another person.⁶ Sexual exploitation includes child pornography, child prostitution, child sex tourism and other forms of violence in which children are subjected

¹ UNICEF, *Hidden From Plain Sight: A Statistical Analysis of Violence against Children*, September 2014, p. 61.

² UNICEF EAPRO (2012). *Child maltreatment*, p. 48.

³ CRC Committee, *General Comment No. 13*, para. 25(a).

⁴ Krug EG et al., eds., 2002, *World Report on Violence and Health*. Geneva: WHO.

⁵ ECPAT. (2008). *Strengthening laws addressing child sexual exploitation*, p. 40.

⁶ ECPAT (2008). *Strengthening laws addressing child sexual exploitation*, p. 40.

to sexual exploitation for financial gain. It can also include trafficking, which can be carried out for the purpose of sexual exploitation, among other purposes.

States should distinguish between child sexual abuse and child sexual exploitation as these types of violence require different legal responses.

Child sexual abuse and sexual exploitation affect millions of children worldwide. While it is difficult to collect concrete data on the incidence of child sexual abuse and exploitation, it has been estimated that 150 million girls and 73 million boys have experienced forced sexual intercourse or other forms of sexual violence involving physical contact.⁷ This includes sexual violence inflicted on children by all types of perpetrators – not solely by strangers or general members of the community. However, this figure is likely to be a significant underestimate due to the covert and clandestine nature of sexual violence against children and difficulties for children reporting this abuse. A multi-country survey carried out by WHO in 2005 found that the prevalence of forced first sex among adolescent girls younger than 15 years ranged from 11 per cent to 48 per cent globally.⁸ The high levels of prevalence, especially against girls, are also to be found in some of the countries in the ASEAN region. In Cambodia for instance, the multi-country study reported that 51.2 per cent of girls reported experiencing forced sexual intercourse.⁹

While both boys and girls are at risk of sexual abuse, reports indicate that, generally, the rates of sexual violence against girls are higher than those against boys.¹⁰ According to WHO estimates, 150 million girls and 73 million boys under 18 have experienced forced sexual intercourse or other forms of sexual violence involving physical contact, although this is believed to be an underestimate.¹¹ However, there is a significant lack of comprehensive data on sexual violence against boys, who may also be more reluctant than girls to report instances of sexual abuse for fear of appearing weak or being labelled as homosexual if the perpetrator is male.¹² Perpetrators of sexual violence against children are overwhelmingly male, but a small proportion of sexual offences against children are committed by females.¹³

Perpetrators of child sexual abuse can come from all walks of life and from diverse social backgrounds. While the term ‘paedophile’ is commonly used to describe those who commit acts of child sexual abuse, this is not strictly correct. Paedophilia is a psychiatric disorder characterized by a primary or exclusive sexual interest in pre-pubescent children.¹⁴ Those who commit child sex offences can generally be divided into two categories: situational and preferential. Situational child sex offenders do not have a true sexual preference for children, but they engage in sex with children because the opportunity arises. This can occur where they are presented with a situation in which a child is easily accessible to them, or they become disinhibited through delusion about a child’s age. Preferential child sex offenders have a definite preference for children. Such offenders are fewer in number, but generally abuse larger numbers of children. While child sex offenders create a demand for children to sexually abuse and exploit, a range of other individuals or groups enable abuse to occur. These

⁷ WHO (2006). *Global estimates of health consequences due to violence against children*, Background paper to the United Nations Secretary-General’s study on violence against children.

⁸ UNAIDS, *Fact sheet: women, girls, gender equality and HIV*. Available at: http://data.unaids.org/pub/FactSheet/2010/20100302_fs_womenhiv_en.pdf [accessed 1 August 2013]. For the full study see WHO, 2005, *Multi Country Study on Health and Domestic Violence against Women*.

⁹ See, *Child Maltreatment, Prevalence, Incidence and Consequences in the East Asia and Pacific Region, A Systematic Review of Research*, UNICEF EAPRO 2012, p. 71; and WHO *Multi Country Study on Health and Domestic Violence against Women* (2005).

¹⁰ Pinheiro, 2006, p. 55.

¹¹ Pinheiro, 2006, p. 54.

¹² UNICEF, *Hidden From Plain Sight: A Statistical Analysis of Violence against Children*, September 2014, pp. 63 and 72.

¹³ WHO. (2012) Fact sheet No. 239. Available at: <http://www.who.int/mediacentre/factsheets/fs239/en/> [accessed 9 July 2013].

¹⁴ WHO, ICD-10 Classification of Mental and Behavioural Disorders, F65.4: Paedophilia.

people can include family members, community leaders, organized criminal networks and private organizations or corporations.¹⁵

Child victims of sexual abuse and exploitation are not a homogeneous group. However, many share commonalities in personal history and background. The complex interplay of these factors can make children more vulnerable to sexual exploitation. These factors can include poverty, which can be a catalyst for child sexual exploitation. Family problems can also increase a child's vulnerability to child sexual exploitation. A review of literature carried out in 2004 found that children who experience family problems, arguments at home and abuse and/or violence were more vulnerable to sexual exploitation. Children who run away from home or from substitute care, those who truant from school or are involved in substance abuse, those who live or work on the street and those who lose contact with family, friends and social networks are all vulnerable to being targeted by persons who wish to exploit them sexually.¹⁶ Conflict, emergency situations, and high rates of HIV/AIDS can also cause fractures in family and support networks that make children vulnerable to sexual exploitation.¹⁷

Sexual violence can have profound short-term and long-term consequences for children, including physical, psychological and social consequences. A recent comprehensive report examining empirical research into the long-term effects of child sexual abuse found that it is associated with "a broad array of adverse consequences for survivors throughout their lifetime." The strongest causative links have been found between child sexual abuse and the presence of depression, alcohol and substance abuse, eating disorders and anxiety-related disorders. The study also found a strong link between child sexual abuse and revictimization of survivors. Child sexual abuse can also lead to an increased risk of suicide and suicidal behaviour and personality, psychotic and schizophrenic disorders.¹⁸

7.3 International standards on sexual violence in the community

According to CRC Article 34, States are obliged to take all appropriate measures (including national, bilateral and multilateral measures) to "protect the child from all forms of ... sexual abuse." Specifically, States are obliged to ensure that domestic laws protect against "the inducement or coercion of a child to engage in any unlawful sexual activity."

According to CRC, States are required to set a minimum age of consent to sexual activity. This is generally known as the age of consent. Any sexual activity by an adult with a child under this age should be regarded as illegal, regardless of whether or not the child has given factual consent. International law does not specify or recommend an explicit age of sexual consent; however, the CRC Committee has stated in *General Comment No. 4 on Adolescent Health*:

"States parties need to ensure that specific legal provisions are guaranteed under domestic law, including with regard to setting a minimum age for sexual consent ... [This] should be the same for boys and girls ... and closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity."¹⁹

The age of consent is normally contained in a State's criminal law relating to sexual offences. Many States have an offence in their criminal laws of 'statutory rape' or 'unlawful carnal knowledge', which is committed when a person has sexual intercourse with a child below the minimum age of consent. Other sexual activity is generally

¹⁵ ECPAT (2008). *Questions and answers about the sexual exploitation of children*.

¹⁶ Chase, E. and Statham, J., Thomas Coram Research Institute (2004). *The commercial sexual exploitation of children and young people: An overview of key literature and data*, para. 3.10.

¹⁷ ECPAT. (2008). *Questions and answers about the sexual exploitation of children*.

¹⁸ Cashmore, J. and Shackel, R., (2003) *The long-term effects of child sexual abuse*, Child Family Community Australia, Paper No. 11.

¹⁹ CRC Committee, *General Comment No. 4*, para. 9.

also covered by such legislation, though the range of sexual acts to which it applies may vary (from kissing to sexual intercourse).

The aim of legal provisions setting a minimum age of sexual consent should be to protect children from sexual exploitation and abuse, rather than to criminalize factually consensual, non-exploitative, sexual behaviour between young people. Accordingly, the law should make a distinction between (1) factually consensual sexual activity taking place in the context of a child's sexual development; and (2) sexual activity that by its very nature is exploitative.²⁰ The age of consent should not be set too low, to ensure that children are protected from sexual abuse and exploitation. At the same time, it should not be too high, so that it is commensurate with the autonomy and evolving capacities of young people. Where the age is set very low, children will not be adequately protected from sexual abuse and exploitation, but where it is set too high, it may not reflect the reality of children's sexual relationships and may deny them access to advice and services relating to sexual and reproductive health.

While there is no general international consensus on what the age of consent should be, the following factors should guide States in legislating a minimum age of consent:

- The law should not provide different standards according to gender or sexuality, as this will be in violation of international standards relating to non-discrimination.²¹ The same age should be set for boys and girls and for homosexual and heterosexual acts.
- The prohibition on sexual activity with persons under the age of consent should apply to children in all contexts, including within a marriage or intimate partner relationship. This is to ensure that all children are offered legal protection from sexual violence.
- The minimum age of consent should be set at 18 years where there is a relationship of trust, power, authority or dependency between the child and his or her sexual partner (e.g. in the case of a carer, teacher, or counsellor).²²
- Any involvement of children in pornography or prostitution (or any other forms of commercial exploitation) should be prohibited below 18 years, in accordance with international law on child sexual exploitation (discussed further on in this chapter).

The age of consent varies across the world, ranging from 12 to 18 years, with most countries setting the age of consent between 14 and 16 years. The average age of consent internationally appears to be 16 years.²³ It is considered best practice for States to have an exemption for prosecution of sexual acts between two young people who are close in age²⁴ as the purpose of these provisions is not to criminalize sexual exploration between children.

7.4 Legislation in ASEAN member States: Age of consent to sexual activity

All ASEAN member States have a minimum age of consent set out in domestic law, and all States have criminalized sexual acts below this age, regardless of whether the child has consented in fact to the activity (table 29).

²⁰ ECPAT (2008). *Strengthening laws addressing child sexual exploitation*, p. 50.

²¹ E.g. Article 2, CRC.

²² ECPAT. (2008). *Strengthening laws addressing child sexual exploitation*, p. 50.

²³ Avert, *Worldwide ages of consent*. Available at: <http://www.avert.org/age-of-consent.htm> [accessed 24 May 2013].

²⁴ Waites, M (2005). *The age of consent: young people, sexuality and citizenship*.

Table 29. Age of consent in ASEAN member States

Country	Female	Male
Brunei	16 (unless married)	–
Section 2, Unlawful Carnal Knowledge Act Cap 29. 1984; however, Section 375 Penal Code may set the age of consent at 14.		
Cambodia	15	15
Indonesia	15 (18 for homosexual acts)	19 (18 for homosexual acts)
Article 287, Penal Code; and Sexual Offences Laws. Note, however, that Article 26(1)(c), Law on Child Protection appears to conflict and set the age at 18.		
Lao PDR	15	15
Article 129, Penal Code		
Malaysia	16 (unless married)	–
Section 375(g), Penal Code		
Myanmar	14	–
Section 375, Penal Code		
Philippines	12	12
Article 266-A(1)(d) Penal Code		
Thailand	15 (unless married)	15 (unless married)
Section 277, Penal Code		
Singapore	16 (unless married)	16 (unless married)
Section 376A, Penal Code		
Viet Nam	13 (16 if partner is an adult)	13 (16 if partner is an adult)
Articles 112 (and 115), Penal Code		

The age of consent varies widely across ASEAN member States, from age 12 in the Philippines, to age 19 for boys involved in heterosexual acts in Indonesia. The laws in ASEAN member States setting out the minimum age of sexual consent do not, at present, comply fully with international law on a number of grounds, as outlined below.

7.4.1 Age of consent is too low in some ASEAN member States

While there is no international minimum age of consent, age 14–16 is the norm and age 16 is the average. Six ASEAN member States have set ages of sexual consent below the international average of age 16. In the case of the **Philippines**, the minimum age of consent is set at 12 years, which is generally considered too low to protect children effectively from forms of sexual violence. However, where the person involved in sexual activity with a child is in a position of trust, such as a teacher or priest, for example, the age is 18.²⁵ The CRC Committee has expressed concern at the low age of sexual consent in the Philippines, which increases “the vulnerability of children to prostitution and pornography.”²⁶ At the time of writing there was a Bill before the House of Representatives in the Philippines, which if passed, will raise the age of consent to 16 years.²⁷

²⁵ Section 377 Penal Code (Philippines).

²⁶ CRC Committee, Optional Protocol on the sale of children, child prostitution and child pornography, ‘Concluding Observations: Philippines’, 31 January 2013, CRC/C/OPSC/PHIL/CO/1, para. 9.

²⁷ Bill 583 (Philippines).

The ages of consent in **Myanmar** (14 years), **Cambodia** (15 years), **Lao PDR** (15 years) and **Thailand** (15 years) are all set below the international average, and, arguably, do not provide sufficient legal protection to children from sexual abuse and exploitation.

Viet Nam provides a **good example** of a law that sets a higher age of consent for sexual acts between children and adults, while ensuring that sexual acts between children are not criminalized. Viet Nam is the only State in the region that has a best practice ‘sliding scale’ age of consent law. Article 112 of the Viet Nam Penal Code provides that “All cases of having sexual intercourse with children under 13 years old are considered rape against children.” Article 115 criminalizes “any adults having sexual intercourse with children aged from full 13 to under 16.” This provision protects children from sexual violence and exploitation by criminalizing sexual intercourse between adults and children under 16 years, while ensuring that young people engaging in consensual sexual intercourse with other young people cannot be prosecuted.

7.4.2 Age of consent is reduced for children who are married

Six ASEAN member States – **Brunei, Indonesia, Malaysia, Myanmar, Singapore** and **Thailand** – have set the age of consent at between 14 and 19 years, but in each of these States, the law provides an exception, or a lower age of consent for young people who are married. In **Brunei**, under Section 2 of the Unlawful Carnal Knowledge Act 1984, “Any person who has or attempts to have carnal knowledge of a girl under the age of 16 years except by way of marriage shall be guilty of an offence.” Section 375 of the Penal Code contains the exception and provides that “sexual intercourse by a man with his own wife, the wife not being under 13 years of age” shall not be considered rape. Thus while the law sets the minimum age of consent for girls at 16, the age of consent is only 13 if the girl is married. Similarly, the law in **Myanmar** criminalizes sexual intercourse with a girl under 14 years, whether or not she has consented. However, sexual intercourse husband and wife, the wife not being under age 13, is not rape (Section 375).

Thai law absolves a perpetrator of criminal responsibility for sexual intercourse with a child under the age of consent (15 years), but over age 13, if the Court permits the man and the girl to marry following the act (Section 277). This provision is of concern as it could lead to a victim being coerced or influenced into marrying the perpetrator, either by the perpetrator to protect himself from being charged with rape, or by his or her family.

In **Malaysia**, the age of consent is effectively set through the criminal prohibition of rape, which is defined in the Penal Code Section 375, as “sexual intercourse with a woman...with or without her consent, when she is under sixteen years of age.” However, the Code also states that “sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force, or is recognised in Malaysia as valid, is not rape.” The minimum age of marriage in Malaysia is 21 years, or 18 years with parental consent; however, Muslim girls under age 18 can legally marry with the permission of *Syariah* authorities.²⁸ The result of such a provision is that there is effectively no minimum age of consent for girls. This leaves girls potentially vulnerable to sexual abuse and exploitation.

Section 376A of the Penal Code of **Singapore** sets the age of consent at 16 years by criminalizing sexual penetration of children below that age; however, this does not apply to acts of penetration against a spouse, as long as the spouse consents. **Indonesian** law criminalizes ‘carnal knowledge’ of a woman under age 15, but this provision only applies outside of marriage (Article 287, Penal Code).

The minimum age of consent is generally taken to reflect society’s view of when a girl (or boy) is able to consent to sexual activity. Allowing consent to sexual acts below this age in the case of marriage almost inevitably creates a dual standard.

²⁸ Section X, Family Law (Malaysia).

7.4.3 Different ages of consent for boys and girls

In some ASEAN member States, different ages of consent apply to boys and girls. In Indonesia, the age of consent for boys is set at 19 years, while for girls it is 15 years. Providing a lower age of consent for girls is likely to be regarded as a breach of international standards as it provides different legal protection against sexual violence and exploitation to boys and girls and amounts to discrimination based on sex. In **Indonesia**, the law provides a different age of consent for homosexual (18 years) and heterosexual (15 years for girls; 19 years for boys) acts. Laws that provide different standards based on sexual orientation arguably contravene the principle of non-discrimination.²⁹

7.4.4 No minimum age of consent for boys

The laws of some ASEAN member States appear to criminalize sex only below the age of consent where the victim is a girl and/or the perpetrator is a man or boy. This is particularly the case where the law indirectly sets an age of consent by providing that sexual intercourse with a female below a certain age will be treated as rape. Definitions of rape restricted to sexual intercourse by a man against a woman have resulted in boys not receiving legal protection against statutory rape in some States. In six ASEAN member States (**Brunei, Indonesia, Malaysia, Myanmar, the Philippines and Thailand**), the acts of rape and statutory rape are limited to acts against women or girls (see table 30). However, in three of these States – **Brunei, Malaysia and Myanmar**, sodomy and other sexual acts “against the order of nature” are criminalized.³⁰ This means that, where a man engages in sexual activity with a boy in these countries, it will be illegal at any age. It is not clear whether the child will also commit an offence in these circumstances. These provisions are not focused on child protection, but rather on criminalizing homosexuality and continue to leave a distinction between the provisions on consent applicable to boys and girls.

7.4.5 Restrictive legal definitions of statutory rape

Table 30. Definitions of statutory rape in ASEAN member States

Country	Perpetrator	Victim	Sexual acts included in definition
Brunei	any person	a girl	carnal knowledge
Cambodia	a person	another person	sexual intercourse/indecent act
Indonesia	any person	a woman	carnal knowledge/obscene acts
Lao PDR	any person	a girl or boy	sexual intercourse
Malaysia	a man	a woman	sexual intercourse
Myanmar	a man	a woman	sexual intercourse
Philippines	a man	a woman	carnal knowledge
Singapore	any person	a person	Includes wide range of acts
Thailand	a person	a girl	sexual intercourse
Viet Nam	all cases	children	sexual intercourse

Restrictive definitions of the acts amounting to unlawful carnal knowledge or statutory rape can minimise legal protection against sexual violence (table 30). In all but three States (**Cambodia, Indonesia and Singapore**) sexual acts, such as oral sex, are not explicitly defined as rape.

The **Singapore** Penal Code, by contrast, includes a wide range of sexual acts in the definition of “sexual penetration of a minor under 16,” including anal and oral sex. This offers greater protection to children from

²⁹ See *Toonen v. Australia*, Human Rights Committee, communication No. 488/1992.

³⁰ Section 377, Penal Code (Brunei), Section 377, Penal Code (Myanmar) and Section 377, Penal Code (Malaysia) criminalize sexual offences “against the order of nature.”

sexual violence and conforms to international standards, which require States to use comprehensive legal definitions to ensure that all acts of violence are covered by criminal laws. Law in **Cambodia** and **Thailand** also criminalize ‘indecent acts’ with children under 15 years, regardless of whether there is factual consent. Under Cambodian law, indecent acts include “an act of touching or exposing a genital or other sexual part of another, or of having another touch the actor’s or a third person’s genital or other sexual part, with the intent to stimulate or satisfy the actor’s sexual desire.” In **Indonesia**, penal law criminalizes “obscene acts with someone who he knows or reasonably should presume that he has not yet reached the age of fifteen years” (Article 200). However, it is unclear what ‘obscene acts’ encompasses, as this is not defined in the law.

7.4.6 Strict liability for statutory rape

In most ASEAN member States, the crime of statutory rape (i.e. sexual intercourse or sexual activity) is a strict liability offence. That is, *mens rea* (or a ‘guilty mind’) does not constitute an element of the offence, and perpetrators may be found guilty whether or not it is proven that they knew the victim was under the legal age of consent. This provides a greater degree of protection to children. However, in **Brunei** and **Indonesia**, statutory rape is not a strict liability offence. In Brunei, the prohibition on “carnal knowledge of a girl under 16” is enforced where “the person charged had reasonable cause to believe that the girl was of or above the age of 16 years.”³¹ In Indonesian law, it is only an offence to have carnal knowledge of a girl under 15 years where the offender “knows or reasonably should presume that she has not yet reached the age of fifteen years.”³²

7.5 Recommendations for law reform: Age of consent to sexual activity

Recommendations

- Consider raising the age of consent to 16 years for sexual activity occurring between a child who is under the age of 16 years and any adult or person who is five years older than the child (**Cambodia, Lao PDR, Myanmar, the Philippines and Thailand**).
- Consider removing the exception to criminalization of unlawful carnal knowledge/statutory rape for acts occurring between married couples, or preceding marriage (**Brunei, Indonesia, Malaysia, Myanmar, Singapore and Thailand**).
- Ensure that the same age of consent applies for boys and girls and for heterosexual and homosexual acts (**Indonesia**).
- Consider expanding the definition of sexual acts that are criminalized below the age of consent (**Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam**).
- Consider making statutory rape a strict liability offence (**Brunei and Indonesia**).

³¹ Section 3, Unlawful Carnal Knowledge Act (Brunei).

³² Article 287, Penal Code (Indonesia).

Table 31. Report card: Age of consent to sexual activity

	Age of consent at or above international average	Marriage does not reduce age of consent	Same age of consent for boys and girls	Law encompass full range of sexual acts
Brunei	●	●	●	●
Cambodia	●	●	●	●
Indonesia	●	●	●	●
Lao PDR	●	●	●	●
Malaysia	●	●	●	●
Myanmar	●	●	●	●
Philippines	●	●	●	●
Singapore	●	●	●	●
Thailand	●	●	●	●
Viet Nam	●	●	●	●

7.6 International standards on child sexual abuse

As set out above, sexual abuse is defined by the CRC Committee as “the inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity.” This includes “any sexual activities imposed by an adult on a child, against which the child is entitled to protection by criminal law.”

The CRC Committee has not specified acts that it regards as amounting to child sexual abuse. However, based on the Committee’s broad definition, child sexual abuse is generally regarded to include the following physical and non-physical acts:

- Sexual touching of any part of the body, clothed or unclothed, including using an object;
- All penetrative sex, including penetration of the mouth with an object or part of the body;
- Encouraging a child to engage in sexual activity, including sexual acts with someone else, or making a child strip or masturbate;
- Intentionally engaging in sexual activity in front of a child or not taking proper measures to prevent a child being exposed to sexual activity by others;
- Meeting a child following sexual 'grooming' or preparation, with the intention of abusing them;
- Taking, making, permitting to take, distributing, showing or advertising indecent images of children;
- Paying for the sexual services of a child or encouraging them into prostitution or pornography;
- Showing a child images of sexual activity including photographs, videos or via webcams.³³

³³ NSPCC, *Sexual abuse*. Available at: http://www.nspcc.org.uk/help-and-advice/worried-about-a-child/online-advice/sexual-abuse/sexual-abuse-a_wda87108.html [accessed 12 July 2013].

Domestic legal definitions should encompass all of these acts to provide children with protection against sexual violence. This part of the chapter examines the extent to which the penal laws of ASEAN member States criminalize these acts.

7.7 Legislation in ASEAN member States: Rape

Rape is prohibited in the penal laws of all ASEAN member States. In most ASEAN member States, provisions prohibiting rape apply to adults and children alike, though different penalties will apply where the victim is a child. These provisions only apply outside the context of marriage (table 32).³⁴

Table 32. Criminal provisions on rape in ASEAN member States

<p>Brunei</p> <p>Criminal provisions on rape: Section 375, Penal Code: Sexual intercourse (defined as ‘penetration’) against will; without consent; where consent is obtained through fear or threats; or where consent obtained by fraud.</p> <p>Penalty: Section 376(2), Penal Code: Up to 30 years imprisonment, and whipping (not less than 8 years for rape of a child under 14 years).</p>
<p>Cambodia</p> <p>Criminal provisions on rape: Section 239, Penal Code: “All acts of sexual penetration, of any kind whatsoever, or an act of penetrating any object into genitals of other persons of either the same sex or different sexes by using violence, coercion, threat or seizing the chance.”</p> <p>Penalty: Penal Code: 5–10 years imprisonment (Section 239), 7–15 years in aggravating circumstances, including where the victim is vulnerable due to their age (Sections 240–244).</p>
<p>Indonesia</p> <p>Criminal provisions on rape: Article 285 and 286, Penal Code; Article 81, Child Protection Act 2002</p> <p>Penal Code: ‘using force or threat of force, forces a woman to have sexual intercourse’ (Article 285) / ‘Carnal knowledge of a woman of whom he knows that she is unconscious or helpless’ (Article 286).</p> <p>Child Protection Act: Sexual intercourse with a child by force, through the deliberate use or threat of violence; or by persuasion or encouragement through tricks, lies or deception (Article 81).</p> <p>Penalty: Penal Code: Maximum of 12 years imprisonment (Article 285)/maximum of 9 years imprisonment (Article 286). Child Protection Act 2002: 3–15 years imprisonment (Article 81).</p>
<p>Lao PDR</p> <p>Criminal provisions on rape: Article 128, Penal Code: “Any person using force, armed threats, drugs or other [substances] or other means to place a woman in a state of helplessness in order to have sexual intercourse with the woman against her will.”</p> <p>Penalty: Article 128, Penal Code: Where the victim is aged 15–18 punishment is 5–10 years imprisonment and 2 million–10 million kip fine; where child is under age 15, punishment is imprisonment for between 7–15 years and 5 million–15 million kip.</p>
<p>Malaysia</p> <p>Criminal provisions on rape: Section 375, Penal Code</p> <p>Sexual intercourse (defined as ‘penetration’) with a woman: against her will; without her consent; with her consent, when consent is obtained through fear, causing hurt, or fraud; in circumstances in which she is unable to give consent; or where consent is obtained using a position of authority or trust.</p>

³⁴ See chapter 3 on domestic violence.

<p>Penalty: Section 375, Penal Code: Imprisonment for a maximum of 20 years, and whipping/5–30 years where she is under age 12 or under age 16 (without consent).</p>
<p>Myanmar</p> <p>Criminal provisions on rape: Section 375, Penal Code: Sexual intercourse (defined as ‘penetration’) with a woman: against her will; without her consent; where her consent is obtained through fear or causing hurt; where consent is obtained through fraud.</p> <p>Penalty: Section 375, Penal Code: “Transportation for life” or imprisonment to a maximum of 10 years, and a fine/unless it is the offender’s wife who is not under age 12, in which case it will be a maximum of 2 years imprisonment and a fine</p>
<p>Philippines</p> <p>Criminal provisions on rape: Article 266A, Penal Code: Rape/ carnal knowledge is committed by a man where the woman is subject to “intimidation, deprived of reason or otherwise unconscious, machination or grave abuse of authority and when the offended party is under the age of 12 or is demented even though none of the circumstances above are present; and by any person who under any [of the] circumstances above shall commit an act of sexual assault 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.”</p> <p>Penalty: Article 266-A(2), Penal Code: Life imprisonment (rape)/<i>prison mayor</i> (sexual assault).</p>
<p>Singapore</p> <p>Criminal provisions on rape: Section 375 and 376, Penal Code: “Any man who penetrates the vagina of a woman with his penis without her consent” (rape) / “any man who penetrates...the anus or mouth of another person” or “causes another man to penetrate his anus or mouth” without consent (sexual assault).</p> <p>Penalty: Section 375 and 376, Penal Code: Maximum of 20 years imprisonment.</p>
<p>Thailand</p> <p>Criminal provisions on rape: Article 276, Penal Code “Sexual intercourse with a woman ... against her will,” through threats; violence, taking advantage of her inability to resist; or causing her to mistake him for another person.</p> <p>Penalty: Article 276, Penal Code: 4–20 years imprisonment and fine/maximum of life imprisonment in specified aggravating circumstances.</p>
<p>Viet Nam</p> <p>Criminal provisions on rape: Penal Code: Sexual intercourse against the victim’s will through violence, threaten to use violence or take advantage of the victim’s state of being unable to defend themselves or resort to tricks (Article 111). Sexual intercourse with children under age 13 in any circumstances will be considered rape (Article 112(4)).</p> <p>Penalty: Penal Code: 2–7 years imprisonment (Article 111) /5–10 years imprisonment where the victim is aged 16–18 (Article 111(4)) /12–20 years imprisonment where the victim is aged 13–16 (Article 112(1)).</p>

7.7.1 Narrow definitions of acts amounting to rape

As set out in table 30, in all States except **Cambodia**, the **Philippines** and **Singapore**, the legal definition of rape is restricted to acts of sexual intercourse or carnal knowledge. Other acts are excluded, such as anal and oral penetration, and thus the law provides limited protection to children, albeit in some cases these acts are criminalized through other provisions.

In addition, in **Brunei**, **Lao PDR**, **Malaysia**, **Myanmar**, and **Thailand**, provisions on rape only apply where the victim is female. However, in three of these States – **Brunei**, **Malaysia** and **Myanmar** – sodomy and other sexual acts ‘against the order of nature’ are criminalized at any age.³⁵ Criminalizing homosexual acts may not be the best way to achieve legal protection for the sexual abuse of boys, especially if the child is also charged with an

³⁵ Section 377, Penal Code (Brunei), Section 377, Penal Code (Myanmar) and Section 377, Penal Code (Malaysia) criminalize sexual offences ‘against the order of nature’.

offence. In **Indonesia**, while the legal definition of rape in the Penal Code applies only where the victim is female, Article 81 of the Child Protection Act (2002) prohibits the act of having sexual intercourse by force with a child, thus extending legal protection to boys.

Section 239 of the Penal Code of **Cambodia** is a **good example** of a protective definition of rape and includes “all acts of sexual penetration, of any kind whatsoever, or an act of penetrating any object into genitals of other persons of either the same sex or different sexes ... “ This includes other forms of penetration beyond intercourse, and it explicitly applies to girls and boys. This ensures greater legal protection to children from sexual violence.

7.7.2 Force as an element of the offence of rape

In four ASEAN member States (**Cambodia, Indonesia, Lao PDR** and **Thailand**) the law requires the prosecution to prove that the perpetrator used force in order to obtain a conviction. Article 128 of the Penal Code in Lao PDR provides an example. It states that rape is constituted by “any person using force, armed threats, drugs or other substances, or other means to place a woman in a state of helplessness in order to have sexual intercourse with the woman against her will.” Requiring an element of force may reduce the protection of children and exclude some cases, where for instance, force may not be particularly clear, obvious or easy to demonstrate. It may also fail to reflect the reality of how violence is used against children. Adults may use subtle forms of coercion in order to engage in sexual acts with children against their will, and it is essential that these psychological acts are included within the definition of rape, which ideally should not require anything more than lack of consent. **Singapore** takes this approach, defining rape as “any man who penetrates the vagina of a woman with his penis without her consent.”

7.8 Legislation in ASEAN member States: Other sexual offences

Sexual violence against children includes a wide range of physical and non-physical sexual acts. It is essential that criminal law covers sexual acts that do not involve penetration, so that children benefit from legal protection in relation to all forms of sexual violence. In many ASEAN member States criminal law encompasses other sexual offences either as part of general provisions that apply to adults and children alike, or more commonly through provisions that apply specifically to acts involving children.

Most ASEAN member States have legal provisions criminalizing obscene acts or indecent behaviour against children (table 33). Penal laws in **Cambodia, Indonesia, Lao PDR, the Philippines, Singapore, Thailand** and **Viet Nam** contain provisions dealing with non-penetrative sexual acts against children, and most require that these acts occur by force or against their will in order to constitute criminal offences. In **Thailand**, Section 278 prohibits indecent acts that occur by threat, violence, deliberate mistake, or taking advantage of a child’s inability to resist. However, this provision only applies only to children under age 15, leaving children aged 15–17 unprotected, although this group of children are probably the most likely to be subjected to indecent behaviour.

Table 33. Sexual indecency offence provisions in ASEAN member States

Brunei: No explicit provisions
Cambodia: Article 246, Penal Code Sexual touching or fondling without consent
Lao PDR: Article 137, Penal Code Engaging in any that causes embarrassment of a sexual nature to against a person’s will.
Indonesia: Sections 289 and 290, Penal Code; Article 82, Child Protection Act 2002 Using force or the threat of force to cause someone to commit or tolerate “obscene acts” (Sections 289 and 290); and using violence, threats, tricks, lies or deception to force or encourage a child to engage in indecent behaviour or who allows such behaviour to occur (Article 82).

Malaysia: Section 377(E), Penal Code It is an offence to commit “any act of gross indecency” with a child under age 14
Myanmar: No explicit provisions
Philippines: * Section 5(g), Anti-Violence against Women and Children Act “Sexual activity” by threat of force, physical harm, or through intimidation
Singapore: Article 376E, Penal Code Sexual grooming offences
Thailand: Section 278, Penal Code Indecent acts against children under 15 years
Viet Nam: Article 116, Penal Code Obscene acts against children

* See also the Penal Code and the Anti Child Pornography Act (republic Act No. 9775) for other indecency offences as well as the Special Protection of Children against Child Abuse, Exploitation and Discrimination, Republic Act No. 7610.

According to the **Indonesian** Penal Code, Section 289 and 290, it is an offence to use force or the threat of force to cause someone to commit or tolerate ‘obscene acts’. Where the victim is under age 15, force is not required as an element of the offence. Also, according to Article 82 of Indonesia’s Child Protection Act, a person who use violence, threats, tricks, lies or deception to force or encourage a child to engage in ‘indecent behaviour’ or who allows such behaviour to occur, is guilty of an offence. The **Philippines’** Anti-Violence against Women and Children Act makes it an offence to cause or attempt to cause a woman or child to “engage in any sexual activity which does not constitute rape, by threat of force, physical harm, or through intimidation.”³⁶ In **Viet Nam**, Article 116 is broader and it is an offence for adults to commit obscene acts against children. It is also more protective, as it does not require any cause (threats, violence and so on).

In **Indonesia** and **Viet Nam**, ‘obscene acts’ or ‘indecent behaviour’ are not defined in legislation and the specific acts prohibited by these laws are unclear. As a result it is difficult to determine whether they would include all acts of sexual violence against children. It is particularly unclear, for instance, whether these provisions include non-physical acts of sexual violence against children, such as forcing children to watch sexual activity and showing children pornographic images.³⁷

In **Lao PDR**, the Penal Code contains a rather broad ‘outrage of decency’ provision, which may encompass a comprehensive range of sexual offences against children. Article 137 of the Code criminalizes “any person engaging in any act that causes embarrassment of a sexual nature to another person against such person’s will.” However, it is unclear how the element of causing embarrassment would operate in this provision, and in particular, whether it would limit the types of acts falling within this section.

The **Cambodian** Penal Code does not include an offence of obscene acts with children; however, Article 246 contains an offence of sexual touching or fondling without consent. This explicitly prohibits particular acts of sexual abuse; however, it may not be sufficiently comprehensive to cover all acts of sexual violence against children. In particular, it does not appear to include acts of non-physical sexual violence.

Penal laws in **Brunei** and **Myanmar** do not prohibit obscene acts or acts of indecency against children. The Penal Code only criminalizes acts of penetrative sex (rape). This could leave children without legal protection

³⁶ In addition, Articles 337–338, Penal Code make it an offence to seduce a virgin over age 12 but under age 18 if the seducer is in a position of authority, or to seduce a woman who is single or a widow over age 12 but under age 18 committed by means of deceit.

³⁷ Article 5(7), Law on Child Protection, Care and Education (Viet Nam) covers forcing children “to buy, sell or use” depraved products (pornography). This does not, however, cover an adult who forces or shows a child pornographic material.

against other forms of sexual violence, such as sexual touching, encouraging children to engage in non-penetrative sexual acts, showing children pornography, or other non-physical forms of sexual abuse.

Only **Singapore** and **the Philippines** have so far legislated against sexual ‘grooming’ of children. Grooming involves preparing children to be sexually abused, for instance, by befriending them and removing their inhibitions with the intention of abusing them. Sexual grooming is reportedly becoming more prevalent, and the use of information and communication technologies to groom children remotely before arranging to meet with them in person to sexually abuse them, is a relatively recent development and growing problem.³⁸ In Singapore, for instance, there has been a reported rise since 2001 in the number of teenagers being raped by people they have met in Internet chat rooms as a result of sexual grooming.³⁹ Where children are groomed for the purpose of sexual abuse, a number of preparatory acts will occur before the abuse, such as chatting to the child online, engaging the child in sexually explicit conversations, and meeting the child in person. It is important that preparatory acts are criminalized to ensure that the law can provide a basis for intervention where it is suspected that an offender is grooming a child, before he or she actually meets with the child with the purpose of sexually abusing them.

The Penal Code of **Singapore** contains a **good practice** provision that criminalizes grooming. Article 376E makes it an offence for a person over age 21 to travel to meet a child (a person under age 16) with the intention of committing a sexual offence against the child, where they have met or communicated with the child on more than two occasions.

7.9 Recommendations for law reform: Child sexual abuse

Recommendations

- Consider extending the legal definition of rape so that it applies to all acts of sexual penetration (**Brunei, Lao PDR, Indonesia, Malaysia, Myanmar, Thailand and Viet Nam**).
- Amend the legal definition of rape so that it covers male victims, as well as female victims (**Brunei, Lao PDR, Malaysia, Myanmar and Thailand**).
- Consider removing the element of ‘force’ from legal definitions of rape (**Cambodia, Indonesia, Lao PDR, Thailand and Viet Nam**).
- Ensure that all other acts of sexual violence, including both physical and non-physical acts of sexual violence, are criminalized (**all ASEAN member States**).
- Include a separate provision criminalizing acts of grooming in criminal laws (**Brunei, Cambodia, Lao PDR, Indonesia, Malaysia, Myanmar, the Thailand and Viet Nam**).
- Provide clear definitions of consent within the criminal law.

It is recommended that Governments of other ASEAN member States should legislate to ensure that acts of grooming a child for sexual abuse are similarly criminalized.

³⁸ Kim Kwang Raymond Choo, (2009) *Online grooming: A literature review of the misuse of online social networking sites for grooming children for sexual offences*, pp. 8–19 and 20–23.

³⁹ ECPAT. (2011). *Global Monitoring, Status of action against commercial sexual exploitation of children: Singapore*, p. 13.

Table 34. Report card: Protection against child sexual abuse

	Definition of rape include all acts of penetration	Rape provisions protect boys	Rape constituted solely by a lack of consent	Other sexual offences comprehensively criminalized
Brunei	●	●	●	●
Cambodia	●	●	●	●
Indonesia	●	●	●	●
Lao PDR	●	●	●	●
Malaysia	●	●	●	●
Myanmar	●	●	●	●
Philippines	●	●	●	●
Singapore	●	●	●	●
Thailand	●	●	●	●
Viet Nam	●	●	●	●

Chapter 8. Child Prostitution

8.1 Context: Understanding child prostitution

In the Asia-Pacific region, the extent and nature of sexual exploitation of children in prostitution is of great concern. In Viet Nam, a study from 2010 found that an estimated 15 per cent of all female sex workers were children. A 2008 study of prostituted children in Indonesia found that 53 per cent of the children interviewed were age 16, compared to 37 per cent who were age 17, 6 per cent who were age 15, and 4 per cent who were age 14. In Thailand, research on prostitution from 2004 indicated that 32 per cent of the 144 children and adults surveyed had entered prostitution under age 18. Further, out of 113 adolescents living or working on the street interviewed in the Philippines in 2003, 5 per cent of males and 25 per cent of females had experienced prostitution.¹ It was recently estimated that 60,000 to 75,000 children are being exploited in the commercial sex industry in the Philippines.² Although child sex tourism, involving non-nationals travelling into a country and paying for sex with children (discussed in detail in chapter 10), is a cause of great concern, ECPAT report that, almost universally, local demand for sex with children outnumbers the demand of foreigners in any given country.³

8.2 International standards on child prostitution

CRC Article 34 requires States parties to undertake to protect the child from all forms of sexual exploitation, and in particular shall take all appropriate national steps to prevent the exploitative use of children in prostitution or other unlawful sexual practices. With the exception of Singapore, all ASEAN member States are parties to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC), which obliges States parties to prohibit child prostitution.⁴ Child prostitution is defined in Article 2(b) as “the use of a child in sexual activities for remuneration or any other form of consideration.”

8.3 Legislation in ASEAN member States: Child prostitution

The legal protection provided to children exploited in prostitution varies widely across ASEAN member States. **Cambodia, Malaysia, the Philippines and Thailand** have enacted the most comprehensive laws and have protective frameworks that generally meet international standards and provide specific protection to children against exploitation through prostitution. Other States, including **Indonesia, Lao PDR and Viet Nam**, either have not enacted specific provisions against such exploitation, or have limited provisions to provide legal protection to child prostitutes. **Indonesian** law does not contain any specific provisions addressing child prostitution, although Articles 1 and 12 of the Law on the Eradication of Criminal Act of Human Trafficking criminalize prostitution in the case of a trafficked child. It is not entirely clear from the Law, possibly due to the translation, whether the child must have been trafficked by another person for this to be a crime.

Domestic laws in **Brunei, Myanmar and Singapore** meet international standards, but there are several crucial gaps in laws that deny protection to all children exploited in prostitution.

The States that have achieved a protective framework that is largely compliant with international standards have enacted specific laws or provisions that are aimed at addressing child prostitution. Table 35 provides a list of these laws.

¹ UNICEF, *Child Maltreatment: Prevalence, Incidence and Consequences in the East Asia and Pacific Region, A Systematic Review of Research*, 2012, pp. 85–86.

² CRC Committee, *Concluding observations on the initial report of the Philippines, submitted under article 12 of the Optional Protocol on the sale of children, child prostitution and child pornography*, para. 21.

³ ECPAT (2008) *Questions and answers about the sexual exploitation of children* (4th ed.), p. 7. Available at: www.ecpat.net.

⁴ Article 1, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography A/RES/54/263 of 25 May 2000.

Table 35. Laws addressing child prostitution in ASEAN member States

Country	Law
Brunei	Women and Girls Protection Act 1984
Cambodia	Law on the Suppression of Human Trafficking and Sexual Exploitation 2008
Indonesia	Articles 1 and 12, Law on the Eradication of Criminal Act of Human Trafficking 2007, (but only in the context of trafficking); Article 88, Law on Child Protection 2002, “every person who economically or sexually exploits a child for their own gain or the gain of some third party.”
Lao PDR	Penal Code; Law on the Protection of Rights and Interests of Children 2007
Malaysia	Child Act 2001; and Penal Code
Myanmar	Penal Code; Suppression of Prostitution Act 1949
Philippines	Special Protection of Children against Child Abuse, Exploitation and Discrimination Act; Special Protection of Children Act 2003
Singapore	Penal Code; Women’s Charter 2009; Children and Young Person’s Act 2011
Thailand	Prevention and Suppression of Prostitution Act 1996
Viet Nam	Penal Code

8.3.1 Criminalized acts related to child prostitution in ASEAN member States

Article 3 of OPSC requires that States make prostitution a criminal offence, whether such offences are committed domestically, transnationally or on an individual or organized basis. At the very least, the acts to be criminalized should include offering, obtaining, procuring or providing a child for prostitution, attempting to commit such acts, or complicity or participation in any of these acts.

ECPAT have provided guidance on the meaning and content of these acts:

Offering: To ask someone if they would like a child for sex; to advertise the availability of children as sexual partners. An offer may occur in a range of ways, including verbally or via newspapers, internet, mobile phone or any other form of communication.

Obtaining: The prohibition on obtaining a child for prostitution targets the client of a prostituted child. It refers to the transaction by which a person acquires the sexual services of a child. Where a person has attempted to involve a child in sexual activities for remuneration, but has not yet engaged in any sexual activity, this should also trigger criminal responsibility.

Procuring: To arrange for a child victim to be made available to a customer, for example by ‘buying’ a child for someone, or arranging for a child to be brought to a particular place for them. This activity is commonly referred to as ‘pimping’.

Providing: To make a child available to someone who so requests. This would include a parent or a relative who sells a child for the purposes of prostitution or sells the child to a brothel owner who provides a customer with access to a child. Owners, occupiers, managers or anyone else who knowingly or recklessly permit premises to be used for child prostitution should be treated as providers.⁵

States parties to OPSC should ensure, in line with Article 3 that their domestic penal laws criminalize all of these acts. Table 36 details the extent to which ASEAN member States criminalize the four different acts of offering, obtaining, procuring and providing. The table refers only to legislation that specifically addresses the

⁵ ECPAT. (2008) *Strengthening laws addressing child sexual exploitation*, p. 62.

prostitution of children and not to general criminal provisions such as unlawful carnal knowledge or sexual activity below the age of consent which could apply to all children.

Cambodia, Lao PDR, Malaysia, the Philippines, Thailand and Viet Nam specifically criminalize acts of offering a child for prostitution. Offering involves advertising online, in newspapers, or in any other form of communication, a child as being available for sex or asking someone whether they would like a child for sex. It normally involves an intermediary, who may be the first point of contact for the client. The laws in these six States are sufficiently comprehensive to include any type of offer or advertisement, but the remaining four States have yet to criminalize the act of offering a child for prostitution.

Brunei, Cambodia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand and Viet Nam, have specifically criminalized the act of exchanging sexual services of children for consideration ('obtaining'), though several of these provisions only cover the payment of money for sexual intercourse. Research indicates that demand creates supply and that is no different in the case of child prostitution, making it essential that the acts of clients are expressly and comprehensively criminalized in domestic law.

All States, with the exception of **Indonesia**, have specifically criminalized acts of procuring and providing children for prostitution. 'Procuring' includes arranging for a child to be made available for a client (commonly referred to as 'pimping'). Most States have comprehensive laws that cover this act and these comply with international standards. Some States, including **Cambodia**, have additional protective laws that criminalize acts of providing a child with money or a loan on the condition that the child engages in prostitution, or making a contract with another person in which a child is obliged to engage in prostitution.⁶ This provides a legal basis for intervention before any sexual acts have taken place. The **Philippines** provides a very protective catch all provision, in addition to more specific laws, that criminalizes "those who engage in or promote, facilitate or induce child prostitution."

Provisions in other States relating to procuring and providing children for prostitution are quite limited. In **Lao PDR**, for instance, the provision criminalizing acts of procuring is limited to the act of forcing a person into prostitution and does not recognize other factors that may lead a child to be procured.

Table 36. Criminalization of acts relating to child prostitution

Brunei
<ul style="list-style-type: none"> ● Offering: No provision ● Obtaining: Section 6, Trafficking and Smuggling of Persons Order 2004: only in relation to a trafficked person; ● Procuring: Section 3(1)(b), Women and Girls Protection Act 1984: an offence to procure any girl under 21 years for the purpose of prostitution; Section 5(1)(a): an offence knowingly to live wholly or in part on the earnings of prostitution; Section 5(1)(b): an offence for any person in any public place persistently solicits or importunes on behalf of a woman or girl for 'immoral purposes'. Section 5(3): an offence to aid and abet procuring. ● Providing: Section 372, Penal Code; Section 3(1)(a), Women and Girls Protection Act 1984: an offence to sell, hire or otherwise dispose of any person under age 18, with the intent that such person be employed or used in prostitution or 'illicit intercourse'. Section 6, Women and Girls Protection Act 1984: an offence to keep, manage or act or assist in the management of a brothel; or being a tenant, lessee, occupier or the person in charge of any premises, knowingly to permit premises to be used as a brothel; or as owner knowingly lets the premises to be used as a brothel. Section 373, Penal Code: an offence to buy, hire or otherwise obtain possession of any person under 18 years with the intent that the person will, at any age, be used for prostitution.

⁶ Articles 36 and 37, Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 (Cambodia).

<p>Cambodia: Law on the Suppression of Human Trafficking and Sexual Exploitation 2008</p> <ul style="list-style-type: none"> ● Offering: Article 35: soliciting or advertising child prostitution for the purpose of acting as an intermediary of child prostitution (as an individual or a business). ● Obtaining: Article 34: an offence to have sexual intercourse or engage in other sexual conduct of all kinds with a minor over age 7 by providing or promising to provide anything of value to the minor, an intermediary, a parent, a guardian or any person keeping the child under his supervision or control. ● Procuring: Articles 25 and 29: an offence to draw a financial profit from the prostitution of others; assist or protect the prostitution of others; recruit, induce or train a person with a view to them practicing prostitution; or to exercise pressure on a person to become a prostitute. ● Providing: Articles 30 and 32: an offence to manage, exploit, operate or finance an establishment of prostitution or to make premises available for prostitution.
<p>Indonesia</p> <ul style="list-style-type: none"> ● Offering: No provision ● Obtaining: Article 12, Law of the Eradication of Criminal Act of Human Trafficking 2007: an offence for anyone to use or make use of the victim of human trafficking by way of committing sexual intercourse ... with the victim. Note: The law is not child specific. The translation of this Act is not clear and it may be intended to cover more aspects of prostitution than evident here. ● Procuring: No provision ● Providing: Article 296, Penal Code: an offence for any person to make an occupation or habit of intentionally causing or facilitating any obscene act with third parties; Article 297, Penal Code: an offence to trade in women or minors of the male sex. Article 88, Law on Child Protection 2002: an offence for any person to economically or sexually exploit a child for their own gain or the gain of some third party. Article 2, Law of the Eradication of Criminal Act of Human Trafficking 2007: an offence to transfer or receipt someone for the purpose of exploitation.
<p>Lao PDR</p> <ul style="list-style-type: none"> ● Offering: Article 89, Law on the Protection of Rights and Interests of Children 2009: an offence to offer or recruit a child for prostitution. ● Obtaining: Article 89, Law on the Protection of Rights and Interests of Children 2009: an offence to have sexual relations with a person under 18 years by giving any kind of benefit. ● Procuring: Article 132, Penal Law: an offence to generate income through procuring prostitution in any manner; greater punishment if procuring involves prostitution of female minors. ● Providing: Article 131, Penal Law: a criminal offence for any person to assist or facilitate prostitution. Article 133: Penal Law 2005: an offence to force a person into prostitution.
<p>Malaysia</p> <ul style="list-style-type: none"> ● Offering: Section 43(1)(h), Child Act 2001 (including amendments made up to 2006): an offence to offer a child for purposes of prostitution by means of advertisement or other notice, to seek information for this purpose or to accept an advertisement for publication or display. ● Obtaining: Section 43(1)(j), Child Act 2001: an offence to engage or hire, for any valuable consideration, a child to provide services for 'sexual gratification;' Section 372, Penal Code: procuring, buying or hiring a person with the intention of using the person in prostitution or having sexual intercourse with the person.

<ul style="list-style-type: none"> ● Procuring: Section 43(1)(i), Child Act 2001: acting as an intermediary on behalf of a child or exercising control or influence over the movements of a child to amount to aiding or abetting a child prostitute; Section 372A, Penal Code: it is an offence to knowingly live on the earnings of prostitution. ● Providing: Section 372, Penal Code: an offence to sell, hire, dispose of a person with the intention of using the person for prostitution or having reason to believe the person will be used in prostitution; Section 373, Penal Code: keeping, managing or acting and assisting in the management of a brothel; knowingly permitting premises to be used as a brothel.
<p>Myanmar</p> <ul style="list-style-type: none"> ● Offering: No provision ● Obtaining: No provision ● Procuring: Section 366A, Penal Code: an offence to induce a girl under 18 years, by any means, to go to a place or do an act with the intent, or knowingly that it will be likely, that she will be forced into illicit intercourse with another person. ● Providing: Sections 372,373, Penal Code: an offence to sell, hiring, disposing of, buying or otherwise obtaining possession of a person with the intention of using the person for prostitution or having reason to believe the person will be used in prostitution.
<p>Philippines: Special Protection of Children Against Abuse, Exploitation and Discrimination Act 1992</p> <ul style="list-style-type: none"> ● Offering: Article III, Section 5(a)(2): an offence to promote child prostitution, by inducing a person to be a client of a child prostitute by means of written or oral advertisements or other means. ● Obtaining: Article III, Section 5(a) and (b): an offence to engage in child prostitution through an act of sexual intercourse or 'lascivious conduct' with a child exploited in prostitution or subject to other sexual abuse; or by giving a child money or other consideration, including goods or other pecuniary benefit, with the intent to engage the child in prostitution. Article III, Section 6: an offence to attempt to commit prostitution with a child. Article VI, Section 10(b): an offence for any person who keeps a child under 12 years or a child more than 10 years younger than themselves in any public or private place and is not a relative within the 4th degree of consanguinity. ● Procuring: Article III, Section 5(a)(1): an offence to act as a procurer of a child prostitute; (2) inducing a person to be a client of a child prostitute; (3) taking advantage of influence or relationship to procure a child as a prostitute; (4) threatening or using violence to procure a child as a prostitute. ● Providing: Article III, Section 5(c): an offence to derive profit or advantage from child prostitution (managers and owners of premises, including businesses acting as a front for child prostitution). Article VI, Section 10(d): an offence for any person operating a public or private place of accommodation (including hotel, motel, beer joint, discotheque, cabaret, sauna or massage parlour etc.) to allow a person to take a child under 12 or a child more than 10 years younger into the accommodation. Article VII, Section 11: all establishments that promote or facilitate child prostitution ... shall be immediately closed and their authority or license removed.
<p>Singapore</p> <ul style="list-style-type: none"> ● Offering: No provision ● Obtaining: Section 376(B), Penal Code: * an offence to obtain for consideration the sexual services of a person who is under age 18. Section 376(B)(2), Penal Code: an offence to communicate with another person for the purposes of obtaining, for consideration, the sexual services of a person under age 18. ● Procuring: Section 140(1), Women's Charter 2009: * an offence to procure a woman or girl to have carnal knowledge with any male person for the purposes of prostitution.

<ul style="list-style-type: none"> ● Providing: Section 140(1), Women’s Charter 2009: an offence to sell, hire out, buy or obtain possession of any woman or girl for the purpose of prostitution. Section 143, Women’s Charter 2009: an offence for any owner or occupier of any premise to induce or knowingly permit a girl below 16 years to resort to or be on those premises for the purpose of engaging in sexual penetration except by way of marriage. Sections 372–373, Penal Code: an offence to sell, buy, hire or obtain possession of a person under age 21 for the purposes of prostitution.
<p>Thailand: Prevention and Suppression of Prostitution Act 1996</p> <ul style="list-style-type: none"> ● Offering: Section 7: an offence to advertise by means of documents or printed matters or by any means makes known to the public in a manner apparently indicative of importunity ... for prostitution of oneself of another. ● Obtaining: Section 8: an offence to commit sexual intercourse or any other act for sexual gratification of a person between 15 and 18 years in a ‘place of prostitution’, regardless of consent. ● Procuring: Section 9: an offence to procure, seduce or traffic a person to commit the act of prostitution; Section 12: Any person who detains, confines another person or deprives a person of liberty or causes or threatens violence against a person to compel them to engage in prostitution commits an offence. ● Providing: Section 10: an offence for any parent who connives with a person procuring, seducing or taking away for the purpose of prostitution a child under parental control commits an offence and is liable to imprisonment and a fine; <p>Section 11: an offence for owners, supervisors or managers of ‘prostitution businesses’ or ‘places of prostitution’.</p>
<p>Viet Nam</p> <ul style="list-style-type: none"> ● Offering: Article 120, Penal Code makes it an offence to ‘trade’ in children for the purposes of prostitution. See also Article 4(1), Ordinance on Prostitution Prevention and Combat, which criminalizes “brokering and organizing”. ● Obtaining: Article 256, Penal Code: an offence to pay for sexual intercourse with a child aged 13–18 years; Article 4(1), Ordinance on Prostitution Prevention and Combat 2002: an offence of ‘buying sex’. ● Procuring: Article 255, Penal Code: an offence to entice or procure prostitution. ● Providing: Art 254, Penal Code: an offence to harbour prostitutes; Article 4(3), Ordinance on Prostitution Prevention and Combat 2002: an offence of ‘harbouring prostitution’.

8.3.2 Protection afforded to children by age and gender

Under OPSC, States are required to criminalize those who engage in sexual activity with children for remuneration and consideration, whether with a boy or a girl up to age 18. While the laws in **Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines Singapore** and **Thailand** provide protection to both girls and boys who are exploited in prostitution up to age 18, the remaining ASEAN member States (Brunei, Myanmar and Singapore) do not provide equal protection to boys or do not apply the law to all children up to age 18.

Table 37. Child prostitution laws pertaining to age and gender

Country	Law provides protection to boys and girls up to the age of 18
Brunei	NO: Provisions in the Penal Code apply to both; however, relevant provisions in the Women and Girls Protection Act 1984 apply to girls alone.
Cambodia	YES
Indonesia	YES
Lao PDR	YES
Malaysia	YES

Myanmar	NO: Penal Code Sections 372, 373 (selling, hiring etc. with intent to use in prostitution) applies to boys and girls alike; however, Penal Code Section 366A (inducing a girl into prostitution) applies only to girls.
Philippines	YES
Singapore	NO: Relevant provisions of the Penal Code apply to boys and girls; however, relevant provisions in the Women’s Charter apply to girls only.
Thailand	YES
Viet Nam	YES

Brunei, Myanmar and Singapore do not provide the same level of legal protection against child prostitution to boys as they do girls. In these States, provisions relating to child prostitution are contained in several different pieces of legislation. While some provisions apply to both boys and girls, other provisions will apply only to girls. For instance, in **Singapore**, acts of obtaining and providing for the purpose of child prostitution apply to boys and girls,⁷ while the criminal act of procuring for the purposes of prostitution applies only to girls who are exploited in prostitution.⁸ Denying boys and girls exploited in prostitution equal legal protection is inconsistent with international laws on non-discrimination.

8.3.3 Definition of prostitution

Under OPSC, States are required to criminalize child exploitation for sexual purposes. However, a number of ASEAN member States, even those with legislation criminalizing the prostitution of children, limit the offence to cases where sexual intercourse takes place and not other sexual acts, even where the client gives consideration for performing such sexual acts with the child. For instance, under Section 376B of the Penal Code in **Singapore**, it is an offence for any person to obtain for consideration the sexual services of a person who is under 18, but the definition of sexual services is limited to penetrative sex. Similarly restrictive definitions appear to apply in Brunei,⁹ Myanmar and Viet Nam.¹⁰ The restrictive definition means that adults who, for consideration, engage children in other sexual acts, such as sexual touching, masturbation or oral sex would not be guilty of prostituting a child, though they may in some cases, commit a general criminal offence of engaging in sexual activity with an underage minor. The definitions contained in legislation in **Cambodia**, the **Philippines** and **Thailand** are more comprehensive and protective, encompassing sexual intercourse and other sexual acts.

Table 38. Child prostitution: sexual activities encompassed by domestic laws

Brunei 'Carnal connection': Section 3(b) Women and Girls Protection Act 1973
Cambodia Sexual intercourse or other sexual conduct of all kinds: Article 23, Law on the Suppression of Human Trafficking and Sexual Exploitation 2008
Indonesia No definition in primary legislation. Decree of the Coordinating Ministry of People’s Welfare (No. 25 of 2009) defines child prostitution as the “use of a child in sexual activities with payment or other forms of compensation.”

⁷ Section 376(B) and sections 272 – 3, Penal Code (Singapore).

⁸ Section 140(1), Women’s Charter 1999 (Singapore).

⁹ Section 3, Women and Girl’s Protection Act 1984, though it should be noted that Section 3(1)(a) makes it an offence to sell, let to hire for the purposes of prostitution

¹⁰ While there is no definition of child prostitution in Viet Nam, the Penal Code provision on paid sexual services is limited to ‘sexual intercourse’, namely penetrative sex.

Lao PDR
No definition
Malaysia
The act of a person offering that person's body for sexual gratification: Section 372(3), Penal Code.
Myanmar
Prostitution is not defined (except as it relates to trafficking offences), but relevant provisions refer to 'illicit intercourse': Section 366A, Penal Code.
Philippines
Sexual intercourse or lascivious conduct: Article 336, Revised Penal Code.
Singapore
'Sexual services', defined as: '(a) sexual penetration of the vagina or anus of a person or part of a person's body (other than the penis) or by anything else; or (b) penetration of the vagina, anus or mouth of a person by a man's penis': Section 376B(4), Penal Code.
Thailand
Sexual intercourse or any other act to gratify the sexual desire of another person: Section 4, Prevention and Suppression of Prostitution Act 1996.
Viet Nam
'Child prostitution' is not defined, but 'paid sexual intercourse' is criminalized: Article 256, Penal Code.

8.3.4 Limited acts covered

In those States where there are limitations to the acts that constitute child prostitution, so that not all sexual activity is covered, some limited protection for children is provided through the general criminal law. Criminal laws generally criminalize rape, indecent assault, obscene acts and sexual activity with underage children. Even this protection however, can be limited in its coverage. For instance, the criminal provisions prohibiting obscene acts in Indonesia, apply only to children under age 15.¹¹ Criminal provisions prohibiting sexual acts with children below the age of consent are similarly unsuitable, as the age of consent in all ASEAN member States is below 18 years (for instance, in Myanmar it is 14 years). In addition, the offence of rape generally requires an element of 'force' or lack of consent, which may be difficult to demonstrate in the case of child prostitution, while there is often a defence to underage sexual activity that the man had reasonable cause to believe that the girl was older than the minimum age.

8.3.5 What does 'remuneration or other form of consideration' include?

According to OPSC, the exploitative economic element of child prostitution includes remuneration or other forms of consideration. This makes it clear that States are obliged not only to prohibit child prostitution involving an exchange of money for sexual activities, but also where there is a transfer of other benefits. This recognizes that child prostitution can and does occur as an exchange for non-monetary benefits, such as food, clothing, gifts, shelter, alcohol and drugs. Definitions in penal laws should be broad enough to cover monetary and all other benefits.

The definitions of child prostitution in all countries require some form of consideration in return for sexual services. In some States, the definitions are sufficiently broad to include non-monetary benefits. The definition of child prostitution in **Cambodian** law is comprehensive and conforms to international law standards: 'child prostitution' is defined as "having sexual intercourse or other sexual conduct of all kinds between a minor and another person in exchange for anything of value."¹² The definitions in **Malaysia**, the **Philippines**, **Singapore** and **Thailand** are similarly broad and refer to consideration "in money or in kind,"¹³ "money, profit or any other

¹¹ Article 290, Penal Code (Indonesia).

¹² Article 23, Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 (Cambodia).

¹³ Section 372(3), Penal Code (Malaysia).

kind of consideration,”¹⁴ “consideration;”¹⁵ and “money or any other benefit.”¹⁶ The definition in the **Philippines** is even more comprehensive as it includes sexual services not only for money or other forms of consideration but also includes children who perform sexual services “due to the coercion or influence of any adult, syndicate or group.”¹⁷

In **Brunei**, consideration is not defined, and relevant provisions refer simply to buying, procuring or paying for sexual services. It is probable that this would be interpreted in a limited way to include only monetary payments, thus excluding some children from legal protection. In **Indonesia**, **Lao PDR** and **Myanmar**, there is no explicit criminal provision covering the act of paying for sexual services with a child (see below). Therefore, the law does not contain a definition of ‘consideration’.

8.3.6 Non-criminalization of child victims

While OPSC Article 8 designates children engaged in child prostitution as victims, most ASEAN member States have not yet enacted legal provisions explicitly prohibiting the criminalization of children who have been exploited in prostitution. This can mean that children who have been involved in prostitution are at risk of prosecution through the criminal justice system, and may not be treated as victims (table 39).

Table 39. Treatment of children engaged in prostitution in ASEAN member States

<p>Brunei: Penalises: under Section 11(2), Women and Girls Prevention Act 1984</p> <p>Where there is reasonable cause to believe that any girl has been purchased by fraud, misrepresentation or any false pretence for the purpose of prostitution or for training as a prostitute or detained against her will for prostitution, the girl may be transferred from the custody of any person under whose custody or control she appears to be and, under Section 14 the girl may be removed to a place of safety and kept until further order, the age of 21 or she marries, whichever is the earlier.</p>
<p>Cambodia: Treats child as a victim: Article 24: Law on the Suppression on Human Trafficking and Sexual Exploitation 2008</p> <p>The law explicitly exempts a minor who solicits for the purpose of prostitution from commission of a criminal offence.</p>
<p>Indonesia: Article 2, Law on the Eradication of Criminal Act of Trafficking 2007</p> <p>The law criminalizes prostitution and recognizes children as falling within the definition of a victim, but the offences do not relate specifically to children.</p>
<p>Lao PDR: Penalises: Article 131 Penal Code: Any person engaging in prostitution shall be punished by three months to one year of imprisonment or by re-education without deprivation of liberty and shall be fined. Any person assisting or facilitating prostitution shall be punished by three months to one year of imprisonment or re-education without deprivation of liberty and shall be fined</p>
<p>Malaysia: Power to penalises: Section 42, Child Act 2001; Exempt under Section 41 (2), Child Act 2001</p> <p>Section 38 Child Act: child is in need of care and protection if induced to perform any sexual act,lives in or frequents any brothel or place of assignment or is habitually in the company or under the control of brothel keepers or procurers or persons employed or directly interested in the business of carrying on brothels or in connection with prostitution.</p>

¹⁴ Section 5, Special Protection of Children Act (Philippines).

¹⁵ Article 376B, Penal Code (Singapore).

¹⁶ Section 4, Prevention and Suppression of Prostitution Act 1996 (Thailand).

¹⁷ Section 5, Special Protection of Children Act (Philippines). In Viet Nam the Ordinance on Prostitution Prevention and Combat refers to buying and selling sex by paying money or other ‘material benefits’.

<p>Section 39 and 40: If a child has been procured for prostitution and is being detained for the purposes of prostitution, the child may be removed to a place of refuge, and brought before the Court for Children which may, if the child is in need of protection and rehabilitation, detain the child for a period not exceeding three years or place the child under supervision for not more than 3 years.</p> <p>Section 41(2): A child is in urgent need of protection if there is reasonable cause to believe that the child is being threatened or intimidated for the purposes of prostitution.</p>
<p>Myanmar: Penalises under the Suppression of Prostitution Act 1949</p>
<p>Philippines: Treated as a victim: Section 5, Special Protection of Children Against Abuse, Exploitation and Discrimination Act 1992</p> <p>The law recognizes children who are used as prostitutes as victims of exploitation: “All children who for money, profit or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.”</p>
<p>Singapore: Penalises: Article 159 and 160 Women’s Charter.</p> <p>(1) If the Director has reasonable cause to believe that any woman or girl below the age of 21 years is being trained or used for immoral purposes or lives in or frequents any brothel or is habitually in the company of prostitutes or brothel keepers or procuresses or persons employed or living in brothels or persons directly interested in the business carried on in brothels or by prostitutes, the Director may, order the woman or girl to be removed to a place of safety and there temporarily detained until an inquiry has been held by him.</p> <p>(2) If the Director after holding such inquiry is satisfied that the woman or girl comes within subsection (1), he may, by warrant under his hand, order her to be detained in a place of safety.</p> <p>Article 160: Director may order detention of woman or girl in certain cases</p> <p>—(1) Any woman or girl (a) whose lawful guardian requests the Director in writing to detain her in a place of safety; (b) whom the Director considers is in need of protection and whose lawful guardian cannot be found;</p> <p>(c)whom the Director believes to have been ill-treated and is in need of protection; or(d)whom the Director considers to be in moral danger, may, order that the woman or girl be detained in a place of safety for such period as he may determine.</p>
<p>Thailand: Penalises: under Prevention and Suppression of Prostitution Act (1996)</p> <p>Section 5: Any person, who, for the purposes of prostitution, solicits, induces or introduces herself or himself to, follows or importunes a person in a street, public place or any other place which is committed openly and shamelessly or causes nuisance to the public shall be liable to a fine.</p> <p>Section 6: Any person who associates with another person in a prostitution establishment for the purpose of prostitution of oneself ... shall be liable to imprisonment.</p> <p>Sections 34 and 37 if a child has committed an offence under Sections 5 and 6, and having considered his personal circumstances, the Court conclude punishment is inappropriate, the child may be committed to a Primary Admittance Centre where child will be assessed and may be sent to a Protection and Occupational Development Centre for a term of not more than 2 years.</p>
<p>Viet Nam: No provisions in primary legislation</p> <p>Article 23, Ordinance on Prostitution, Prevention and Combat 2003: “prostitutes shall, depending on the nature and seriousness of their violations, be administratively sanctioned.”</p>

In **Lao PDR**, engaging in prostitution is a criminal offence, with a penalty of up to three years imprisonment.¹⁸ In **Brunei, Malaysia** and **Myanmar**, it is a criminal offence to loiter or solicit in any place for the purpose of prostitution.¹⁹ Without expressly providing protection from prosecution for children involved in prostitution, they may be treated as offenders rather than victims, and subjected to the criminal justice system. In its concluding observations to States parties, the CRC Committee has expressed concern over the criminalizing of child prostitutes in Myanmar, the Philippines and Singapore.²⁰

Cambodia and the **Philippines** are the only ASEAN member States that expressly exempt children from prosecution for soliciting offences relating to prostitution.

8.4 Recommendations for law reform: Child prostitution

Recommendations

- Ratification of OPSC (**Singapore**).
- Consider enacting specific laws on child prostitution that criminalize offering, obtaining, procuring and providing children for child prostitution (**Indonesia, Lao PDR** and **Myanmar**).
- Consider creating offences as follows:
 - a) Offering children for prostitution (**Brunei, Indonesia, Lao PDR, Myanmar, Singapore** and **Viet Nam**);
 - b) Obtaining children for prostitution (**Lao PDR, Indonesia** and **Myanmar**); and
 - c) Procuring and providing a child for prostitution (**Indonesia** and **Viet Nam**).
- Ensure that laws relating to child prostitution apply equally to boys and girls (**Brunei, Myanmar** and **Singapore**).
- Consider expanding the definition of child prostitution to include a broad range of sexual activities, not just penetrative sex (**Brunei, Myanmar, Singapore** and **Viet Nam**), in exchange for all forms of consideration/benefit (**Brunei, Viet Nam, Lao PDR** and **Myanmar**).
- Consider providing explicit recognition of children exploited as prostitutes as victims (**Brunei, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand**, and **Viet Nam**).
- States should impose a legal duty on premises owners and occupiers to notify the police as soon as they become aware that the premises are being used for the sexual exploitation of children.²¹

¹⁸ Article 131, Penal Code (Lao PDR).

¹⁹ Section 294A, Penal Code (Brunei), though under the Women and Girls Act, girls under 21 years involved in prostitution should be removed to a 'place of safety.' (s.14); Section 372B, Penal Code (Malaysia); Suppression of Prostitution Act 1949 (Myanmar).

²⁰ CRC/C/MMR/CO3-4, para. 89; CRC/C/15/Add.15, para. 82; Concluding observations: Singapore, para. 64.

²¹ ECPAT. (2008). *Strengthening laws addressing child sexual exploitation*, p. 64.

Table 40. Report card: Protection against child prostitution

	All acts (offering, obtaining, procuring, providing) are criminalized	All children up to age 18 are protected	Boys and girls are equally protected	Law provides comprehensive definition of child prostitution	Children involved in prostitution are treated as victims
Brunei	●	●	●	●	●
Cambodia	●	●	●	●	●
Indonesia	●	●	●	●	●
Lao PDR	●	●	●	●	—
Malaysia	●	●	●	●	●
Myanmar	●	●	●	●	—
Philippines	●	●	●	●	●
Singapore	●	●	●	●	●
Thailand	●	●	●	●	●
Viet Nam	●	●	●	●	●

Chapter 9. Child Sex Tourism

9.1 Context: Understanding child sex tourism

Child sex tourism is “the exploitation of children for sexual purposes by people who travel locally or internationally to engage in sexual activities with children.” It often involves the use of tourism infrastructure, including travel agencies, transport, accommodation and other tourist-related services, to facilitate contact with children.¹ It can involve any form of travel that results in the sexual abuse of children, including short or long-term, business or leisure travel and can also include long-term residential stays. Child sex tourists may gain access to children directly on the street, in hotels, in brothels, on beaches, in bars or in schools. Children can also be accessed through parents, other family members or through other intermediaries, who are often connected to tourism services, including transport and accommodation. The Internet has made it easier for abusers to contact children, through chat forums or social media networks.

Child sex tourism is a specific form of sexual exploitation, but it can also overlap with and foster other forms of child sexual exploitation, including child prostitution, child trafficking for sexual purposes and child pornography.² Profits made through child sex tourism are extensive: they are estimated to amount to \$20 million every year.³ However, the full extent of child sex tourism is unknown as its clandestine nature makes it difficult to gather data, arrest and prosecution statistics are extremely limited. Only a very small proportion of child sex offenders are ever prosecuted.

South-East Asia experiences high levels of child sex tourism compared to other regions, which has intensified through a tourism boom in the region in recent years.⁴ The ASEAN region attracted a total of 81.2 million visitor arrivals in 2011; a significant increase from 65.6 million in 2008. Of these, 37.7 million arrived from within the ASEAN region, while 43.5 million arrived from other countries.⁵ This boom in tourism, along with advancements in information and communications technologies, has enabled travellers to have easy and affordable access to vulnerable communities, exacerbating the extent of child sex tourism in the region.⁶ Child sex tourism is considered to be a long established and relatively prevalent problem in the **Philippines** and **Thailand**, partly due to existing sex industries in these countries. ECPAT have reported on child sex tourism in **Cambodia** and **Viet Nam**, and that increased efforts to combat child sex tourism in Thailand has re-directed the flow of child sex offenders to neighbouring countries.⁷

Countries of origin of child sex tourists vary by region, but offenders often arrive from the more industrialized countries in Europe, North America, the Russian Federation, Japan, Australia and New Zealand,⁸ but tourists from Asia are also involved. In Cambodia and Thailand, of all sex tourists prosecuted, the largest group by nationality are from Australia and the United States, respectively.⁹ While there is no simple profile for a child

¹ Human Rights Council, 2012, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M’jid, 24 December, A/HRC/22/54, para. 12.

² Ibid., paras. 12, 14 and 29.

³ One World South Asia. (2013). *Every year, 2 million kids face sexual exploitation: UNICEF*. Available at: <http://southasia.oneworld.net/news/every-year-2-million-kids-face-sexual-exploitation-unicef> [accessed 17 June 2013].

⁴ Childwise. (2007). *An outcome of the Annual Meeting of the ASEAN Regional Taskforce to Combat the Sexual Exploitation of Children in Tourism Destinations*, ASEAN Child-Sex Tourism Review, August 2007.

⁵ ASEAN Statistics, *Tourist arrivals in ASEAN as of 30 June 2012*. Available at: <http://www.asean.org/images/pdf/resources/statistics/table%2028%20n.pdf> [accessed 17 June 2013].

⁶ Childwise, 2007, p. 8.

⁷ ECPAT. (2008) *Combating child sex tourism: questions and answers*.

⁸ O’Brian, *Sexual exploitation of children and adolescents in tourism*, thematic paper submitted by ECPAT International as a contribution to the World Congress II against the sexual exploitation of children and adolescents, p. 8.

⁹ Human Rights Council, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M’jid, 24 December 2012, A/HRC/22/54, para. 23.

sex tourist, the majority are male, with less than 5 per cent believed to be female,¹⁰ and they come from a variety of socio-economic backgrounds.

9.2 International standards on child sex tourism

Although there is no specific mention of ‘sex tourism’ in international conventions, it falls squarely under provisions preventing sexual exploitation of children. The Convention on the Elimination of Discrimination against Women (CEDAW), to which all ASEAN member States are parties, requires them to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation or prostitution of women.”

Article 34 of the Convention on the Rights of the Child (CRC) also requires States parties to protect the child (whether girl or boy) from all forms of sexual exploitation, while Article 35 requires States to take all appropriate national, bilateral and multilateral measures to prevent the sale of children. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) (to which all ASEAN member States are parties other than Singapore) places more specific requirements on States, providing that States criminalize and exercise territorial jurisdiction over acts of child sexual exploitation (i.e. those acts occurring within the jurisdiction of the State, regardless of the nationality of the offender).¹¹

Acts connected to child sex tourism will generally be covered under a State’s laws relating to child sexual exploitation, in particular laws relating to child prostitution. However, the trans-national nature of child sex tourism means that in order to address sex tourism by tourists within its State and acts committed by its nationals or residents in other States, it is necessary to have specific domestic legal provisions to do the following:

- a) Enable State nationals who commit offences in jurisdictions outside their country of origin or residence to be prosecuted in their home State;¹² and
- b) Permit the prosecution of perpetrators present within the State’s jurisdiction, regardless of the nationality of the offender.

Such legislation ensures that offenders cannot evade criminal liability by committing offences in destination countries and returning home in order to avoid prosecution.

9.3 Legislation in ASEAN member States: Child sex tourism

9.3.1 Territorial jurisdiction

Under OPSC, States are required to criminalize and exercise territorial jurisdiction over acts of child sexual exploitation (i.e. those acts that occur within the jurisdiction of the State, regardless of the nationality of the offender). As set out in table 41, criminal laws of all ASEAN member States can be used to prosecute offences that occur within the territory of the State, even where the offender is a foreign national, through the application of territorial jurisdiction.

¹⁰ ECPAT. (2008) *Combating child sex tourism: questions and answers*.

¹¹ Article 4(1), OPSC.

¹² Article 4(2), OPSC.

Table 41. Territorial jurisdiction: the application of penal and specialist law to non-nationals in ASEAN member States

Country	Penal law	Specialist law
Brunei	● Section 2(2)	YES, but not explicit: relevant offences in the Women and Girls Protection Act 1973 apply to acts committed by ‘any person’
Cambodia	● Article 12	● Article 2, Law on Suppression of Human Trafficking and Sexual Exploitation 2008
Indonesia	● Articles 2 and 3	N/A
Lao PDR	● Article 3	N/A
Malaysia	● Section 2	● Section 1(2), Child Law 2001
Myanmar	● Section 2	N/A
Philippines	● Article 2	YES, but not explicit: relevant offences in the Special Protection of Children Against Abuse, Exploitation and Discrimination Act 1992 apply to acts committed by ‘any person’
Singapore	● Section 2	● Section 3, Women’s Charter 2009
Thailand	● Article 4	YES, but not explicit: relevant provisions of the Prevention and Suppression of Prostitution Act 1996 apply to acts committed by ‘any person’
Viet Nam	● Article 5	N/A

The ability of destination countries (i.e. countries to which tourists travel to commit sex offences) to prosecute foreign national offenders will be dependent, of course, on whether offences relating to child sexual exploitation are comprehensively covered in their domestic laws. Also, if the alleged offender has already departed, States will need to rely on an extradition agreement to force his or her return to the jurisdiction of the State to be charged and tried for the offence.

Territorial jurisdiction is usually considered preferable in prosecuting suspects, as it is the State territory in which the alleged victim, material evidence, witnesses and so on are normally located. However, the process of extradition can be complex. It can be difficult to identify and locate alleged offenders and it may not be easy to work through the extradition process of the offender’s home State to ensure the return of the offender. In these cases, extraterritorial legislation is essential in ensuring a perpetrator is brought to justice.

9.3.2 Extraterritorial jurisdiction

Extraterritorial jurisdiction permits States to prosecute offences that occur outside its territory. According to the OPSC, States may (but are not mandated to) establish jurisdiction over acts of child sexual exploitation (child prostitution, child pornography and the sale of children) committed by its nationals or residents in another country.¹³ While the enactment of extraterritorial legislation is not mandatory, it is widely regarded as best practice, as it is “a prerequisite for an adequate real scheme to prevent and punish child sex tourism.”¹⁴ Extraterritorial legislation ensures that offenders cannot avoid criminal liability for offences against children simply by returning to their home country. It also acts as a safeguard in cases in which it is not possible for the offender to be extradited to the country in which the offence occurred. It should be noted, however, that few

¹³ Article 4(2), OPSC.

¹⁴ ECPAT. (2012). *Protection and the OPSC: Justifying good practice laws to protect children from sexual exploitation*, p. 5.

States have actually used these provisions to prosecute offenders for child sex offences. Extraterritorial legislation can be challenging to implement, labour intensive and expensive.¹⁵

As set out in table 42, most ASEAN member States have legislated for extraterritorial jurisdiction in their penal law, which would allow the State to prosecute nationals for sexual offences, even when these offences are committed abroad.

The penal codes in **Brunei, Cambodia, Lao PDR, Myanmar, Singapore, Thailand** and **Viet Nam** allow governments to prosecute nationals for sexual offences against children committed abroad. Extraterritorial provisions in the **Thai** Criminal Code, however, are limited to just two offences. There are also limitations to the exercise of extraterritorial jurisdiction in some ASEAN member States. **Cambodia's** extraterritorial provisions, for instance, only apply to citizens, excluding permanent residents who commit offences abroad from criminal liability. **Vietnamese** criminal provisions, by contrast, apply explicitly to both citizens and permanent residents who are stateless.

In **Thailand**, extraterritorial jurisdiction is subject to a double criminality requirement, in which the relevant offence must be a criminal offence both in the country in which it occurred, and in the State of which the offender is a national/resident. This limits the extent of extraterritorial legislation and can result in child sex tourists escaping prosecution for offences in countries that have non-protective legal frameworks. The CRC Committee has expressed concern over the application of the principle of double criminality to child sexual exploitation offences, and has welcomed its abolition in its concluding observations.¹⁶ The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adults calls on States to “establish effective extraterritorial jurisdiction, abolishing the requirement of double criminality for offences of sexual exploitation of children and adolescents.”¹⁷

Table 42. Extraterritorial jurisdiction: the application of penal and specialist law relating to child prostitution

Country	Penal law	Specialist laws
Brunei	<ul style="list-style-type: none"> ● Penal Code Section 2(3), which provides that ‘Any person liable to be tried for an offence committed beyond the limits of Brunei Darussalam shall be dealt with according to the provisions of this Code for any acts committed beyond Brunei Darussalam in the same manner as if such act had been committed within Brunei Darussalam’. 	<ul style="list-style-type: none"> ● Women and Girls Protection Act 1973 Section 3 (which contains a limited number of child prostitution offences) applies to offences committed ‘within’ and ‘outside’ Brunei.
Cambodia	<ul style="list-style-type: none"> ● Article 19, Penal Code provides that the Code applies to ‘any felony committed by a Cambodian citizen outside the territory of the Kingdom of Cambodia’. 	<ul style="list-style-type: none"> ● Article 3, Law on Suppression of Human Trafficking and Sexual Exploitation 2008, provides that ‘This law shall apply to any felonies or misdemeanors committed outside the territory of the Kingdom of Cambodia by a Khmer citizen’.

¹⁵ Human Rights Council, Report of the Special Rapporteur on the sale of children, para. 46.

¹⁶ UNICEF Innocenti Research Centre. (2009). *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, p. 13.

¹⁷ Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adults, 25 – 28 November 2008, para. 29.

Indonesia	<ul style="list-style-type: none"> Articles 4 and 5, Penal Code, which extends extraterritorial jurisdiction for specified offences, does not apply to sexual offences against children. 	N/A
Lao PDR	<ul style="list-style-type: none"> Article 4, Penal Law, applies the Penal Law to offences committed outside territory of Lao PDR, by Lao citizens and residents. 	N/A
Malaysia	<ul style="list-style-type: none"> Section 4, Penal Code, which extends extraterritorial jurisdiction for specified offences, does not apply to sexual offences against children contained in the Code. 	<ul style="list-style-type: none"> The Child Act 2001 does not contain a provision extending jurisdiction to offences committed outside Malaysian territory.
Myanmar	<ul style="list-style-type: none"> Section 3, Penal Code extends extraterritorial jurisdiction to offences committed under the Code outside the territory of Myanmar 	N/A
Philippines	<ul style="list-style-type: none"> Section 2, Penal Code, which extends extraterritorial jurisdiction for specified offences, does not explicitly apply to sexual offences against children contained in the Code. 	<ul style="list-style-type: none"> There is no provision explicitly allowing for extraterritorial jurisdiction in the Special Protection of Children Against Abuse, Exploitation and Discrimination Act 1992.
Singapore	<ul style="list-style-type: none"> Section 3, Penal Code extends extraterritorial jurisdiction to acts committed outside Singapore where the person would be liable if the offence were committed within Singapore. 	UNCLEAR: Section 3, Women's Charter 2009, applies to <i>'all persons in Singapore and shall also apply to all persons domiciled in Singapore.'</i>
Thailand	<ul style="list-style-type: none"> Section 7, Criminal Code, extends extraterritorial jurisdiction to a limited number of sexual offences (those contained in articles 282 and 283). 	<ul style="list-style-type: none"> A limited number of offences under the Prevention and Suppression of Prostitution Act 1996 apply to offences committed both within and outside Thailand (Section 9).
Viet Nam	<ul style="list-style-type: none"> Article 6(1), Penal Code extends criminal liability to Vietnamese citizens and residents for offences committed under the Code outside the territory of Viet Nam. 	N/A

In **Indonesia**, **Malaysia** and the **Philippines**, extraterritorial jurisdiction does not apply to sexual offences against children contained in the State's penal code.¹⁸ Also, as noted above, in some ASEAN member States, provisions setting out offences related to child prostitution and other sexual offences against children are contained in special legislation, as well as in the State's general criminal code. In **Malaysia** and the **Philippines**, special legislation (Malaysia's Child Act 2001 and the Philippines' Special Protection of Children Against Abuse, Exploitation and Discrimination Act 1992) does not expressly apply to acts committed outside the territory of the State. This means that, in these States, nationals could not be prosecuted for sexual offences against children that are committed abroad.

¹⁸ In these States, the provisions of the penal law which extend extraterritorial jurisdiction to specified offences do not apply to sexual offences against children: Articles 4 and 5, Penal Code 1982 (Indonesia); Article 4, Penal Code 1976 (Malaysia); Article 2, Penal Code 1930 (Philippines).

9.3.3 Criminalization of ‘preparatory acts’

It is considered best practice for States to criminalize preparatory acts relating to child sex tourism so that their nationals and residents can be prevented from committing criminal acts against children once they travel abroad. Preparatory acts include any actions taken in a destination country relating to child sex tourism (for example, actively and intentionally seeking online information about a child sex tourism destination, making a booking at a hotel for the purpose of sexually exploiting a child and so on). Preparatory liability is important as it has the potential to prevent acts of child sexual exploitation. Preparatory provisions should establish that it is an offence to commit any action in preparation for any sexual exploitation offence, regardless of whether the exploitation is actually committed and regardless of whether it is committed with the intention of committing any specific sexual exploitation offence.¹⁹

With the exception of **Singapore**, **Viet Nam**²⁰ and to a limited extent, the **Philippines**, ASEAN member States have not criminalized acts carried out in preparation for child sex tourism. As noted above, data indicate that a significant proportion of child sex tourists in ASEAN arrive from other ASEAN countries. It is important that preparatory acts carried out in the offender’s country of residence are criminalized, in order to ensure that there is a legal basis for preventing the exploitation of children through child sex tourism.

Legislation in **Singapore** provides a **good example** of the criminalization of acts carried out in preparation for child sex tourism. The law criminalizes the following acts: making or organizing travel arrangements for or on behalf of a person; or transporting a person outside Singapore, with the intention of facilitating commercial sex with a minor under 18 years, regardless of whether the offence is actually committed by that person; and printing, publishing or distributing any information intended to promote the commission of commercial sex with a minor under 18 years (Article 376D, Penal Code).

In the **Philippines**, limited protection is also provided under the Anti-Trafficking in Persons Act 2003. Under this act, sex tourism is categorized as a form of trafficking. The Act, which applies to sex tourism generally, rather than child sex tourism, defines this as:

“a program organized by travel and tourism-related establishments and individuals which consists of tourism packages or activities, using and offering escort and sexual services as enticement for tourists ... for the purpose of utilising and offering persons for prostitution, pornography or sexual exploitation.”²¹

However, it does not set out explicitly which acts are encompassed by ‘undertaking or organizing’.

9.4 Recommendations for law reform: Child sex tourism

Recommendations

- Consider enacting or extending laws establishing extraterritorial jurisdiction for offences related to child prostitution, sale of children, sexual exploitation and other related sexual offences against children (**Indonesia, Malaysia, the Philippines and Thailand**).
- Ensure that extraterritorial jurisdiction applies to residents, as well as citizens (**Cambodia**).
- Remove the ‘double criminality’ requirement for the exercise of extraterritorial jurisdiction (**Thailand**).
- Consider criminalizing ‘preparatory acts’ carried out in relation to child sex tourism (**Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar and Thailand**).

¹⁹ ECPAT. (2012) *Protection and the OPSC: Justifying good practice laws to protect children from sexual exploitation*, p. 10.

²⁰ Article 17, Penal Code, but note that this criminalizes acts in preparation to commit a criminal offence and relate to all extra-territorial jurisdiction.

²¹ Section 3(e) and 4(d), Anti-Trafficking in Persons Act 2003 (Philippines).

Table 43. Report card: Protection against child sex tourism

	Territorial jurisdiction	Extraterritorial jurisdiction	Criminalization of 'preparatory acts'
Brunei	●	●	●
Cambodia	●	●	●
Indonesia	●	●	●
Lao PDR	●	●	●
Malaysia	●	●	●
Myanmar	●	●	●
Philippines	●	●	●
Singapore	●	●	●
Thailand	●	●	●
Viet Nam	●	●	●

Chapter 10. Child Pornography

10.1 Context: Understanding child pornography

Child pornography is a type of sexual exploitation involving the use of children in pornographic materials or performances. It includes photographs, visual and audio representations and writing and can be distributed through magazines, books, drawings, movies, videotapes, mobile phones and computer disks or files.¹ The United Nations Special Rapporteur on the sale of children, child prostitution and child pornography has set out the following categories of materials that fall under the umbrella term of ‘child pornography’:

- a) Child pornography, which depicts children engaged in real or simulated explicit sexual activities or depicts parts of a child’s body in a sexual way. One or several children may be involved, and they may be involved in sexual acts alone, with other children or with adults, who may or may not be visible. The Special Rapporteur reports increasing use of ‘highly repugnant images’ involving very degrading and/or violent sexual activity.²
- b) Child erotica, which consists of images of children posing half-dressed/naked or naked, and sexualizes the child.
- c) Virtual pornography, which is the production of ‘morphed’ or artificially blended images of children involved in sexual activities. While children are not as directly involved in this form of pornography, the realism of the morphed images causes harm as it creates the illusion that children are actually directly involved.
- d) Pseudo-infantile pornography or initiation pornography, in which models are recorded or photographed in child-like poses, sometimes staged with props, to reinforce the impression of youth.³

Child pornography production and distribution is estimated to be worth between \$3 billion and \$20 billion.⁴ It is very difficult to know the number of children directly harmed by child pornography. Estimates on the number of children exploited in child pornography range from 10,000 to 100,000, and children of all ages have been exploited, including babies.⁵ According to one study, 83 per cent of individuals possessing child pornography had images of children aged 6–12; 39 per cent had images of children aged 3–5; 19 per cent had images of babies and infants under age 3; and 87 per cent had very explicit images of prepubescent children. Several studies have also highlighted the high number of child pornography materials that involve particularly degrading and/or violent sexual acts.⁶

The use of the Internet in the dissemination of child pornography is of increasing concern. The United Nations Special Rapporteur reports that the number of websites devoted to child pornography worldwide is increasing rapidly, and that the number of child pornography consumers connected to the Internet at any one time is estimated to be 750,000. Thousands of new child pornography photographs and videos are uploaded onto the Internet every week and hundreds of thousands of searches for images of sexual exploitation of children are carried out each day. It is estimated that 200 new images are put into circulation every day.⁷

Where victims and abusers are identified, data have shown that the abuser is commonly found to be a member or associate of the child’s family, or is otherwise in a care-giving relationship with the child. Other children at

¹ ECPAT. (2008) *Combating child sex tourism: questions and answers*.

² Human Rights Council, *Report of the Special Rapporteur on the sale of children*, para. 44.

³ Human Rights Council, *Report of the Special Rapporteur on the sale of children*, paras. 18–22.

⁴ Human Rights Council, *Report of the Special Rapporteur on the sale of children*, para. 44.

⁵ Human Rights Council, *Report of the Special Rapporteur on the sale of children*, para. 37.

⁶ Human Rights Council, *Report of the Special Rapporteur on the sale of children*, para. 39.

⁷ Human Rights Council, *Report of the Special Rapporteur on the sale of children*, para. 36.

risk include children who live or work on the streets, as well as children already forced into prostitution and children who have been trafficked.⁸

Child pornography has a profoundly devastating impact on children. Children directly involved in the production of pornography suffer acute harm. These children suffer the harms of children exposed to other forms of sexual abuse and exploitation, set out above. These harms may be compounded, however, by the existence of the pornographic images and the victims' knowledge that these images have been and may continue to be, in circulation. This makes recovery a longer and more difficult process.⁹ In addition, even children not directly involved in child pornography may experience harm as a result of child pornography. Child pornography can be used to desensitize children, and as part of the process of grooming them to participate in sexual acts with adults, and make them more susceptible to engaging in sexual acts with adults. The viewing of child pornography by adults with a predisposition toward sexual attraction to children can adjust internal 'morality' mechanisms that would otherwise stop potential abusers from acting on their impulses.¹⁰

10.2 International standards on child pornography

As with child sex tourism and child prostitution, Article 34 of the Convention on the Rights of the Child (CRC) requires States to take all appropriate national, bilateral and multilateral measures to prevent the exploitative use of children in pornographic performances and materials.¹¹ The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC), to which all ASEAN member States other than Singapore are parties, requires States parties to criminalize the production, distribution, importation, exportation, offer, sale and possession of child pornography. States are also required under OPSC to criminalize attempts to commit these acts, as well as complicity or participation in these acts, and to ensure that all of these acts are "punishable by appropriate penalties that take into account their grave nature."¹²

10.3 Legislation in ASEAN member States: Child pornography

Two ASEAN member States have enacted specific laws addressing child pornography: **Cambodia** and the **Philippines**. In other States, including **Brunei, Malaysia, Myanmar, Thailand** and **Viet Nam**, there are no specific laws addressing child pornography. Instead, some acts connected to child pornography fall within general penal law provisions on 'obscene articles'. **Lao PDR** has one provision dealing with the 'dissemination of child pornography', but this provides only limited protection and does not provide a definition of child pornography.¹³

Table 44. Laws related to child pornography in ASEAN member States

- **Brunei:** No specific provisions, however, 'child pornography' may fall within the Undesirable Publications Act 1984 and 'obscene articles' within Article 292, Penal Code
- **Cambodia:** Articles 40 and 41, Law on the Suppression of Human Trafficking and Sexual Exploitation
- **Indonesia:** No specific provisions, however, the Law on Pornography 2009 would apply to pornography involving children
- **Lao PDR:** Article 86, Law on the Protection of the Rights and Interests of Children 2006 deals with dissemination of child pornography. Child pornography may also fall within a provision relating to pornographic objects (Article 138, Penal Code).

⁸ ECPAT (2008). *Questions and answers about the sexual exploitation of children*, p. 8.

⁹ Human Rights Council, *Report of the Special Rapporteur on the sale of children*, para. 47.

¹⁰ ECPAT. (2012) *Protection and the OPSC: Justifying good practice laws to protect children from sexual exploitation*, p. 19.

¹¹ See Article 34(1)(c), CRC.

¹² Article 3(1)(c), (2) and (3), OPSC.

¹³ Article 86, Law on the Protection of the Rights and Interests of Children 2006 (Lao PDR).

- **Malaysia:** However, child pornography may fall within the definition of ‘obscene articles’ (Section 292, Penal Code).
- **Myanmar:** No specific provisions, however, child pornography may fall within the definition of ‘obscene articles’ (Section 292, Penal Code).
- **Philippines:** Anti-Child Pornography Law 2009
- **Singapore:** No specific provisions, however, the Undesirable Publications Act 1998 and Films Act 1981 may apply to child pornography
- **Thailand:** No specific provisions, however, child pornography may fall within the definition of ‘obscene objects’ (Section 287, Penal Code), and data of a pornographic nature under Section 14, Computer Crimes Act 2007.
- **Viet Nam:** No specific provisions, however, child pornography would probably fall within the definition of ‘debauched cultural products’ (Article 253, Penal Code).

Provisions on obscene articles were not drafted to apply specifically to child pornography. As a result, particular forms of child pornography, or acts connected to child pornography, may not be covered by existing law, with the result that children exploited in child pornography may not have adequate legal protection. General obscenity laws are also somewhat out-dated and unsuited to responding to new forms, production, distribution methods and access to child pornography facilitated by new information and communications technologies. In **Indonesia** and **Singapore**, specific laws have been adopted which relate to pornography generally or ‘undesirable publications’. These laws offer a higher level of protection to children against being harmed by pornography; however, these laws also do not apply to child pornography specifically.

10.3.1 Definitions of child pornography in domestic law

Child pornography is defined under OPSC 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.”¹⁴ This section discusses the two main elements of the definition in detail.

10.3.1.1 ‘Any representation’: Activities that should be encompassed by domestic law

While OPSC does not explicitly define the types of sexual activities or materials that constitute child pornography, the definition encompasses two broad types of representations: (a) real or simulated explicit sexual activities, which should be criminalized regardless of the purpose for which they were produced. This provision includes a broad range of activities (with the limiting element that the sexual activities must be ‘explicit’, though it does not further elaborate the acts that constitute explicit sexual activity); and (b) representations of the sexual parts of a child for primarily sexual reasons. This would include materials commonly referred to collectively as ‘child erotica’ (sexually suggestive images of children). States must ensure that all such activities are covered by criminal law, and, ideally, States should set out the sexual activities that are encompassed by penal laws on child pornography in explicit detail.

The Explanatory Guide to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse sets out the sexual activities whose depiction will amount to child pornography. Although not applicable to ASEAN member States, this provision can be used by States as a best practice guide in the enactment of child pornography laws. It provides that sexually explicit conduct must cover at least the following: (a) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between children, or between an adult and a child, of the same or opposite sex; (b) bestiality; (c) masturbation; (d) sadistic or masochistic abuse in a sexual context; or (e) lascivious exhibition of the genitals or the pubic area of a child.¹⁵

¹⁴ Article 2(c), OPSC.

¹⁵ Article 143, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

While not a requirement in international law, the most protective definitions of child pornography would include virtual images. Virtual child pornography does not involve ‘real’ children, and includes cartoons, computer generated images (CGIs), and images created through a process of ‘morphing’ (in which two or more images are combined into one, or pictures are distorted into new images – this can make non-pornographic images of children appear to be pornographic).¹⁶

Only **Cambodia** and the **Philippines** have set out explicit definitions of child pornography in national laws. As noted above, in **Brunei, Lao PDR, Malaysia, Myanmar, Thailand** and **Viet Nam**, general penal law provisions on obscene articles can be applied to certain forms of child pornography. However, only Brunei’s Penal Code offers a definition of ‘obscene articles’, namely those which have the effect of tending to “deprave and corrupt persons, having regard to all the relevant circumstances.”¹⁷ It is unclear whether these laws encompass the wide range of representations encompassed by international law, as set out above. Very general provisions on obscene articles can also create inconsistencies in the application of criminal laws by different law enforcement agencies and courts.¹⁸ This can cause a lack of legal protection for children from exploitation in and by child pornography.

The law in **Singapore** does not specifically criminalize child pornography. However, Section 7 of Children and Young Persons’ Act 2011 criminalizes obscene or indecent acts with a person under age 16, and Section 11 prohibits children under age 16 from participating in public entertainment that is of an immoral nature. Furthermore, Section 376D(1)(c) of the Penal Code carries penalties for any person who prints, publishes or distributes any information that is intended to promote any offence related to commercial sex with a minor under age 18. Moreover, Section 4(1)(a) of the Undesirable Publications Act and the Films Act may be applied to child pornography, which defines undesirable publications as those that describe, depict, express or otherwise deal with matters such as sex, horror, crime, cruelty, violence or the consumption of drugs or other intoxicating substances in a manner that is likely to be injurious to the public good. Exploitation of the nudity of children is considered in determining whether a publication is ‘objectionable’.

Indonesian law contains provisions that apply to child pornography in its Law on Pornography (2009). Pornography is defined under the Law as “any sexual materials that cause sexual arousal and/or violates norms in the community.”¹⁹ The Law does not define child pornography, however, it provides that, where a person under age 18 is involved in pornography, the punishments set out in the Law will be increased by one third.²⁰ Both of these definitions are fairly comprehensive and would include a wide range of representations of sexual activity, as required by international law. They are also likely to make sexual displays of children’s bodies unlawful. However, specific representations of sexual activity are not set out in either law, which could lead to particular forms or types of representations being excluded from this definition.

Cambodian law defines child pornography as “visible material such as a photograph or videotape, including material in electronic form, depicting a minor’s naked figure which excites or stimulates sexual desire.”²¹ However, this definition does not comply fully with international standards. It does not, for instance, apply to children who appear clothed or half-naked but engaged in sexual activities, nor does it include morphed or computer generated images of children.

The law in the **Philippines** provides a good example of a definition that is fully compliant with international law. Child pornography is defined in Section 3(c) of the Anti-Child Pornography Act 2009 as “any representation, whether visual, audio, written or a combination thereof, by electronic, magnetic, optical or any other means of a child engaged or involved in real or simulated sexual activities.” The Act specifies sexual intercourse or

¹⁶ ECPAT. (2008) *Strengthening laws addressing child sexual exploitation*, p. 78.

¹⁷ Sections 292(1) and (2), Penal Code (Brunei).

¹⁸ ECPAT. (2012) *Protection and the OPSC: Justifying good practice laws to protect children from sexual exploitation*, p. 16.

¹⁹ Chapter 1, Law on Pornography 2009 (Indonesia).

²⁰ Law on Pornography 2009, section 38 (Indonesia).

²¹ Article 40, Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 (Cambodia).

lascivious acts including, but not limited to, contact involving genital to genital, oral to genital, anal to genital, or oral to anal, whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; lascivious exhibition of the genitals, buttocks, breasts, pubic area and/or anus; or use of any object or instrument for lascivious acts. ‘Child’ is defined under the Act as a person under age 18, and can include a person over 18 where he or she is “unable to fully take care of himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability.”²² The Act also encompasses child pornography involving persons who, regardless of age, are presented, depicted or portrayed as children. This definition is fully compliant with the definition set out in OPSC, and includes all types of images, including digitally simulated images and images presenting adults as children.

10.3.1.1 Mediums for child pornography

The definition of child pornography provided by OPSC is quite broad, and in order to comply with this provision, States must ensure that they criminalize child pornography in all contexts and mediums. This is not limited to such visual images as photographs, videos, DVDs, drawings, paintings and online visual representations, but also includes audio recordings and written materials.²³ Table 45, sets out the forms or mediums that are encompassed by domestic legislation relating to child pornography or obscene articles.

Table 45. Child pornography mediums encompassed by laws in ASEAN member States

Brunei: Article 292(2), Penal Code
“...Matter to be read or looked at or both, any sound record, and any film, video cassette, photographic negative or other record of a picture.”
Cambodia: Article 41, Law on the Suppression of Human Trafficking and Sexual Exploitation 2008
“Visible material such as a photograph or videotape, including material in electronic form”
Indonesia: Chapter 1, Law on Pornography 2009
“Any sexual materials created by humans in the form of pictures, sketches, photos, writings, voices, sounds, motion pictures, animations, cartoons, poems, conversations, body movement, or other form of message communication through various forms of communication media and/or representations in public that cause sexual arousal and/or violates norms in the community.”
Lao PDR: Article 138, Penal Law; Article 86, Law on the Protection of the Rights and Interests of Children 2006
“Pornographic items, magazines, pictures, video cassettes and other materials...” (Article 138); and “magazines, photographs, films, videos, VCDs, DVDs and other items...” (Article 86).
Malaysia: Section 292, Penal Code
“Any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever.”
Myanmar: Section 292, Penal Code
“Any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever.”
Philippines: Section 3(c), Anti-Child Pornography Act 2009
“Any representation, whether visual, audio, written or a combination thereof, by electronic, magnetic, optical or other means...”

²² Section 3(a), The Anti-Child Pornography Act, 2009 (Philippines).

²³ ECPAT. (2012) *Protection and the OPSC: Justifying good practice laws to protect children from sexual exploitation*, p. 15.

Singapore: Section 4(1)(a), Undesirable Publications Act
“(Publications) that describe, depict, express or otherwise deal with...”
Thailand: Article 297, Criminal Code
“Any document, drawing, print, painting, printed matter, picture, poster, symbol, photograph, cinematograph film, audio tape, video tape or any other thing...”
Viet Nam: Article 253 Penal Code
“...books, newspapers, pictures, photographs, films, music or other objects.”

Not all of the definitions set out in table 45 are comprehensive enough to comply fully with international law. For instance, the laws in **Cambodia, Lao PDR, Malaysia, Myanmar, and Viet Nam** do not explicitly include sound recordings. Also, the legal definitions in only **Cambodia, the Philippines and Indonesia** explicitly include electronic mediums. This is a cause for concern, as the Internet and other information and communications advancements are increasingly used for producing, distributing and accessing child pornography.

10.3.2 Specific acts criminalized in domestic law

In accordance with OPSC, States are required to criminalize the production, distribution, importation, exportation, offer, sale and possession of child pornography. ECPAT has provided guidance on what each of these acts cover:

Production: Producing child pornography refers to its creation or making, by whatever means. This may include taking photographs of a child, morphing (digitally created, blended images of adults and children), organizing and/or directing films or audio recordings, sexual posing, etc.

Offering: This may be done through a range of different means whether verbally or via newspapers, the Internet (for example through a website), mobile phones or other forms of ICT. It does not matter whether a subsequent transaction actually takes place. The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse establishes an offence of making available child pornography to cover, for instance, the creation of child pornography websites.

Distribution and dissemination: This refers to the act of delivering, giving, selling or sending of child pornography materials, including through computer systems (e.g. file sharing programmes, popular online chat mediums or webpages). This would include the import/export of child pornography.

Possessing: Having child pornography under someone’s control or owning the materials. In order to be considered a criminal act, the OSPC requires that possession be coupled with the intent to distribute the materials, or to commit any of the other above acts.²⁴

As set out in table 46, most ASEAN member States have criminalized acts of producing, offering, distributing/disseminating and possessing child pornography. However, it should be remembered that the applicability of these provisions will be restricted by the lack of or limited definitions of child pornography across many ASEAN member States. Also, the act of possession of child pornography is not comprehensively covered by legislation in all ASEAN member States. In **Cambodia** and **Lao PDR**, the possession of child pornography/obscene articles with the intent to sell or distribute is an offence, but mere possession is not. Also, the act of wilfully accessing or downloading child pornography from the Internet and other electronic communication tools is not explicitly an offence in any ASEAN State except the **Philippines**.

²⁴ ECPAT, *Strengthening laws addressing child sexual exploitation* (2008), p. 75.

Table 46. Laws on acts related to child pornography in ASEAN member States

Brunei	<ul style="list-style-type: none"> ● Production: Section 4(1), Undesirable Publications Act 1984; Section 292(3)(a), Penal Code ● Offering: Section 4(1), Undesirable Publications Act 1984; Sections 292(3)(d) and (e), Penal Code ● Distribution and dissemination: Section 4(1), Undesirable Publications Act 1984; Section 292(3)(a), Penal Code ● Possession: Section 292(3)(a), Penal Code
Cambodia	<ul style="list-style-type: none"> ● Production: Article 41, Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 ● Offering: Article 41, Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 ● Distribution and dissemination: Article 41, Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 ● Possession: Article 41, Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 criminalizes possession with intent to sell etc. but not mere possession
Indonesia	<ul style="list-style-type: none"> ● Production: Section 4(1), Law on Pornography 2009 ● Offering: Section 4(1), Law on Pornography 2009 ● Distribution and dissemination: Section 4(1), Law on Pornography 2009 ● Possession: Section 6, Law on Pornography 2009
Lao PDR	<ul style="list-style-type: none"> ● Production: Article 86, Law on the Protection of the Rights and Interests of Children 2006; Article 138, Penal Law 2006 (but only where it is 'widespread') ● Offering: Article 86, Law on the Protection of the Rights and Interests of Children 2006, (covers offering and displaying) ● Distribution and dissemination: Article 86, Law on the Protection of the Rights and Interests of Children 2006; Article 138, Penal Law 2006 (but only where it is 'widespread') ● Possession
Malaysia	<ul style="list-style-type: none"> ● Production: Section 292, Penal Code ● Offering: Section 292, Penal Code ● Distribution and dissemination: Section 292, Penal Code ● Possession: Section 292, Penal Code
Myanmar	<ul style="list-style-type: none"> ● Production: Section 292, Penal Code ● Offering: Section 292, Penal Code ● Distribution and dissemination: Section 292, Penal Code ● Possession: Section 292, Penal Code
Philippines	<ul style="list-style-type: none"> ● Production: Section 4, Anti-Child Pornography Law 2009 ● Offering: Section 4, Anti-Child Pornography Law 2009 ● Distribution and dissemination: Section 4, Anti-Child Pornography Law 2009 ● Possession: Section 4, Anti-Child Pornography Law 2009
Singapore	<ul style="list-style-type: none"> ● Production: Section 6(1), Undesirable Publications Act 1967 ● Offering: Section 6(1), Undesirable Publications Act 1967 ● Distribution and dissemination: Section 6(1), Undesirable Publications Act 1967 ● Possession: Section 6(2), Undesirable Publications Act 1967

Thailand	<ul style="list-style-type: none"> ● Production: Article 297(1), Criminal Code ● Offering: Article 297(3), Criminal Code ● Distribution and dissemination: 297(1) and (2), Criminal Code Article ● Possession: Article 297(1), Criminal Code
Viet Nam	<ul style="list-style-type: none"> ● Production: Article 253, Penal Code ● Offering: Article 253, Penal Code ● Distribution and dissemination: Article 253, Penal Code ● Possession: Article 253, Penal Code criminalizes possession with intent to sell etc. but not mere possession

10.3.4 Reporting obligations

Reporting obligations imposed on individuals who suspect that a child is at risk of abuse were discussed in chapter 2. In relation to child pornography, specific groups of individuals should, as a matter of best practice, be subject to an affirmative obligation to report suspected cases of child pornography or exploitation. These include persons who may come across child pornography images in the course of their work. Among ASEAN member States, only the **Philippines** has imposed mandatory reporting obligations on relevant bodies or individuals that may come across evidence of child pornography offences in the course of their work, for instance, Internet service providers, photo developers, information technology professionals and so on.

In the **Philippines**, the Anti-Child Pornography Act 2009 imposes mandatory reporting obligations on private sector actors, including Internet service providers (ISPs), private businesses and Internet content hosts (Section 9). ISPs, for instance, must, upon discovery that their servers or facilities are being used to commit child pornography offences, report to the Police within 7 days. They are also obliged to preserve evidence for use in criminal proceedings, and they must give details of users following a request from the Police, and must provide details to police of users who access or attempt to access websites containing child pornography. ISPs must also install available software programmes designed to filter and block child pornography. Other bodies obliged to report child pornography offences include photo developers, information technology professionals, credit card companies and banks (Section 10).

The lack of reporting obligations in other ASEAN member States is a significant gap in protection for children exploited in child pornography. Mandatory reporting obligations provide an effective legal framework for responding to, preventing and reducing the market of child pornography, which in turn ensures that children enjoy legal protection against being exploited in child pornography.

10.4 Recommendations for law reform: Child pornography

Recommendations

- Consider enacting specific, comprehensive laws on child pornography that are fully compliant with international law (**Brunei, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand and Viet Nam**).
- Ensure that comprehensive and explicit legal definitions of child pornography are included in national laws (**Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand and Viet Nam**).
- Ensure that child pornography laws impose mandatory reporting obligations on relevant bodies and individuals (**Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand and Viet Nam**).

Table 47. Report card: Child pornography

	Comprehensive definition of child pornography	All related acts (production, offering, distribution/ dissemination, possession) are criminalized	Law imposes reporting obligations
Brunei	●	●	●
Cambodia	●	●	●
Indonesia	●	●	●
Lao PDR	●	●	●
Malaysia	●	●	●
Myanmar	●	●	●
Philippines	●	●	●
Singapore	●	●	●
Thailand	●	●	●
Viet Nam	●	●	●

Chapter 11. Child Trafficking

This chapter examines ASEAN laws connected to the specific act of child trafficking. While it is noted that criminal laws in all ASEAN member States contain general provisions criminalizing acts of kidnapping and abduction, this is discussed separately in chapter 12.

11.1 Context: Understanding child trafficking

There is a lack of clarity within the international community on the acts that constitute child trafficking and definitions vary greatly across national laws, and in international instruments. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) (the Palermo Protocol) contains the most comprehensive definition of human trafficking in international law.¹ With the exception of **Brunei** and **Singapore**, all ASEAN member States have ratified the Palermo Protocol. The Palermo Protocol treats human trafficking as a process by which a person is recruited and exploited by a trafficker or group of traffickers, using deception or some form of coercion to lure and control them for the purpose of exploitation.

Children are trafficked for a variety of purposes. They may be sold into prostitution or compelled to engage in other forms of sexual conduct for the commercial benefit of their traffickers. Children may also be trafficked for labour; child labour may take place in industries such as agriculture, mining, fisheries or manufacturing. Children who are trafficked may also become involved in entertainment and street-based activities like hawking or organized begging. In some regions, children are trafficked into armed conflict, while in others they are more commonly trafficked for the purpose of domestic service and become household servants. Babies may be trafficked for adoption, and older children adopted for the purpose of labour, for instance to work in a family business or on a farm.²

In South-East Asia, the purposes of child trafficking that have been documented include various forms of bonded and exploitative labour, such as domestic services, factory work, agriculture, fishing and construction; sexual exploitation, such as child prostitution or the production of child pornography; marriage; adoption; and begging and selling small items.³

11.1.1 Nature and extent of child trafficking in the Asia-Pacific region

The true extent of child trafficking is unknown, as recent, accurate data are extremely limited.⁴ It has been estimated recently, however, that between 600,000 and 800,000 people worldwide are trafficked across borders every year,⁵ though this figure includes adults and children alike, and it does not include people trafficked within their own country. Trafficking is a global phenomenon: the 2012 UNODC *Global Report on Trafficking in Persons* documented trafficking victims of 136 different nationalities in 118 countries and detected approximately 460 different trafficking flows. Moreover, trafficking of children appears to be increasing worldwide. A comparison between data from 2003 – 2006 and 2007 – 2010 showed that the proportion of child trafficking victims increased from 20 per cent to 27 per cent. Globally, of every three child victims, one is a boy and two are girls. The UNODC report also found significant regional differences in the demographic profile of trafficking victims. In European and Central Asian countries, 16 per cent of detected

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) ('The Palermo Protocol').

² UNICEF. (2009). *Understanding Child Trafficking*, p. 23.

³ UNICEF EAPRO, *Reversing the trend: Child trafficking in East and South-East Asia* (2009), p. 32.

⁴ The limitations in data are ascribed to the hidden nature of the crime, low rates of detection, reporting and prosecution, and variance between national laws and terms used by international instruments. Cf. UNICEF EAPRO, *Reversing the trend: Child trafficking in East and South-East Asia* (2009), p. 28.

⁵ United States Department of State, *Trafficking in Persons Report* (2012).

victims were children, in Africa and the Middle East the figure was 68 per cent, while in South Asia, East Asia and the Pacific, 39 per cent of victims were children.⁶

South-East Asia has long been regarded as a hub for child trafficking. This has been attributed to “stark socio-economic and development disparities, long contiguous borders, historical intraregional migration patterns and existence of few legal migration alternatives.”⁷ In South-East Asia, South Asia and the Pacific, exploitation for forced labour (which accounts for 47 per cent of victims of trafficking) is more common than sexual exploitation (44 per cent of victims), and exploitation for domestic servitude is frequently reported.⁸ UNICEF has reported on the trafficking of babies and infants for unlawful adoption, which is an emerging form of trafficking in Cambodia, Viet Nam and Indonesia. In South-East Asia, boys are being trafficked for sexual exploitation: while this form of trafficking affects girls in much higher numbers, trafficking in boys is hidden and not as widely recognized. UNICEF has also documented trafficking for forced recruitment in armed conflict in Myanmar and the Philippines.⁹

Trafficking routes carry victims to destinations within the region, to destinations outside the region, and, in some ASEAN countries, to destinations within national borders. In the Mekong sub-region, Thailand is by far the wealthiest country and it is often the destination not only of trafficking victims but also of migrants from neighbouring countries seeking out better economic opportunities and stability.¹⁰

Recognized trafficking routes within the Mekong sub-region include:

- Children trafficked from Cambodia to Thailand for begging or for the sale of small items;
- Girls trafficked from Viet Nam to Cambodia or from Myanmar to Thailand for sexual exploitation;
- Boys trafficked from Myanmar to Thailand to work in Thai factories and on fishing boats
- Boys trafficked from Viet Nam to China for illegal adoption;
- Girls trafficked from rural areas of Cambodia to urban centres for sexual exploitation; and
- Lao girls trafficked to Thailand for domestic or factory work.

Sources: UNICEF EAPRO. (2009) *Reversing the trend: Child trafficking in East and South-East Asia*, p. 29; and Child Maltreatment: Prevalence, Incidence and Consequences in the East Asia and Pacific Region, A Systematic Review of Research, UNICEF EAPRO 2012 p. 91.

Trafficking of children from South-East Asia to the rest of the world is proliferating.¹¹ In 2012 UNODC reported that East Asian trafficking victims were detected in 64 countries around the world, often in relatively large numbers. East Asians account for about 7 per cent of detected victims in Western and Central Europe; 10 per cent in South America; 27 per cent in North and Central America; and 35 per cent in the Middle East.¹²

⁶ UNODC. (2012) *Global report on trafficking in persons*, p. 39.

⁷ UNICEF EAPRO. (2009) *Reversing the trend: Child trafficking in East and South-East Asia*, p. 29. For more information on the prevalence and nature of trafficking in ASEAN member States see Child Maltreatment: Prevalence, Incidence and Consequences in the East Asia and Pacific Region, A Systematic Review of Research, UNICEF, EAPRO 2012.

⁸ UNODC. (2012) *Global report on trafficking in persons*, p. 14.

⁹ UNICEF EAPRO. (2009) *Reversing the trend: Child trafficking in East and South-East Asia*, p. 34–35.

¹⁰ UNICEF EAPRO. (2009) *Reversing the trend: Child trafficking in East and South-East Asia*, p. 29.

¹¹ UNICEF EAPRO. (2009) *Reversing the trend: Child trafficking in East and South-East Asia*, p. 30.

¹² UNODC. (2012) *Global report on trafficking in persons*, pp. 14 and 23.

UNICEF has recorded the following international trafficking flows from South-East Asia:

- From Indonesia to Brunei, Australia, Saudi Arabia, Kuwait, the Netherlands, Germany and Austria.
- From the Philippines to Costa Rica, New Zealand, the United States and the Northern Mariana Islands.
- From Thailand to South Africa, Germany and Switzerland.
- From Myanmar to Pakistan and Bangladesh.

Source: UNICEF EAPRO. (2009) *Reversing the trend: Child trafficking in East and South-East Asia*, p. 29.

Globally, domestic trafficking is also increasing. Domestic trafficking occurs within the borders of a country and usually involves movement from rural to urban areas or from one city to another.¹³ UNODC has reported that from 2007 to 2010 domestic (as opposed to trans-border) trafficking rose from 19 per cent to 31 per cent of all trafficking.¹⁴ In some countries in East Asia, data indicate that domestic trafficking is a more significant problem than trans-border trafficking. In the Philippines, for instance, children are trafficked from rural areas to large cities, and in Viet Nam, there are significant numbers of children trafficked internally into known areas of prostitution.¹⁵

In the East Asia region, children are trafficked using a variety of methods, including: recruitment or false recruitment; introduction to work by an acquaintance; deception by a relative or acquaintance; force; abduction or kidnapping, primarily of infants; abuse of a position of authority; and through the provision of payments or benefits to garner the consent of an adult in a controlling position over a child. UNICEF has also reported the increased use of information and communication technologies by traffickers, such as social networking sites, online chat rooms, voice over Internet protocol and email, to make contact with potential trafficking victims.¹⁶

11.1.2 Vulnerability and demand for child trafficking

While child trafficking victims are a very diverse group, there are some common factors in a child's background and circumstances that increase his or her vulnerability to trafficking. UNICEF has identified the most common elements which leave children vulnerable to trafficking, including individual factors, such as experiences of violence or abuse, dropping out of school, lack of life skills, living on the street, lack of citizenship and/or personal documentation, or desire for adventure; family-related factors, such as family breakdown, domestic violence, substance abuse, or neglect; and socio-economic factors, such as poverty and/or relative poverty, lack of education and viable employment opportunities, lack of labour protection, discrimination, or tensions and armed conflict.¹⁷ These vulnerabilities then interact with demand-side causes of child trafficking, determining the destination and purpose of child trafficking.

While it is important to understand the factors that make children vulnerable to trafficking, it is demand (for cheap labour, for sex with children, and so on) that fuels child trafficking. The demand side of trafficking has drawn more attention globally in recent years, and although some countries are seeking to reference this in their anti-trafficking policies, all of the aspects of demand remain largely unaddressed. The individuals and groups involved directly or indirectly with trafficking of children operate within diverse social and political contexts to fulfil varying types and degrees of demand. They operate under varying levels of acceptability and impunity. In East-Asia and the Pacific, the primary demands include: the demand for child labour (e.g. cheaper cost of employing children, their lower access to workers' rights); the demand for sex with children (e.g.

¹³ ECPAT, Stop Sex Trafficking of Children and Young People campaign, *The state of global child trafficking for sexual purposes* (2009), p. 18.

¹⁴ UNODC. (2012) *Global report on trafficking in persons*, p. 51.

¹⁵ UNICEF EAPRO. (2009). *Reversing the trend: Child trafficking in East and South-East Asia*, p. 31.

¹⁶ UNICEF EAPRO. (2009). *Reversing the trend: Child trafficking in East and South-East Asia*, p. 36.

¹⁷ UNICEF EAPRO. (2009). *Reversing the trend: Child trafficking in East and South-East Asia*, p. 24–26.

virginity seeking, child sex offenders and paedophiles); the demand for children and infants to adopt; and the demand for young brides.¹⁸

11.1.3 Impact of child trafficking

Regardless of the purpose or form of trafficking the consequences can be devastating for children who fall victim to it. Trafficking places children in a situation of extreme vulnerability to violence, exploitation and harm. They are at high risk of suffering sexual, physical and emotional violence as well as acute neglect, all of which have severe consequences for a child's health, development and wellbeing.

Trafficked children may be made to carry out demanding and/or dangerous work, with inadequate or non-existent compensation, a lack of employment rights, and elements of violence or force. The conditions in which children work are frequently dangerous: they may experience violence in their workplace, their living conditions are usually substandard and their access to health care extremely limited or non-existent. This inevitably has a damaging impact on their health, sometimes resulting in death or serious psychological and/or physical illness or injury.¹⁹

Girls are particularly vulnerable to sexual abuse (though this affects boys too), and commercial sex work puts children's health at risk, for instance, through contracting STDs or reproductive illnesses. Trafficked children can also be exposed to drugs, either as a means to make them more compliant, or to engender dependency upon their traffickers.²⁰

The psychological harm incurred through being separated from their family and community and exposed to exploitation and abuse can leave children extremely vulnerable to repeated cycles of trafficking. Many experience severe depression, manifesting in self-harm and suicide. Trafficked children are frequently subjected to violence and threats to themselves or their families to keep them compliant and to prevent them from escaping.²¹

11.2 International standards on child trafficking

Provisions on trafficking are contained in a range of international instruments. The Convention on the Rights of the Child (CRC) requires States to "take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."²² However, it does not elaborate what 'traffic in children' encompasses, or what 'any purpose' might include. The Optional Protocol on the Sale of Children (OPSC) prohibits the sale of children, defined as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration."²³ In many instances, child trafficking will also qualify as the sale of children.

Girls are particularly vulnerable to trafficking for the purposes of sexual exploitation, and Article 6 of the Convention on the Elimination of All Forms of Violence against Women (CEDAW) imposes an obligation on States to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."

The most comprehensive definition of trafficking is contained in the Palermo Protocol, which defines trafficking in persons as:

¹⁸ UNICEF EAPRO. (2009). *Reversing the trend: Child trafficking in East and South-East Asia*, p. 27–28.

¹⁹ UNICEF. (2009). *Understanding Child Trafficking*, p. 35. Available at: http://www.unicef.org/protection/Textbook_1.pdf

²⁰ UNICEF. (2009). *Understanding Child Trafficking*, p. 35.

²¹ UNICEF. (2009). *Understanding Child Trafficking*, p. 35.

²² Article 35, CRC.

²³ Article 2, OPSC.

“The recruitment, transportation, transfer, harbouring or receipt of persons, 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 the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation should 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.”²⁴

This definition has three elements: an act (recruitment, transportation, transfer, harbouring or receipt of persons); a means (the threat or use of force or other forms of coercion etc.), and a purpose (exploitation). However, according to the Palermo Protocol, it is not necessary to prove that particular means were used to gain consent of the trafficked person (threat or use of force, coercion, abduction, fraud, deception, abuse of power, giving or receiving payments) where the victim of trafficking is a child (under age 18).²⁵

States parties are obliged to criminalize all acts falling within this definition, along with attempt to commit these acts and acting as an accomplice to such acts. States must also ensure that domestic laws apply to offences which are transnational in nature.

11.3 Child trafficking legislation in ASEAN member States

The Recommended Principles and Guidelines on Human Rights and Human Trafficking, adopted in 2002, state that the crime of trafficking must be precisely defined in national laws and that detailed guidance should be provided on punishable elements. All ASEAN member States except for **Lao PDR** have enacted specific legislation on human trafficking, setting out specific offences and a range of other provisions responding to trafficking in persons. Trafficking of children falls under these laws.

Table 48. Laws on trafficking in persons (including children) in ASEAN member States

<ul style="list-style-type: none"> ● Brunei: Trafficking and Smuggling of Persons Order 2004; Children and Young Persons Order 2006 (Part VIII: Trafficking in children and young persons); Women and Girls Protection Act 1972 (Section 4(1)): Trafficking in women and girls)
<ul style="list-style-type: none"> ● Cambodia: Law on Suppression of Human Trafficking and Sexual Exploitation 2008
<ul style="list-style-type: none"> ● Indonesia: Law on the Eradication of the Criminal Act of Human Trafficking 2007
<ul style="list-style-type: none"> ● Lao PDR: There is a specific provision on human trafficking in Article 134, Penal Law 2005; “trafficking in women and children” in Articles 24 and 49, Law on the Development and Protection of Women 2004; and trafficking in children in Article 90, Law on the Protection of the Rights and Interests of Children 2006.
<ul style="list-style-type: none"> ● Malaysia: Anti-Trafficking in Persons Act 2007
<ul style="list-style-type: none"> ● Myanmar: Anti-Trafficking in Persons Law 2005
<ul style="list-style-type: none"> ● Philippines: The Expanded Anti-Trafficking in Persons Act 2012 (Republic Law No. 10364); Limited provisions are also contained in the earlier Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992
<ul style="list-style-type: none"> ● Singapore: Prevention of Human Trafficking Act 2014.
<ul style="list-style-type: none"> ● Thailand: Anti-Trafficking in Persons Act 2008
<ul style="list-style-type: none"> ● Viet Nam: Law on Prevention and Suppression of Human Trafficking 2011 <p>Article 119, Penal Code 1999 also contains a provision on “trafficking in women” and “trading in, fraudulently exchanging or appropriating children” (Article 120).</p>

²⁴ Article 3(a), Palermo Protocol.

²⁵ Article 3(c) and 3(d), Palermo Protocol.

Provisions on trafficking of children in **Lao PDR**, while not contained in a separate instrument, are fairly comprehensive, as set out in more detail below.

11.3.1 Children protected in trafficking legislation of ASEAN member States

According to CRC Articles 1 and 2, States must ensure that all children up to age 18 are legally protected from trafficking, and boys and girls must be given equal protection. In all ASEAN member States, trafficking laws apply to children (both boys and girls) up to age 18 either explicitly, where provisions apply specifically to children, or implicitly, where provisions on trafficking apply to adults and children alike.

11.3.2 Penalties for child trafficking

Under Guideline 4(3) of the Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002, States are required to enact effective and proportional criminal penalties for trafficking offences. Aggravated circumstances should apply to increase penalties for offences against children.

Table 49. Penalties for child trafficking offences in ASEAN member States

Brunei: Section 5, Trafficking and Smuggling of Persons Order 2004
Penalty: 4 – 30 years imprisonment, whipping and a fine of B\$1 million
Cambodia: Articles 12, 16, 17, 19, Law on Suppression of Human Trafficking and Sexual Exploitation 2008
Penalty: 15 – 20 years imprisonment
Indonesia: Articles 1 and 17, Law on the Eradication of the Criminal Act of Human Trafficking 2007
Penalty: 3 – 15 years imprisonment and a fine of 120 million to 600 million rupiah (increased by one third if the victim is a child)
Lao PDR: Article 134 (human trafficking), Penal Law 2005; Article 49 (trafficking in women and children), Law on the Development and Protection of Women 2004; and Article 90 (child trafficking), Law on the Protection of the Rights and Interests of Children 2006
Penalty: 15 – 20 years imprisonment and a fine of 10 million – 100 million Kip (human trafficking and trafficking in women and children); 5 – 15 years and a fine of 10 million – 100 million Kip (child trafficking)
Malaysia: Section 14, Anti-Trafficking in Persons Law 2007
Penalty: 3 – 20 years imprisonment and a fine
Myanmar: Section 24, Anti-Trafficking in Persons Law 2005
Penalty: 10 years – life imprisonment
Philippines: Section 6, Expanded Anti-Trafficking in Persons Act 2012
Penalty: Life imprisonment and a fine of not less than 2 million to not more than 5 million pesos
Singapore: Section 4, Prevention of Human Trafficking Act 2014
Penalty: in the case of a first offence, a fine not exceeding \$100,000 with a term of imprisonment not exceeding 10 years and shall be liable to caning not exceeding 6 strokes; in the case of a second offence a fine not exceeding \$150,000 with a term of imprisonment for a term not exceeding 15 years and shall be liable to caning not exceeding 9 strokes. The Court in determining the appropriate sentence may take into account aggravating factors that the trafficked victim was a child..
Penalty: Children and Young Persons Act and Women’s Charter: imprisonment for a term not exceeding five years and a fine not exceeding S\$10,000.
Penal code: imprisonment up to seven years and a fine (for buying or disposing a person as a slave, Section 370) and caning (for abduction, Section 363A).

Thailand: Section 52, Anti-Trafficking in Persons Act 2008
Penalty: If the victim is between age 15 – 18, 6 – 12 years imprisonment and a fine of 120,000 – 240,000 Bhat; if the victim is under age 15, 8 – 15 years imprisonment and a fine of 160,000 – 300,000 Bhat.
Viet Nam: Articles 119 and 120, Penal Code*
Penalty: Penalties of a fine between 5 million and 50 million Dong and imprisonment of between two and seven years or in the case of trafficking humans and penalties of a fine between 5 million and 50 million Dong or probation or residence ban for one to five years in the case of trading children.
Note: Where multiple provisions apply, the table includes the most directly applicable provision/s.
* The Law on the Prevention and Suppression of Human Trafficking 2011 defines specified ‘prohibited acts’ relating to trafficking but does not set out any penalties.

The maximum penalties for (child) trafficking offences generally have the appropriate level of severity, allowing courts to impose sanctions that are proportionate to the offence where the circumstances of the case warrant a severe penalty.

11.3.3 Criminalizing all acts involved in child trafficking

States must ensure that all acts connected to child trafficking set out in international law (recruitment, transportation, transfer, harbouring and receipt of children) are criminalized in domestic laws. ECPAT have provided guidance on the meaning of each act:

Recruitment	The search for and physical conscription of one or more children with the sole objective of trafficking for exploitation.
Transportation	The means by which children are moved from one place to another
Transfer	The process of moving children from one place to another. It does not necessarily require the use of transportation vehicles.
Harbouring	The process of keeping child victims of trafficking hidden (usually in the short term) by a person or persons until arrangements are made for their transfer or transportation by someone else.
Receipt	The act by which a person comes to be in possession of a trafficked child. ²⁶

The laws in all ASEAN member States are comprehensive and include all acts contributing to child trafficking as set out in international law.

²⁶ ECPAT. (2008). *Strengthening laws addressing child sexual exploitation: A practical guide*, p. 44.

Table 50. Criminalization of acts connected to child trafficking in ASEAN member States

Brunei: Section 5, Trafficking and Smuggling of Persons Order 2004
<ul style="list-style-type: none"> ● Recruitment ● Transportation ● Transfer ● Harbouring ● Receipt
Cambodia: Law on Suppression of Human Trafficking and Sexual Exploitation 2008
<ul style="list-style-type: none"> ● Recruitment: Article 12 ● Transportation: Article 17 ● Transfer: Article 10 (unlawful removal) ● Harbouring: Article 19 ● Receipt: Article 19
Indonesia Law on the Eradication of the Criminal Act of Human Trafficking 2007
<ul style="list-style-type: none"> ● Recruitment: Article 2 ● Transportation: Article 2 ● Transfer: Article 2 (trafficking in persons), Article 6 (transfer or receipt of child) ● Harbouring: Article 2 ● Receipt: Article 2 (trafficking in persons), Article 6 (transfer or receipt of child)
Lao PDR: Article 134, Penal Code 2005; Article 24, Law on the Development and Protection of Women 2004
<ul style="list-style-type: none"> ● Recruitment ● Transportation ● Transfer ● Harbouring ● Receipt
Malaysia: Sections 2 and 14, Anti-Trafficking in Persons Act 2007
<ul style="list-style-type: none"> ● Recruitment ● Transportation ● Transfer ● Harbouring ● Receipt
Myanmar: Sections 3(a) and 24, Anti-Trafficking in Persons Law 2005
<ul style="list-style-type: none"> ● Recruitment ● Transportation ● Transfer ● Harbouring ● Receipt
Philippines: Sections 3(a) and 4, Expanded Anti-Trafficking in Persons Act 2012
<ul style="list-style-type: none"> ● Recruitment ● Transportation ● Transfer ● Harbouring ● Receipt

<p>Singapore: Section 3, Prevention of Human Trafficking Act 2014</p> <ul style="list-style-type: none"> ● Recruitment ● Transportation ● Transfer: ● Harbouring: ● Receipt
<p>Thailand</p> <ul style="list-style-type: none"> ● Recruitment: The procuring, buying, selling and vending of children is encompassed in criminal law, so this likely covers ‘recruitment’: Section 6, Anti-Trafficking in Persons Act 2008. ● Transportation: Likely encompassed by ‘bringing from or sending to’: Section 6, Anti-Trafficking in Persons Act 2008 ● Transfer: Section 6, Anti-Trafficking in Persons Act 2008 ● Harbouring: Section 6, Anti-Trafficking in Persons Act 2008 ● Receipt: Section 6, Anti-Trafficking in Persons Act 2008
<p>Viet Nam Article 3(2), Law on Prevention and Suppression of Human Trafficking 2011</p> <ul style="list-style-type: none"> ● Recruitment ● Transportation ● Transfer ● Harbouring ● Receipt

11.3.4 The element of means (force or coercion)

Under international law, it is not necessary to prove that particular means were used (threat or use of force, coercion, abduction, fraud, deception, abuse of power, giving or receiving payments) in the course of trafficking a child (under age 18).²⁷ States must ensure that their legislation criminalizes acts, as set out in the previous section, regardless of the means used against a child.

Table 51. Compliance with international law, no requirement of means as an element of child trafficking in ASEAN member States

<ul style="list-style-type: none"> ● Brunei: Section 5, Trafficking and Smuggling of Persons Order 2004 ● Cambodia: Articles 10, 12, 17 and 19, Law on Suppression of Human Trafficking and Sexual Exploitation 2008, require the use force, threat, deception, abuse of power or enticement.
<p>Indonesia:</p> <ul style="list-style-type: none"> ● For trafficking in persons offence: Article 2, Law on the Eradication of the Criminal Act of Human Trafficking 2007 requires the use of threat or abuse of force, kidnapping, locking up, forging, deception, abuse of power or vulnerable position, debt bondage or to provide payment or benefit even with consent) ● For more limited offence of removal/receipt of child: Article 6, Law on the Eradication of the Criminal Act of Human Trafficking 2007 delivery of children either into Indonesia or out from Indonesia “by any means” that causes exploitation of the children.
<ul style="list-style-type: none"> ● Lao PDR: Article 134, Penal Law; Article 24, Law on Development and Protection of Women 2004 ● Malaysia: Section 14), Anti-Trafficking in Persons Act 2007

²⁷ Article 3(c) and (d), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

<ul style="list-style-type: none"> ● Myanmar: Section 3(a), Anti-Trafficking in Persons Law 2005 defines ‘trafficking in persons’ with the requirement that it involves “threat, use of force or other form of coercion; abduction; fraud; deception; abuse of power or of position taking advantage of the vulnerability of the person; giving or receiving of money or benefit to obtain the consent of the person having control over another person.”
<ul style="list-style-type: none"> ● Philippines: Section 3(a), Anti-Trafficking in Persons Act 2003
<ul style="list-style-type: none"> ● Singapore: Section 3(1) Prevention of Human Trafficking Act 2014
<ul style="list-style-type: none"> ● Thailand: Section 6(2), Anti-Trafficking in Persons Act 2008
<ul style="list-style-type: none"> ● Viet Nam: Article 3, Law on Prevention and Suppression of Human Trafficking 2011

As set out in table 51, laws in **Brunei, Lao PDR, Malaysia, the Philippines, Singapore, Thailand** and **Viet Nam** do not require proof that any particular means (such as force or coercion) were used in cases of child trafficking. This is commendable: the mere act of removing, transporting, transferring, harbouring or receiving a child with the intent to exploit them should be sufficient to constitute the offence of child trafficking. Force or coercion may at times be quite subtle where children are involved, and difficult to prove, making it all the more difficult to demonstrate that an act of child trafficking has occurred. However, proof of force or coercion is required by laws in **Cambodia, Indonesia and Myanmar**. In these States, particular means of gaining a child’s consent, such as through the use of force, threats, abduction and so on, must be proved in conjunction with the act of trafficking.

11.3.5 The element of exploitation (purpose)

In international law the act of child trafficking must be for the purpose of exploitation. This should, according to Article 3(a) of the Palermo Protocol, include “at a minimum, prostitution and other forms of sexual exploitation; forced labour or services; slavery or practices similar to slavery; servitude; or the removal of organs.” National laws must explicitly cover these types of exploitation. In addition, the most protective laws would cover a wider range of exploitation.

Table 48. Types of exploitation encompassed by trafficking laws of ASEAN member States

<p>Brunei: Section 2, Trafficking and Smuggling of Persons Order 2004</p> <p>“all forms of sexual exploitation (including sexual servitude and exploitation of another person’s prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.”</p>
<p>Cambodia: Article 10, Law on Suppression of Human Trafficking and Sexual Exploitation 2008</p> <p>“profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation”; “any form of exploitation’ shall include the exploitation of the prostitution of others, pornography, commercial sex act, forced labour or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labour or the removal of organs.”</p>
<p>Indonesia: Articles 1(7) and 1(8), Law on the Eradication of the Criminal Act of Human Trafficking 2007</p> <p>Article 1(7): “any acts with our without the consent of victim which covers but not limited to prostitution, forced labour or service, slavery or other practice similar to slavery, oppression, extortion, abuse of physical, sexual, reproduction organ, or unlawfully remove or transplant organ and/or body tissue or make use of the strength or skill of someone by other person to obtain profit either material as well as immaterial.”</p> <p>Article 1(8): “Sexual Exploitation shall be any form of the use of sexual organ or other body organ from the victim in order to obtain profit, including but not limited to any act of prostitution and adultery.”</p>

Lao PDR: Article 134, Penal Code 2005; Article 24, Law on Development and Protection of Women 2004
Article 134: “forced labour, prostitution, pornography, or anything that is against the fine traditions of the nation, or removing various body parts, or for any other unlawful purpose” (human trafficking).
Article 24: “for forced labour, prostitution, publishing pornography and what is in contradiction to the fine national culture, removal of various body parts, or for other unlawful purposes” (trafficking in women and children).
Malaysia: Section 2, Anti-Trafficking in Persons Act 2007
‘exploitation’ means all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs.
Myanmar: Section 3(a), Anti-Trafficking in Persons Act 2005
“exploitation includes receipt or agreement for receipt of money or benefit for the prostitution of one person by another, other forms of sexual exploitation, forced labour, slavery, servitude, debt-bondage or the removal and sale of organs from the body” (pornography and debt-bondage are further defined).
Philippines: Section 4, Anti-Trafficking in Persons Act 2003
Prostitution, pornography, sexual exploitation, forced labour, slavery, servitude, debt bondage, sale of organs
Singapore: Section 2
Exploitation means sexual exploitation, forced labour, slavery or any practice similar to slavery, servitude or the removal of an organ.
sexual exploitation in relation to an individual, means the involving of the individual in prostitution, sexual servitude or the provision of any other form of sexual service, including the commission of any obscene or indecent act by the individual or the use of the individual in any audio or visual recording or representation of such act.
Thailand: Section 4, Anti-Trafficking in Persons Act 2008
seeking benefits from the prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labour or service, coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person’s consent.
Viet Nam: Articles 2, 3(2) and 3(3), Law on Prevention and Suppression of Human Trafficking 2011
sexual exploitation, forced labour, the removal of organs, or for other inhuman purposes.”
sexual exploitation means the forcing a person to prostitution or to be the subject of a pornographic publication or show or to sexual slavery.”

The laws in all ASEAN member States explicitly encompass all of the types of exploitation required, as a minimum, in international law (prostitution and other sexual exploitation, forced labour, slavery, servitude and removal of organs). In **Cambodia, Indonesia, Lao PDR, Thailand** and **Viet Nam**, laws encompass additional kinds of exploitation, with the result that these laws are more protective than required by international law. Provisions in **Indonesia, Lao PDR** and **Viet Nam** are particularly broad, as they explicitly set out particular types of exploitation but also include ‘catch all’ phrases such as ‘covers but is not limited to’; ‘anything that is against the fine traditions of the nation’; ‘for other immoral purposes’. Such language broadens the range of exploitation prohibited in trafficking acts.

11.4 Extraterritorial application of trafficking provisions

The transnational nature of trafficking offences, in which elements of the offence may occur in origin, transit and/or destination countries, makes it highly important for States to ensure that criminal provisions relating to

child trafficking apply extraterritorially. Table 52 lists ASEAN member States in which trafficking laws apply to extend criminal responsibility to acts committed outside the State.

Table 52. Extraterritorial application of child trafficking laws in ASEAN member States

Brunei	● Trafficking and Smuggling of Persons Order 2004 Section 3 (applies to offences taking part, in whole or partially, outside Brunei if Brunei is the receiving, transit or origin country of the trafficking)
Cambodia	● Article 3, Law on Suppression of Human Trafficking and Sexual Exploitation 2008 (applies offences committed outside Cambodia by a Khmer citizen or involving a Khmer victim)
Indonesia	● No provision
Lao PDR	● Article 4 (offence of 'human trafficking'), Penal Law, applies to offences committed outside territory of Lao PDR, by Lao citizens and residents, and to non-national for offences committed in Lao PDR.
Malaysia	● Section 3, Anti-Trafficking in Persons Act 2007, applies to conduct occurring inside or outside Malaysia where Malaysia is the receiving country or the exploitation occurs in Malaysia or the trafficking start or involves a transit in Malaysia
Myanmar	● Section 2, Anti-Trafficking in Persons Law 2005, applies to offences committed by nationals and residents of Myanmar outside the territory of Myanmar
Philippines	● Section 26A, Anti-Trafficking in Persons Act 2003, applies to acts committed within or outside the Philippines where it is committed by a national or resident of the Philippines or where the victim is a national of the Philippines.
Singapore	● Section 3(2), Prevention of Human Trafficking Act 2014
Thailand	● No provision. However, a more limited offence contained in Section 383, Penal Code 2008, of procuring, seducing or taking away a person for an indecent act using deceitful means, threat, violence, unjust coercion or other means applies to offences committed outside Thailand by Thai nationals (Section 7, Penal Code 2008).
Viet Nam	● Not explicitly provided for in the Trafficking Law but the offence of trafficking in humans and specifically children is contained in Articles 119 and 120, Penal Code. Article 6, Penal Code, extends criminal liability to Vietnamese citizens and residents for offences committed under the Code outside the territory of Viet Nam.

In **Indonesia, Singapore and Thailand**, the specific laws on child trafficking do not have extraterritorial application (though some limited offences under each State's general penal laws do). This leaves children unprotected from trafficking offences that occur before they reach their destination country.

11.5 Recommendations for law reform: Child trafficking

<p>Recommendations</p> <ul style="list-style-type: none"> ● Ratify the Palermo Protocol (Brunei and Singapore). ● Consider removing from legislation the requirement that a particular means for gaining a child's consent be proved in child trafficking offences (Cambodia, Indonesia and Myanmar). ● Consider broadening the types of exploitation encompassed by child trafficking provisions (Brunei, Malaysia, Myanmar and the Philippines). ● Ensure that specific human/child trafficking laws have extraterritorial application (Indonesia and Thailand).

Table 53. Report card: Protection against child trafficking

	All children (up to age 18; boys and girls) covered by trafficking provisions	All acts (recruiting, transporting, transferring, harbouring, receiving) criminalized	Can an offence be committed regardless of the means used to gain the child's consent	Law covers trafficking for all types of exploitation	Trafficking provisions have extraterritorial application
Brunei	●	●	●	●	●
Cambodia	●	●	●	●	●
Indonesia	●	●	●	●	●
Lao PDR	●	●	●	●	●
Malaysia	●	●	●	●	●
Myanmar	●	●	●	●	●
Philippines	●	●	●	●	●
Singapore	●	●	●	●	●
Thailand	●	●	●	●	●
Viet Nam	●	●	●	●	●

Chapter 12. Child Abduction

12.1 Context: Understanding child abduction

Child abduction, sometimes referred to as kidnapping, is the unauthorized removal of a child from the custody of the person with whom the child lawfully lives. There are generally considered to be two types of abduction: stranger abduction and parental abduction. Stranger abduction can occur when a member of the public removes the child from their place of habitual residence. This type of abduction is linked with particular types of violence against children that are explored in other sections of this report. For instance, stranger abduction will normally be for the purpose of sexual abuse or exploitation of the child, trafficking, illegal adoption or the use of the child for illicit activities. The abduction may involve the use of violence, force, threats or coercion, or it may involve more subtle forms of control in order to remove the child from the care of their parents or guardian. It is increasingly reported that ‘grooming’, a series of preparatory activities that lead up to the sexual exploitation of children, is often carried out online by a stranger. The stranger befriends a child and gains his or her trust online before meeting in person with the purpose of abducting the child.¹

Parental abduction normally occurs where one parent removes the child unlawfully from the custody of the other parent. There is sometimes a misconception that children abducted by a parent, as opposed to a stranger, are not likely to be harmed or exposed to violence. However, parental abduction can expose the child to abuse. Depending on the length that the child is away, the particular circumstances of the abduction and the relationship with the responsible parent, it can have a negative impact on the child. Research has demonstrated that abduction often results in significant psychological harm to a child,² and has been associated with anxiety, eating problems, nightmares, mood swings, sleep disturbances, aggressive behaviour, resentment, guilt and fearfulness.³ These effects can be heightened when a child is removed outside of their country of habitual residence.

This chapter examines how child abduction is dealt with by ASEAN member States and focuses on the extent to which laws in those States criminalize child abduction.

12.2 International standards on child abduction

While States are required to criminalize particular forms of violence associated with child abduction, such as trafficking and child prostitution, it is also essential that States criminalize the act of abduction. Requiring States to ensure that there is a law enforcement response to the act of abduction can help prevent acts of violence or harm that follow from a child being abducted. In order to ensure that children are legally protected from both stranger and parental abduction, the law must criminalize not only abduction that occurs by force or coercion, but also abductions that involve the unlawful removal from the care of the parent/guardian with whom the child lawfully resides. The most protective laws also expressly criminalize acts of abduction outside the territory of the State (inter-country abductions).

12.3 Legislation in ASEAN member States: Child abduction

Table 54 sets out the criminalization of abduction in each ASEAN member State. The table includes all legislation related to abduction by force, abduction from lawful guardianship and inter-country abduction.

¹ Child Exploitation and Online Protection Centre. (2011). *Scoping Report on Missing and Abducted Children*, p. 8.

² Daignault, J. (2012) *Psychological effects of international child abduction*, *Boston Bar Association Newsletter, Family Law Section*, 3, p. 3.

³ United States Department of State. (2010) *The Human and Social Cost of International Parental Child Abduction*.

Table 54. Criminalization of abduction-related acts in ASEAN member States

Brunei
<ul style="list-style-type: none"> ● Abduction by force: Section 362, Penal Code ● Unlawful removal from care of parent/guardian: Section 361, Penal Code ● Abduction outside State territory: Section 360, Penal Code
Cambodia
<ul style="list-style-type: none"> ● Abduction by force: Article 8(1), Law on Suppression of Human Trafficking and Sexual Exploitation 2008 ● Unlawful removal from care of parent/guardian: Articles 8(2) and 9, Law on Suppression of Human Trafficking and Sexual Exploitation 2008; Article 326, Penal Code (Taking away a minor). ● Abduction outside State territory: Article 11, Law on Suppression of Human Trafficking and Sexual Exploitation 2008
Indonesia
<ul style="list-style-type: none"> ● Abduction by force: Article 332, Penal Code, applies only to women, and the abductor can subsequently escape punishment by marrying the abducted person. ● Unlawful removal from care of parent/guardian: Article 330, Penal Code ● Abduction outside State territory
Lao PDR
<ul style="list-style-type: none"> ● Abduction by force: Under Article 100, Penal Law, abduction must be for the purpose of “ransom, sale or other purposes.” ● Unlawful removal from care of parent/guardian: not explicitly: Article 100, Penal Law, includes abduction for the purpose of “ransom, sale or other purposes.” ● Abduction outside State territory
Malaysia
<ul style="list-style-type: none"> ● Abduction by force: Section 362, Penal Code ● Unlawful removal from care of parent/guardian: Section 361, Penal Code ● Abduction outside State territory: Section 360, Penal Code
Myanmar
<ul style="list-style-type: none"> ● Abduction by force: Section 362, Penal Code ● Unlawful removal from care of parent/guardian: Section 361, Penal Code ● Abduction outside State territory: Section 360, Penal Code
Philippines
<ul style="list-style-type: none"> ● Abduction by force: Article 267, Penal Code ● Unlawful removal from care of parent/guardian: Articles 270 and 271, Penal Code ● Abduction outside State territory
Singapore
<ul style="list-style-type: none"> ● Abduction by force: Section 362, Penal Code ● Unlawful removal from care of parent/guardian: Section 361, Penal Code ● Abduction outside State territory: Section 360, Penal Code

Thailand
<ul style="list-style-type: none"> ● Abduction by force: Section 312, Penal Code ● Unlawful removal from care of parent/guardian: Section 317, Penal Code ● Abduction outside State territory: Section 320, Penal Code, includes removal by fraudulent or deceitful means, threats, violence, unjust influence or any other means of compulsion.
Viet Nam
<ul style="list-style-type: none"> ● Abduction by force: Article 134, Penal Code, includes abduction for the purpose of appropriating property. ● Unlawful removal from care of parent/guardian: not explicitly: Article 134, Penal Code, includes abduction for the purpose of appropriating property. ● Abduction outside State territory

12.3.1 Abduction by force

As set out in table 51, all ASEAN member States have criminalized acts of abduction or kidnapping where there is a means used to abduct a child (for instance, force, coercion or deceit). However, in **Indonesia, Lao PDR** and **Viet Nam**, the legal protection afforded to children is very limited. In the Indonesian Penal Code, the law criminalizing abduction by force only applies to women, leaving boys unprotected. Also, the law provides an exception where the abductor subsequently enters into a lawful marriage with the abducted person, which is inconsistent with international standards.⁴ The laws in Lao PDR and Viet Nam pertain to acts of abduction that are for the purpose of appropriating property (for instance, a ransom), which limits the legal protection afforded to children from acts of abduction that occur for other purposes. However, it should be noted that the Lao provision also includes abduction “for ransom, sale or other purposes.”

12.3.2 Abduction from lawful guardianship

Laws in **Viet Nam** and **Lao PDR** do not explicitly criminalize unlawful removal of a child from the lawful care of a parent or guardian, though this type of abduction is likely to be encompassed by general provisions on kidnapping. Also, provisions criminalizing the abduction of a child from their lawful guardian in **Brunei, Malaysia, Myanmar** and **Singapore** only apply to boys up to age 14, and to girls up to age 16. Offering different legal protection to boys and girls is inconsistent with CRC Article 2, as it amounts to discrimination based on sex.

12.3.3 Inter-country abduction

Laws in some ASEAN member States, including **Indonesia, Lao PDR, the Philippines** and **Viet Nam**, do not expressly apply to abductions that involve the removal of a child outside the territory of the State (though particular forms of abduction will be criminalized by laws on trafficking, as set out in section 4.3).⁵ It is recommended that these States consider expressly criminalizing the act of abduction where it involves moving a child outside the territory of the State.

Where children are removed outside the territory of the State as a result of a parental abduction, it is important that legal measures are in place to allow the child to be returned to the care of the parent or guardian legally responsible for his or her care. The Hague Convention on the Civil Aspects of International Child Abduction (the ‘Hague Convention’) is an international treaty that establishes a civil mechanism to ensure the return of children wrongfully removed outside their country of habitual residence. According to the Hague Convention, removal of a child is to be considered wrongful where it is carried out in breach of rights of custody attributed

⁴ See chapter 4 and particularly 4.5.

⁵ For instance, see Article 13(1), Law on Adoption (Viet Nam) which prohibits using adoption as a means of abduction

to a person, an institution or any other body either jointly or alone, under the law of the State in which a child was habitually resident immediately before the removal.⁶ Under the Convention, an application can be made for the return of a child who has been wrongfully removed from a State.

Out of the 10 ASEAN member States, only **Cambodia**, the **Philippines**, **Singapore** and **Viet Nam** are parties to the Hague Convention. It is recommended that all other ASEAN member States become parties to the Convention, which would enhance the legal mechanisms for the return of children unlawfully removed from their country of residence.

12.4 Recommendations for law reform: Child abduction

Recommendations

- Ensure that law explicitly criminalizes unlawful removal of a child outside the territory of the State (**Indonesia, Lao PDR, Thailand, the Philippines, Viet Nam**).
- Consider ratifying the Hague Convention on the Civil Aspects of International Child Abduction (**Brunei, Indonesia, Lao PDR, Malaysia, Myanmar and Thailand**).

Table 55. Report card: Criminalization of child abduction

	Abduction by force criminalized	Unlawful removal from care of parent/guardian criminalized	Inter-country abduction criminalized
Brunei	●	●	●
Cambodia	●	●	●
Indonesia	●	●	●
Lao PDR	●	●	●
Malaysia	●	●	●
Myanmar	●	●	●
Philippines	●	●	●
Singapore	●	●	●
Thailand	●	●	●
Viet Nam	●	●	●

⁶Article 3, The Hague Convention on the Civil Aspects of International Child Abduction (1980).

Part VI: Violence against Children in Conflict with the Law

Chapter 13. Violence against Children in Conflict with the Law

Children “alleged as, accused of, or recognized as having infringed the penal law”¹ (referred to as children in conflict with the law), are highly vulnerable to suffering violence at each stage of the justice process, whether administrative, criminal or informal. Many of these children also face difficult circumstances in their everyday lives. They may live or work on the street, be involved in gangs, come from dysfunctional families, suffer from drug or alcohol addiction or exposure to other environmental factors that increase the risk of their suffering violence (for example, they may live in a high crime neighbourhood).

International standards and norms require States to prevent and respond to violence against children in conflict with the law. Such prevention and response is provided for in the extensive international framework for juvenile justice, including Articles 37 and 40 of the Convention on the Rights of the Child (CRC). In January 2013, the Special Representative to the Secretary-General on Violence against Children articulated this clearly in her Annual Report, stating:

“A juvenile justice system framed by the rights of the child is critical to safeguard children’s access to justice and enable their participation in administrative and judicial proceedings that children can understand and effectively use; shape a non-intimidating justice environment; and address incidents of violence, including when children are deprived of liberty.

The justice system is an area where children’s rights can be at risk and where violence is often invisible and concealed, as well as rarely investigated and punished. Incidents of violence occur while in the custody of police and security forces, in pre-trial detention, after conviction and as a form of sentencing. Violence can be perpetrated by staff, adult detainees and other children, or be the result of self-harm.”²

The Special Representative went on to reiterate the recommendations arising out of her 2012 report, issued jointly with UNODC, which encouraged, among other things:

“a legal prohibition of all forms of violence within the juvenile justice system, including as a form of punishment, treatment or sentencing and establishing by law safe and child-sensitive counselling, reporting and complaints mechanisms to prevent and respond to incidents of violence; raising the age of criminal responsibility in line with international human rights standards; recognizing deprivation of liberty as a measure of last resort and for the shortest appropriate time and putting in place an effective system of restorative justice and non-custodial options for children.”³

The report also highlighted the importance of establishing systems of accountability, including oversight and monitoring and the recruitment and training of specialized personnel as a means to reduce violence against

¹ Article 40(1), CRC.

² United Nations General Assembly, Human Rights Council, *Annual Report of the Special Representative to the Secretary-General on Violence Against Children*, A/HRC/22/55, 4 January 2013, paras. 34–35.

³ United Nations General Assembly, Human Rights Council, *Annual Report of the Special Representative to the Secretary-General on Violence Against Children*, para. 36(b).

children in conflict with the law.⁴ Both reports confirmed the importance and urgency of ensuring that legislative provisions are in place that both prevent and respond to violence against children in conflict with the law.

This chapter analyses national laws relating to violence against children in conflict with the law, and focuses on violence by law enforcement bodies, violent sentences and the safeguards against violence in institutions as well as the use of discipline and restraint during detention. This section looks first at whether the State has a juvenile justice legislative framework and whether it sets a minimum age of criminal responsibility. It then examines legislation in relation to the four key points at which children are most at risk of violence during the criminal justice process: during arrest, during interrogation, on conviction and when the child is held in detention.

This section does not aim to provide a comprehensive juvenile justice assessment of each ASEAN member State. This means, for example, that when discussing arrest, the section does not consider such issues as legal or other appropriate representation of children or parental notification of arrest. Similarly, in the context of sentencing, the section does not consider key principles such as proportionality of the sentence or consideration of social enquiry reports. These issues are undoubtedly important and contribute to the prevention of violence against children in the sense that an effective, fully functioning juvenile justice system should prevent and eliminate the use of violence against children, however, this chapter focuses specifically on violence.

13.1 Context: Understanding violence against children in conflict with the law

In order to understand how States can best prevent and respond to violence against children in conflict with the law, it is important to understand the context in which children who are “alleged as, accused of, or recognized as having infringed the penal law”⁵ are exposed to violence, and the context in which systems and institutions may support, explicitly or implicitly, such violence.

13.1.1 Violence by law enforcement officials during arrest or apprehension

Being subject to arrest can produce tremendous tension and anxiety in children. Law enforcement officials who are responsible for the initial interactions and, potentially, the arrest of children in conflict with the law, do so within the context of a power imbalance, exercising a great deal of authority over the children in question. There are numerous ways in which law enforcement officials may perpetrate violence against a child they are arresting, and numerous opportunities for them to do so. Violence during the arrest or apprehension process, may include physical violence (hitting, slapping, kicking), emotional violence (threats and slurs) and sexual violence (harassment, threats or assault). It is essential that legislation guides law enforcement interactions with children, prohibits violence and establishes accountability for unlawful acts.

13.1.2 Violence by law enforcement officials during interrogation/questioning

After a child is arrested, he or she will be questioned. During this interrogation, the child is, again, vulnerable to suffering all forms of violence. States can seek to prevent such violence through clear legislative provisions prohibiting torture, or other cruel, inhuman or degrading treatment, but also by enshrining safeguards to reduce a child’s vulnerability, prohibiting interrogation unless the child is accompanied by a parent, guardian or other appropriate adult and/or is represented by a lawyer. A lack of such protections can leave the child at risk of violent behaviour by law enforcement, including physical and emotional abuse, as well as sexual violence, for example, sexual harassment, solicitation of or forced sexual acts.

⁴ United Nations General Assembly, *Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system*, A/HRC/21/25, 27 June 2012, section VI.

⁵ Article 40(1), CRC.

13.1.3 Violence upon conviction: violent sentences

When a child is convicted of an offence, it is imperative that the sentence applied by the court or other administrative body do not include prohibited sentences, such as the death penalty or life imprisonment, or sentences involving direct physical violence, such as physical chastisement such as whipping and caning. To help ensure that children are protected, violent options should be prohibited and other options developed and made available instead.

13.1.4 Violence in institutions: safeguards against violence

Children who are deprived of their liberty through detention in an institution are vulnerable to violence from staff, other detainees and visitors to the institution. Safeguards are therefore especially important for children in detention because of the nature of institutions. A lack of privacy and, importantly, a lack of opportunity to avoid or escape harm, leads to increased risk of all forms of violence and abuse. Moreover, detainees and staff in positions of authority may leverage their authority to perpetrate abuse.

13.1.5 Violence in institutions: violent discipline and restraint

In addition to the risk of non-sanctioned violence in institutions, in some instances, children could be at risk of 'sanctioned' violence, in the form of violent discipline and restraint. Violent restraint and disciplinary methods can include corporal punishment, the use of pain techniques, isolation, restriction of diets or hard/forced labour, all of which are considered inappropriate under international standards.

13.2 Nature and extent of violence against children in conflict with the law

The United Nations Secretary-General's 2006 *Study on Violence against Children* highlighted several key issues relating to children in conflict with the law, both globally and in ASEAN member States. Children are at risk of violence while in police custody and detention. For example, it was reported in 2005 that 30 per cent of detained children in **Lao PDR** experienced physical or mental punishment, including beatings, being forced to crawl, sitting in the sun, and having meals withheld. The law in the **Philippines** requires that children be transferred from police custody within 8 hours, but research in 2003 indicated that children were detained for up to a month. In **Malaysia**, children may face sentences such as the death penalty, life imprisonment, or corporal punishment. The Study noted that girls in the justice system are at risk of violence including sexual harassment and assault or rape by officials or by other detainees.⁶ Violence of this form is not, of course, limited to girls and all genders may face gender-based violence.

More recent reports from ASEAN member States indicate that many of these problems persist. According to the most recent **Indonesian** State Party Report to the CRC Committee, "procedural errors still occur during arrest, detention, trial and imprisonment leading to long periods of detention."⁷ The **Cambodian** State Party Report acknowledged the challenge of implementing children's rights and ensuring sufficient resources in the system to protect children from violence, noting that children are imprisoned with adults outside Phnom Penh, and that even in Phnom Penh girls are imprisoned with women.⁸

According to international standards, the primary purpose of any intervention relating to a child in conflict with the law must be the rehabilitation and reintegration of the child, rather than punishment.⁹ Violence against children can be a considerable barrier to rehabilitation and reintegration, harming the child's sense of dignity and worth. It may also erode the child's respect for the human rights and fundamental freedoms of others. This could lead to greater challenges in ensuring successful outcomes for a child once he or she leaves the justice system.

⁶ Pinheiro, P. (2006), pp.196–198.

⁷ CRC Committee, *State Report, Indonesia*, 2010, para 168.

⁸ CRC Committee, *State Report, Cambodia*, 2009, para 216.

⁹ CRC Committee, *General Comment No. 10, Children's rights in juvenile justice*, 2007, para. 10.

Additional concerns relating to violence against children in conflict with the law include the possibility of false confession from children as a result of violence during arrest, interrogation or court procedures, which may lead to wrongfully convictions. Further, all forms of violence against children in detention are likely to impact a child's physical and mental health. Detention systems, which are usually poorly funded and lack resources and facilities, generally fail to provide adequate medical and psychosocial support for vulnerable children who are left untreated and may suffer permanent damage as a result.

13.3 International standards on violence against children in conflict with the law

Under CRC Article 40(3), States are required to “promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law.” These laws, procedures, authorities and institutions are often referred to as the separate system for juvenile justice that States should develop for the administration of cases involving children in conflict with the law. In General Comment 10, relating to children's rights in juvenile justice, the CRC Committee emphasized this point:

“Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children.”¹⁰

The CRC Committee has also recommended that States should enact a juvenile justice law and repeal any existing laws which permit children to be prosecuted for status offences: offences which can only be committed by children, such as truancy from school.

As in all matters affecting children, the administration of justice for children must be grounded in the four guiding principles of CRC. Each of these rights is extremely important in the context of preventing and addressing violence against children in conflict with the law:

- *Non-discrimination (CRC Article 2)*

If a child is subjected to discrimination, it is possible that this discrimination could take a violent form, such as emotional abuse or gender-based violence.

- *The best interests of the child (CRC Article 3.1)*

It is essential that children are treated in a manner that protects their best interests, and non-violence, particularly in the juvenile justice system.

- *The right to life, survival and development (CRC Article 6)*

Where violence against children occurs, it can have a devastating impact upon the right to life, survival and development. Violence of any form can have an extremely negative impact on a child's development, while the applicability of the death penalty to children in conflict with the law clearly violates the right to life.

- *The right to be heard (CRC Article 12)*

Effective implementation of a child's right to be heard is an essential component of the prevention of and response to violence against children in conflict with the law. In particular, a child's ability to access complaint mechanisms helps to ensure that perpetrators of violence will be held accountable. However, in order for such mechanisms to be effective, participation must be meaningful and the child must be supported to present his or her views.

¹⁰ CRC Committee, *General Comment No. 10: Children's rights in juvenile justice 2007*, para 10.

13.4 Violence against children in conflict with the law: Legislation in ASEAN member States

13.4.1 A separate system of laws

While all ASEAN member States have enacted specific legislation relating to children, most ASEAN member States do not have separate legal instrument specifically covering children in conflict with the law. Instead, provisions governing the treatment of children are found within broader laws such as the Penal Code or Criminal Procedural Codes. Usually, such provisions simply modify the way a child might be treated within the wider adult justice system. Table 56 provides a summary of the legislative framework for children in conflict with the law in ASEAN member States, highlighting those States that have developed stand-alone juvenile justice legislation. The table provides detailed information relating to provisions for juvenile justice where there is no juvenile justice law. The table includes only the legislative framework itself, not its contents, which are examined further throughout this report.

Table 56. Legislative frameworks for children in conflict with the law

<ul style="list-style-type: none"> ● Brunei ● Juvenile justice law ● Legal provisions on juvenile justice: Criminal Procedure Code includes a section on children in institutions (Youthful Offenders (Places of Detention) Rules, 2001). Other provisions in the Criminal Procedure Code refer to reduced sentences for ‘youthful offenders’ (e.g. Section 262) but do not set out guidance on handling juvenile cases. The Children and Young Person’s Order 2006 contains a section on procedure in Juvenile Courts (Part IX) and several sections on institutions for children (Parts X, XI, XII, XIII and XIV) but there is no guidance on handling of children’s cases prior to Court. ● Separate legal system for children: There is a separate set of rules for children’s institutions, as set out in the Youthful Offenders (Places of Detention Rules) 2001 and the Children and Young Person’s Order (2006), which also covers some provisions relating to administration of cases involving children in Court. However, there is no separate guidance on police or prosecutorial processes.
<ul style="list-style-type: none"> ● Cambodia ● Juvenile justice law ● Legal provisions on juvenile justice: Articles 96, 100 and 213–214, Criminal Procedure Code, relate to police handling of cases involving children, while Article 224 refers to the non-applicability of certain sentences to minors. Chapter 3 of the Penal Code focuses on the criminal responsibilities of minors and distinguishes measures that may/may not be applied to minors. ● Separate legal system for children: Specific provisions relating to handling of cases involving children by police and upon sentencing in the Criminal Procedure Code and Penal Code. However, these provisions are not comprehensive and do not cover all stages in the justice system.
<ul style="list-style-type: none"> ● Indonesia ● Juvenile justice law: Law on Child Criminal Justice System 2012 to come into force in 2014 Legal provisions on juvenile justice: N/A Article 1(1) Law on Child Criminal Justice System 2012, governs the entire juvenile justice system. ● Separate legal system for children: Law on Child Criminal Justice System 2012

<ul style="list-style-type: none"> ● Lao PDR ● Juvenile justice law: Law on Juvenile Criminal Procedure 2014 ● Legal provisions on juvenile justice: Part V of the Law on the Protection of Rights and Interests of Children 2007 covers issues relating to children below and above the minimum age of criminal responsibility. Decree on the Implementation of the Law on the Protection of the Rights and Interests of Children Part V contains provisions relating to the definition of a juvenile offender, assistance to juvenile suspects and defendants, diversion, village mediation, the investigation and questioning of children and re-education centres. Article 44, Penal Law 2005, limits sentences to be used against children, while Article 53 sets out measures for children under age 15. Article 21, Criminal Procedure Law 2012, requires the People’s Court to conduct criminal cases involving children in closed sessions (apart from the announcement of the verdict, which must be declared openly); Article 71 regarding legal representation of children; Article 109 (regarding the separation of child and adult cases); Article 114 on serving summons relating to children; Article 117 on taking testimonies of children; Article 155 concerning pre-trial diversion for certain categories of crimes; Article 172 concerning child participation in court proceedings; Article 180 concerning legal representation of children in court. ● Separate legal system for children: Law on Juvenile Criminal Procedure 2013, read in conjunction with Part V of the Law on the Protection of Rights and Interests of Children 2007 and the related Decree, Article 44 of the Penal Law 2005 and relevant provisions of the Law on Criminal Procedure 2012.
<ul style="list-style-type: none"> ● Malaysia ● Juvenile justice law: ● Legal provisions on juvenile justice: Provisions in the Child Act 2001 cover children ‘beyond control’ (Part VII) and different options for the detention of children in institutions (Part IX Chapter 2). Part X governs some procedures for children accused of offences. The Criminal Procedure Code contains provisions limiting punishments of children (Articles 288 and 293). ● Separate legal system for children: Though the Child Act 2001 contains information on several procedures relating to children in conflict with the law (and separate institutions for children in conflict with the law), this is not comprehensive, omitting, for example, information about questioning and prosecution.
<ul style="list-style-type: none"> ● Myanmar ● Juvenile justice law: ● Legal provisions on juvenile justice: Child Act 1993 Chapters VI, IX, X, XII, XV and XVIII contain provisions relating to children in conflict with the law, including the minimum age of criminal responsibility, court procedures for children in conflict with the law, probation and sentencing. Articles 82–84, Penal Code, set out the minimum age of criminal responsibility. ● Separate legal system for children: Relevant sections of the Child Act 1993 work together to form part of a juvenile justice system but elements are missing, specifically covering interrogation and more detailed information relating to the prosecution of cases
<ul style="list-style-type: none"> ● Philippines ● Juvenile justice law: Juvenile Justice and Welfare Act 2006 Legal provisions on juvenile justice: N/A Juvenile Justice and Welfare Act 2006 covers all stages of juvenile justice administration ● Separate legal system for children: Set out in the Juvenile Justice and Welfare Act 2006

<ul style="list-style-type: none"> ● Singapore ● Juvenile justice law: ● Legal provisions on juvenile justice: Part III of the Children and Young Persons Act 2011 covers procedures in the Youth Court. Penal Code Sections 82–83 cover the minimum age of criminal responsibility. Criminal Procedure Code Section 232 requires that juveniles are dealt with under the Children and Young Persons Act 2011. ● Separate legal system for children: Children and Young Persons Act 2011 is the primary piece of legislation covering juvenile justice. However, this legislation is not complete and does not cover all aspects of the juvenile justice system, including for example, arrest and interrogation. However, juvenile cases are heard separately from non-juvenile cases by the Youth Court. The Family Justice Rules Committee can make rules regulating and prescribing the procedure and practice of the Youth Court.
<ul style="list-style-type: none"> ● Thailand ● Juvenile justice law: Act on Juvenile and Family Court and Procedure B.E. 2553 (2010) Legal provisions on juvenile justice: N/A Act on Juvenile and Family Court and Procedure B.E. 2553 (2010) ● Separate legal system for children: Provided within the Act on Juvenile and Family Court and Procedure B.E. 2553 (2010)
<ul style="list-style-type: none"> ● Viet Nam ● Juvenile justice law: ● Legal provisions on juvenile justice: Some provisions are contained within Article 58, Law on the Care, Protection and Education of Children, but broader reaching provisions are also included in the Penal and Penal Procedural Codes ● Separate legal system for children: Elements of a juvenile justice system are present, including special institutions for children. However, there is no comprehensive juvenile justice system.

Table 56 shows that while most States have developed child specific legislation that includes provisions relating to children in conflict with the law, few have separate juvenile justice laws. **Indonesia**, **Lao PDR**, the **Philippines** and **Thailand** have developed juvenile justice legislation that can be considered to have established a separate system for juvenile justice. In most ASEAN member States, the legal framework for juvenile justice continues to be contained within the general legal framework for criminal justice. This appears to have the effect of limiting the scope of the juvenile justice system in these States, and only partially creating a separate system.

13.4.2 Guiding principles

As suggested earlier, one way in which States may try to prevent violence is through the development of clear principles relating to the treatment of children in conflict with the law. This may include the underpinning principles of CRC (non-discrimination; the best interests of the child; the right to life, survival and development; and the right to be heard), and could also include a provision that children must be treated in a manner that protects their welfare and dignity (table 57).

Brunei, **Malaysia** and **Singapore**, which ratified CRC with reservations and declarations, may interpret their reservation as limiting the application of these provisions in their jurisdictions. Several other ASEAN member States, however, include the guiding principles related to children in conflict with the law within their legislation. Such provisions are most commonly located within child-specific legislation or within child-specific sections of general laws. For example, in **Indonesia**, Articles 2 and 3 of the Law on the Child Criminal Justice System 2012 set out the underpinning principles of CRC and applies them to the child justice system. No such provision exists in general **Indonesian** criminal justice legislation.

Table 57. Guiding principles related to children in conflict with the law in ASEAN member States

<ul style="list-style-type: none"> ● Brunei: Section 2(4), Children and Young Person's Order 2006 <p>"When any question arises with respect to the welfare of any child or young person in any particular circumstances, the best interests of the child shall always be the paramount consideration."</p>
<ul style="list-style-type: none"> ● Cambodia: Not contained within the laws relating to juvenile criminal proceedings
<ul style="list-style-type: none"> ● Indonesia: Law on Child Criminal Justice System 2012 <p>The administration of juvenile justice shall be predicated upon the following Principles:</p> <p>Article 2: "... c. non-discrimination; d. the best interests of the child; e. respect for the child's opinion; f. survival and development; h. proportional. i. deprivation of freedom and punishment as a last resort."</p> <p>Article 18: "In handling child cases ... the investigator, prosecutor, judge and advocates or other legal advisers shall take into account the best interests of the child and as well as maintain a familial atmosphere."</p>
<ul style="list-style-type: none"> ● Lao PDR <p>Law on Juvenile Criminal Procedure 2014</p> <p>Article 5: "The State and society consider the necessity in resolving juvenile cases to protect the rights and best interests of children."</p> <p>Article 84(3): "The trial of juvenile cases in the courtroom shall proceed as the following: ... Proceed the hearing in front of related persons by considering the best interest of a child as the primary [consideration] and follow the special rules on the trial."</p> <p>Article 4: "The best interests of the child shall be the deciding factor in making decisions, in particular about issues relating to child care, appointment of guardians, adoption, education, medical treatment and the conduct of criminal proceedings against [the child]."</p> <p>Article 6, Law on the Protection Rights and Interests of Children 2007; Article 13, Law on Criminal Procedure 2012: Provisions on non-discrimination</p> <p>RIGHT TO BE HEARD</p> <p>Law on the Protection Rights and Interests of Children 2007</p> <p>Article 7: "State, society and family shall create conditions for children to participate in various activities and to express their views in all matters affecting them. Those views shall be given due and balanced consideration based on the age and discernment of the child."</p> <p>Article 34: "All children have the right to study and express their opinions in decision-making, especially on issues relating to their futures and fates. Individuals and concerned organisations shall facilitate them in such expressions of opinion, and shall consider such opinions, based on the balancing of the age and the discernment of the child."</p> <p>Law on Juvenile Criminal Procedure</p> <p>Article 11(7): "Fundamental principles on juvenile proceeding ... participation of children ..."</p> <p>Article 18: "In all stages of the juvenile proceeding shall be participated by children ..."</p> <p>Article 83(3): "In considering the juvenile case, the court shall follow the following rules... Allow the child offender to participate in the court proceeding to give opinion which shall be considered based on the balance of the ages and the ability of the children in identifying right-wrong things."</p> <p>RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT</p>

Article 3(1), Law on the Protection Rights and Interests of Children 2007: “Every child shall have the following basic rights.....safe life and suitable physical and moral development.”

Article 8, Law on Juvenile Criminal Procedure: “... participants in the juvenile proceedings shall receive the protection from threats to the life, health, dignity and reputation, personal and family properties as described by the laws.”

Article 7, Law on Criminal Procedure 2012: “During criminal proceedings, organisations and participants shall receive protection according to legal regulations from [acts of] revenge and threats to their life, health, freedom, honour, joint assets, personal assets, or family ... During criminal proceedings, the life, health, honor, and assets of members of the public shall be protected.”

PROTECTION OF CHILD’S WELFARE AND DIGNITY

Article 7(1), Law on Juvenile Criminal Procedure: “Protection of the rights and interests of children shall conduct in the following: ... Respecting dignity and value of children.”

● **Malaysia:** Not contained in the laws relating to juvenile criminal proceedings

● **Myanmar:** Section 16, Child Law 1993

“not [to] be subjected to arbitrary infringement of his honour, personal freedom and security”

● **Philippines: Section 2, Juvenile Justice and Welfare Act 2006**

Incorporates guiding principles of CRC

● **Singapore: Section 3A, Children and Young Persons Act 2011**

‘In all matters relating to the administration or application of this Act, the welfare and best interests of the child or young person shall be the first and paramount consideration’

● **Thailand**

Section 22, Child Protection Act 2003: ‘The child treatment in any case shall be made with a view to maximize benefit of a child without unfairness and discrimination’

The **Act on Juvenile and Family Court and Procedure B.E. 2553 (2010)** specifies guiding principles that apply specifically to certain stages or aspects of legal proceedings.

Section 31: “During a trial, for the best interest of a Child or a Juvenile, the court may request that medical or psychological experts give advice on or provide social administration services or Safety Protection, or request such other experts to give advice and opinion on physical and mental conditions including the well-being of a Child, a Juvenile and members of family, parties or any related persons.

Section 41(6): “While a Child or a Juvenile is in the custody of the Juvenile Observation Centre, the Director of Juvenile Observation Centre shall have the following powers and duties: ... To grant permission to a Child or Juvenile who is convicted by a final judgement or a court’s order to attend day school outside the Juvenile Observation Centre in accordance with regulations imposed by the Director-General, the report of which to be submitted to the court without delay. If the court considers that such permission will not be in line with the best interest of the Child or Juvenile, then the court may issue an order as it may deem appropriate.”

Section 84: “The alleged or accused Child or Juvenile who is in custody of any person or institution shall receive both physical and psychiatric Rehabilitation and the promotion of opportunities for social reintegration and shall be treated with humanity and respect for the inherent dignity of the human person. In case where there is exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, or any act that is not conducive to the physical or psychiatric Rehabilitation or to the social reintegration of the Child or Juvenile, or that is in breach of the best interest of the Child or Juvenile, the court shall issue an order to refrain or revoke such act and determine damages or mitigation measures, or to require a remedy for the damage that is caused as the court may consider appropriate.”

● **Viet Nam**

Article 69(1), Penal Code: “educate and redress their wrongs” and “develop healthily and become citizens useful to society.”

Article 36(3), Law on the Care, Protection and Education of Children 2004: “educated... to redress their wrongdoings.”

Although child-specific legislation in certain other States, including **Brunei** and **Singapore**, contains articles relating to the child’s welfare, best interests or dignity, it is only in the **Philippines** and **Lao PDR** that these principles are applied specifically to children in conflict with the law. In the other States, the provisions are general statements about the treatment of children or, as is the case with **Thailand**, only apply specifically to certain stages of legal proceedings. **Viet Nam** takes a notably different approach, focusing on the aims of juvenile justice in relation to the child’s reintegration into society, but with a greater focus on the benefit and needs of society, rather than of the child. The **Vietnamese** Penal Code states “the handling of juvenile offenders aims mainly to educate and help them redress their wrongs, develop healthily and become citizens useful to society,”¹¹ while the Law on the Care, Protection and Education of Children states “juvenile offenders are educated and assisted by their families, the schools and society to redress their wrong-doings.”¹² Although these provisions appear to encourage the rehabilitation of children, they can be regarded negatively. In particular, terms such as ‘educate’ and ‘redress’ could be used justify a punitive approach.

Recommendations

- States should consider developing a separate juvenile justice law, preferably as a stand-alone law, or as a detailed chapter within the Penal Code or Penal Procedure Code, accompanied by comprehensive practice guidance (**Brunei, Cambodia, Malaysia, Myanmar, Singapore and Viet Nam**).
- Consideration should be given to including a specific amendment to enshrine the underpinning principles of CRC within the existing legislative framework relating to children in conflict with the law (particularly **Cambodia** and **Malaysia** as well as **Brunei, Myanmar, Singapore, Thailand and Viet Nam**).
- Withdrawal of reservations to CRC, particularly to Articles 2 and 12 (**Brunei, Malaysia and Singapore**).

13.4.3 Minimum age of criminal responsibility

According to CRC Article 40(3)(a), States must establish a minimum age below which a child “shall be presumed not to have the capacity to infringe the penal law.” Although there is no age specified in the Convention, the CRC Committee has indicated that a minimum age of criminal responsibility (MACR) below 12 years would not be considered acceptable. The Committee has also expressed concerns relating to exceptions to the minimum age of criminal responsibility,¹³ such as the principle of ‘discernment’ whereby it is possible to overrule the minimum age of criminal responsibility if justice system officials believe the child has the requisite maturity and understanding.

In addition, the Committee has noted its dissatisfaction with ‘split’ ages of criminal responsibility, which involve levels of capacity: one for more serious offences and another, often higher, for less serious offences. These practices are considered inappropriate because they increase the risk of discrimination or improper use of discretion, lead to younger children being brought into the juvenile justice system, cause confusion in practice and can disguise a true minimum age of criminal responsibility.

¹¹ Article 69(1), Penal Code (Viet Nam) .

¹² Article 36(3), Law on the Care, Protection and Education of Children 2004 (Viet Nam).

¹³ Committee: on the Rights of the Child, *General Comment No. 10*, 2007, paras. 32 and 34.

The minimum age of criminal responsibility is relevant as it prevents young children from entering the criminal justice system and reduces their exposure to potential violence experienced by children within the system (table 58).

Table 58. Minimum age of criminal responsibility in ASEAN member States

<p>Brunei: Sections 82–83, Penal Code</p> <ul style="list-style-type: none"> ● Minimum age: 7 ● Upper limit: 18 <p>Notes: Children aged 7–12 may be found to lack sufficient maturity and understanding. Age is considered “in the absence of evidence to the contrary.” A Juvenile Court has jurisdiction over most cases against children aged 7–18 unless the case would ordinarily be heard in the High Court (due to seriousness) or if the child is jointly charged with an adult. (Article 10, Children and Young Persons Order 2006)</p>
<p>Cambodia: Articles 38–39, Penal Code</p> <ul style="list-style-type: none"> ● Minimum age: 18 ● Upper limit: 18 <p>Notes: Circumstances of the offence or personality of the offender may justify lowering the minimum age to 14–18 years.</p>
<p>Indonesia: Article 2, Draft Juvenile Justice System Act 2013</p> <ul style="list-style-type: none"> ● Minimum age: 12 ● Upper limit: 18 <p>Notes: Law on Child Criminal Justice System will enter into force in 2014. The minimum age of criminal responsibility was set in 2011, following the 2010 ruling of the Constitutional Court (Case No. 01/PUU VIII/2010, decision of 24 February 2011). The Court held that the minimum age of criminal responsibility set at age 8 under Law No. 3/1997 on Juvenile Court, was unconstitutional and that the minimum age of criminal responsibility should be set at age 12.</p>
<p>Lao PDR: Articles 3(3) and 39, Law on Juvenile Criminal Procedure 2013; Articles 2(1), 2(12) and 50, Law on the Protection of Rights and Interest of the Child 2007</p> <ul style="list-style-type: none"> ● Minimum age: 15 ● Upper limit: 18 <p>Notes: None</p>
<p>Malaysia: Section 82–83, Penal Code</p> <ul style="list-style-type: none"> ● Minimum age: 10 ● Upper limit: 18 <p>Notes: Children aged 10–12 may be found to lack sufficient maturity and understanding, however the <i>Syariah Criminal Procedure (Federal Territories) Act 1997</i> does not provide a comparable provision.</p>
<p>Myanmar: Section 28, 28(b) and Chapters IX and X, Child Law 1993</p> <ul style="list-style-type: none"> ● Minimum age: 7 ● Upper limit: 16 <p>Notes: Children aged 7–12 may be found to lack sufficient maturity and understanding. A child is defined in the Child Law as an individual under age 16. Chapters IX and X set provisions for children in conflict with the law.</p>
<p>Philippines: Section 6, Juvenile Justice and Welfare Act 2006</p> <ul style="list-style-type: none"> ● Minimum age: 15 ● Upper limit: 18 <p>Notes: Children below age 15, or aged 15–18 who act without ‘discernment’ are not held criminally liable.</p>

<p>Singapore: Sections 82–83, Penal Code; Section 33, Children and Young Persons Act 2001</p> <ul style="list-style-type: none"> ● Minimum age: 7 ● Upper limit: 16 <p>Notes: Children aged 7–12 may be found to lack sufficient maturity and understanding. Youth Courts have jurisdiction over most cases involving children age 7 to under age 16, unless the case would ordinarily be heard in the High Court or the child is over age 16. Section 33, Children and Young Persons Act 2001.</p>
<p>Thailand: Sections 73–75, Criminal Code Amendment Act 2003</p> <ul style="list-style-type: none"> ● Minimum age: 7 ● Upper limit: 18 <p>Notes: Criminal Code was amended in 2008 to increase the minimum age to 10 years. The amended legislation was not available for review. Children aged 7–14 may not be punished but Courts may take rehabilitative measures against the child.</p>
<p>Viet Nam: Articles 12 and 68, Penal Law; Articles 7 and 24, Ordinance on Administrative Handling of Cases 2002</p> <ul style="list-style-type: none"> ● Minimum age: 14 ● Upper limit: 18 <p>Notes: Children aged 14–16 may be tried for very serious offences or for administrative offences. Children aged 12–14 may be treated in a manner that is similar to juvenile justice procedures, for example by being detained in education reformatories.</p>

As indicated in table 58, there is wide variation in ASEAN member States as to the minimum age of criminally responsible. In **Brunei, Malaysia, Myanmar, Singapore** and **Thailand**, children below age 12 can be held criminally liable. In addition, children over age 16 in some States are not afforded the protection of the juvenile justice system and are not treated as children (**Myanmar** and **Singapore**), meaning that children below age 18 may be subjected to criminal provisions that are designed for use against adults.

At present, five ASEAN member States have minimum ages of criminal responsibility that are set below the recommended threshold of 12 years and two States prescribe that children age 16–17 are dealt with within the adult criminal justice system. In order to meet international standards these provisions should be reviewed and amended.

Recommendations

- Consideration should be given to setting the minimum age of criminal responsibility no lower than age 12 in those States where it is currently lower (**Brunei, Malaysia, Myanmar, Singapore** and **Thailand**).
- Consideration should be given to eliminating split ages and discernment, and to establishing one, clear age of criminal responsibility (**Brunei, Malaysia, Myanmar, Singapore, Thailand** and **Viet Nam**).
- Legislation should be reviewed and amended to ensure that all children below age 18 who are alleged as, accused of, or recognized as having infringed the penal law are treated as minors and have their cases dealt with according to juvenile justice rather than criminal justice (**Myanmar** and **Singapore**).
- Consideration should be given to clarifying whether the minimum age of criminal responsibility is qualified by the conditions relating to awareness and mental competency (**Lao PDR**).

13.4.3 Violence in arrest of children

The United Nations *Code of Conduct for Law Enforcement Officials* defines law enforcement officials as “all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest

or detention.”¹⁴ Law enforcement actions are governed by the international framework surrounding the administration of juvenile justice, CRC and the United Nations *Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules).¹⁵ Law enforcement is also guided by international standards that apply to all individuals, not just children, including ICCPR, ICESCR, CAT and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.¹⁶

Law enforcement officials play a crucial role in the protection of children’s rights; their actions are central to a child-friendly, violence-free juvenile justice system. One of the key responsibilities of law enforcement or police officials is to arrest individuals, including children, sometimes in high-stress, urgent situations in which the target of the arrest may try to evade custody. The international framework recognizes that some element of force may be necessary in order to apprehend a suspect, however, according to Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, officials may use force only when strictly necessary and should “as far as possible, apply non-violent means before resorting to the use of force and firearms.” In relation to children, it is clear that force and firearms should be avoided to the maximum extent possible. Rule 10.3 of the Beijing Rules states “contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.”

There is a clear distinction between those States in the ASEAN region that explicitly permit the use of force by law enforcement, almost without limitation, and those that have legislation that is more protective of children (table 59).

Table 59. Legal provisions on the use of force during the arrest of children in ASEAN member States

<p>● Brunei</p> <p>Use of force: Criminal Procedure Code</p> <p>Section 19 (1–2): ‘Touch’ is a required element of arrest. ‘Force’ is permitted if the subject resists arrest.</p> <p>General limitations: Criminal Procedure Code</p> <p>Section 19 (3–4): “the person arrested shall not be subjected to more restraint than is necessary to prevent his escape”; “nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for 15 years.”</p> <p>Use of force against children: None</p>
<p>● Cambodia</p> <p>Use of force: No provisions</p> <p>General limitations: No provisions</p> <p>Use of force against children: No provisions</p>
<p>● Indonesia</p> <p>Use of force: None</p> <p>General limitations: None</p> <p>Use of force against children: Law on Child Criminal Justice System 2012</p> <p>Article 30(4): “The arrest and detainment of a child must be conducted in a humane manner having regard to his or her age and needs.”</p>

¹⁴ General Assembly resolution 34/169 of 17 December 1979, Article 1, Commentary (a).

¹⁵ General Assembly resolution 40/33 of 29 November 1985, annex.

¹⁶ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).

<p>● Lao PDR</p> <p>Use of force: Law on Criminal Procedure 2012</p> <p>Article 139: The arrest of a person must be carried out using “methods and procedures which are appropriate to the nature of the offence and that of the person being arrested.”</p> <p>General limitations: Law on Criminal Procedure 2012</p> <p>Article 139: Prohibition against the infliction of bodily harm or torture of a suspect.</p> <p>Article 12: Provision against coercion, threats, causing bodily harm to, or torture of, a suspect or defendant in case proceedings and a provision that the arrest of an individual illegally leads to criminal prosecution and civil obligation to compensate for any damage caused.</p> <p>Article 7: Provision regarding protection of participants in criminal proceedings and members of the public.</p> <p>Use of force against children: Law on Juvenile Criminal Procedure 2013</p> <p>Article 7: “In every stage of the juvenile proceeding, children shall receive ... the protection of the rights and interests from physical harms, torture, threat, violation of dignity or property.”</p> <p>Article 8: “participants in the juvenile proceeding shall receive the protection from threats to the life, health, dignity and reputation, personal and family properties as described by the laws.”</p> <p>Article 14: “Any person who confines, arrests, detains, conducts a body search of the child or location search unlawfully will be legally proceeded [against] and responsible for the crime and damage caused.”</p> <p>Articles 64(3) and 65: “Do not use any forms of violence, threat with weapons or use rude words that defame the dignity and mentality of the child.”</p> <p>Law on the Protection of the Rights and Interests of Children 2007</p> <p>Article 51: “A child who is a suspect or defendant has the following rights during the criminal proceedings: ... To receive appropriate treatment with no threat, coercion or use of foul language at all stages of the criminal proceedings.”</p> <p>Decree on the Implementation of the Law on the Protection of the Rights and Interests of Children</p> <p>Article 28(2): “Investigation agencies investigating and/or questioning children who have committed a criminal offence... must adhere to the following ... : suitable and soft methods and approaches must be applied in order to avoid the child being scared [to give true testimony].”</p>
<p>● Malaysia</p> <p>Use of force: Criminal Procedure Code</p> <p>Section 15: ‘Touch’ is required to effect arrest. ‘Force’ is permitted if the subject resists arrest.</p> <p>General limitations: Criminal Procedure Code</p> <p>Section 15 (5) “Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.”</p> <p>Use of force against children: No provisions</p>
<p>● Myanmar</p> <p>Use of force: Criminal Procedure Code</p> <p>Section 46: ‘Touch’ is a required element of arrest. ‘Force’ is permitted if the subject resists arrest.</p>

<p>General limitations: Criminal Procedure Code</p> <p>Section 46: “(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.</p> <p>(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with transpiration for life.”</p> <p>Use of force against children: Child Law 1993</p> <p>Section 37: “A police officer or a person authorized to take cognizance shall abide by the following when arresting a child accused of having committed an offence: (a) shall not handcuff the child or tie with a rope ... (c) shall not maltreat or threaten the child.”</p>
<p>● Philippines</p> <p>Use of force: Revised Rules of Criminal Procedure 2000</p> <p>Rule 113 Section 2(a): “No violence or unnecessary force shall be used in making an arrest.”</p> <p>General limitations: Revised Rules of Criminal Procedure 2000</p> <p>Rule 113, Section 2(a): “The person arrested shall not be subject to a greater restraint than is necessary for his detention.”</p> <p>Use of force against children: Juvenile Justice and Welfare Act 2006</p> <p>Section 21: “From the moment a child is taken into custody, the law enforcement officer shall: ... (d) Refrain from using vulgar or profane words and from sexually harassing or abusing, or making sexual advances on the child in conflict with the law; (e) Avoid displaying or using any firearm, weapon, handcuffs or other instruments of force or restraint, unless absolutely necessary and only after all other methods of control have been exhausted and have failed; (f) Refrain from subjecting the child in conflict with the law to greater restraint than is necessary for his/her apprehension; (g) Avoid violence or unnecessary force.”</p>
<p>● Singapore</p> <p>Use of force: Criminal Procedure Code</p> <p>Section 75: ‘Touch’ is required. ‘All reasonable means’ are permitted if the subject resists arrest.</p> <p>General limitations: Criminal Procedure Code</p> <p>Section 76: “The person arrested must not be restrained more than is necessary to prevent his escape.”</p> <p>Use of force against children: No provisions</p>
<p>● Thailand</p> <p>Use of force: Force allowable apart from limitations</p> <p>General limitations: Criminal Procedure Code</p> <p>Section 87: Restraint and force are prohibited beyond that necessary to prevent escape.</p> <p>Use of force against children: Act on Juvenile and Family Court and Procedure B.E. 2553 (2010)</p> <p>Section 69: The arrest of a child (i.e. persons under age 15) or juvenile (i.e. persons aged 15–17) must be “in a careful manner taking into account the human dignity, and shall not be carried out in a manner that would denounce the Child or Juvenile. The <i>detention measure</i> [emphasis added] may not be used more than is necessary to prevent the flight or for the safety of the Child or Juvenile under arrest or of other persons. Under no circumstances may physical restraints be used on a Child* unless in case of inevitable necessity in order to prevent the flight or for the safety of the Child under arrest or of other persons.”</p> <p>* Note omission of ‘Juvenile.’</p>

● **Viet Nam**

Use of force:

Criminal Procedure Code

Article 6: “All forms of coercion and corporal punishment are strictly forbidden” but force is not mentioned.

Constitution 2013

Article 20(1): “Everyone has the right to inviolability of his or her body and to the protection by law of his or her health, honour and dignity; no one shall be subjected to torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health or offending his or her honour and dignity.”

Article 31(5): “A person who is illegally arrested, held in custody, temporarily detained, charged with a criminal offence, investigated, prosecuted, brought to trial or subject to judgment enforcement has the right to compensation for material and mental damages and restoration of honour. A person who violates the law in respect of arrest, detention, holding in custody, laying of charges, investigation, prosecution, trial or judgment enforcement, thereby causing damages to others, shall be punished in accordance with law.”

General limitations: No provisions

Use of force against children: No provisions

Recommendation

States should consider strengthening legal provisions and in particular limiting the use of force and firearms when handling cases involving children in conflict with the law (**Brunei, Cambodia, Malaysia, Singapore, Thailand and Viet Nam**).

13.4.3 Violence against children by law enforcement (police) during interrogation/ questioning

As indicated throughout this study, States have a firm obligation under CAT and CRC Article 37(a) to prohibit torture and cruel, inhuman or degrading treatment or punishment. The prohibition of torture applies in all contexts, including at all stages of the juvenile justice system and may not be derogated from at any time. The CRC Committee addressed the prohibition against torture in General Comment 10, on the Rights of Children in Juvenile Justice, indicating that the prohibition relates to:

“violence in all its forms against children in order to extract a confession, to extrajudicially punish children for unlawful or unwanted behaviours, or to force children to engage in activities against their will, typically applied by police and law-enforcement officers, staff of residential and other institutions and persons who have power over children, including non-State armed actors.”¹⁷

Article 2 of the United Nations *Code of Conduct for Law Enforcement Officials* provides “in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.” This language is also reflected in ICCPR Article 10 and CRC Article 37, which provides that children who are deprived of liberty must be treated with respect for inherent human dignity.

Finally, one of the ways in which children can be protected from violence during interrogation or questioning is through the presence of a lawyer or other appropriate assistance, or the presence of parents or guardians, unless this is considered to be contrary to the best interests of the child.¹⁸ Table 60 presents provisions for the

¹⁷ CRC Committee, *General Comment No. 10: Children’s rights in juvenile justice*, 25 April 2007, CRC/C/GC/10, para. 26.

¹⁸ Article 40(2)(b)(ii–iv), CRC.

presence of a parent, guardian, lawyer or other representative of the child during law-enforcement questioning in ASEAN member States.

Table 60. Rights of children in conflict with the law during questioning in ASEAN member States

<ul style="list-style-type: none"> ● Brunei <p>Right to a lawyer or other assistance: No right</p> <p>Right to have parents/guardians or other adult present: No right</p>
<ul style="list-style-type: none"> ● Cambodia <p>Right to a lawyer or other assistance: If the accused has a lawyer, the lawyer must be present at interrogation (Article 145, Code of Criminal Procedure). A lawyer may also be appointed if the accused does not have a lawyer (Article 48). It is not clear if such legal representation is free. Under Article 102, an accused in police custody may only benefit from seeing his/her lawyer after 24 hours.</p> <p>Right to have parents/guardians or other adult present: Article 100, Code of Criminal Procedure, states “When a detained person is a minor, the judicial police officer shall notify by all means the parents, the legal representative or any person who is responsible for that minor.”</p>
<ul style="list-style-type: none"> ● Indonesia <p>Right to a lawyer or other assistance: Under Article 3c, Law on Child Criminal Justice System 2012, a child has the right to “be provided with legal and other assistance in a concrete and effective manner.” This is further elucidated at Article 36: “Every child shall be entitled to legal assistance from an advocate from the time of his or her arrest or detention.”</p> <p>Right to have parents/guardians or other adult present: Under Article 3j, Law on Child Criminal Justice System 2012, a child has the right to ‘obtain assistance of parents/guardian and the person he or she trusts.’ It is not clear whether there is a right to have a parent/guardian present during questioning. Article 23 provides that “the child must be accompanied by a Community Advisor or other companion in accordance with the provisions of the legislation.”</p>
<ul style="list-style-type: none"> ● Lao PDR <p>Right to a lawyer or other assistance: Law on Juvenile Criminal Procedure 2013</p> <p>Article 51: “The investigation-interrogation of suspected, accused or defendant children must be conducted with the presence of the parents, guardian or other protector [such as a lawyer or teacher] of children in every time.” See also Article 7: “In every stage of criminal proceedings, children shall receive legal assistance;”</p> <p>Article 7(3): “Protection of the rights and interests of children shall [be] conducted in [accordance with] the following: ... Allowing parents, guardian or protector of the children to participate in all steps of the proceedings;” Article 11(7)–(8): “The following fundamental principles shall be applied to juvenile proceedings: ... participation of the children, parents or guardian or protector; Appointing lawyer or other protector;”</p> <p>Article 18: “In all stages of the juvenile proceeding shall be participated by children, parents, guardian, lawyer or protector, except for the case of suspecting that these persons are the violators to the child or the child is in worry with the participation of these people;”</p> <p>Article 19: “In all stages of the juvenile proceedings, [the child] shall have a lawyer or other protector to provide legal assistance. If there is no lawyer or other protector, the organisation that conducts juvenile proceedings shall propose to the Lao Bar Association or propose to the relevant organisation for appointing a lawyer or protector under their duty. Such organisation who received the proposal shall appoint a lawyer within 3 days from the date of receiving the proposal;”</p> <p>Article 22(7): “The social worker or psychologist can participate in all stages of the juvenile proceeding to apply the rights and duties in....participating in the interrogating, interviewing and mediating of the child;”</p>

Law on Criminal Procedure 2012: “In the event that the suspect or defendant is a child who has not yet reached the age of 18 years, a deaf, blind, dumb, mentally challenged, or mentally disturbed person, a person unfamiliar with the Lao language, or a person to whom the law has specified the death penalty, shall require an attorney or other form of representation (individuals participating in criminal proceedings in order to protect the legitimate rights and interests of the suspect or defendant, an injured party, the civil plaintiff, or person holding civil liability). In the event that the suspect or defendant does not have an attorney or other form of representation, the organization responsible for case proceedings shall propose that the Bar Association considers appointing one as a duty. The Bar Association must consider such an appointment according to the proposal of the organization responsible for criminal proceedings within seven days of receiving such a proposal.” Note the similar provision in Article 180 regarding court proceedings.

Article 117, Law on Criminal Procedure 2012: “When taking the testimony of a child who has yet to reach the age of 18 years ... the participation of a parent, guardian, partner, attorney, or other form of legal representation is required and this must be recorded as specified in Article 100 of this Law.”

Right to have parents/guardians or other adult present: Articles 7(3), 11(7), 18 and 19, 22(7), 51 and 53, Law on Juvenile Criminal Procedure 2013.

Article 54: “In conducting an investigation-interrogation or interview with children who do not have a guardian to participate ... the relevant officers should contact close relatives or propose to relevant organisations for appointing a guardian or invite the representative from the Child Protection and Assistance Network to participate.”

Article 56 permits the appointment of an expert in cases where there is doubt whether the child fully understands the questions or consequences of the answers, in order to assess the mental condition and ability of the child in identifying right and wrong.

Article 51(3), Law on the Protection of the Rights and Interests of Children 2007 (see box above).

Articles 71, 117 and 180, Law on Criminal Procedure 2012.

Article 29, Decree on Implementing the Law on the Protection of the Rights and Interests of Children: investigations and questioning of child suspects must take place in the same way as interviewing child victims. The provision relating to child victims states that their parents/guardians must not be present in the interview in case they are the perpetrators and are forbidden from asking the child anything before the interview. However, in light of the provisions above, it is likely that this provision would not apply to the interviewing or questioning of juvenile suspects, although clarification to this effect would be beneficial.

● Malaysia

Right to a lawyer or other assistance: Under Section 90(7), Child Act 2001, a child’s parent or guardian can assist at trial unless the child has a lawyer. There is no mention of a right to legal or other assistance.

Right to have parents/guardians present or other adult present:

Under Section 88, Child Act 2001, a child’s parents or guardians are required to attend a trial. However, no such provision exists for questioning or interrogation.

● Myanmar

Right to a lawyer or other assistance: No right

Right to have parents/guardians or other adult present: No right

● Philippines

Right to a lawyer or other assistance: Section 5(e), Juvenile Justice and Welfare Act 2006, provides the child with: “(e) the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on such action.”

<p>Section 22 provides: “The taking of the statement of the child shall be conducted in the presence of the following: (1) child's counsel of choice or in the absence thereof, a lawyer from the Public Attorney's Office; (2) the child's parents, guardian, or nearest relative, as the case may be; and (3) the local social welfare and development officer. In the absence of the child's parents, guardian, or nearest relative, and the local social welfare and development officer, the investigation shall be conducted in the presence of a representative of an NGO, religious group, or member of the BCPC.”</p> <p>Right to have parents/guardians or other adult present: Section 21(m), Juvenile Justice and Welfare Act 2006, requires that “all statements signed by the child during investigation shall be witnessed by the child's parents or guardian, social worker, or legal counsel in attendance who shall affix his/her signature to the said statement.” Section 22 (see above).</p>
<p>● Singapore</p> <p>Right to a lawyer or other assistance: Section 33, Children and Young Persons Act gives a right to the child's legal representative but there is no explicitly stated right to legal representation.</p> <p>Right to have parents/guardians or other adult present: Section 31, Under the Children and Young Persons Act, parents/guardians shall, unless the Court otherwise orders, attend before the Court during all stages of the proceedings; and the Court can compel the attendance of the parent/guardian as if he were required as a witness in the proceedings. However the Court may require the parent/guardian to withdraw from the Court if it is in the best interests of the child.</p>
<p>● Thailand</p> <p>Right to a lawyer or other assistance: Act on Juvenile and Family Court and Procedure B.E. 2553 (2010) Section 75 provides that the legal adviser of the child (a person under age 15) or juvenile (a person aged 15–17) must “always be present at the time of informing [the Child or Juvenile of] the charge or interrogating such Child or Juvenile.” However, there is no requirement under the Act to appoint a legal adviser for the child from the point of arrest if the child does not already have one (Section 70).</p> <p>Right to have parents/guardians or other adult present: Act on Juvenile and Family Court and Procedure B.E. 2553 (2010) Section 75 stipulates that the parents/guardians of the Child or Juvenile may attend the inquiry without specifying the circumstances in which this is permissible.</p>
<p>● Viet Nam</p> <p>Right to a lawyer or other assistance: Criminal Procedure Code Article 303(3) states: “the bodies ordering the arrest, custody or temporary detention of minors must notify their families or lawful representatives thereof immediately after the arrest, custody or temporary detention is effected.”</p> <p>Article 305(2): “Where the accused or defendants are minors or their lawful representatives refuse to select defense counsels for them, the investigating bodies, procuracies or courts must request bar associations to assign lawyers' offices to appoint defense counsels for them or propose the Viet Nam Fatherland Front Committee or the Front's member organizations to appoint defense counsels for their organizations' members.”</p> <p>Constitution 2013 Article 31(4): “A person who is arrested, held in custody, temporarily detained, charged with a criminal offence, investigated, prosecuted or brought to trial has the right to defend himself or herself in person or choose a defense counsel or another person to defend him or her.”</p> <p>Law on Legal Aid 2006: The child may be eligible for legal aid</p> <p>Right to have parents/guardians or other adult present: Criminal Procedure Code Article 306 requires that parents, teachers and representatives from social organizations shall have the right and obligation to participate in procedures throughout the juvenile justice system. If the child is aged 14–16 and has a mental disability, taking of statements and interrogation must be attended by the family's representative.</p>

13.4.4 Torture or other cruel, inhuman or degrading treatment or punishment during law enforcement interactions

In addition to unnecessary force, improper law enforcement practices can include more sinister forms of violence such as torture, or other cruel, inhuman or degrading treatment, practices prohibited by several ASEAN members States (table 61).

Torture, and other cruel, inhuman or degrading treatment is prohibited within the constitutions of five ASEAN member States (**Cambodia, Indonesia, the Philippines, Thailand and Viet Nam**). Torture within the course of law enforcement activities is also specifically prohibited in the general criminal justice legislation of **Lao PDR** where the Penal Procedure Code provides that “beating or torture of the arrested person is prohibited.”¹⁹ In addition, child-specific legislation in several States prohibits the use of torture against children in conflict with the law (**Lao PDR, Indonesia, the Philippines, Thailand and Viet Nam**). Interestingly, in **Brunei, Malaysia, Myanmar and Singapore**, the Penal Code uses torture as an example of a criminal offence perpetrated by an official when used to extort a confession, thus providing for a direct criminal response to torture in the line of police questioning.

Table 61. Legislative prohibition on torture, or other cruel, inhuman or degrading treatment or punishment in ASEAN member States

<p>● Brunei</p> <p>Laws relating to police practices: Torture is used as an example of a criminal offence when used to extort a confession in Section 330, Penal Code.</p> <p>Child-specific legislation: No</p>
<p>● Cambodia</p> <p>Laws relating to police practices: Constitution Article 38 provides the right to protection from torture and torture is also criminalized under Article 210, Penal Code.</p> <p>Child-specific legislation: No</p>
<p>● Indonesia</p> <p>Laws relating to police practices: Articles 28G and 28L, Constitution; Articles 4 and 33, Human Rights Law 1999, provide for the right to protection from torture, while Article 1(3), Human Rights Court Law 2000, provides for prosecution of gross violations of torture.</p> <p>Child-specific legislation: Article 3(e), Law on Child Criminal Justice System 2013; Article 16, Child Protection Law 2002.</p>
<p>● Lao PDR</p> <p>Laws relating to police practices: Under Article 12, Law on Criminal Procedure 2012, torture or coercion of, or threats or causing bodily harm to, a suspect or defendant during case proceedings is prohibited. See also Articles 24, 36, 116, 139 and 142 on the prohibition of torture and/or coercion and threats in specific contexts. Article 171, Penal Law, explicitly criminalizes torture of a suspect or prisoner and under Article 154, Penal Law torture is an aggravating factor in the crime of abuse of power. Note a similar provision under Article 7, Law on Criminal Procedure 2012.</p>

¹⁹ Article 62, Penal Procedure Code (Lao PDR).

<p>Child-specific legislation: Articles 7, 8, 40(5), 50, 51, 64(3), 64(5), 84(2) and 103(7), Law on Juvenile Criminal Procedure 2013</p> <p>Article 3(8) and Article 51, Law on the Protection of the Rights and Interests of Children 2007 provides for the right to protection from abuse.</p> <p>Article 28(2), Decree on Implementing the Law on the Protection of the Rights and Interests of Children requires investigation agencies investigating and/or questioning child offenders to adopt suitable and soft methods and approaches to avoid scaring the child so that the child can give a true testimony.</p>
<p>● Malaysia</p> <p>Laws relating to police practices: Torture is used as an example of a criminal offence when used to extort a confession in the Section 330, Penal Code.</p> <p>Child-specific legislation: Possibly. The Child Act 2001, amended 2006, provides that an individual can be prosecuted for “ill-treatment, neglect, abandonment or exposure of children’ if that person was considered to be ‘having the care of a child.” (Section 31)</p>
<p>● Myanmar</p> <p>Laws relating to police practices: Torture is used as an example of a criminal offence when used to extort a confession in Section 330, Penal Code.</p> <p>Child-specific legislation: No</p>
<p>● Philippines</p> <p>Laws relating to police practices: Section 12, Constitution (1987) and the Act ‘Penalizing Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefor’ (The Anti-Torture Act 2009)</p> <p>Child-specific legislation: Section 5(a), Juvenile Justice and Welfare Act 2006</p>
<p>● Singapore</p> <p>Laws relating to police practices: Torture is used as an example of a criminal offence when used to extort a confession in Section 330, Penal Code</p> <p>Child-specific legislation: Possibly. Ill-treatment of a child by a person with care, custody or control of the child is an offence under Section 5, Children and Young Persons Act 2001</p>
<p>● Thailand</p> <p>Laws relating to police practices: Torture is prohibited by Section 32, Constitution 2007</p> <p>Child-specific legislation: Possibly. Prohibition appears to be limited to ‘custody’: “The alleged or accused Child or Juvenile who is in custody of any person or institution shall receive both physical and psychiatric rehabilitation and the promotion of opportunities for social reintegration and shall be treated with humanity and respect for the inherent dignity of the human person. In case where there is exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, or any act that is not conducive to the physical or psychiatric rehabilitation or to the social reintegration of the Child or Juvenile, or that is in breach of the best interest of the Child or Juvenile, the court shall issue an order to refrain or revoke such act and determine damages or mitigation measures, or to require a remedy for the damage that is caused as the court may consider appropriate.”</p> <p>Section 84, Act on Juvenile and Family Court and Procedure B.E. 2553 (2010)</p>

● Viet Nam

Laws relating to police practices: Constitution Article 20(1) states: “Everyone has the right to inviolability of his or her body and to the protection by law of his or her health, honour and dignity; no one shall be subjected to torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health or offending his or her honour and dignity.”

Article 6 of the Criminal Procedure Code states that all forms of coercion are prohibited.

Child-specific legislation: Article 7(6), Law on the Care, Education and Protection of Children (2004) provides that torture will be punished by law.

13.4.5 Forced confessions

Forced confessions are a serious and damaging consequence of improper police practices. Children are, for various reasons, particularly susceptible to providing false confessions. The impact of this, particularly when the child confesses to a serious crime, can have devastating consequences. Legislation in six ASEAN member States acknowledges the potential for forced false confessions and allows (or even requires) a Court to disregard these in criminal proceedings. The constitutions of **Cambodia** and the **Philippines** provide that a confession obtained by force or torture shall not be admissible as evidence of guilt.²⁰ In **Brunei, Malaysia, Myanmar and Singapore**, the Penal Codes make forcing a confession by a police officer an offence and, in **Brunei and Malaysia**, courts are prohibited from accepting confessions unless they are satisfied that the confession was voluntary.²¹

In **Lao PDR**, there is a prohibition in the Law on Criminal Procedure 2012 against using violence, coercion, threats, bodily harm, torture or other illegal measures when taking testimonies from suspects, defendants, and third parties participating in case proceedings.²² The confession of a suspect/defendant obtained through such means or ‘trickery’ may not be used as case evidence.²³ Violation of the prohibition against using trickery, coercion, threats, bodily harm or torture to obtain a suspect’s testimony is said to result in criminal proceedings and compensation for damages caused.²⁴ Some protection is also provided in child-specific legislation; under its Law on Juvenile Criminal Procedure 2013 does not explicitly allow or require the Court to disregard forced confessions, it includes the concept of a ‘pressure question’ namely, “questioning that has a force, coercive character that that interferes with the dignity and mentality of children so that the children admit.”²⁵ It specifies that during investigations/interrogations of children, officials must avoid using pressure questions, and must use simple language, act in a child-friendly manner to avoid frightening the children, and use no violence, force, threats, beatings, torture or other unlawful measures.²⁶ Similar rules apply to court trials of juvenile cases.²⁷

The commentary to the Criminal Procedure Code in **Indonesia** captures the challenges associated with a forced confession: “in order that an examination may achieve a result which does not deviate from the truth, a suspect or an accused must be kept away from the feeling of fear. Therefore, the application of force or pressure against a suspect or an accused must be prevented.”

Such provisions are a positive way of protecting children from the consequences of false confessions, and of removing the incentive to force a confession.

²⁰ Article 38, Constitution 1993 (Cambodia), Section 12, Constitution 1987 (Philippines).

²¹ Section 117, Criminal Procedure Code (Brunei); Section 115, Criminal Justice (Penal Procedure Code) Act, amended 2006 (Malaysia).

²² Article 24, Law on Criminal Procedure 2012 (Lao PDR).

²³ Articles 36 and 42, Law on Criminal Procedure 2012 (Lao PDR).

²⁴ Article 116, Law on Criminal Procedure 2012 (Lao PDR).

²⁵ Article 3(27), Law on Juvenile Criminal Procedure 2013 (Lao PDR).

²⁶ Article 51, Law on Juvenile Criminal Procedure 2013 (Lao PDR).

²⁷ Article 84(2), Law on Juvenile Criminal Procedure 2013 (Lao PDR).

13.4.6 Complaints and discipline

In all ASEAN member States, as in most States worldwide, law enforcement officers are required to make records relating to arrest. The very process of making these records is important because it can help to remind law enforcement of their obligations and thereby reduce the opportunity for violence (by requiring an officer to consider and account for all of his or her actions). Another way of preventing violence against children is to ensure that complaints may be lodged against officials, and to openly allow for the discipline or punishment of improper practice by law enforcement. This sub-section considers the legislative framework in ASEAN member States as it relates to complaints and discipline.

Table 62. Legislation against official malfeasance in ASEAN member States

Country	Legislation
Brunei	Section 166, Penal Code
Cambodia	Article 66, Criminal Procedure Code
Indonesia	Article 82A, Draft Juvenile Justice System Act
Lao PDR	Articles 153 and 154 of the Penal Code
Malaysia	Section 166, Penal Code
Myanmar	Section 166, Penal Code
Philippines	Section 62, Juvenile Justice and Welfare Act
Singapore	Section 166, Penal Code
Thailand	Chapter 2, Criminal Code
Viet Nam	Article 123, Penal Code

Official malfeasance, especially where this leads to injury or harm to another person, is criminalized in all ASEAN member States. In **Viet Nam**, primary legislation also provides citizens with the right to complain over improper treatment.²⁸ Interestingly, Indonesia and the Philippines have child-specific juvenile justice legislation and violations of these Acts may be criminal offences.

As a cautionary note, however, it is important to consider whether a child is likely and fully able to complain over improper treatment. It can be extremely intimidating for a child to consider lodging a complaint against a person in a position of authority, and, even where a national human rights institution or ombudsperson exists, unless there is considerable support for children, complaints are likely to be few and far between.

Recommendations

- Where they have not done so already, States should consider developing child-specific legislation for the administration of juvenile justice, or comprehensive child-specific sections within general legislation such as the Criminal/Penal Code or Criminal Procedure Codes. Among other things, this legislation should consider including the following provisions in relation to violence by law enforcement:
 - a) Clear provisions to ensure that the welfare, dignity and best interests of the child are upheld (**Cambodia and Malaysia** in particular, and **Brunei, Myanmar, Singapore, Thailand and Viet Nam**);
 - b) Limitations on the use of force, such that it is only used if and to the extent that it is absolutely necessary, with a presumption against all use of force in handling cases involving children (**Brunei, Cambodia, Indonesia, Malaysia, Singapore, Thailand and Viet Nam**);

²⁸ Article 31, Criminal Procedure Code (Viet Nam).

<p>c) Prohibition of the use, handling or possession of firearms and weapons when arresting or dealing with children (Brunei, Cambodia, Indonesia, Malaysia, Singapore, Thailand and Viet Nam); and</p> <p>d) Clear provisions that any confession obtained through force must be regarded as inadmissible (Indonesia, Lao PDR, Myanmar, Singapore and Thailand).</p> <ul style="list-style-type: none"> • States may wish to consider designating and training specialist law enforcement to handle cases involving children (all ASEAN member States). • States should consider establishing effective, accessible complaints mechanisms for use by children in conflict with the law and their representatives, in order to hold perpetrators of violence to account, and to prevent the occurrence of violence where possible (all ASEAN member States).
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13.4.7 Violent sentences

The international standards and best practices governing children in conflict with the law set out certain violent sentences that are considered inappropriate for use against children. For example, CRC Article 37(a) provides: “Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”

The CRC Committee has expanded upon this to emphasize that corporal punishment is also considered an impermissible sentence: “the Committee reiterates that corporal punishment as a sanction is a violation of these principles as well as of Article 37 which prohibits all forms of cruel, inhuman and degrading treatment or punishment.” Under CRC Article 40(3)(b), States must establish and provide a range of dispositions to which children can be assigned or sentenced.

Table 63. Applicability of violent sentences to children in ASEAN member States

Brunei
<ul style="list-style-type: none"> • Death penalty: Not permitted under age 18: Criminal Procedure Code Section 238 • Life imprisonment: Permitted (a child may be detained at His Majesty’s Pleasure): Criminal Procedure Code Section 238; Article 45, Children and Young Person’s Order 2006 • Corporal punishment: Permitted for males only. Limited by Section 257 Criminal Procedure Code to 18 strokes with a light rattan. Prohibited against females by Section 258, Criminal Procedure Code
Cambodia
<ul style="list-style-type: none"> • Death penalty: Abolished generally by Article 32, Constitution 1993 • Life imprisonment: Not permitted. A maximum sentence of life imprisonment is reduced to 20 years for juveniles under Article 160, Penal Code • Corporal punishment: Not permitted
Indonesia
<ul style="list-style-type: none"> • Death penalty: Not permitted under age 18. Sentence of 10 years imprisonment: Article 69 and 81, Law on Child Criminal Justice System 2012 • Life imprisonment: Not permitted, reduced to 10 years imprisonment: Article 81, Law on Child Criminal Justice System 2012 • Corporal punishment: Not permitted: Article 69(1), Law on Child Criminal Justice System 2012
Lao PDR
<ul style="list-style-type: none"> • Death penalty: Not permitted under age 18: Article 32, Penal Law; Article 89, Law on Juvenile Criminal Procedure 2013

<ul style="list-style-type: none"> ● Life imprisonment: Not permitted under age 18: Article 31, Penal Law; Article 89, Law on Juvenile Criminal Procedure 2013 ● Corporal punishment: Not permitted
Malaysia
<ul style="list-style-type: none"> ● Death penalty: Not permitted under age 18: Section 92, Child Act 2001. ● Life imprisonment: Permitted under Section 92, Child Act 2001, by which a death sentence is commuted to an indefinite sentence at the 'pleasure' of authorities. ● Corporal punishment: Permitted for males with a light cane: Section 91(g), Child Act 2001. Whipping is also permitted for females by Article 125, <i>Syariah</i> Criminal Procedure (Federal Territories) Act 1997.
Myanmar
<ul style="list-style-type: none"> ● Death penalty: Not permitted under age 18: Child Act 1993 Section 45 ● Life imprisonment: Not permitted under age 18: Child Act 1993 Section 45 ● Corporal punishment: Not permitted under age 18: Child Act 1993 Section 45
Philippines
<ul style="list-style-type: none"> ● Death penalty: Abolished and not permitted under age 18: Sections 5 and 59, Juvenile Justice and Welfare Act 2006 ● Life imprisonment: Not permitted under age 18: Section 5(b), Juvenile Justice and Welfare Act 2006 ● Corporal punishment: Not permitted
Singapore
<ul style="list-style-type: none"> ● Death penalty: Not permitted under age 18: Criminal Procedure Code Section 314 ● Life imprisonment: Permitted: Section 314, Criminal Procedure Code commutes a death sentence to life imprisonment). ● Corporal punishment: Permitted if ordered by the High Court: Section 37(3), Children and Young Persons Act 2011
Thailand
<ul style="list-style-type: none"> ● Death penalty: Not permitted under age 18: Section 18, Criminal Code ● Life imprisonment: Not permitted under age 18: Section 18, Criminal Code ● Corporal punishment: Not permitted*
Viet Nam
<ul style="list-style-type: none"> ● Death penalty: Not permitted under age 18: Article 35, Penal Code ● Life imprisonment: Not permitted under age 18: Articles 68 and 69, Penal Code ● Corporal punishment: Not permitted

* In its Concluding Observations from 2005, the CRC Committee noted that a ministerial regulation had eliminated the use of corporal punishment, which was otherwise provided for in the now repealed Section 39 of the Act for the Establishment of and Procedure for Juvenile and Family Court B.E. 2534 (CRC Committee: Concluding Observations 2005, (Thailand), para. 76). Note that, in any event, no such provision is found in the current Act on Juvenile and Family Court and Procedure B.E. 2553 (2010).

13.4.8 Capital punishment and life imprisonment

In line with international standards and best practices, the death penalty is not applicable to children in any ASEAN State. While that is a positive finding, international standards also require the elimination of life

imprisonment. As shown in table 59, in **Brunei, Malaysia and Singapore**, crimes for which the death penalty could be applied against an adult are commuted to life imprisonment.

13.4.9 Corporal punishment

Brunei, Malaysia, Myanmar and Singapore ordinarily allow sentences of whipping or caning as a criminal punishment against the wider population. Of these, **Myanmar** is the only State to prohibit all corporal punishment under age 18, while others partially limit the use of corporal punishment. For instance, in **Singapore**, the sentence of caning can only be passed by the High Court. The punishment can be carried out against a juvenile (male or female age 7 to below age 16), only with a light rattan. The maximum number of strokes of cane that can be imposed on a juvenile is 10, compared to 24 strokes for an adult (Section 329(4) and 330(2), Criminal Procedure Code). In **Brunei**, ‘light’ caning is only permitted against males. Females are exempt from such punishment. Interestingly, in **Malaysia**, ‘light’ caning is permitted for males only under the Criminal Procedure Code, which conflicts with provisions of the *Syariah* Criminal Procedure (Federal Territories) Act 1997, which allow the caning of women.

International standards and best practices are clear that corporal punishment must not be applied to children in conflict with the law under any circumstances.

Good practice example: alternative sentences

In order to limit the use of violent sentences, a range of alternative sentences should be available for children. The **Philippines** Juvenile Justice and Welfare Act contains a range of alternative provisions and can be considered good practice, including ‘diversion’, community based programmes, discharge or probation. Even where children are to be detained in youth rehabilitation centres, these are intended to be like group homes to promote and focus upon treatment and rehabilitation.

Recommendations

- Legislation in all ASEAN member States should prohibit life imprisonment as a sentence that can be used against children (**Brunei, Malaysia, Singapore and Viet Nam**).
- Consideration should be given to prohibiting all forms of corporal punishment as a measure to be used against children (**Brunei, Malaysia and Singapore**).
- Consideration should be given to amending legislation relating to sentencing to include all child justice principles: that the best interests of the child shall be a primary consideration, the principle of proportionality, the promotion of rehabilitation and reintegration, the limitation of deprivation of liberty as a matter of the last resort and for the shortest appropriate period of time (**all ASEAN member States**).

13.4.10 Violence within juvenile justice institutions

Where children are deprived of their liberty within juvenile justice institutions, it is essential that States legislate to safeguard them against violence from other detainees, staff and visitors. CRC Article 37(c) stipulates:

“every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.”

Separation from adults is a particularly important safeguard in protecting children from the risk of violence from adult detainees. However, as the CRC Committee has noted:

“this rule does not mean that a child placed in a facility for children has to be moved to a facility for adults immediately after he/she turns 18. Continuation of his/her stay in the facility for children should be possible if that is in his/her best interest and not contrary to the best interests of the younger children in the facility.”²⁹

According to the Rule 17 of the Havana Rules, untried detainees must be held separately to convicted children. The CRC Committee also require special provisions for female child prisoners, taking into account their special health needs and other issues, including, for example, risk of abuse.³⁰

All staff members are responsible for the prevention of violence against children, however, medical officers, in particular, are in a position to examine children and to report either a concern that the child is the victim of violence or any specific incidents of violence. Guidance on medical support to children in detention is provided in Section H of the Havana Rules and is, of course, implicit within CRC Article 37(c) (relating to humanity and respect for the inherent dignity of the human person). In addition, in order to ensure that children are protected within detention, facilities should be monitored and have a complaint mechanism that children can access to report abuse or other concerns.³¹

In all ASEAN member States except Thailand, legislation provides that children should be separated from adults when in detention. For example, the **Cambodian** Penal Code states: “jailed minors are detained in the special quarters, separated from the adults,”³² while, in **Malaysia** and **Brunei**, it is required that children and adults are segregated.³³ Separation is set out in child-specific legislation in the **Philippines** (Juvenile Justice and Welfare Act, Section 46), **Myanmar** (Child Law, Section 52), and **Indonesia** (Articles 81(1) and 85, Law on Child Criminal Justice System 2012). Some States, however, include caveats within their legislation providing that separation of adults and children is enforced where conditions/resources allow.³⁴ Such provisions do not meet international standards, which are clear that children should always be separated from adults, unless it is in the best interests of that child to be placed with an adult.

In **Thailand**, while the Act on Juvenile and Family Court and Procedure B.E 2553 (2010) states that a child must be held separately from adults if the administrative officer, a police officer or an inquiry official requires the child to remain in custody (Section 81). The Act provides for the establishment of juvenile observation centres for children who must remain in custody during investigation or trial or as required by a judgment or a court order (Chapter III). There is no explicit requirement in that Act that all children deprived of their liberty (whether pre-trial or after sentencing) be held separately from adults or in institutions of this type.

The laws in some States contain specific provisions for the treatment of children who have reached age 18. For example, in **Cambodia**, a juvenile over age 18 can be moved to a young offenders correctional facility and a young person over age 21 moved to an adult correctional facility. However, if an institution for young offenders is not available, the child can be moved to an adult correctional facility when he or she reaches age 18 “based on recommendations from a social enquiry report.”³⁵ In **Brunei**, the Prison Rules gives the Officer-in-Charge and Medical Officer the discretion to decide to treat a prisoner age 18 or over as a young prisoner and to therefore retain the detainee alongside young people.³⁶ These provisions are good examples in line with international standards, but it is important that they are administered within the best interests of the other children in detention.

²⁹ CRC Committee, *General Comment No. 10*, para. 86.

³⁰ CRC Committee, *General Comment No. 10*, para. 40.

³¹ Rule 24, Havana Rules.

³² Article 166, Penal Code (Cambodia).

³³ Article 46(2), Prison Act 1984 (Brunei) and Section 49, Prison Act 1995, as amended 2008 (Malaysia).

³⁴ E.g. Rule 46(2), Prison Act 1984 (Brunei).

³⁵ Article 78, Penal Code (Cambodia).

³⁶ Rule 6(2), Prison Rules 1984 (Brunei).

Within legislative frameworks of ASEAN member States, there are few provisions for the support of girls. In the **Philippines**, legislation explicitly mentions the needs of female children and requires separate facilities for boys and girls.³⁷ **Brunei** also has a specific provision for the separation of male and female detainees.³⁸ The remaining ASEAN member States lack such provisions, perhaps because it is assumed that male and female detainees will be held in separate facilities.

Note on implementation

Several United Nations reports express concerns about the lack of separation of children from adults in a number of ASEAN member States, including **Cambodia**, **Lao PDR** and **Thailand**, for example. **Myanmar** has also acknowledged that it faces difficulties in separating children and adults.

Source: CRC Committee: State Report 2011, (Myanmar), para. 141.

13.4.11 Complaints procedures for institutions

Monitoring and inspection is an important way to ensure that legislation is implemented and that children are not being exposed to violent treatment. Domestic legislation provides for monitoring of institutions by visiting officials in **Brunei**, **Malaysia**, **Singapore** and **Thailand**,³⁹ while in **Indonesia**, **Lao PDR** and the **Philippines**, laws include a general statement relating to monitoring. Surprisingly, although the Juvenile Justice and Welfare Act in the Philippines requires the monitoring of institutions and provides that the Juvenile Justice and Welfare Commission should “set up a mechanism to ensure that children are involved in research and policy development,” there is no specific complaints mechanism built into the Act.⁴⁰

In **Brunei**, under the Youthful Offenders (Places of Detention) Rules, a child may request to see the warden or other member of staff to make a complaint,⁴¹ while under the **Myanmar** Child Law, children may make a complaint relating to their treatment (in any sphere, not just juvenile justice), if they are deemed “capable of expressing his or her own views in accordance with his age and maturity.”⁴² As indicated earlier, it is important for any complaint mechanism to be effective and accessible, especially in the context of an institution, where there may be concerns about a child’s ability to lodge a complaint without fear of reprisal.

13.4.12 Restraint and discipline in institutions

CRC Articles 37 and 40 protect children from violent forms of restraint and discipline in detention, providing that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age,” and prohibiting torture and other cruel, inhuman or degrading treatment. The CRC Committee has also explained that

³⁷ Section 47, Juvenile Justice and Welfare Act 2008 (Philippines).

³⁸ Rule 7(1), Youthful Offenders (Places of Detention) Rules 2001 (Brunei).

³⁹ Section 75, Children and Young Persons Order 2006 (Brunei); Section 65, Prison Act (Malaysia) 1995, amended 2008; Section 82, Child Act 2001 (Malaysia), amended 2008; Section 52F, Children and Young Persons Act 2001, amended 2011 (Singapore); Section 141, Act on Juvenile and Family Court and Procedure B.E. 2553 (2010) (Thailand).

⁴⁰ Article 94, Law on Child Criminal Justice System 2012 (Indonesia); Article 77, Law on the Protection of the Rights and Interests of Children 2007 (Lao PDR); Sections 9 and 10, Juvenile Justice and Welfare Act 2006 (Philippines).

⁴¹ Rule 60, Youthful Offenders (Places of Detention) Rules 2001 (Brunei).

⁴² Section 13, Child Law 1993 (Myanmar).

“any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of Article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned.”⁴³

In addition, the Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules),⁴⁴ contain an extensive section relating to the discipline and restraint of children in detention:

“63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time...

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care...

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.

The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose....”

In summary, international standards prohibit violent sanctions, including corporal punishment, solitary confinement or isolation. At present, not all ASEAN member States have specific legislation that prohibits violent sanctions.

Table 64 demonstrates that **Brunei, Malaysia, Singapore** and **Thailand** permit forms of restraint and discipline regarded as violent sanctions by international standards, though complete information was not available for other States. In some of the States that permit such discipline of children, a medical officer must examine the child and confirm that the disciplinary measure is appropriate. In **Brunei**, “If a restricted diet is ordered for a longer period than 6 days, the offender shall receive 3 days ordinary diet after each period of 6 days restricted diets.”⁴⁵ In **Singapore**, in order to impose a sentence of corporal punishment, a medical officer must be present and “certify that the prisoner is in a fit state of health to undergo the punishment.”⁴⁶ The involvement of a medical officer is an important protection measure for the child.

⁴³ United Nations Committee on Rights of the Child, *General Comment 10*, para 24.

⁴⁴ General Assembly resolution 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990).

⁴⁵ Rules 55 and 56 Youthful Offenders (Places of Detention) Rules 2001 (Brunei).

⁴⁶ Section 77(1) Prisons Act 2000 (Singapore).

Table 64. Legislative provisions relating to restraint and disciplinary measures against children in institutions in ASEAN member States

<p>● Brunei Youthful Offenders (Places of Detention) Rules 2001, Rules 49, 50 and 59</p> <p>Isolation/solitary confinement: Yes, up to 3 days by warden and 14 days by advisory board. Rules 49–50</p> <p>Corporal punishment: Yes, Advisory Board may order whipping with a light cane, though, any order for corporal punishment must be approved by the Superintendent. Rule 50</p> <p>Restricted diet: Yes May be ordered for up to 15 days by the Advisory Board. Rules 49–50</p> <p>Confiscation of material necessities (i.e. mattress): Yes Mattress may be confiscated for up to 15 days by advisory board. Rule 50</p> <p>Notes: Mechanical restraints (for example handcuffs and strait jackets) may be used only to prevent harm to an individual or property, rather than as a punishment. Rule 59</p>
<p>● Cambodia</p> <p>Isolation/solitary confinement: Not in primary legislation</p> <p>Corporal punishment: Not in primary legislation</p> <p>Restricted diet: Not in primary legislation</p> <p>Confiscation of material necessities (i.e. mattress): Not in primary legislation</p> <p>Notes: Under the Constitution, “coercion, physical ill- treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate or conspire in such acts shall be punished according to the law.”</p>
<p>● Indonesia</p> <p>Isolation/solitary confinement: Not in primary legislation</p> <p>Corporal punishment: Not in primary legislation</p> <p>Restricted diet: Not in primary legislation</p> <p>Confiscation of material necessities (i.e. mattress) : Not in primary legislation</p> <p>Notes: Articles 68 and 69, Law on Child Criminal Justice System 2012, requires that juveniles may only be punished in accordance with the provisions of the Law, the provisions of which do not allow for any form of violent punishment.</p>
<p>● Lao PDR</p> <p>Isolation/solitary confinement: Neither explicitly permitted nor prohibited, see ‘Notes’.</p> <p>Corporal punishment: Neither explicitly permitted nor prohibited, see ‘Notes’.</p> <p>Restricted diet: Children sentenced to deprivation of liberty have the right to ‘receive appropriate food’ although no specific provisions are provided on restrictions to this right as a disciplinary measure</p> <p>Confiscation of material necessities (i.e. mattress): Children sentenced to deprivation of liberty have the right to have appropriate accommodation and receive appropriate clothes which must be suitable for the weather conditions, although there are no specific provisions on restrictions to these rights as disciplinary measures</p> <p>Notes: Law on Juvenile Criminal Procedure 2013 includes a general provision requiring that child offenders who have been sentenced to deprivation of liberty be protected from ‘all forms of torture, abuse, taking advantage, neglect and inappropriate disciplines’ although the latter term is not defined further (Article 103(7)). Article 27, Penal Law 2005 also includes a general statement that punishments do not aim to ‘generate physical suffering or to outrage human dignity’.</p>

<p>● Malaysia</p> <p>Isolation/solitary confinement: Yes, by Officer-in-Charge or substitute. Prison Act 1995</p> <p>Corporal punishment: Yes, by Officer-in-Charge or substitute. Prison Act 1995</p> <p>Restricted diet: Yes, by Officer-in-Charge or substitute. Prison Act 1995</p> <p>Confiscation of material necessities (i.e. mattress):</p> <p>Notes Corporal punishment must be confirmed by the Minister</p>
<p>Myanmar: N/A</p>
<p>● Philippines</p> <p>Isolation/solitary confinement: No</p> <p>Corporal punishment: No</p> <p>Restricted diet: No</p> <p>Confiscation of material necessities (i.e. mattress) : No</p> <p>Notes: Section 61, Juvenile Justice and Welfare Act 2006, carefully and heavily restricts the use of discipline and restraints against children, outlining and prohibiting many different forms of violent discipline or restraint</p>
<p>● Singapore</p> <p>Isolation/solitary confinement: Yes, Article 70, Prison Act 2000</p> <p>Corporal punishment: Yes, Article 71, Prison Act 2000; Section 77 “In no case shall a sentence of corporal punishment in excess of 10 strokes with a light rattan be passed upon a juvenile.”</p> <p>Restricted diet:</p> <p>Confiscation of material necessities (i.e. mattress):</p> <p>Notes: Section 68, Children and Young Persons Act 2001 gives discretion to the manager of an institution to use “such force as is reasonable and necessary’ to compel that person to follow an order, or to ‘to restrain any such person who is attempting or preparing to commit or is committing any offence or any breach of discipline”</p>
<p>● Thailand</p> <p>Isolation/solitary confinement: Not explicitly prohibited, see ‘Notes’.</p> <p>Corporal punishment: Not explicitly prohibited, see ‘Notes’.</p> <p>Restricted diet: Not explicitly prohibited, see ‘Notes’.</p> <p>Confiscation of material necessities (i.e. mattress): Not explicitly prohibited, see ‘Notes’.</p> <p>Notes: “Punishments to be inflicted upon a Child or Juvenile in the custody of the Juvenile Observation Centre shall include: To forfeit certain benefits and facilities provided by the Juvenile Observation Centre.”</p> <p>Section 42(2), Act on Juvenile and Family Court and Procedure B.E. 2553 (2010)</p>

“The alleged or accused Child or Juvenile who is in custody of any person or institution shall receive both physical and psychiatric Rehabilitation and the promotion of opportunities for social reintegration and shall be treated with humanity and respect for the inherent dignity of the human person. In case where there is exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, or any act that is not conducive to the physical or psychiatric Rehabilitation or to the social reintegration of the Child or Juvenile, or that is in breach of the best interest of the Child or Juvenile, the court shall issue an order to refrain or revoke such act and determine damages or mitigation measures, or to require a remedy for the damage that is caused as the court may consider appropriate.”

Section 84, Act on Juvenile and Family Court and Procedure B.E. 2553 (2010)

“No physical restraints of any forms may be used on a Child (Person under the age of 15 years. Note that it does not include ‘Juvenile’ – i.e. a person from 15 to but excluding 18 years of age) during the time when it is necessary to hold the Child in custody for the purpose of the proceedings, except in case where the Child is alleged to have committed an offence punishable by a maximum of more than 10 years’ imprisonment.”

Section 103, Act on Juvenile and Family Court and Procedure B.E. 2553 (2010)

Rules and guidance from 1936 and 1937 (The Training Arrangement for Certain Groups of Children Act (1936)) and (The Ministry of Interior Regulation on Punishment of Certain Groups of Children Regulation (1937)) permit whipping or flogging of children

● **Viet Nam**

Isolation/solitary confinement: N/A

Corporal punishment: Prohibited for use against juvenile offenders under Article 7(9), Law on the Protection, Care and Education of Children 2004; also note general prohibition in Article 20(1), Constitution 2013

Restricted diet: N/A

Confiscation of material necessities (i.e. mattress): N/A

Notes: None.

Elsewhere, any corporal punishment tends to be outlawed. In **Viet Nam**, for example, Article 7(9) of the Law on the Protection, Care and Education of Children prohibits the application of corporal punishment to juvenile offenders. However, as is often the case, the CRC Committee has expressed deep concerns: “that many children have reportedly been and still are subjected to ill treatment or torture while being administratively detained in drug detention centres, including through the imposition of solitary confinement punishment measure.”

Some gaps appear to remain in ASEAN member States, whereby it remains permissible to inflict violent methods of discipline and restraint upon children in conflict with the law. Furthermore, **Singapore’s** specific declaration to CRC Article 19, stating that it will continue “the judicious application of corporal punishment in the best interest of the child,” should be highlighted as it could limit the protections afforded to children held in institutions. Similar arguments may be raised in respect of the other reservations or declarations of **Brunei**, **Malaysia** and **Singapore**, to CRC Article 37.

Recommendations

- Withdraw the reservations and declarations to CRC, particularly those relating to Articles 19 and 37 (**Brunei, Malaysia and Singapore**).
- Consider strengthening implementation of separation of juveniles and adults in all detention facilities.
- Consider strengthening legislative recognition of the needs of the girl child and children with disabilities, or other special needs and vulnerabilities (**all ASEAN member States**).
- Review current complaint mechanism and introduce or strengthen independent complaint mechanisms for children in institutions, taking particular care to ensure the protection of the rights and welfare of children accessing these mechanisms (**all ASEAN member States**).

- Consider adding specific provisions to legislation to prohibit the use of corporal punishment, isolation, restriction of a diet and other disciplinary measures against children as prohibited by the Havana Rules (**Brunei, Lao PDR, Malaysia, Singapore and Thailand** and possibly **Myanmar** and **Viet Nam**).
- Consider adding specific provisions to legislation to prohibit violent forms of restraint, in line with the Havana Rules (**Brunei, Indonesia, Lao PDR, Malaysia, Singapore and Thailand** and possibly **Myanmar** and **Viet Nam**).

13.5 Recommendations for law reform: Violence against children in conflict with the law

Recommendations

In addition to the specific recommendations throughout this section, the following are recommended in order to bring juvenile justice systems into line with international standards in law and practice:

- Increase the minimum age of criminal responsibility to an internationally acceptable level and ensure proper protection of children below the minimum age of criminal responsibility (**Brunei, Malaysia, Myanmar, Singapore and Thailand**).
- Develop separate, child-specific legislation in compliance with international standards to protect children in conflict with the law from all forms of violence. Seek support from UNICEF and other qualified agencies to provide technical assistance in this regard (**Brunei, Cambodia, Malaysia, Myanmar, Singapore and Viet Nam**).
- Provide in legislation for the designation and training of specialist law enforcement officials to work with children in conflict with the law in a child friendly manner (**all ASEAN member States**).
- Bring legislation relating to violent sentences, discipline and restraint into line with international standards (**all ASEAN member States**).
- Develop or continue to develop alternatives to the criminal justice system (diversion and restorative justice options) in order to minimize the number of children who come into contact with law enforcement, and who are deprived of their liberty (**all ASEAN member States**).

Table 65. Report card: Protection of children in conflict with the law

	Legislative framework	MACR	Safeguards against violence by law enforcement	Safeguards against violent sentences	Safeguards in institutions	Safeguards against violent discipline/restraint in institutions
Brunei	●	●	●	●	●	●
Cambodia	●	●	●	●	●	●
Indonesia	●	●	●	●	●	●
Lao PDR	●	●	●	●	●	●
Malaysia	●	●	●	●	●	●
Myanmar	●	●	●	●	●	N/A
Philippines	●	●	●	●	●	●
Singapore	●	●	●	●	●	●
Thailand	●	●	●	●	●	●
Viet Nam	●	●	●	●	●	●

Part VII: Violence against Children in the Workplace

Chapter 14. Worst Forms of Child Labour

14.1 Context and understanding of the worst forms of child labour

Child labour can generally be described as “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.”¹ The difference between acceptable child work and child labour depends on “the child’s age, the types of work performed, the conditions under which it is performed and the objectives pursued by individual countries.”² While significant advances have been made to combat child labour, there are still approximately 168 million child labourers worldwide, constituting 11 per cent of the global child population.³ Research indicates that the prevalence of child labour ranges from 6.5 per cent of children in Viet Nam to 56 per cent of children in Cambodia.⁴ In **Indonesia**, approximately 1.76 million children were engaged in child labour.⁵ In **Lao PDR**, 67 per cent of working children are child labourers.⁶

Most child labour takes place in the agricultural sphere, although increasing numbers may be found working in the services and manufacturing sectors, particularly in the informal economy. Statistics from the International Labour Organization (ILO) indicate that the majority of child labourers aged 5–17 are boys (99.8 million boys compared to 68.2 million girls), although the gender gap is far more pronounced among older children (aged 15–17). This trend also does not account for the number of girls involved in household chores or undetected domestic work in private homes.⁷

Article 2 of the Worst Forms of Child Labour Convention 1999 (No. 182) identifies the following four categories:

- (i) “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;”⁸
- (ii) “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;”⁹
- (iii) “the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;”
- (iv) “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

¹ ILO, *ILO says global number of child labourers down by a third since 2000*, 23 September 2013.

² ILO and Inter-Parliamentary Union, *Eliminating the worst forms of child labour: A practical guide to ILO Convention No. 182*, Handbook for Parliamentarians No. 3 2002, p 16

³ ILO, *Marking Progress against Child Labour: Global Estimates and Trends 2000–2012*, p vii

⁴ UNICEF, *Child Maltreatment: Prevalence, Incidence and Consequences in the East Asia and Pacific Region, A Systematic Review of Research*, 2012, p xii

⁵ ILO, *Observation (CEACR) – adopted 2012, published 102nd ILC session (2013)*, Convention No. 138 – Indonesia

⁶ *Direct Request (CEACR) – adopted 2013, published 103rd ILC session (2014)* Convention No. 138 – Lao PDR

⁷ ILO, *Marking Progress against Child Labour: Global Estimates and Trends 2000–2012*, pp. vii, 5 and 18.

⁸ Excluding community work as a criminal or administrative sanction.

⁹ Excluding prostitution, child sex tourism, child pornography or human trafficking.

All ASEAN member States are party to Convention No. 182. The Convention entered into force in Myanmar on 18 December 2014.

Slavery is defined internationally as: “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” and includes:

“all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery [or].... the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”¹⁰

ILO described slavery in the following way: “where one person is owned by and made to work for another person without having any say over what happens to them. Slaves are held against their will from the time of their capture, purchase, or birth, and are not allowed to leave or to refuse to work.”¹¹

Practices similar to slavery include debt bondage, serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for the purposes of armed conflict. Each of these terms is defined below:

Debt bondage: “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”¹²

Serfdom: “the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.”¹³

Forced or compulsory labour: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”¹⁴

The following forms of labour do not constitute slavery and are not included among practices similar to slavery:

- Work or service of a purely military character pursuant to compulsory military service laws (which does not apply to children as per the Worst Forms of Child Labour Convention, 1999 (No. 182));
- Work or service forming part of the normal civic obligations of citizens of a fully self-governing country;
- Work or service as a consequence of a court conviction, carried out under the supervision and control of a public authority and without being hired to or placed at the disposal of private persons or bodies;
- Emergency work or service (for example, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population); and

¹⁰ Article 1, Slavery Convention 1926.

¹¹ <http://www.ilo.org/ipecc/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/worstforms/lang--en/index.htm>. [accessed 9 September 2014].

¹² Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Article 1(a).

¹³ *Ibid*, Article 1(b).

¹⁴ Article 2(1), ILO Forced Labour Convention, 1930 (No. 29).

- Minor communal services that can be considered as normal civic obligations of members of a community provided that the members of the community or their direct representatives have the right to be consulted regarding the need for such services.¹⁵ International law also stipulates conditions under which forced or compulsory labour may not be used:
- As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- As a method of mobilizing and using labour for purposes of economic development;
- As a means of labour discipline;
- As a punishment for having participated in strikes; or
- As a means of racial, social, national or religious discrimination.¹⁶

Involvement in ‘illicit activities’, one of the worst forms of child labour, includes the production and trafficking of drugs; crimes defined under national laws (for example, buying stolen goods, shoplifting, robbery, hijacking cars, theft and burglary); and organized beggary.¹⁷

An estimated 8.4 million children are in slavery, trafficking, debt bondage and other forms of forced labour, forced recruitment for armed conflict, prostitution, pornography and other illicit activities.¹⁸ In 2011, out of the 1.5 million children economically active in **Cambodia**, around 250,000 were engaged in the worst forms of child labour.¹⁹ The ILO has expressed concern that children are being recruited and forced to join illegal armed groups or the national armed forces in the **Philippines**.²⁰ However, ILO estimates that the majority of child labourers (approximately 85 million children) are engaged in work falling under paragraph (iv) of the definition, provided in Convention No. 182, commonly referred to as ‘hazardous work’:²¹

“Labour that jeopardizes the physical, mental or moral well-being of a child, either because of its nature or because of the conditions in which it is carried out.”

Furthermore, most child labourers are located in Asia and the Pacific.²²

The specific types of work that fall within this category are left to be determined by the national laws and regulations of each State party after consultation with worker and employee organizations and taking into consideration relevant international standards.²³ The Worst Forms of Child Labour Recommendation, 1999 (No. 190) recommends that in determining the types of hazardous work, consideration should be given to the following:

- Work which exposes children to physical, psychological or sexual abuse;
- Work underground, underwater, at dangerous heights or in confined spaces;

¹⁵ For the full definitions of these exclusions, see Article 2(2), Forced Labour Convention, 1930 (No. 29).

¹⁶ Article 1, Abolition of Forced Labour Convention 1957 (No. 105).

¹⁷ <http://www.ilo.org/ipecc/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/worstforms/lang--en/index.htm>. [accessed 9 September 2014].

¹⁸ http://www.antislavery.org/english/slavery_today/child_labour.aspx [accessed 15 September 2014]

¹⁹ CRC Committee, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Cambodia*, CRC/C/KHM/CO/2, 20 June 2011, para. 67.

²⁰ Observation (CEACR) – adopted 2013, published 103rd ILC session (2014).

²¹ ILO, *A future without child labour, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights and Work*, 2002, p. 9; ILO, *Marking Progress against Child Labour: Global Estimates and Trends 2000–2012*, p. 4.

²² ILO, *Marking Progress against Child Labour: Global Estimates and Trends 2000–2012*, p. vii.

²³ Article 4(1), ILO Convention No. 182.

- Work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- Work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and
- Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.²⁴

In 2013 in **Lao PDR**, 49 per cent of all working children were engaged in hazardous work, and 54 per cent of working children aged 14–18 being engaged in such work.²⁵ In 2011 in the **Philippines**, 2.993 million children (constituting 54.5 per cent of working children) were identified as working in a hazardous environment, a third of them being girls.²⁶

Domestic workers in particular are vulnerable to physical, psychological or sexual abuse, the nature of their work hiding them from public scrutiny. Thousands of children in **Cambodia** and hundreds of thousands of children in the **Philippines**, mainly girls, work as domestic workers in slavery-like conditions.²⁷ Children constitute 35 per cent of domestic workers in **Indonesia**, and they reportedly suffer sexual, physical or psychological abuse, and work 11 hours or more a day.²⁸

The use of child labour in other forms of hazardous work in ASEAN member States includes: deep-sea fishing in **Indonesia**;²⁹ industries such as food processing, street vending, refuse collecting and light manufacturing, in restaurants, teashops and family agricultural activities, and in large-scale development projects in the extractive and energy industries in **Myanmar**;³⁰ and on farms, in the streets, maritime sector, marketplace, employer's houses, construction or quarries, and factories in the **Philippines**.³¹ In **Malaysia**, child migrant domestic workers may work under conditions that are harmful to the child's health and physical, mental, spiritual, moral or social development.³²

14.2 International standards on the worst forms of child labour

To implement and enforce their obligations under Convention No. 182 effectively, State parties are required to take all necessary measures including the imposition of penal and other sanctions,³³ and effective and time-bound measures to do the following:

- (a) Prevent the engagement of children in the worst forms of child labour;
- (b) Provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- (c) Ensure access to free basic education, and, wherever possible and appropriate, vocational training for all children removed from the worst forms of child labour;
- (d) Identify and reach out to children at special risk; and

²⁴ Article 3, Worst Forms of Child Labour Recommendation, 1999 (No. 190).

²⁵ Direct Request (CEACR) – adopted 2013, published 103rd ILC session (2014) Convention No. 138 – Lao PDR.

²⁶ Direct Request (CEACR) – adopted 2013, published 103rd ILC session (2014) Convention No. 182 – Philippines.

²⁷ CRC Committee, *Concluding observations: Cambodia*, CRC/C/KHM/CO/2, 20 June 2011, para. 67; Observation (CEACR) – adopted 2013, published 103rd ILC session (2014), Convention No. 182 – Philippines.

²⁸ ILO, Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Convention No. 182 – Indonesia.

²⁹ *Ibid.*

³⁰ CRC Committee; *Concluding observations: Myanmar*, 14 March 2012, para. 85(a).

³¹ Direct Request (CEACR) – adopted 2013, published 103rd ILC session (2014), Convention No. 182 – Philippines.

³² CRC Committee, *Concluding observations: Malaysia*, 25 June 2007, para. 91; Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013) Convention No. 182 – Malaysia.

³³ Article 7(1), ILO Convention No. 182.

- (e) Take account of the special situation of girls.

'Hazardous work,' as a general rule, is forbidden to all persons under age 18, as stated in Article 3 of Minimum Age Convention 1973 (No. 138): "The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years." However, children from age 16 may be authorized to undertake this type of work under conditions that "the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity."³⁴ The provisions apply not only to employment relationships under contractual arrangements but also to other forms of employment and work, whether or not remunerated and whether or not there is an employment contract, including work in the informal economy and self-employment.

The ILO provisions are reinforced by CRC Article 32(1):

"States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."

14.3 Legislation in ASEAN member States: worst forms of child labour

14.3.1 Slavery and practices similar to slavery

Table 66 summarizes the extent to which each ASEAN member State has criminalized the worst forms of child labour, particularly slavery, debt bondage, serfdom, forced labour and forced recruitment for armed conflict.

Table 66. Legislation against the worst forms of child labour in ASEAN member States

<ul style="list-style-type: none"> ● Brunei ● Slavery: Article 2, Trafficking and Smuggling of Persons Order 2004; Articles 367, 370 and 371, Penal Code 1951; Article 35, Children and Young Persons Order 2006; Section 4, Women and Girls Protection Act 1984. ● Debt bondage: Article 2, Trafficking and Smuggling of Persons Order 2004. ● Serfdom: Article 2, Trafficking and Smuggling of Persons Order 2004. ● Forced labour: Section 374, Penal Code 1951. ● Forced recruitment for armed conflict: No provisions.
<ul style="list-style-type: none"> ● Cambodia ● Slavery: Article 48, Constitution 1993; Article 188, Penal Code 2011; Law on the Suppression of Human Trafficking and Sexual Exploitation 2008. ● Debt bondage: Articles 1, 16, 44, 363 and 370, Labour Law 1997; Article 48, Constitution 1993; Law on the Suppression of Human Trafficking and Sexual Exploitation 2008. ● Serfdom: Article 48, Constitution 1993; Law on the Suppression of Human Trafficking and Sexual Exploitation 2008. ● Forced labour: "Forced or compulsory labour is absolutely forbidden in conformity with [ILO Convention No. 29 on Forced or Compulsory Labour]." Articles 15 and 369, Labour Law 1997: The provision is said to apply to everyone including domestic or household servants and workers in agricultural enterprises or businesses. Breach is punishable with a fine or to imprisonment of six days to one month; Article 48, Constitution 1993; Suppression of Human Trafficking and Sexual Exploitation 2008. ● Forced recruitment for armed conflict: No provisions

³⁴ Article 3(3), Minimum Age Convention 1973 (No. 138); Article 4, Worst Forms of Child Labour Recommendation, 1999 (No. 190).

<ul style="list-style-type: none"> ● Indonesia ● Slavery: “Everybody shall be prohibited from employing and involving children in the worst forms of child labour” which includes “all kinds of job [undefined] in the form of slavery or practices similar to slavery.” Articles 74 and 183, Manpower Law 2003; Article 28I(1) Constitution 1945 (as amended); Articles 1(5), 4, 20 and 64, Human Rights Law No. 39 1999; Articles 13, 66(3), 68(2), 78, 83 and 88, Law on Child Protection 2002; Articles 324 to 327 Penal Code 1982; Law on the Elimination of Trafficking (No. 21) 2007. ● Debt bondage: Articles 74 and 183, Manpower Law 2003; Articles 13, 66(3) and 88, Law on Child Protection 2002; Article 28I(1), Constitution 1945 (as amended); Articles 1(5), 4, 20 and 64, Human Rights Law No. 39 1999; Law on the Elimination of Trafficking (No. 21) 2007. ● Serfdom: Articles 74 and 183, Manpower Law 2003; Articles 13, 66(3) and 88, Law on Child Protection 2002; Article 28I(1), Constitution 1945 (as amended); Articles 1(5), 4, 20 and 64, Human Rights Law No. 39 1999; Law on the Elimination of Trafficking (No. 21) 2007. ● Forced labour: Articles 74 and 183, Manpower Law 2003; Articles 13, 66(3) and 88, Law on Child Protection 2002; Article 28I(1), Constitution 1945 (as amended); Articles 1(5), 4, 20, 38(2) and 64, Human Rights Law No. 39 1999; Law on the Elimination of Trafficking (No. 21) 2007. ● Forced recruitment for armed conflict: “Any person who recruits and equips a child [i.e. person under 18 years of age] for military purposes or who misuses a child by involving them in an armed conflict or war is punishable with imprisonment for up to 5 years and/or a fine.” Articles 15(b), 15(e) and 63, Law on Child Protection 2002.
<ul style="list-style-type: none"> ● Lao PDR ● Slavery: Articles 100 and 134, Penal Law 2005; Articles 24 and 49, Law on the Development and Protection of Women 2004; Articles 57(1) and 74, Decree on Adoption of Children 2014. ● Debt bondage: Article 134, Penal Law 2005; Articles 24 and 49, Law on the Development and Protection of Women 2004. ● Serfdom: No provisions. ● Forced labour: Article 134, Penal Law 2005; Articles 2(6), 3(10) and 75, Labour Law 2007; Articles 24 and 49, Law on the Development and Protection of Women 2004. ● Forced recruitment for armed conflict: No provisions.
<ul style="list-style-type: none"> ● Malaysia ● Slavery: Article 6(1), Constitution 1957; Articles 367, 370 and 371, Penal Code 2013; Articles 2, 14, 15, 15a, 20, 21 and 26B(a), Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (as amended). ● Debt bondage: Articles 2, 14, 15, 15a, 20, 21 and 26B(a), Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (as amended). ● Serfdom: Articles 2, 14, 15, 15a, 20, 21 and 26B(a), Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (as amended). ● Forced labour: Article 374, Penal Code 2013; Article 6(2)–(3), Constitution 1957; Articles 2, 14, 15, 15a, 20, 21 and 26B(a), Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (as amended). ● Forced recruitment for armed conflict: Article 6(2)–(3), Constitution 1957.
<ul style="list-style-type: none"> ● Myanmar ● Slavery: Article 358, Constitution 2008; Articles 3 and 24, Anti-Trafficking in Persons Act 2005; Article 367, 370 and 371 Penal Code 1860. ● Debt bondage: Articles 3 and 24, Anti-Trafficking in Persons Act 2005. ● Serfdom: No provisions ● Forced labour: Article 359, Constitution 2008; Article 374, Penal Code 1860; Articles, 3 and 24 Anti-Trafficking in Persons Act 2005 ● Forced recruitment for armed conflict: Sections 2(b) and 3, Public Military Service Law 2010.

<ul style="list-style-type: none"> ● Philippines ● Slavery: Slavery is defined as “status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised;” Section 12-D(1), Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended); Section 3(e), Anti-Trafficking in Persons Act 2003 (as amended). Sections 12-D(1) and 16(c), Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended); Article 272, Penal Code 1930 (as amended); Sections 3(h), 4(c)(19), 6(c), 6(g) and 7, Act against Crimes against International Humanitarian Law, Genocide and Other Crime against Humanity 2009; Section 4, Anti-Trafficking in Persons Act 2003 (as amended). ● Debt bondage: The ‘worst forms of child labour’ include practices similar to slavery such as debt bondage. Sections 12-D(1) and 16(c), Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended); Sections 4, 15 and 40, Domestic Workers Act 2012; Articles 273 and 274, Penal Code 1930 (as amended); Anti-Trafficking in Persons Act 2003 (as amended). ● Serfdom: The ‘worst forms of child labour’ include practices similar to slavery such as serfdom. Sections 12-D(1) and 16(c), Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended); Trafficking in Persons Act 2003 (as amended). ● Forced labour: The ‘worst forms of child labour’ include practices similar to slavery such as forced or compulsory labour. Sections 12-D(1) and 16(c), Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended); Article 3, Section 18(2) Constitution 1987; Anti-Trafficking in Persons Act 2003 (as amended); Article 273, Penal Code 1930 (as amended). ● Forced recruitment for armed conflict: The ‘worst forms of child labour’ include practices similar to slavery such as forced or compulsory labour including recruitment of children for use in armed conflict. Sections 12-D(1) and 16(c), Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended); Section 4, Trafficking in Persons Act 2003 (as amended).
<ul style="list-style-type: none"> ● Singapore ● Slavery: Article 10(1), Constitution 1963 (as amended); Articles 367, 370–373, Penal Code 2008 ● Debt bondage: Articles 372–373, Penal Code 2008 ● Serfdom: Articles 372–373, Penal Code 2008 ● Forced labour: Article 374, Penal Code 2008; Article 10(2)–(3), Constitution 1963 (as amended) ● Forced recruitment for armed conflict: No provisions
<ul style="list-style-type: none"> ● Thailand ● Slavery: Enslavement, or causing a person to be in a position similar to a slave, is a criminal offence. Sections 312 to 214, Criminal Code 2003; Anti-Trafficking in Persons Act 2008 ● Debt bondage: Section 312 to 214, Criminal Code 2003 ● Serfdom: Sections 312 to 214, Criminal Code 2003; Sections 4 and 6, Anti-Trafficking in Persons Act 2008 ● Forced labour: Section 38, Constitution 2007; Anti-Trafficking in Persons Act 2008 ● Forced recruitment for armed conflict: Article 38, Constitution 2007: defined in terms of forced labour and permitted in times of armed conflict or where there is a state of emergency or martial law. No age limited provided.
<ul style="list-style-type: none"> ● Viet Nam ● Slavery: Articles 25, 119(2) and 192, Labour Code 1994 (as amended); Article 7(6)–(7), Law on Child Protection, Care and Education 2004; Article 37(1), Constitution 2013; Articles 119 and 120, Penal Code 1999 (as amended; Articles 2(1), 3(2)–(3) and 23, Law on the Prevention and Suppression against Human Trafficking 2011; Articles 8–9, Decree on the Procedural Manual for the implementation of Some Articles of the Law on Protection, Care and Education of Children 2009; Article 28, Youth Law 2005; Article 13(1), Adoption Law 2010. ● Debt bondage: Articles 25, 119(2) and 192, Labour Code 1994 (as amended); Article 7(6)–(7), Law on Child Protection, Care and Education 2004; Article 37(1), Constitution 2013; Articles 119 and 120, Penal Code 1999 (as amended; Articles 2(1), 3(2)–(3) and 23, Law on the Prevention and Suppression against

Human Trafficking 2011; Articles 8–9, Decree on the Procedural Manual for the implementation of Some Articles of the Law on Protection, Care and Education of Children 2009; Article 28, Youth Law 2005; Article 13(1), Adoption Law 2010.

- **Serfdom:** Articles 25, 119(2) and 192, Labour Code 1994 (as amended); Article 7(6)–(7), Law on Child Protection, Care and Education 2004; Article 37(1), Constitution 2013; Articles 119 and 120, Penal Code 1999 (as amended; Articles 2(1), 3(2)–(3) and 23, Law on the Prevention and Suppression against Human Trafficking 2011; Articles 8–9, Decree on the Procedural Manual for the implementation of Some Articles of the Law on Protection, Care and Education of Children 2009 ; Article 28, Youth Law 2005 ; Article 13(1), Adoption Law 2010.
- **Forced labour:** Article 35(3), Constitution 2013; Articles 5(2), 25 and 192, Labour Code 1994 (as amended); Article 7(6)–(7), Law on Child Protection, Care and Education 2004; Articles 2(1) and 3(2)–(3), Law on Prevention and Suppression against Human Trafficking 2011; Articles 8–9, Decree on the Procedural Manual for the implementation of Some Articles of the Law on Protection, Care and Education of Children 2009; Article 28, Youth Law 2005; Article 13(1), Adoption Law 2010.
- **Forced recruitment for armed conflict:** No provisions

Only the **Philippines** explicitly criminalizes slavery, debt bondage, serfdom, forced labour and forced recruitment for armed conflict.

Thailand criminalizes slavery of persons under age 18. While **Indonesia** criminalizes the employment or involvement of persons under age 18 in all ‘jobs’ in the form of slavery, it is not clear whether this applies to informal work in which there is no contractual relationship between employer and employee. Several ASEAN member States criminalize slavery only in certain contexts or have issued blanket prohibitions against slavery without imposing criminal sanctions for the offense. **Brunei, Malaysia, Myanmar** and **Singapore** criminalize slavery only in the context of trafficking. Similarly, **Cambodia** criminalizes slavery only in the context of trafficking or crimes against humanity. Trafficking persons under age 18 is criminalized in **Malaysia** under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (as amended), which includes “all actions involved in acquiring or maintaining the labour or services of a person” for the purposes of slavery, “through coercion.”³⁵ Coercion is often difficult to prove, and is not a requisite element in the internationally accepted definition of slavery.

Lao PDR and **Viet Nam** do not explicitly criminalize slavery, even in the context of trafficking, although aspects of it may fall within crimes relating to trafficking, adoption or exploitation of labour. **Singapore’s** Penal Code 2008 contains provisions which are likely to cover such acts, although they do not specifically criminalize slavery.³⁶ Under Section 367 of the Penal Code, whoever kidnaps or abducts any person in order to subject such person to slavery shall be punished with imprisonment for a term which may extend to 10 years, and also be liable to fine or to caning. Furthermore, under Sections 370–371, dealing in slaves can be punished with a term of imprisonment of up to 7 or 10 years (depending on aggravating factors) and also a fine. Additionally, Section 374 provides for the criminalisation of unlawful compulsory labour, with imprisonment for a term up to a year, and/or a fine. While **Cambodia, Lao PDR** and **Malaysia** contain blanket prohibitions against economic exploitation or slavery in their constitutions, they do not impose clear criminal sanctions for all such acts.

³⁵ Defined in Article 2, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (as amended) as: threat of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.

³⁶ For example, under Articles 372 and 373, whoever sells, lets to hire, or otherwise disposes of, or buys, hires or otherwise obtains possession of, any person under age 21 with intent that such person shall at any age be employed or used for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, is punishable with imprisonment for up to 10 years and a fine.

Thailand criminalizes acts that cause another person to be in a position similar to slavery, but does not specifically prohibit or criminalize debt bondage or serfdom. **Indonesia** prohibits and criminalizes economic exploitation of persons under age 18, such as involvement or employment in ‘jobs’ similar to slavery, and criminalizes debt bondage but only in the context of trafficking. Similarly, **Brunei, Cambodia, Lao PDR, Malaysia** and **Myanmar** criminalize practices similar to slavery and/or debt bondage only in the context of trafficking. In **Cambodia**, Article 16 of the Labour Law 1997 criminalizes the hiring of people for work to pay off debts, and also criminalizes an employer who require a cash guarantee or bond of any form to sign or maintain an employment contract. However, the law does not apply to certain categories of workers, including domestic workers. **Singapore’s** Penal Code 2008 contains provisions which do not specifically criminalize practices similar to slavery, although they may be interpreted as applying to such acts.³⁷ **Viet Nam** has several laws that prohibit labour exploitation or the abuse of child labour but the laws do not extend to practices similar to slavery, such as debt bondage or serfdom, nor do they carry clear criminal sanctions for offenses.

Cambodia’s Labour Law 1997 criminalizes forced or compulsory labour. **Brunei’s** Penal Code 1951, **Malaysia’s** Penal Code 2013, **Myanmar’s** Penal Code 1860 and **Singapore’s** Penal Code 2008 all criminalize acts of ‘unlawfully’ compelling a person to labour against his or her will, but these laws do not define unlawful compulsion, which is likely to impede the effectiveness of these provisions in preventing forced or compulsory labour. In **Malaysia**,³⁸ **Myanmar**³⁹ and **Singapore**, the constitutions specifically permit exceptions to the prohibition on forced labour for national purposes or for labour in the interest of the public, caveats that are drafted far wider than the narrow exceptions permitted by international standards.

Indonesia, Lao PDR and **Thailand** have criminalized forced or compulsory labour only in the context of trafficking. While **Indonesian** law criminalizes the worst forms of child labour and economic exploitation, it is not clear whether the provisions would be interpreted as including forced or compulsory labour and informal work. Furthermore, Article 673 of the Civil Code 1874 provides that compulsory labour shall be maintained, and that the Governor General is authorized to stipulate further provisions with regard to compulsory labour as he deems necessary, the ambit of which is not clear. Although **Lao PDR** and **Viet Nam** prohibit forced labour, they do not clearly impose criminal sanctions for breaches of the prohibition. Similarly, Article 38 of **Thailand’s** Constitution 2007 prohibits forced labour (with the exception of forced labour permitted by law specifically for “averting imminent public calamity” or in times of war, armed conflict, state of emergency or martial law) without imposing clear criminal sanctions in respect of its breach.

Indonesia’s Law on Child Protection 2002 specifically prohibits all persons (whether individual or corporate) from recruiting and/or equipping a child (i.e. persons under age 18) for military or similar purposes and from placing the life of a child in danger. Breach of this prohibition, or misuse of a child by involving them in an armed conflict or war is punishable with imprisonment and/or a fine. **Brunei, Cambodia, Lao PDR, Malaysia Myanmar, Singapore, Thailand** and **Viet Nam** do not specifically criminalize forced or compulsory recruitment of persons under age 18 for use in armed conflict. Although under **Myanmar’s** Public Military Service Law 2010, only persons above age 18 are eligible for military service, it does not impose criminal sanctions on the forced recruitment or use of persons under age 18 in armed conflicts, whether in the context of military service or not.

14.3.2 Involvement of children in illicit activities

The following table summarises the extent to which ASEAN member States have criminalized the worst forms of child labour falling within paragraph (iii) of the definition contained in ILO Convention No. 182 relating to the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties.

³⁷ See above the commentary regarding the prohibition against slavery.

³⁸ Malaysia’s Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (as amended).

³⁹ Myanmar’s Anti-Trafficking in Persons Act 2005 also prohibits forced labour and forced service in the context of trafficking (Articles 3 and 24).

Table 67. Legislation against using, procuring and offering a child for illicit activities

<ul style="list-style-type: none"> ● Brunei ● Using: No provisions ● Procuring: Article 29, Children and Young Person's Order 2006 ● Offering: Article 29, Children and Young Person's Order 2006
<ul style="list-style-type: none"> ● Cambodia ● Using: Article 47(7), Law on Control of Drugs 1996; ● Procuring: Articles 344–345, Penal Code 2011; Article 47(7), Law on Control of Drugs 1996 ● Offering: Articles 344–345, Penal Code 2011; Article 47(7), Law on Control of Drugs 1996
<ul style="list-style-type: none"> ● Indonesia: Article 74, Manpower Law 2003; Articles 67(2) and 89, Law on Child Protection 2002 ● Using: No provisions ● Procuring: Article 301, Penal Code 1982 ● Offering: Article 301, Penal Code 1982
<ul style="list-style-type: none"> ● Lao PDR: Articles 41(5) and 146, Penal Code 2005 ● Using: Articles 83 and 84, Law on the Protection of the Rights and Interests of Children 2007 ● Procuring: ● Offering:
<ul style="list-style-type: none"> ● Malaysia ● Using: No provisions ● Procuring: Article 32, Child Act 2001 (as amended) ● Offering: Article 32, Child Act 2001 (as amended)
<ul style="list-style-type: none"> ● Myanmar: Articles 372 and 373, Penal Code 1860 (Myanmar); Sections 65 and 66, Child Law 1993 ● Using: ● Procuring: ● Offering
<ul style="list-style-type: none"> ● Philippines: Sections 10(e), 12-D(3), 16(d) and 16(e), Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended); Section 4(K), Anti-Trafficking in Persons Act 2003 (as amended); Article 59(7), Child and Youth Welfare Code 1974; Section 5, Dangerous Drugs Act 2002; Articles 14(20) and 278, Penal Code 1930 (as amended); Section 20-C, Juvenile Justice and Welfare Act 2006 (as amended) ● Using ● Procuring ● Offering
<ul style="list-style-type: none"> ● Singapore: Article 6, Children and Young Persons Act 2011 (as amended) ● Using ● Procuring ● Offering
<ul style="list-style-type: none"> ● Thailand: Articles 26 and 78, Child Protection Act 2003 ● Using ● Procuring: Section 12A, Misuse of Drugs Act ● Offering

- **Viet Nam:** Articles 48(h) and 48(m), 194(2)(f), 198(2)(c), 252, Chapter XVIII, Penal Code 1998 (as amended); Articles 4, 6, 7 and 9, Decree on the Procedural Manual for the Implementation of Some Articles of the Law on Protection, Care and Education of Children 2009; Article 8, Youth Law 2005; Articles 25, 119(2) and 192; Labour Code 1994 (as amended)
- Using
- Procuring
- Offering

Only the **Philippines** criminalizes the use, procuring and offering of a person under age 18 for illegal or illicit activities, particularly the production and trafficking of dangerous drugs and volatile substances (as prohibited under its domestic laws).

Certain ASEAN member States (**Brunei, Malaysia, Myanmar and Singapore**) criminalize only one activity (use, procurement or offering), rather than all three. **Brunei, Malaysia and Singapore** fail to explicitly criminalize the use of minors in illicit activities. Their laws limit the crimes to causing or procuring, as well as criminalizing legal guardians who allow the child to go anywhere for the purposes of certain illegal activities or activities detrimental to the health and welfare of the child. In **Myanmar**, the Penal Code 1860 criminalizes only the sale, letting to hire, disposal, purchase, hiring, or obtaining possession of any person under age 18 with intent that the person will be employed or used for any unlawful and immoral purpose, or knowing it to be likely that the person (at any age) will be employed or used for any such purpose.

In **Singapore**, Section 12A of the Misuse of Drugs Act (chapter 185) states it shall be an offence for any person of or above age 21 to cause or procure any young person or vulnerable person to commit a trafficking or importation offence.

Some States (**Brunei, Cambodia, Indonesia and Myanmar**) criminalize the use, procurement and/or offering of children but only in a limited range of illicit activities. **Brunei's** Penal Code 2011 only criminalizes the 'incitement' of a minor to beg or commit felonies or misdemeanours, without specifically criminalizing procurement or offering of minors in all illicit activities. Under **Cambodia's** laws it is a crime to involve minors in offences under the Law on Control of Drugs 1996. Similarly, in **Indonesia**, Article 74 of the Manpower Law 2003 criminalizes the employment or involvement of children in jobs that make use of them, procure them or involve them in gambling or the production and trade of alcoholic beverages, narcotics, psychotropic substances and other addictive substances. It is also not clear whether this applies to all work or only to formal wage employment entered into under a contractual relationship. The Law on Child Protection 2002 also criminalizes deliberately allowing a child to become involved, involving, or ordering the involvement of a child in the misuse, production or distribution of narcotics, alcohol, and/or psychotropic or other addictive substances. Further, Article 301 of its Penal Code 1982, it is a crime for a legal guardian to surrender or leaving a child under age 12 to another person, knowing that the child will be used for begging. Under **Myanmar's** Child Law 1993 as amended, crimes relating to the use, procurement or offering of a child are limited to illicit activities involving alcohol, gambling and begging and only apply to persons under age 16.

Under its Child Protection Act 2003, **Thailand** criminalized certain acts including forcing, threatening, inducing, encouraging, consenting to, or acting in any other way that results in a child becoming a beggar, living on the street, or using a child as an instrument for begging or committing crimes. It also criminalized any action that results in the exploitation of a child, using or allowing a child to gamble, enter a place where gambling occurs or any other place where children are not allowed. The protections provided under the Act apply to persons under age 18 who have not attained majority through marriage.

Rather than explicitly criminalizing the use, procurement or offering of children in illicit activities, the Penal Code 2005 of **Lao PDR** provides that the initiation of minors into committing or participating in offences is considered to be circumstances conducive to increasing criminal responsibility. Similarly, Articles 83 and 84 of its Law on the Protection of the Rights and Interests of Children 2007 do not impose clear criminal responsibility and penalties for the use of children to buy or advertise narcotic or intoxicating substances. Such acts are sanctioned with 're-education'. If a further offence is committed, it can be sanctioned with a fine, disciplinary

sanction or suspension or withdrawal of a business licence, but the Act does not impose clear criminal responsibility for such acts.

Viet Nam's Decree on the Procedural Manual for the Implementation of Some Articles of the Law on Protection, Care and Education of Children 2009, Labour Code 1994 (as amended) and Youth Law 2005 provide a range of prohibitions against the use of children in illicit activities, including prohibitions against commercial exploitation of children living and working on the street, and the involvement of children in illegal trade, transportation, storing, buying, selling and use of drugs and narcotics and gambling. The laws do not provide clear criminal sanctions for breaches of these prohibitions. The Penal Code 1998 (as amended) criminalizes some of these matters: to employ children in the commission of the crime of illegally storing, transporting, trading in or appropriating narcotics (Article 194(2)(f)); and to lease or lend places or commit any other act of harbouring the illegal use of narcotics when committed against children (Article 198(2)(c)). There is a general crime under Article 252 of enticing or compelling juveniles into criminal activities or a depraved life, although this does not cover all aspects of using, procuring or offering juveniles for illicit activities.

Brunei, Malaysia, Myanmar and Thailand do not criminalize acts related to using, procuring or offering children specifically for the purpose of producing and trafficking drugs.

14.3.3 Hazardous work

Table 68 summarizes the relevant provisions in each ASEAN member State relating to ILO Convention No. 182 paragraph (iv) which defines the worst forms of child labour relating to hazardous work or any type of work that may be likely to jeopardise the health, safety or morals of the child.

Table 68. Provisions on child labour and hazardous work in ASEAN member States

● Brunei
<p>Definition of hazardous work: Not defined, but the Employment Order 2009 contains special rules relating to 'industrial undertakings'. However, these provisions appear to be limited to employment under contracts for services and excluding arrangements relating to domestic workers.</p> <p>Note: Industrial undertakings include mines, quarries and other works for the extraction of minerals from earth; manufacturing industries, including ship-building and the generation and transmission of electricity, construction including of railways, roads, tunnels, bridges, sewers, gasworks, waterworks, and the transport of goods and passengers (excluding transport by hand), although occupations may be excluded from this definition by law (Section 2 Employment Order 2009).</p> <p>Minimum age: 15 years, except for certain types of industrial undertakings for which there is no minimum age. The Minister of Home Affairs may also prohibit certain industrial undertakings from employing children aged 15–17. Sections 103, 104 and 107 Employment Order 2009</p> <p>Protection for children: Conditions of employment for persons under age 18 may be set out in regulations. Section 109 Employment Order 2009</p> <p>Breach of provisions is a criminal offence: No: Sections 17 and 18 Employment Order 2009</p>
● Cambodia
<p>Definition of hazardous work:</p> <p>'Employment or work which, by its nature, could be hazardous to the health, the safety, or the morality of an adolescent', determined by the Ministry of Labour in consultation with the Labour Advisory Committee, via a ministerial order, but does not apply to certain categories of workers, such as domestic workers. Articles 1, 173 and 177(2), Labour Law 1997</p> <p>Underground work, including in underground mines or quarries. Article 174, Labour Law 1997</p>

Minimum age: 18 years or 15 years if the conditions in the adjacent column are met. Articles 177(2)–(3) Labour Law 1997. 18 years for employment in underground mines or quarries; 16 years for underground work (including apprenticeships). Article 174, Labour Law 1997

Protection for children:

Conditions for children from 15 years of age include: the ‘health, safety or morality [of the child] is fully guaranteed’; and the child can receive ‘specific and adequate instruction or vocational training.’ Articles 177(2)–(3), Labour Law 1997

The Ministry of Labour must impose special conditions under which minors can be employed in “insalubrious or hazardous establishments where the staff is exposed to arrangements harmful to their health.” Article 173, Labour Law 1997

Also note constitutional protections. Article 48, Constitution 1993

For underground work and apprenticeships, the Prakas (ministerial order) of the Ministry in Charge of Labour must determine special conditions of work. Article 174, Labour Law 1997

Breach is a criminal offence: No

Definition of hazardous work:

Underground work, including in underground mines or quarries. Article 174, Labour Law 1997

Minimum age: 18 years for employment in underground mines or quarries; 16 years for underground work (including apprenticeships). Article 174, Labour Law 1997

Protection for children:

For underground work and apprenticeships, the Prakas (ministerial order) of the Ministry in Charge of Labour must determine special conditions of work. Article 174, Labour Law 1997

Breach is a criminal offence: No

● **Indonesia**

Definition of hazardous work: Jobs that damage the health, safety or morals of the child as defined in secondary legislation Article 74, Manpower Law 2003. It is not clear whether this is limited to wage employment under a contractual relationship.

Minimum age: 18 years “Everybody is prohibited from employing or involving children in the worst forms of child labour’ which includes ‘all kinds of jobs harmful to the health, safety and morals of the child” as determined in a Ministerial decision; Article 74, Manpower Law 2003

Protection for children: Right of all ‘citizens’ to work as befits a human being, in line with their ability and capacity, and to just conditions of work. Article 38(1), Human Rights Act No. 39 1999 (Indonesia); note definition of child under this law only applies to unmarried persons under 18 years of age (Article 1(5)).

Also note right of unmarried persons under age 18 to protection against work that is dangerous and/or could interfere with their education or physical, mental or spiritual health. Article 64, Human Rights Law No. 39 1999

Breach is a criminal offence: Partially: Article 301, Penal Code 1982 (Indonesia); Article 2(1)(c) and Chapter VIII, Law on the Elimination of Violence in the Household 2004

● **Lao PDR**

Definition of hazardous work: Employment in sectors involving the performance of heavy work or that are dangerous to their health. Namely: all types of mining; production activities that use chemicals, explosives or toxic substances; work involving the handling of human corpses; overtime time; work in environment with excessive noise; work in places serving alcohol or with gambling; work at night from 10 p.m. to 5 a.m. of the next day; sectors involving direct exposure to radiation or to dangerous communicable diseases, direct exposure to vapour or smoke which is dangerous to health, direct exposure to dangerous chemicals, such as explosives, working in pits, or in underground tunnels, under water or in the air, working in an abnormally hot or cold place, or working directly with constantly vibrating equipment; Article 41, Labour Law 2007.

Applies to work conducted under an employment contract between 'employers', i.e., a person or organization using employees for its activities by paying salary or wages, and providing benefits and other policies to the employees as regulated by laws, regulations and 'employees' i.e. a person working under the supervision of an employer while receiving compensation for work through salary or wages, benefits or other policies as regulated by laws, regulations and the employment contract; Articles 2, 3, 6 and 41, Labour Law 2007.

Minimum age: 18 years Article 41, Labour Law 2007

Protection for children: N/A

Breach is a criminal offence: Partially: Articles 84, 87 and 91, Law on the Protection of the Rights and Interests of Children 2007

● **Malaysia:** All definitions appear to be limited to contractual employment. Different provisions may apply if an existing employment contract was entered into by a person before the commencement of the Children and Young Persons (Employment) (Amendment) Act 2010

Definition of hazardous work: "[A]ny work that has been classified as hazardous work based on the risk assessment conducted by a competent authority on safety and health determined by the Minister" Employment requiring the person to work underground, Articles 1A(1), 2(1), 2(5) and 2(6), Children and Young Persons (Employment) Act 1966 (as amended)

Minimum age: 18 years Article 1A(1), Children and Young Persons (Employment) Act 1966 (as amended)

Protection for children: N/A

Breach is a criminal offence: YES: Article 14(1), Children and Young Persons (Employment) Act 1966 (as amended)

Definition of hazardous work: Employment in an 'industrial undertaking' or employment on any vessel under the personal charge of the person's parent/ guardian. Employment in any hotels, bars, restaurants and stalls, godown, factory, workshop, store, boarding house, theatre, cinema, club or association. Articles 1A(1) and 2(3)(c), 2(3)(d) and 2(3)(e)), Children and Young Persons (Employment) Act 1966

Minimum age: 15 years Articles 1A(1), Children and Young Persons (Employment) Act 1966 (as amended)

Protection for children: The work must be suitable to the young person's capacity and not contrary to the Factories and Machineries Act 1967, the Occupational Safety and Health Act 1994 or the Electricity Supply Act 1990. Articles 2(3)(d) and 2(5), Children and Young Persons (Employment) Act 1966 (as amended)

Females may only be engaged in employment in hotels, bars, restaurants, boarding houses or clubs if such establishments are under the management or control of her parent or guardian or if the employment is approved by the Director General. Article 2(3)(c), Children and Young Persons (Employment) Act 1966 (as amended)

<p>Further, the Labour Minister may, in any particular case, by order prohibit any child or young person from engaging or from being engaged in the employment if he is satisfied that having regard to the circumstances such employment would be detrimental to the interests of the child or young person, as the case may be. Article 3, Children and Young Persons (Employment) Act 1966 (as amended)</p> <p>Breach is a criminal offence: Yes: Article 14(1), Children and Young Persons (Employment) Act 1966 (as amended)</p>
<p>● Myanmar: Not all labour laws were available for this review</p>
<p>Definition of hazardous work: Employing or permitting a person to perform work which is hazardous to the life of the person or which may cause disease to the person or which is harmful to the person's moral character Section 65(a), Child Law 1993</p> <p>Minimum age: 16 years Sections 2 and 65(a), Child Law 1993</p> <p>Protection for children: No provisions</p> <p>Breach is a criminal offence: Yes: Section 65(a), Child Law 1993</p>
<p>● Philippines</p> <p>Definition of hazardous work: 'Work which, by its nature or the circumstance in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it: a) Debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or b) Exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or c) Is performed underground, underwater or at dangerous heights; or d) Involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or e) Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or f) Is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations; or g) Is performed under particularly difficult conditions; or h) Exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, nematodes and other parasites; or i) Involves the manufacture or handling of explosives and other pyrotechnic products' (Section 12-D(4) Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended)). See also Article 139(c), Labour Code 1974, provisions prohibiting and criminalizing trafficking of children for the purposes of hazardous work in Sections 3(b), 4 and 10(a), Anti-Trafficking in Persons Act 2003 (as amended), and other related provisions in Articles 104, 106 and 210, Child and Youth Welfare Code 1974</p> <p>Minimum age: 18 years. Sections 3(a) and 12-D(4), Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended)</p> <p>Protection for children: N/A</p> <p>Breach is a criminal offence: YES: Section 16(b) and (e), Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended) (Philippines); Article 278, Penal Code 1930 (as amended)</p>
<p>● Singapore</p> <p>Definition of hazardous work: (Defined as public and private undertakings and any branch thereof and includes particularly — (a) mines, quarries and other works for the extraction of minerals from the earth; (b) undertakings in which articles are manufactured, assembled, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in shipbuilding, or in the generation, transformation or transmission of electricity or motive power of any kind; (c) undertakings engaged in constructional work; and (d) undertakings engaged in the transport of passengers or goods by road, rail, sea, inland waterway or air, including the handling of goods at docks, quays, wharves, warehouses or airports (Section 2, Employment Act 2009); Section 68(1)–</p>

<p>(2), Employment Act 2009.) Children can take part in industrial undertakings where only family members are employed.</p> <p>Minimum age: A girl or boy age 13 to below age 15, defined as a 'child' in the Employment Act, can only be employed in an industrial undertaking if only members of her/his family are employed, otherwise 16.</p> <p>For a girl or boy age 15 to below age 16, defined as a 'young person' in the Employment Act, the employer must notify the Commissioner for Labour of such employment and submit medical report certifying fitness for such work.</p> <p>Potentially hazardous work, such as working at night between 11 p.m. to 6 a.m. or underground are explicitly prohibited for children and young person below age 16.</p> <p>Protection for children: Not specifically. Employers must comply with the provisions set out in the Singapore Workplace Safety and Health Act 2009 but these are general provisions applying to all employees.</p> <p>Breach is a criminal offence: Yes. A contravention of any of the provisions under Part VIII of the Employment Act as provided for under Section 74 of the Employment Act, would constitute an offence, punishable with a fine not exceeding S\$5000 or imprisonment for a term not exceeding two years or to both.</p>
<p>● Thailand</p> <p>Definition of hazardous work: Specified areas of work mainly in industry or services as prescribed under ministerial regulations. See Articles 49 and 50, Labour Protection Act 1998 (as amended) Provisions appear to be limited to contractual employment relationships and wage employment.</p> <p>Minimum age: 18 years Articles 49 and 50, Labour Protection Act 1998 (as amended)</p> <p>Protection for children: N/A</p> <p>Breach is a criminal offence: Yes, Article 144, Labour Protection Act 1998 (as amended)</p> <p>Definition of hazardous work: Employment, use or request of a child to work or act in a way that might be physically or mentally harmful to the child, affect the child's growth or hinder the child's development; Force, threaten, use, induce, instigate, encourage, or allow a child to commit any acts indicative of commercial exploitation in a manner which hinders the child's growth and development or constitutes an act of abuse against the child. Article 26, Child Protection Act 2003.</p> <p>Minimum age: 18 years old or majority attained through marriage Article 26, Child Protection Act 2003.</p> <p>Protection for children: N/A</p> <p>Breach is a criminal offence: Yes, Article 78, Child Protection Act 2003</p> <p>Definition of hazardous work: Work which by its nature may be hazardous to the health and safety of the person, as prescribed in ministerial regulations. Section 20, Home Workers Protection Act 2010 (note that the law relates to 'home work' which means work assigned by a hirer in an industrial enterprise to a home worker to be produced or assembled outside of the workplace of the hirer or other work specified in ministerial regulations)</p> <p>Minimum age: 15 years, pregnant women are prohibited. Section 20, Home Workers Protection Act 2010.</p> <p>Protection for children: None</p> <p>Breach is a criminal offence: Yes, Section 43, Home Workers Protection Act 2010.</p>

● Viet Nam

Definition of hazardous work: Employment of person for heavy or hazardous jobs or jobs requiring exposure to noxious substances or in working places or jobs badly affecting their personality which are on the lists promulgated by the Ministry of Labour, War Invalids and Social Affairs, and the Ministry of Health; limited to wage employment relationships. Article 121, Labour Code 1994 (as amended); Article 7(7), Law on Child Protection, Care and Education 2004. Note that the latter refers to the 'use' of persons for such activities but only applies to Vietnamese citizens under the age of 16 years and is partially criminalized.

Minimum age: 18 years Articles 119(1) and 121, Labour Code 1994 (as amended).

Protection for children: Under age 16 (Article 1, Law on Child Protection, Care and Education 2004) but only applies to children who are Vietnamese citizens.

Breach is a criminal offence: Partially Articles 227 and 228, Penal Code 1999 (as amended); Articles 9(3), 13 and 17, Decree on Child Protection, Care and Education 2004.

Definition of hazardous work: Hard or dangerous work, or work exposed to toxic substances that are harmful to their ability to bear and raise children, as specified in the lists established by the Ministry of Labour, War Disabled and Social Affairs and the Ministry of Health; limited to wage employment relationships. Article 113(1), Labour Code 1994 (as amended)

Regular underground work in mines or for work immersed in water; limited to wage employment relationships. Article 113(2), Labour Code 1994 (as amended).

Minimum age: No female workers of any age may undertake this type of work. Articles 113(1) and 113(2), Labour Code 1994.

Protection for children: children under 18 may not be employed: Article 121 Labour Code 1994 and Article 9, Decree on the Law on Child Protection, Care and Education 2004.

Breach is a criminal offence: Article 228, Penal Code

Definition of hazardous work: Use of a person to work in dance halls, massage parlours, casinos, karaoke houses, bars, beer houses, entertainment places with betting or other places adversely affecting the development of a person's personality.

Taking advantage of adoption or other humanitarian acts to force a person to perform heavy housework exceeding regular working hours adversely affecting his or her physical and spiritual development. Article 9, Decree on the Law on Child Protection, Care and Education 2005

Minimum age: 16 years for Vietnamese citizens. Non-Vietnamese citizens are not covered by this Law. Article 1, Law on Child Protection, Care and Education 2004

Protection for children: As provided in Article 1, Law on Child Protection, Care and Education Act 2004 and Article 9 Decree on the Law on Child Protection, Care and Education 2004

Breach is a criminal offence: Partially: Articles 9 and 13, Decree on the Law on Child Protection, Care and Education 2004

Only the **Philippines** provides a blanket prohibition against persons under age 18 undertaking hazardous work as described under its domestic law, which can be used as a good practice example.

'Work which, by its nature or the circumstance in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it: a) Debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or b) Exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or c) Is performed underground, underwater or at dangerous heights; or d) Involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or e) Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or f) Is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations; or g) Is performed under particularly difficult conditions; or h) Exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, nematodes and other parasites; or i) Involves the manufacture or handling of explosives and other pyrotechnic products'

(Section 12-D(4) Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended) (Philippines))

Some or all of the laws relating to hazardous work in **Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Singapore, Thailand** and **Viet Nam** either explicitly exclude do not apply to domestic workers and/or are limited to contractual employment relationships, excluding informal work, unremunerated work or and self-employment. It should be noted that **Thailand** has issued a reservation to Article 5 of the Minimum Age Convention, 1973 (No. 138), restricting its application to the following branches of economic activity: mining and quarrying; manufacturing; construction; electricity; gas and water; sanitary services; transport; storage service and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, with the exception of family and small-scale holdings producing for local consumption and not regularly employing hired workers. Article 5(3) of the Convention enables States parties to issue reservations, but only for an initial period, and Thailand has been a party to the Convention since 11 May 2004.

Legislation in **Viet Nam** includes blanket prohibitions against persons under age 18 undertaking hazardous work, as defined in the Labour Code. The Decree on the Law on Protection, Care and Education of Children 2004 gives protection by prohibiting the employment of children under the age of 16 in relation to other forms of employment, including using the child to performed in dance halls or similar entertainment places, or working in massage parlours, casinos, karaoke houses, bars, beer houses or places where betting takes place. However, the law applies only to Vietnamese citizens under age 16 and does not apply to non-Vietnamese citizens.

The following ASEAN member States do not impose minimum ages, or impose minimum ages that fall below international standards, for persons engaged in hazardous work: **Brunei, Cambodia, Malaysia, Myanmar, Singapore** and **Thailand**. In **Brunei**, there is no express definition of hazardous work or express prohibition of children engaging in such work. However, the law states that a person aged 16–17 has the capacity to enter into a contract of service for an occupation approved by the Commissioner of Labour as not being injurious to their moral and physical development,⁴⁰ which may suggest that they otherwise do not have the capacity to enter into such employment contracts. Further, employment law in **Brunei** limits employment in 'industrial undertakings', with some exceptions, to people over age 15.⁴¹

⁴⁰ Excluding apprenticeship contracts, Section 9(2) Employment Order 2009 (Brunei).

⁴¹ Exceptions include the following: industrial undertakings in which only members of the same family are employed; work approved and supervised by the Ministry of Education, the Institute of Technical Education or any agency authorized by the Ministry of Home Affairs; and employment carried on in any technical, vocational or industrial training school/institute. Sections 103, 104 and 107 and Employment Order 2009 (Brunei).

Contrary to international standards, legislation in several ASEAN member States does not sufficiently specify that a child who is employed or engaged in hazardous work must have his/her health, safety and morals fully protected, and receive adequate specific instructions or vocational training in the relevant branch of activity. Those States include **Brunei, Cambodia, Malaysia, Myanmar, Singapore, Thailand** and **Viet Nam** (relating to work in dance halls etc.). The **Cambodia** Employment Order 2009 provides some protection for children in respect of hazardous work, but it does not apply to all categories of workers, particularly domestic workers, nor to all types of hazardous work. Similarly, labour laws in Thailand prohibit hazardous work, and the Child Protection Act 2003 contains some general offences relating to hazardous work, but these laws only apply to persons under age 18 who have not attained majority through marriage.⁴²

Regarding the consequences of any violations of these laws, only **Malaysia, Myanmar, Philippines** and **Thailand** fully criminalize breaches of the prohibitions against the use of children in hazardous work as described under their respective laws.⁴³ **Indonesia** partially criminalizes the use of children in hazardous work under the Penal Code 1982. It is a crime for the child's legal guardian to surrender or leave a child under age 12 to another person, knowing that the child will be used to perform dangerous feats, dangerous labour or labour detrimental to the health. Further, the Law on the Elimination of Violence in the Household 2004, which applies to individuals working to assist a household and living in the household criminalizes acts of physical, mental or sexual violence and neglect. Similarly in **Lao PDR**, it is only the continued use of child labour in hazardous sectors after the imposition of an administrative sanction that leads to criminal liability. In **Viet Nam**, legislation specifies that criminal liability for violations depends on the seriousness of the harm caused or acts of recidivism, or generally refers to penalties, prosecution or the imposition of fines in accordance with the law without specifically designating such acts as crimes. **Brunei** and **Cambodia** do not specifically criminalize breaches of the rules relating to employment or use of children in hazardous work at all. The laws of **Singapore** either do not criminalize the acts or, concerning work in public entertainment etc., the laws limit criminal offences to persons that cause or procure such acts, or criminalize parents or guardians that allow it.

Viet Nam prohibits certain categories of work for all females, regardless of their age, namely, hard or dangerous work, or work exposed to toxic substances that are harmful to their ability to bear and raise children, as specified by the Ministry of Labour, War Disabled and Social Affairs and the Ministry of Health, and regular work underground in mines or immersed in water. Such work may not necessarily be prohibited for males under age 18 under the general provisions relating to hazardous work. Consideration to whether these female-only prohibitions should be extended to males, and full criminalization of any violations, would strengthen Viet Nam's legislation in line with international standards, particularly with respect to equality and non-discrimination.

14.4 Recommendations for law reform: Worst forms of child labour

Recommendations

- Consider withdrawing reservations to the Minimum Age Convention 1973 (No. 138) that limit its applicability to certain areas (**Thailand**).
- Expand the crime of slavery to cover the enslavement of children in all contexts, and not just in the context of trafficking, crimes against humanity, relationships under employment contracts, or upon proof of coercion (**Brunei, Cambodia, Indonesia, Malaysia, Myanmar** and **Singapore**).
- Introduce into the law a specific crime against slavery (**Lao PDR** and **Viet Nam**);

⁴² The prohibitions relate to the employment, use or request of a child to work or act in a way that might be physically or mentally harmful to the child, affect the child's growth or hinder the child's development; and forcing, threatening, using, inducing, instigating, encouraging, or allowing a child to commit any acts indicative of commercial exploitation in a manner which hinders the child's growth and development or constitutes an act of abuse against the child; Article 26, Child Protection Act 2003 (Thailand).

⁴³ Note however that not all labour laws relating to Myanmar were available for review.

- Criminalize the use, procurement and offering of children for the purposes of illicit activities (**Brunei, Malaysia, Myanmar, Singapore, Lao PDR and Viet Nam**).
- Extend the crime of using, procuring and offering children for illicit activities to all offences under national laws, and to all persons under age 18 regardless of their marital status or whether an employment contract has been entered into (**Brunei, Cambodia, Indonesia, Myanmar and Thailand**).
- Specifically criminalize the use, procurement and offering of children for the production and trafficking of drugs (**Brunei, Malaysia, Myanmar, Singapore and Thailand**).
- Extend the application of the provisions relating to hazardous work to all categories of workers (particularly domestic workers) regardless of whether or not the child labourer is under a contractual employment relationship or receives remuneration for his/her work (**Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Singapore, Thailand and Viet Nam**).
- Introduce or increase the minimum age thresholds for conducting all forms of hazardous work in line with international standards (**Brunei, Cambodia, Malaysia, Myanmar, Singapore, Thailand and Viet Nam**).
- Specify that all persons under age 18 employed or engaged in hazardous work must have their health, safety and morals fully protected and receive adequate specific instructions or vocational training in the relevant branch of activity (**Brunei, Cambodia, Malaysia, Myanmar, Singapore, Thailand and Viet Nam**).
- Fully criminalize a breach of the laws relating to hazardous work and impose a range of appropriate criminal sanctions for such offences (**Brunei, Cambodia, Indonesia, Lao PDR, Singapore and Viet Nam**).

Table 69. Report card: Worst forms of child labour

	Criminalization of slavery and practices similar to slavery	Criminalization of the use, procurement or offering of children for illicit activities	Provisions relating to hazardous work
Brunei	●	●	●
Cambodia	●	●	●
Indonesia	●	●	●
Lao PDR	●	●	●
Malaysia	●	●	●
Myanmar	●	●	●
Philippines	●	●	●
Singapore	●	●	●
Thailand	●	●	●
Viet Nam	●	●	●

Chapter 15. Labour below the Minimum Working Age and Light Work

15.1 Context and understanding of the minimum working age and light work

With the exception of Myanmar, all ASEAN member States are party to the Minimum Age Convention 1973 (No. 138). The employment of children below the minimum working ages prescribed by the Convention is a form of violence against children in the workplace. The majority of child labourers fall within this category (i.e. aged 5–11).¹

As a general rule, the member States are required to specify a minimum age below which children cannot legally be admitted to employment or work in any occupation in the State.² According to a multi-country study conducted by UNICEF EAPRO in 2008, in **Indonesia** in 2000, 5.4 per cent of children aged 5–14 were working, compared to 32.4 per cent in **Lao PDR** in the same year, 16.2 per cent in the **Philippines** in 2007, and 15.8 per cent in **Viet Nam** in 2006.³ In **Lao PDR**, 75,231 child labourers were aged 5–13, with another 119,394 aged 14–17.⁴ In 2011 in the **Philippines**, approximately 3.2 million children were child labourers (58.4 per cent of all working children aged 5–17).⁵

Child labour can occur both in rural and urban areas, and in industrial and non-industrial undertakings. In **Indonesia**, child labour mainly occurs in the fields of agriculture, forestry, hunting and fishing.⁶ In **Malaysia**, child labour occurs primarily in agriculture in rural areas, although child labour also occurs in urban areas in restaurants, shops and small manufacturing units usually owned by family members.⁷

Child labour in informal work and unregulated practices is a particular concern. In **Indonesia**, for instance, 12.7 per cent of working children aged 5–12 were self-employed (2009), and 82.5 per cent of working children were unpaid family workers (2009). Only 4.8 per cent of working children aged 5–12, and 12.1 per cent of children aged 13–14, were working as employees.⁸ The CRC Committee has expressed concern in relation to children under age 15 in **Thailand**, particularly foreign nationals and children living and working on the street, working informally in agriculture, the tourist industry, begging and domestic service. The CRC Committee has expressed similar concerns to **Viet Nam**.⁹

15.2 International standards on the minimum working age and light work

Article 2 of the ILO Minimum Age Convention 1973 (No. 138) specifies that the minimum working age must “not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.” However, member States whose economy and educational facilities are insufficiently developed may, after consultation with the employers and workers concerned, “initially specify a minimum age of 14 years.” Certain reporting obligations apply to such States, requiring them to issue a statement that the reasons for imposing the lower minimum age subsists, and that the State will renounce its right to impose the lower minimum age from a stated date.

¹ ILO, *Marking Progress against Child Labour: Global Estimates and Trends 2000–2012*, p. 6.

² Article 2(1), Minimum Age Convention 1973 (No. 138)

³ UNICEF, *Child Maltreatment: Prevalence, Incidence and Consequences in the East Asia and Pacific Region, A Systematic Review of Research*, 2012, p. 79.

⁴ Report on the National Child Labour Survey 2010 of Lao PDR, Available at: http://www.ilo.org/ipec/informationresources/WCMS_202334/lang-en/index.htm [accessed 15 September 2014].

⁵ Direct Request (CEACR) – adopted 2013, published 103rd ILC session (2014), Convention No. 182 – Philippines.

⁶ ILO, Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Convention No. 138 – Indonesia.

⁷ ILO, Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Convention No. 138 – Malaysia.

⁸ ILO, Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Convention No. 138 – Indonesia.

⁹ CRC Committee, Concluding observations: Viet Nam, CRC/C/VNM/CO/3-4, 22 August 2012, para. 69.

Convention No. 138 also describes light work as “not likely to be harmful to the health or development” of the child and “does not prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.” Such work may be carried out by children from age 13, or 12 where the economy and educational facilities are insufficiently developed.¹⁰ In such cases, the competent national authority must specify: the activities in which such employment/work is permitted; and the acceptable number of working hours; and the conditions under which such employment/work is undertaken.¹¹

The minimum ages of employment/work prescribed by international standards are summarized in the table below.¹²

Category of work	General minimum age	Minimum age – insufficiently developed economic and educational facilities
General	Not less than the age of completion of compulsory schooling, and in any case not less than 15 years	Not less than 14 years for an initial period
Light work	13 years	12 years

Certain exceptions apply to the obligations to impose minimum ages of employment/work, under Convention No. 138:

- **Special and substantial problems of application:** Limited categories of employment/work in respect of which “special and substantial problems of application arise,” except for hazardous work, may be excluded from the application of the minimum age rules “in so far as necessary” and provided that the competent national authority has consulted with the concerned employers’ and workers’ organizations (Article 4);
- **Economy and administrative facilities insufficiently developed:** Certain branches of economic activity or types of undertakings may be excluded from the scope of the minimum age rules where the State’s economy and administrative facilities are insufficiently developed, and after consultation with the concerned employers’ and workers’ organizations, provided that the rules apply as a minimum to the following areas: “mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers” (Article 5);
- **Work done for educational reasons:** Work done by children in schools for general, vocational or technical education or in other training institutions, or by persons at least age 14 in undertakings where such work: is carried out in accordance with conditions prescribed by the competent national authority; is carried out after consultation with the concerned employers’ and workers’ organizations; and is an integral part of:
 - A education/training course for which a school or training institution is primarily responsible;
 - A programme of training mainly or entirely in an undertaking, which programme has been approved by the competent national authority; or
 - A programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training (Article 6); and

¹⁰ Article 7(1) and (4), Minimum Age Convention 1973 (No. 138).

¹¹ Article 7(3), Minimum Age Convention 1973 (No. 138).

¹² This table is largely based on Table 6.1, Chapter 7, P. Pinheiro, *World Report on Violence against Children*, 2006.

- **Individual cases:** Permits allowing exceptions to the minimum age for employment or work in individual cases, granted by the competent national authority after consultation with concerned organizations for workers and employers, “for such purposes as participation in artistic performances,” and limiting the hours during which and prescribing the conditions for such employment/work (Article 8).

To ensure the effective implementation of these obligations, States are required under Article 9 to take “all necessary measures, including the provision of appropriate penalties,” specify the persons responsible for complying with the obligations, and prescribe the registers and other documents that should be kept and made available by the employer, such registers/documents containing the names and ages/dates of birth (duly certified wherever possible) of all child employees.

The ILO provisions above are reinforced by CRC Article 32, as follows:

1. “States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”
2. “States parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States parties shall in particular ... Provide for appropriate regulation of the hours and conditions of employment ... [and] Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.”

15.3 Legislation in ASEAN member States: minimum working age and light work

15.3.1 Minimum working age

Table 70 summarizes the minimum working age and age of completion for compulsory schooling in each ASEAN member State. Each State may attach conditions and exceptions to the age of completion of compulsory schooling, which have not been summarized in this table.

Table 70. Minimum working age and compulsory schooling completion age in ASEAN member States

<ul style="list-style-type: none"> • Brunei <p>Compulsory schooling completion age: 15 years, Compulsory Education Act 2007 (as amended)</p> <p>Minimum working age: 16 years, applies only to “contracts of service” and excludes domestic workers. Sections 2, 9, 10 and 111, Employment Order 2009</p>
<ul style="list-style-type: none"> • Cambodia <p>Compulsory schooling completion age: No compulsory schooling law. Basic education commences at age 6 (not before 70 months on school year start date) and goes up to grade nine (Education Law 2007 Chapter VII).</p> <p>Minimum working age: 15 years for “wage employment” (Article 177(1), Labour Law 1997); Law does not include domestic workers and excludes other categories of workers (Article 1, Labour Law 1997).</p>

<ul style="list-style-type: none"> ● Indonesia <p>Compulsory schooling completion age: 15 years (Article 6, Education Act No. 20 of 2003)</p> <p>Minimum working age: 18 years for employment by ‘entrepreneurs’, one type of employer (Articles 1(4), 1(5), 1(26) and 68, Manpower Law 2003); otherwise 15 years (Act of the Republic of Indonesia No. 20 of 1999 on Ratification of ILO Convention No. 138, Elucidation of the Act, para. 1).</p>
<ul style="list-style-type: none"> ● Lao PDR <p>Compulsory schooling completion age: 11 years (Article 17, Revised Education Law 2007); primary education is compulsory for “Lao people from diverse ethnic groups who are over 6 years old” and comprises five grades.</p> <p>Minimum working age: 14 years (Article 41, Labour Law 2007); applies to work conducted under an employment contract between employer (a person or organization using employees for its activities by paying salary or wages, and providing benefits and other policies to the employees as regulated by laws, regulations) and employee (a person working under the supervision of an employer while receiving compensation for work through salary or wages, benefits or other policies as regulated by laws, regulations and the employment contract) (Articles 2, 3 and 6, Labour Law 2007).</p>
<ul style="list-style-type: none"> ● Malaysia: Note that different provisions may apply if an existing employment contract was entered into by a person before the commencement of the Children and Young Persons (Employment) (Amendment) Act 2010 <p>Compulsory schooling completion age: 12 years. “The Minister may, by order published in the Gazette, prescribe primary education to be compulsory education.” Primary education starts at age 6 and is designed to last for 6 years (Articles 29 and 29A, Education Act 1996 (as amended)).</p> <p>Minimum working age: 15 years (Articles 1A(1) and 2, Children and Young Persons (Employment) Act 1966 (as amended)). ‘Employment’ means “employment in any labour for purposes of gain, whether the gain be to a child, young person or to any other person.”</p> <p>However, the Labour Minister may, if he is satisfied that any employment (not falling within one of the exceptions outlined in Section 2(2) of the Children and Young Persons (Employment) Act 1966 (as amended) – discussed further below) is not dangerous to life, limb, health, safety or morals, by order declare such employment to be an employment in which a child or young person may be, or permitted to be, engaged, and the Minister may in such order impose such conditions as he deems fit and he may at any time revoke or vary the order or may withdraw or alter such conditions (Article 2, Children and Young Persons (Employment) Act 1966 (as amended)).</p> <p>Young persons (i.e. age 15, 16 or 17) may only undertake certain types of work (Including employment as a domestic servant and employment in any office, shop (including hotels, bars, restaurants and stalls), godown, factory, workshop, store, boarding house, theatre, cinema, club or association), provided that no female young person may be employed in any hotels, bars, restaurants, boarding houses or clubs unless the establishment is under the management or control of the young person’s parent/guardian, or employment in the club is approved by the Director General (Article 2, Children and Young Persons (Employment) Act 1966 (as amended)).</p>
<ul style="list-style-type: none"> ● Myanmar: Information provided by UNICEF. Primary legislation was not available for review. <p>Compulsory schooling completion age: Not specified. The National Education Law 2014 provides for free and compulsory primary education, and sets a target for gradually expanding free and compulsory education to other levels of education. According to the National Education Law 2014, children above age 6 must be enrolled in primary education, but the age of completion of compulsory schooling is not mentioned.</p> <p>‘The Ministry of Education shall: (i) have an objective of implementing the system of free and compulsory primary education....’ (Article 20B(i), Child Law 1993)</p>

<p>Minimum working age: 13 years (Shops and Establishments Act 1951); 15 years, or 13 years if the child is able to present a 'certificate of fitness' (Factories Act 1951 and Oilfields (Workers and Welfare) Act 1951)</p>
<p>● Philippines</p> <p>Compulsory schooling completion age: At least 18 years. Compulsory education comprises 1 year of kindergarten (children 'at least' age 5), 6 years of elementary school (typically beginning age 6) and 6 years of secondary school (typically beginning age 12) (Section 4, Enhanced Basic Education Act 2013).</p> <p>Minimum working age: 15 years. "Children below 15 years of age shall not be employed except..." Section 12, Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended); Section 16, Domestic Workers Act 2012; Article 139(a), Labour Code 1974.</p>
<p>● Singapore</p> <p>Compulsory schooling completion age: 15 years, Compulsory Education Act 2000 (as amended) Section 2</p> <p>Minimum working age: 15 years for work in non-industrial undertakings, excluding light work (discussed below) (Articles 67A–69, Employment Act 2009). Under the Act, 'employer' means any person who employs another under a contract of service and 'employee' excludes certain categories of workers, including domestic workers (Article 2).</p>
<p>● Thailand</p> <p>Compulsory schooling completion age: 16 years or completion of grade 9 (Section 17, National Education Act 1999).</p> <p>Information provided by UNICEF. Primary legislation was not available for review.</p> <p>Minimum working age: 15 years– limited to wage employment. "A boss shall be prohibited from employing a child under the age of 15 years as an employee" (Section 44, Labour Protection Act 1998 (as amended)).</p>
<p>● Viet Nam</p> <p>Compulsory schooling completion age: 15 years (Education Law 2005 Articles 11 and 26)</p> <p>Minimum working age: 15 years– "A worker is a person of at least 15 years of age who is able to work and has entered into an employment contract" (Article 6, Labour Code 1994 (as amended)).</p>

In line with international standards, primary legislation in **Indonesia** provides a minimum employment age not less than the age of completion of compulsory schooling, and not less than 15 years. **Brunei's** Employment Order 2009 provides a minimum age for employment of 16 years, which exceeds its compulsory schooling completion age. However, it does not apply to all categories of workers, particularly domestic workers. A similar issue arises in **Cambodia** where school is not compulsory, **Singapore** and **Viet Nam**.

In **Lao PDR**, the minimum age for employment (14 years), set out in the Labour Law 2007, is above the age of completion of compulsory schooling (11 years) and is in line with international standards in respect of States where the economic and educational facilities are insufficiently developed. International standards require that the lower minimum age is maintained only for an initial period.

In **Malaysia**, while the general minimum age for employment is 15 years, the law allows the Labour Minister by order to declare that children may be employed if he is satisfied that the employment is not dangerous to life, limb, health, safety or morals of children. Its primary legislation therefore does not fix the minimum age for employment to that required by international standards. While the **Philippines** provides a minimum age for employment of 15 years, it falls below the minimum age of completion of compulsory schooling. **Thailand** provides a minimum age for employment of 15 years, which is less than the general age of completion for compulsory schooling (16 years). However, children who have completed grade 9 are also eligible to work. It is not clear whether this provision can be interpreted as setting the compulsory schooling completion age below 15 years.

In **Myanmar**, there is no clear age of completion of compulsory schooling. However the minimum employment age can be as low as 13 years, which falls below the requirement under international standards.

The minimum ages of employment in **Brunei, Cambodia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand, Singapore** and **Viet Nam**, and in most cases the law in which they are contained, do not apply to all types of work, particularly to the self-employed and other work performed outside of contractual employment relationships. Children engaged in such work will not be protected by those laws nor the minimum employment ages established therein.

15.3.2 Light work

Table 71 summarizes the provisions relating to light work in each ASEAN member State. Exceptions to the minimum age for light work under Convention No. 138 are permitted only if specific conditions have been met. First, the State's economy and administrative facilities must be insufficiently developed. Second, consultations must be conducted with the concerned organizations of employers and workers. Third, light work must be in one the following areas: family and small-scale holdings that produce for local consumption and do not regularly employ hired workers; mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes.

Table 71. Provisions pertaining to light work in ASEAN member States

<p>● Brunei</p> <p>Minimum age: 14 years, but only applies to 'contracts of service' and does not apply to domestic workers (Section 103(1) and (3), Employment Order 2009).</p> <p>Maximum duration: Not specified.</p> <p>Permitted activities: Light work (undefined), excluding industrial undertakings (Section 103(3) Employment Order 2009).</p> <p>Permitted conditions: The work must be "suited to his capacity," a certificate of a medical practitioner being conclusive on this question (Section 103(3)–(4) Employment Order 2009).</p>
<p>● Cambodia</p> <p>Minimum age: 12 years (Article 177(4), Labour Law 1997), but note that this legislation does not apply to all types of workers or employees (see Article 1), and the Ministry of Labour in consultation with the Labour Advisory Committee can exclude certain categories of occupation or employment from these rules if the rules would '<i>create considerable difficulties</i>' (Article 177(6), Labour Act 1997).</p> <p>Maximum duration: Determined under ministerial orders of the Ministry of Labour in consultation with the Labour Advisory Committee (Article 177(5), Labour Law 1997).</p> <p>Permitted activities: Determined under ministerial orders of the Ministry of Labour in consultation with the Labour Advisory Committee (Article 177(5), Labour Law 1997).</p> <p>Permitted conditions: Article 177(4), Labour Law 1997:</p> <ul style="list-style-type: none"> - Work is not hazardous to their health or mental and physical development; and - Work will not affect their regular school attendance, their participation in guidance programmes or vocational training approved by the competent authority. <p>Other conditions determined under ministerial orders of the Ministry of Labour in consultation with the Labour Advisory Committee (Article 177(5), Labour Law 1997).</p>

● **Indonesia**

Minimum age: Children aged 13–15 may be employed by entrepreneurs to undertake ‘light work’ (Article 69(1), Manpower Law 2003). Note: the provisions relating to children in this Law apply to entrepreneurs, not to all employers. Also, ‘employment relationship’ is defined as the relationship between the entrepreneur and labourer/worker based on the work/employment agreement which deals with, among other things, the worker’s wage.

Maximum duration: 3 hours / day (Article 69(2)(c), Manpower Law 2003).

Permitted activities: No provisions

Permitted conditions: Article 69, Manpower Law 2003

- The work must not stunt or disrupt the child’s physical, mental and social development;
- The entrepreneur must obtain the written permission of the child’s parents/guardians (unless the child works for his/her parent in a family business);
- A work agreement between the entrepreneur and parents/guardian (unless the child works for his/her parent in a family business);
- The child may only work during the day without disturbing their schooling;
- The entrepreneur must comply with ‘occupational health and safety requirements’;
- There must be a clear-cut employment relationship between the entrepreneur and child or his/her parents/guardian (unless the child works for his/her parent in a family business);
- The child is entitled to receive wages in accordance with ‘valid rulings’ (unless the child works for his/her parent in a family business).

● **Lao PDR:** Article 41 Law on Labour covers employment of children

Minimum age: 14

Maximum duration: 8 hours a day

Permitted activities: prohibited activities set out in Article 41, Law on Labour

Permitted conditions: Cannot work between 10pm and 5am.

● **Malaysia:** Different provisions may apply if an existing employment contract was entered into by a person before the commencement of the Children and Young Persons (Employment) (Amendment) Act 2010

Minimum age: None – a child of any age may be engaged in employment involving ‘light work’ (Article 2(2)(a), Children and Young Persons (Employment) Act 1966 (as amended)).

Maximum duration: A child employee (i.e. under age 15) may not work for more than three consecutive hours without a period of rest of at least 30 minutes, and for more than six hours in a day (or, if the child is attending school, for a period which together with the time he spends attending school, exceeds seven hours). The child may also not commence work on any day without having had a period of not less than fourteen consecutive hours free from work. With the exception of work in public entertainment, the child may not work between 8pm and 7am. Further, the child or young person (i.e. person under 18) may not work for more than six days in any period of seven consecutive days (Articles 4 and 5(1), Children and Young Persons (Employment) Act 1966 (as amended)). Different working hours may apply to young persons (Section 6).

Permitted activities: The Labour Minister retains the general right to prohibit any child or young person from engaging in any employment if he is satisfied that having regard to the circumstances such employment would be detrimental to the interests of the child or young person, as the case may be.

(Article 3, Children and Young Persons (Employment) Act 1966 (as amended)).

<p>Permitted conditions:</p> <ul style="list-style-type: none"> - Work must be suitable to the child's capacity; - For children under age 15, the work must be in an undertaking carried on by the child's family (Article 2(2)(a) and (3)(a) Children and Young Persons (Employment) Act 1966 (as amended)).
<p>Myanmar: The full set of relevant legislation was not available for review.</p>
<p>Minimum age: N/A</p> <p>Maximum duration: N/A</p> <p>Permitted activities: N/A</p> <p>Permitted conditions: N/A</p>
<p>● Philippines</p> <p>Minimum age: None specified (Article 107, Child and Youth Welfare Code 1974; Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended)).</p> <p>Maximum duration: 20 hrs/week and 4 hrs/day.</p> <p>(Section 12-A(1), Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended) (Philippines); Article 107, Child and Youth Welfare Code 1974).</p> <p>Permitted activities: No provisions</p> <p>Permitted conditions:</p> <ul style="list-style-type: none"> • Child works directly under the sole responsibility of his/her parents/ legal guardian and where only members of the child's family are employed; • The work is not prejudicial to the child's studies; • Work neither endangers the child's life, safety, health and morals, nor impairs the child's normal development; • Parents/guardian provide the child with prescribed primary and/or secondary education; • No work permitted between the hours of 8pm and 6 am. <p>Sections 12(1) and 12-A(3), Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended).</p>
<p>● Singapore</p> <p>Minimum age: 13 years (Employment Act 2009 Section 68(3))</p> <p>Maximum duration: Permissible number of working hours/breaks for children or young persons employed as workmen are set out in the Employment Act, Employment (Children and Young Persons) Regulations 5–9.</p> <p>Permitted activities: Non-industrial undertakings. 'Non-industrial undertakings' are not defined but see the discussion above relating to hazardous work in Singapore for the definition of 'industrial undertaking'. (Employment Act 2009 Section 68(3)).</p> <p>Permitted conditions: Light work must be suited to the child's capacity, the certificate of a medical officer being conclusive evidence of whether or not this is the case (Employment Act 2009 Section 68(3)–(4)).</p>
<p>Thailand: The full set of relevant legislation was not available for review but no provisions contained within the Labour Protection Act 2008</p>
<p>Minimum age: No provisions</p> <p>Maximum duration: No provisions</p> <p>Permitted activities: No provisions</p> <p>Permitted conditions: No provisions</p>

- **Viet Nam**

Minimum age: No minimum age (Articles 119–121, Labour Code 1994 (as amended)).

Maximum duration: Not specified.

Permitted activities: Persons under age 15 may only be employed in certain categories of occupations and work determined by the Ministry of Labour, War Disabled and Social Affairs (Article 120, Labour Code 1994 (as amended)).

Permitted conditions: “Vocational training or apprenticeship is permitted, the agreement and supervision of their parents or guardian shall be required” Employers may only employ persons under age 18 in work suitable to their health so as to ensure their physical, intellectual and personality development. Employers must also give due attention and care for minor labourers in terms of labour, salary, health and study in the course of their labour (Articles 119–121, Labour Code 1994 (as amended)).

Although they do not use the term ‘light work’, laws in **Cambodia**, **Indonesia** and the **Philippines** are broadly in line with international standards and require that light work is not hazardous to the health or mental and physical development of the child, and will not affect the child’s schooling. **Malaysia’s** definition of light work is not fully in line with international standards, defining it solely with reference to physical movement, as follows: “any work performed by a worker— (a) while sitting, with moderate movement of the arm, leg and trunk; or (b) while standing, with mostly moderate movement of the arm.”¹³ **Viet Nam** does not sufficiently reflect these requirements in its provisions governing to the employment of young children. The laws of **Brunei** do not define ‘light work’.

Brunei, **Indonesia**, **Singapore** and **Viet Nam** prescribe minimum ages of employment for light work, which comply with the age thresholds required by international standards. Although **Malaysia** does not impose a minimum age for light work, it specifies that the work must be in an undertaking carried on by the child’s family. The exception under Malaysia’s law is not drafted in sufficient detail to satisfy the requirements of Convention No. 138.

Similarly, the **Philippines** does not specify a minimum age for light work, but requires the child to work directly under the sole responsibility of his or her parents or legal guardian where only members of the child’s family are employed. As in **Malaysia**, the law in the Philippines does not provide sufficient detail on the exemption relating to family undertakings.

Viet Nam does not impose a minimum age but allows only certain categories of work and occupations determined by the Ministry of Labour, War Disabled and Social Affairs. In principle, this provision is not inconsistent with international standards, which allows for certain exemptions from the minimum age rules. Rather, it is the application of this provision that will determine whether it is in line with international standards.

Cambodia’s minimum age for light work is 12 years. While Convention No. 138 provides for a minimum age for light work at 12 years where the economy and educational facilities are insufficiently developed, Cambodia has reportedly renounced this right and will increase the minimum age to 13 years.¹⁴

Brunei, **Singapore** and **Viet Nam** do not specify the number of working hours permitted, sufficiently explain the activities which children undertaking light work may perform, or specify other conditions of work required for such work. Similarly, **Indonesia** and the **Philippines** specify some general provisions relating to the conditions of work and the number of working hours permitted but do not provide detailed information on the activities permitted for light work. While **Cambodia** provides some detail on these matters, its legislation specifies that

¹³ Article 1A(1), Children and Young Persons Employment Act 1966 (as amended) (Malaysia).

¹⁴ ILO, Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:2699959:NO [accessed 15 September 2014].

such provisions will be determined under ministerial orders of the Ministry of Labour in consultation with the Labour Advisory Committee.

Singapore's reservation to CRC does not appear to accord with its current domestic legal provision: "The employment legislation of the Republic of Singapore prohibits the employment of children below 12 years old and gives special protection to working children between the ages of 12 years and below the age of 16 years. The Republic of Singapore reserves the right to apply Article 32 subject to such employment legislation." Further, this reservation to CRC could be interpreted to restrict the application of Convention No. 138 on light work to which Singapore has agreed.

It was not possible to find provisions governing the engagement of children in light work in either Lao PDR or Thailand.

15.3.3 Training and apprenticeships

ILO Convention No. 138 allows some exemptions to the minimum age at which children may undertake work. The Convention allows children to undertake work while of compulsory school age and during school time when this is a part of the educational process. The exemption applies when:

Work done by children in schools for general, vocational or technical education or in other training institutions, or by persons at least age 14 in undertakings where such work; is carried out in accordance with conditions prescribed by the competent national authority; is carried out after consultation with the concerned employers' and workers' organizations; and is an integral part of:

- A education/training course for which a school or training institution is primarily responsible;
- A programme of training mainly or entirely in an undertaking, which programme has been approved by the competent national authority; or
- A programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training (Article 6)

The laws of ASEAN member States have exceptions relating to training and apprenticeships in accordance with Convention No. 138. In **Indonesia**, and **Singapore**, provisions relating to training and apprenticeships are broadly in line with international standards, while exemptions in **Malaysia** and the **Philippines** appear to be only partially compliant with international standards. If training and apprenticeships are to be permitted as an exception, legislation should make it clear that all such training work and apprenticeships must be an integral part of either an education/training course for which the school or training institution is primarily responsible, or a programme of training mainly or entirely in an undertaking approved by the competent national authority, or a programme of guidance or orientation designed to facilitate the choice of an occupation or training.

Table 72. Exceptions and exemptions to minimum age rules in ASEAN member States

Brunei	<ul style="list-style-type: none"> ● Contracts of apprenticeship may be entered into by the parents/guardians (or with the approval of the Commissioner of Labour where the child does not have a parent/guardian) of a person under age 16, with that person's consent, apprenticing the child to the employer. 'Apprentice' for these purposes means "any person who has contracted to serve an employer and to learn and be taught any business, trade, manufacture, undertaking, calling or employment in which employees are employed." (Employment Order 2009 Sections 28 to 36).
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Cambodia	<ul style="list-style-type: none"> ● If an apprentice is a ‘minor’ (undefined in the law), the contract must be signed by his/her legal representative and the instructor. It is not clear whether these rules are an exception to the rules above on minimum age for employment (Article 53, Labour Law 1997). <p>An apprentice is defined as a person who has ‘entered into an apprenticeship contract with an employer or artisan who has contracted to teach or use someone to teach the apprentice his occupation; and in return, the apprentice has to work for the employer according to the conditions and term of the contract’ (Article 8, Labour Law 1997).</p> <p>There are no provisions specifically governing the types of work for which a child can be an apprentice; the only provisions relate to 18 year olds and over: “A <i>Prakas</i> (ministerial order) of the Ministry in Charge of Labour shall determine the occupation and types of work for which teenagers aged at least eighteen years are allowed to be an apprentice.” (Article 56, Labour Law 1997).</p>
Indonesia	<ul style="list-style-type: none"> ● After having consulted with the Labour Advisory Committee, the Ministry in Charge of Labour can wholly or partially exclude certain categories of occupation or employment from the minimum working age and minimum age for light work if the implementation of these rules for these types of occupation or employment create considerable difficulties (Article 177(6), Labour Law 1997).
Malaysia*	<ul style="list-style-type: none"> ● Children (any person under age 15) may be employed in work approved or sponsored by the Federal Government or the Government of any State and carried on in any school, training institution or training vessel (Article 2(2)(c), Children and Young Persons (Employment) Act 1966 (as amended)) ● Children (any person under age 15) may be employed as an apprentice (undefined) under a written apprenticeship contract approved by the Director General with whom a copy of such contract has been filed (Article 2(2)(d), Children and Young Persons (Employment) Act 1966 (as amended)). ● Children and young persons may be employed in any other employment that the Labour Minister determines is “not dangerous to life, limb, health or morals” of the child or young person subject to any such conditions as the Labour Minister may deem fit (Article 2(4), Children and Young Persons (Employment) Act 1966 (as amended)).
Philippines	<ul style="list-style-type: none"> ● A person may enter into an apprenticeship contract from age 14 although an apprenticeship agreement with a ‘minor’ must be signed on the minor’s behalf by a parent/guardian or if unavailable, by an authorized representative of the Department of Labour. <p>‘Apprenticeship’ means “practical training on the job supplemented by related theoretical instruction. An apprentice is “a worker who is covered by a written apprenticeship agreement with an individual employer or any of the entities recognized under ... [Title II Chapter I on Apprentices].” The apprenticeship contracts must, among other things, comply with rules issued by the Secretary of Labour and Employment and be entered into only in accordance with apprenticeship programmes duly approved by the Secretary of Labour and Employment if the agreement provides for remuneration below the legal minimum wage (Article 61, Labour Code 1974).</p>

Singapore	<ul style="list-style-type: none"> ● Children and young persons may be employed in work approved and supervised by the Ministry of Education or the Institute of Technical Education and carried on in any technical, vocational or industrial training school or institute (Section 72, Employment Act 2009). ● Young persons (age 15) may be employed under any apprenticeship programme approved and supervised by the Institute of Technical Education (Section 72, Employment Act 2009).
Viet Nam	<ul style="list-style-type: none"> ● Trainees in training establishments must be at least age 13 except in the case of trades determined by the Ministry of Labour, War Invalids and Social Affairs, and provided that the trainees are in good health so as to meet the requirements of the trade concerned (Article 22, Labour Code 1994 (as amended)). ● Persons under age 15 may be employed in certain categories of occupations and work determined by the Ministry of Labour, War Disabled and Social Affairs but work, vocational training or apprenticeship of persons under age 15 must be approved and supervised by the child's parents (Article 120, Labour Code 1994 (as amended)).

* Note that different provisions may apply if an existing employment contract was entered into by a person before the commencement of the Children and Young Persons (Employment) (Amendment) Act 2010.

The provisions in **Viet Nam** that permit training and apprenticeships outside training establishments would benefit from review to ensure that they are in compliance with international standards, particularly in relation to the age at which employment under Article 120 of the Labour Code may start. Viet Nam does not appear to impose a minimum age for such work as required by Convention No. 138. It is possible, however, that this is contained in secondary legislation that was not available to the authors.

In **Cambodia**, it is not clear that the legislation relating to apprenticeships for children of compulsory school age meet the international standards: that the apprenticeship or training must be an integral part of either an education/training course for which the school or training institution is primarily responsible, or a programme of training mainly or entirely in an undertaking approved by the competent national authority, or a programme of guidance or orientation designed to facilitate the choice of an occupation or training.

The law in **Brunei** and **Malaysia** regarding child apprenticeships do not appear to meet international standards, which require a minimum age of 14 years for such contracts. **Cambodia's** laws on apprenticeship contracts do not set a clear minimum age for employment or work under such arrangements.

Under **Malaysia's** Children and Young Persons (Employment) Act 1966 (as amended), children and young persons may take any employment that the Labour Minister determines is "not dangerous to life, limb, health or morals" of the child or young person, subject to any conditions the Labour Minister may deem fit. Similarly, in **Viet Nam**, persons under age 15 may be employed in categories of occupations and work determined by the Ministry of Labour, War Disabled and Social Affairs. These are very wide powers, and are likely to be regarded as too widely drafted to be fully compliant with the exceptions permitted by international standards.

The **Philippines** has exempted from the minimum age rules children working directly under the sole responsibility of their parents or guardian and where the employment does not in any way interfere with schooling. This exemption does not comply with any of the general exceptions permitted by international standards.

15.3.4 Consequences of a breach

To enforce the rules relating to the minimum age for employment, Convention No. 138 requires the competent authorities in each State party to take all necessary measures, including the provision of appropriate penalties. Table 73 summarizes criminal and other consequences for any breach of rules regarding the minimum age for employment in ASEAN member States.

Table 73. Criminalization and other consequences of infractions of minimum age for employment rules in ASEAN member States

<ul style="list-style-type: none"> ● Brunei
<p>Criminalization: An employer that enters into a contract of service with a person in breach of rules relating to minimum age for employment is liable to a fine and/or imprisonment for a term not exceeding 1 year (Employment Order 2009 Section 27(b)).</p> <p>Breach by an employer of the rules relating to the employment of children and young people set out in Part XI of the Employment Order 2009, including the minimum age for light work, or by a parent or guardian who knowingly/ negligently suffers/ permits such employment, is punishable with a fine and/or imprisonment for up to 2 years, and a further conviction of the same if the breach results in the child/young person suffering serious injury of death (Employment Order 2009 Section 110).</p> <p>Breach of the rules regarding apprenticeship contracts is an offence punishable with a fine and/or imprisonment for up to 6 months (Employment Order 2009 Sections 28 to 36).</p> <p>Other Consequences: None specifically relating to the child labour below the minimum age for employment/work.</p>
<ul style="list-style-type: none"> ● Cambodia
<p>working conditions which are detrimental to his/her health or his/her physical development”</p> <p>Criminalization: “The acts of submitting a person, by abusing his/her vulnerability, or his/her situation of dependence, to working conditions incompatible with the human dignity” is a crime punishable by an imprisonment and a fine with the possibility of other additional penalties (Article 274–277, Penal Code 2011)</p> <p>“The acts of placing a minor to are punishable by imprisonment for up to 5 years and a fine. If the act results in the death of the victim, it is punishable by imprisonment of up to 15 years (Article 339–340, Penal Code 2011).</p> <p>Crimes relating to child labour in the context of trafficking such as the unlawful removal (Namely, the removal without legal authority or any other legal justification to do so from the legal custody of parents, care taker or guardian (Article 8(2))) of a person for profit making or any form of exploitation (which includes child labour) or the inducement, hiring or employment of a person to engage in any form of exploitation with the use of deception, abuse of power, confinement, force, threat or any coercive means (Law on the Suppression of Human Trafficking and Sexual Exploitation 2008).</p> <p>Other Consequences: Employers who employ children less than eighteen years of age under conditions contrary to the provisions of Articles 173 (hazardous work), 174 (underground work), 175 (regarding night work), 176 (night time breaks), 177 (minimum wage employment age) and 178 (inspection of child employee’s physical capabilities) are liable to a fine imposed by the Labour Inspectors or Controllers of thirty-one to sixty days of the base daily wage (Article 368, Labour Law 1997).</p> <p>Those guilty of violating the rules concerning the minimum age are liable to a fine of thirty to one hundred twenty days of the base daily wage (Article 374, Labour Law 1997).</p> <p>In the context of trafficking, a contract to commit an unlawful act prescribed under the Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 such as the hiring or employment of a person to engage in child labour with the use of deception, abuse of power, confinement, force, threat or any coercive means, or a loan in connection with such an act, is void. A person who is enriched without legal cause knowing that is it due to such an act is liable to such unjust enrichment, plus accrued interest, and damages to the aggrieved person. Other civil sanctions may also apply (Articles 45–48, Law on the Suppression of Human Trafficking and Sexual Exploitation 2008).</p>

<p>● Indonesia</p> <p>Criminalization: Breach by ‘entrepreneurs’ of the minimum age for employment or the provisions relating to light work is a felony punishable with up to 4 years’ imprisonment and/or a fine (Articles 68, 69 and 185, Manpower Law 2003).</p> <p>Breach of the conditions for employing children to develop their talents or interests, or the prohibition against employing female children at night time, is a misdemeanour punishable with up to 1 year in prison and/or a fine (Articles 71(2), 76 and 187, Manpower Law 2003).</p> <p>Other consequences: None specifically relating to child labour below the minimum age for employment/work.</p>
<p>● Lao PDR</p> <p>Criminalization: None specifically relating to the child labour below the minimum age for employment/work.</p> <p>Other consequences: Any individual or legal entity that violates the Labour Law 2007 (for example, the minimum age for employment) will be re-educated, warned, fined, subject to temporary suspension of business or withdrawal of business license, or brought to court proceeding based on the nature of the offence, including having to compensate for civil damage caused, as regulated by laws and regulations (Article 75, Labour Law 2007).</p> <p>Employment of a child under 14 years of age is included in a list that includes other violations that are considered to be ‘not serious in nature’ and which are sanctioned with ‘re-education’ (Article 83, Law on the Protection of the Rights and Interests of Children 2007). Recommitting the violation leads to a fine, disciplinary sanction or suspension or withdrawal of business license (Article 84, Law on the Protection of the Rights and Interests of Children 2007).</p>
<p>● Malaysia: Note that different provisions may apply if an existing employment contract was entered into by a person before the commencement of the Children and Young Persons (Employment) (Amendment) Act 2010.</p> <p>Criminalization: Breach of the minimum age for employment and provisions relating to light work under the Children and Young Persons (Employment) Act 1966 (as amended) or any parent/guardian knowingly consenting to such a breach is criminally liable and punishable with imprisonment for up to 1 year (or 3 years if he/she repeats the offence) and/or a fine (Article 14(1), Children and Young Persons (Employment) Act 1966 (as amended)).</p> <p>Other consequences: The relevant licensing authority may be informed and permitted to take appropriate action (Article 14(2), Children and Young Persons (Employment) Act 1966 (as amended)).</p>
<p>Myanmar: The full set of relevant legislation was not available for review.</p> <p>Criminalization: N/A</p> <p>Other consequences: N/A</p>
<p>● Philippines</p> <p>Criminalization: Employer and parents/legal guardians are liable to imprisonment, community service and/or a fine if they breach any of the rules on minimum age or light work (Section 16(a) and 16(f), Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act 1992 (as amended)).</p> <p>Employment of a person under the age of 15 as a domestic worker is punishable with a fine without prejudice to any criminal or civil action filed by the aggrieved party (Sections 16 and 40, Domestic Workers Act 2012).</p>

Other consequences:

- Closure of the business firm/ establishment that violates minimum age rules more than 3 times or if the violation results in the death, insanity or serious injury of the child employee (Section 16(g), Special Protection of Children against Child Abuse, Exploitation and Discrimination Act 1992 (as amended));
- In the event of the closure of the firm/ establishment, the employer must pay the employee(s) separation pay and other monetary benefits required by law (Section 16(h), Special Protection of Children against Child Abuse, Exploitation and Discrimination Act 1992 (as amended));
- Fines/ penalties from breach of child labour rules is placed in a trust fund administered by the Department of Labour and Employment for the needs, including costs of rehabilitation and reintegration into mainstream society, of working child victims, and for programmes/ projects to prevent child labour (Section 16-A), Special Protection of Children against Child Abuse, Exploitation and Discrimination Act 1992 (as amended));
- An employer guilty of an offence against a child domestic worker under the Domestic Workers Act 2012 is prohibited from hiring a working child (Section 16, Domestic Workers Act 2012).

- **Singapore**

Criminalization: Any person who employs a child or young person in contravention of the rules relating to minimum age for employment or light work, and any parent or guardian who knowingly or negligently suffers or permits such employment, is guilty of an offence punishable with imprisonment for up to two years and/or a fine (Section 74, Employment Act 2009).

Other consequences: Section 74 of the Employment Act would cover an offence of child labour below the minimum age of employment.

- **Thailand**

Criminalization: Employment of a child under the age of 15 is punishable with imprisonment of up to 1 year and/or a fine (Article 148, Labour Protection Act 1998 (as amended)).

Violation of provisions relating to granting leave to child employees to attend meetings and seminars, receive training or undertake other activities organized by places of education or state or private sector work units approved by the Director-General is punishable with a fine (Article 149, Labour Protection Act 1998 (as amended)).

Intentionally or neglectfully withholding things that are necessary for sustaining the life or health of a child under guardianship (guardians include employers), to the extent which would be likely to cause physical or mental harm to the child is punishable with up to 3 months' imprisonment and/or a fine (Articles 26 and 78, Child Protection Act 2003).

Other consequences: Article 43, Child Protection Act 2003:

- If criminal proceedings are instituted against an employer who abuses a child (i.e. a person under 18 who has not reached majority via marriage) in their care and it is believed that the employer will repeat the abuse, the court can impose conditions on the employer to forbid him/her from entering a specified area or to come closer to the child and may place the employer under a bond of performance.
- If criminal proceedings are yet to be instituted or are not instituted but circumstances suggest that the abuse will be repeated against a child, the authorities may submit a request to the court to give an injunction against such act and a performance bond.
- If there is an urgent need to protect a child from a repeated act of abuse, the court may order the police to arrest any person believed to have the intention to perpetrate the act of abuse against the child to be detained for a period not exceeding 30 days at a time.

Breach of the conditions imposed above is a criminal offence punishable with imprisonment of up to 1 month, a fine and/or both (Article 81).

● Viet Nam

Criminalization: Persons that breach regulations on labour safety, labour hygiene, safety in places crowded with people, causing loss of lives or serious damage to the health and/or property of other persons, are punishable with non-custodial reform for up to three years or a prison term of between six months and five years (or between 3 and 10 years' imprisonment if the offender is responsible for labour safety, labour hygiene or safety in crowded places or the act causes very serious consequences, or up to 12 years in prison if the act causes particularly serious consequences). The offender may also be subject to a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years and a fine (Article 227, Penal Code 1999 (as amended)).

Other consequences: The following are violations of child rights that result in the perpetrator being penalized, prosecuted or fined in accordance with the law: using a child to perform any work contrary to labour law; and taking advantage of adoption or other humanitarian acts to force the child to perform heavy housework exceeding regular working hours adversely affecting his/her physical and spiritual development (Articles 9 and 13, Decree on the Law on Child Protection, Care and Education 2004).

While **Brunei** provides criminal sanctions for breaches of the rules relating to the minimum age of work and light work, such provisions do not apply to all categories of workers, notably domestic workers who are left unprotected by these laws. Penal sanctions in **Cambodia** apply to child labour only in certain circumstances, such as cases of human trafficking, while criminal sanctions in **Indonesia** apply only to entrepreneurs, rather than all employers, which must inevitably limit the scope of protection. Laws in **Lao PDR, Myanmar** and **Viet Nam** do not impose criminal sanctions specifically relating to child labour below the minimum age for employment/work.

It is recommended that civil sanctions relating to child labour below the minimum age for employment/work should be introduced or strengthened in **Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Singapore, Thailand** and **Viet Nam**. States should give particular consideration to the range of sanctions which can be applied for such breaches, including the withdrawal of licences and suspension of authorization to employ children in future.

15.4 Recommendations for legal reform: minimum working age and light work

Recommendations:

- Ratification by **Myanmar** of the Minimum Age Convention 1973 (No. 138) and withdrawal of the reservation by **Singapore** to CRC Article 32;
- Introduce or fix a minimum working age that is not less than the age of completion of compulsory schooling and, in any case, not less than 15 years (**all ASEAN member States**, apart from **Indonesia**);
- Define 'light work' in line with international standards, in particular, clarifying that it must not be hazardous to the health or mental and physical development of the child and will not affect the child's schooling (**Brunei, Malaysia, Singapore** and **Viet Nam**);
- Increase the minimum age for employment for light work to at least 13 years (**Cambodia**);
- Narrow the scope of the exceptions to the minimum age rules relating to family undertakings in line with international standards (**Malaysia** and **Philippines**);
- Specify the number of working hours permitted for light work, sufficiently explain the activities which children may perform, and specify the requisite conditions for such work if not already contained within secondary legislation (**Brunei, Indonesia, Philippines, Singapore** and **Viet Nam**);
- Narrow the scope of or clarify the ambit of the exceptions relating to: training; occupations or categories of employment which have been excluded from the minimum age rules due to difficulties in their implementation (**Indonesia, Malaysia, Philippines** and **Viet Nam**);
- Impose a minimum age of at least 14 years for apprenticeship contracts and clarify the ambit of such exceptions in line with international standards (**Brunei, Malaysia** and **Cambodia**);

- Narrow the scope of the general exceptions to the minimum age rules in line with international standards (**Malaysia, Viet Nam** and **Philippines**);
- Criminalize and impose a range of appropriate penal sanctions for perpetrators all forms of child labour below the minimum working age and age for light work (**Brunei, Cambodia, Indonesia, Viet Nam** and **Lao PDR**);
- Introduce and/or strengthen an appropriate range of civil sanctions for perpetrators of child labour below the minimum working age and age for employment for light work (**Brunei, Cambodia, Indonesia, Malaysia, Singapore, Thailand** and **Viet Nam**)

Table 74. Report card: Minimum working age and age for light work

	Minimum working age	Provisions related to light work	Exceptions to minimum working age and/or age for light work	Criminal and civil sanctions
Brunei	●	●	●	●
Cambodia	●	●	●	●
Indonesia	●	●	●	●
Lao PDR	●	●	N/A	●
Malaysia	●	●	●	●
Myanmar	●	N/A	N/A	N/A
Philippines	●	●	●	●
Singapore	●	●	●	●
Thailand	●	N/A	N/A	●
Viet Nam	●	●	●	●

Part VIII: Conclusion

Chapter 16. Conclusions and Recommendations

Exposure to violence has a devastating impact on children. To uphold the right of the child to be protected from all forms of violence, a comprehensive, legal framework is essential, inclusive of any form of violence in any setting. While laws in ASEAN member States offer children a good level of protection from some types of violence, this review of the has shown that significant gaps remain and more needs to be done to ensure that full legal protection is provided. Where gaps exist, it is recommended that States should consider developing relevant laws to protect children from all forms of violence.

16.1 Main findings

The review found common themes that apply across ASEAN member States, as summarized in the sections below.

16.1.1 General criminal or penal laws, or laws designed to apply to adults, offer a lesser degree of protection than laws specifically designed to apply to children

Where States have enacted particular laws or provisions that relate specifically to children, the protection offered largely met international standards. Where the protection of children relied upon existing laws applicable to adults and children alike, a much lesser degree of protection to children was afforded. Laws that are drafted with the particular experiences and vulnerability of children in mind are inevitably more responsive to their unique needs and tend to strengthen the protections afforded to them. They are better able to protect children from violence through targeted, more detailed, legislative provisions.

The review found some examples of good practice from laws specifically developed to apply to a particular form of violence or to children in specific contexts. For instance, ASEAN member States have enacted specific laws or provisions to address human trafficking, setting out specific offences connected to child trafficking, along with a range of other provisions responding to child trafficking. These laws were found to be largely consistent with international standards and offered comprehensive protection to children. Most recently, Singapore passed the Prevention of Human Trafficking Act which came into effect on 1 March 2015. The Act is a dedicated anti-trafficking legislation and includes provisions on offences, penalties, protection of vulnerable persons (including children), enforcement powers and victim protection and support measures. However, in the area of child pornography, for which few States have a child-specific law (other than the Philippines with the Child Pornography Law 2009), the protection offered to children relies on general criminal provisions and does not meet international standards.

The same point can be made about juvenile justice. Where a State lacks a specific juvenile justice law, there appears to be a greater likelihood of finding that measures of violence, continue to be permitted, and that there are fewer protections or safeguards for children (such as guiding principles or safeguards during institutionalisation). However, where a State has had the opportunity to develop a juvenile justice law, or separate sections relating to juveniles within a broader piece of legislation, the legislative framework tends to offer children a much greater level of protection.

16.1.2 Legal exceptions that apply in the context of particular relationships (parent-child, teacher-pupil, husband-wife) deny children protection from violence

Children are particularly vulnerable to violence in the context of relationships such as parent/carer-child or teacher-pupil, characterized by reliance, trust or authority. In some cases, particularly for girls, marriage or other intimate relationships increase vulnerability to violence.

However, rather than recognizing the vulnerability of children and offering a greater degree of protection within these relationships, the laws in many ASEAN member States reduce protection through the use of legal exceptions or exemptions to general prohibitions on violence.

The majority of ASEAN member States (Brunei, Cambodia, Malaysia, Myanmar, the Philippines, Singapore and Thailand) have provisions in law that allow physical violence to be inflicted on children, usually in the context of punishment. Two States (Malaysia and Singapore) specifically permit the use of corporal punishment of boys in schools, as a form of discipline. Other States fail to protect children, usually by exempting parents or teachers from criminal liability for acts of physical violence where this is done in order to discipline children. These exceptions have been consistently criticized by the CRC Committee.

Some ASEAN member States also provide for exceptions, exclusions and defences for acts of violence committed against family members and intimate partners. The most common of these are provisions that exclude non-consensual or forced sex that takes place within the context of marriage from the legal definition of rape. Eight ASEAN member States (Brunei, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore and Thailand) have laws that exclude or provide defences to the crime of rape (and other sexual crimes) where this takes place in the context of marriage. In Brunei, Malaysia and Singapore, these provisions apply to children from age 13 (provisions criminalizing rape do not apply in marriage where the child is older than 13). Children who are married before age 18 (which is permitted in some circumstances in many ASEAN member States), have extremely limited legal protection from rape within marriage.

Other provisions offer a lesser standard of protection to children in the context of marriage. In Brunei, Indonesia, Malaysia, Myanmar, Singapore and Thailand the age of consent to sex ranges from age 14 to age 19, but in each of these States, the law provides an exception, or a lower age of consent, where the young person is married.

16.1.3 Narrow and gendered definitions of sexual violence have the effect of denying legal protection to many children

Legal definitions of forms of sexual violence, including violence occurring in the home/family or in the community generally, are restrictive in many ASEAN member States, limiting the sexual acts that are prohibited and also limiting the protection afforded to boys. For instance, in Brunei, Indonesia, Malaysia, Myanmar, the Philippines and Thailand, definitions of rape are restricted to acts perpetrated against women or girls, denying legal protection to boys.

Laws prohibiting rape, statutory rape, incest and child prostitution only apply to a limited number of sexual acts. For instance, six ASEAN member States with specific provisions prohibiting incest limit the definition of incest to 'sexual intercourse'. Similarly, laws in Brunei, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam establishing an age of sexual consent only apply to the act of sexual intercourse: these provisions do not encompass other sexual acts below the age of consent, including for instance, oral sex.

Child prostitution is also narrowly defined in a number of ASEAN member States, limiting the legal protection children are afforded against sexual exploitation. While international law requires States to criminalize child prostitution, a number of ASEAN member States (including Brunei, Myanmar, Singapore and Viet Nam) limit child prostitution provisions to acts of sexual intercourse. In addition, these States (with the exception of Singapore) offer less legal protection to boys forced into prostitution.

While boys are explicitly denied protection against certain forms of sexual violence in some ASEAN member States, the lack of comprehensive legal protection against sexual violence generally disproportionately affects girls, as girls are far more likely to be victims of sexual violence than boys.

16.1.4 Lack of laws on forms of violence disproportionately affecting girls or boys may result in indirect gender discrimination

Limited protection against certain sexual acts, as outlined above, along with the lack of legal provisions relating to some forms of sexual abuse and exploitation – such as child pornography, for which only two ASEAN member States have specific laws – are likely to lead to discrimination where a form of violence disproportionately impacts either boys or girls. Also, a lack of legal protection against other forms of violence, including FGM/C, which solely affects girls, is likely to result in a low level of legal protections afforded to girls.

16.1.5 Age-based provisions are incompatible with international law and remove legal protections from some children

Age-based laws are important because they recognize the unique vulnerability of children to violence and exploitation. This analysis of provisions in ASEAN member States revealed a number of gaps in the legal protection of children from such vulnerability.

Although international standards do not establish a minimum age of consent to sexual activity, age 14–16 is the norm, and age 16 is the average. Six ASEAN member States have set ages of sexual consent below this threshold (Cambodia, Lao PDR, Myanmar, the Philippines, Thailand and Viet Nam). Arguably, these do not provide sufficient legal protection to children from sexual abuse and exploitation, although, in some States, the age of consent is higher according to other provisions, including, for example, sexual activity with a person in a position of trust (the Philippines, for example) or an adult (Viet Nam, for example). However, in others, the age of consent is reduced for children who are married (Singapore, Indonesia and Malaysia) as set out in exceptions to criminal provisions. The result of such provisions is to leave children, usually girls, at risk of sexual abuse and exploitation.

In a number of States (Myanmar, Brunei, Thailand, Malaysia and Indonesia) the minimum age for marriage is set too low, while in Myanmar there is no minimum age for marriage for boys. Further, the majority of ASEAN member States have established legalized exceptions to the general minimum age of marriage. Though these provisions may sometimes be in the best interests of children, most provisions are insufficiently specific and could permit early marriage in a wide array of circumstances that are not in the best interests of children. It is also notable that in Indonesia, Malaysia, Cambodia, Myanmar and Viet Nam, there are different legal ages for marriage for boys and girls, which could fail to provide adequate protection for girls from early marriage and which can lead to discrimination against girls and the reinforcement of harmful ideas and practices relating to gender roles in society.

Comparing the minimum ages of marriage and sexual consent in ASEAN member States reveals problematic inconsistencies in law, which fail to provide adequate protection from child marriage. In some States there is a wide discrepancy between the minimum age of consent to sexual activity and the minimum age for marriage. In other States, as described above, marriage is an exception to the minimum age of sexual consent, and even to criminal rape. Provisions that allow exceptions undermine the meaning and enforceability of the minimum age for marriage and send contradictory messages about the meaning of underage marriage and statutory rape within the law.

Provisions relating the minimum age at which a child is considered to have some form of criminal responsibility are also a matter of concern in a number of ASEAN member States, including, in particular, Myanmar, Brunei, Singapore and Thailand, where children as young as 7 years old continue to face criminal liability for their actions. In Malaysia, this age is set at 10 years, below the minimum recommended threshold of age 12. On a related note, in Myanmar and Singapore, children over age 16 are not afforded the protection of the juvenile justice system and are treated as adults instead.

Based on age, these laws deny protection to some children, and fail to take into account the child's particular vulnerability. Because some children are excluded, such laws undermine the protection of children from violence.

16.1.6 Children are denied legal protection from new and emerging forms of violence, or new and emerging methods of perpetrating violence against children

Violence perpetrated through the use of information and communication technology has not been effectively incorporated into legal frameworks in most ASEAN member States. According to best practice, States should criminalize preparatory acts relating to child sex tourism, however, only Singapore and the Philippines, to a lesser extent, have done so. As data indicate that a large proportion of child sex tourists in the ASEAN region arrive from other ASEAN member States, it is imperative that preparatory acts carried out in the offender's country of residence are criminalized.

At present, there appear to be insufficient provisions in the legal framework of most ASEAN member States in relation to child pornography. Only Cambodia and the Philippines have enacted specific laws addressing child pornography, although some related acts would fall within general penal law provisions on ‘obscene articles’ or ‘undesirable publications’. Although such provisions could apply to child pornography, they often fail to provide an adequate definition or are not suited to child pornography. Moreover, they fail to respond to new forms of electronic production and distribution. Only in the Philippines is it an offence wilfully to access or download child pornography from the Internet and other electronic communication tools. The absence of a strong legal framework for the protection of children from violence and abuse in information and communications technology makes children increasingly vulnerable as such technology develops.

16.1.7 Children engaged in child labour, particularly hazardous and informal work, are not fully protected in line with international standards

On the whole, provisions on child labour in ASEAN member States are partially compliant with international standards, and significant reform or development will be required in order to ensure compliance with international standards relating to hazardous work. Additionally, most of the laws and/provisions of ASEAN member States relating to child labour exclude certain categories of workers, such as domestic workers or workers in the informal economy, denying basic protections in the workplace to a significant number of children. Furthermore, given the lack of comprehensive, up-to-date data on the prevalence of child labour, particularly in domestic work and among boys, it is possible that even where legal protections are provided, these will need to be further strengthened in future to address emerging findings on the true scale and nature of child labour in the region.

16.2 Consolidated recommendations

Based on the findings of the review, specific actions are needed in ASEAN member States to improve the legislative framework to protect children from all forms of violence. This section contains the recommendations to each State that emerged from the review of domestic legislation on violence against children.

Convention on the Rights of the Child (CRC)	
Withdrawal of the reservations and declarations to CRC, particularly those relating to Articles 2, 12, 19 and 37	Brunei, Malaysia, Singapore
Violence against Children in the Home and Family	
Infanticide	
Consideration should be given to reviewing the laws on infanticide to remove any lawful excuse for infanticide, other than that of mental disturbance due to the birth or other external pressures.	Indonesia, Philippines, Thailand, Viet Nam
Emotional violence	
Consider including a comprehensive definition of emotional violence in domestic legislation. Emotional violence should be classified as a criminal offence.	Lao PDR, Myanmar, Viet Nam
Ensure that non-physical (emotional) forms of violence which are included in the law are classified as a criminal offence.	Brunei, Cambodia
Neglect	
Consideration should be given to including physical neglect of a child as a criminal offence.	Lao PDR, Myanmar, Viet Nam
Consideration should be given to raising the age at which physical neglect of a child is a criminal offence to 18.	Cambodia

Consideration should be given to including emotional neglect as an offence in domestic legislation.	Cambodia, Lao PDR, Myanmar, Viet Nam
Consideration should be given to including neglect of health as a criminal offence.	Brunei, Cambodia, Lao PDR, Malaysia, Myanmar, Viet Nam
Consideration should be given to including educational neglect as a criminal offence.	Brunei, Cambodia, Indonesia, Lao PDR, Myanmar, Thailand, Viet Nam
Consideration should be given to increasing the age in criminal provisions on abandonment, so that the offence applies to all children under age 18.	Brunei, Cambodia, Malaysia, Myanmar, Singapore
The Law on the Protection of the Rights and Interests of Children in Lao PDR has a comprehensive definition of emotional neglect, but consideration should be given to classifying neglect as a criminal offence.	Lao PDR
The Law on the Protection of the Rights and Interests of Children in Lao PDR has a definition of abandonment, but consideration should be given to expanding the definition to include unintentional forms of abandonment.	Lao PDR
Incest	
Where a State does not already have a specific offence of incest, it should consider enacting such a provision.	Cambodia, Indonesia, Philippines, Thailand
Consider reviewing existing provisions on incest with a view to expanding the definition to specifically include sexual intercourse or sexual penetration by step-parents and adoptive parents.	Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam
Consider reviewing existing provisions on incest with a view to expanding the definition to specifically include sexual intercourse or sexual penetration by siblings.	Indonesia, Malaysia, Myanmar
Consider reviewing existing provisions on incest with a view to expanding the definition to specifically include sexual intercourse or sexual penetration by a mother against her child.	Indonesia
Consider reviewing existing provisions on incest with a view to expanding the definition to specifically include homosexual acts of penetration.	Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam
Clarify in legislation that a child under age 18 who is the subject of incest shall not be considered to be either a principal or accessory to the offence.	All ASEAN member States
General recommendations regarding child abuse	
Consider reviewing the current child protection law so that a child protection response is triggered when there is physical violence against a child.	Viet Nam
Consider reviewing the current child protection law so that a child protection response is triggered when there is emotional forms of violence against children.	Lao PDR, Viet Nam
Consider reviewing the current child protection law so that a child protection response is triggered when there is sexual abuse of children.	Myanmar, Singapore, Viet Nam
Consider reviewing the current child protection law so that a child protection response is triggered when there is neglect.	Cambodia, Myanmar, Viet Nam
Consider strengthening child protection response provisions to physical and emotional forms of child abuse.	Myanmar, Singapore, Thailand

Domestic violence	
Consider establishing or strengthening specific legislation prohibiting violence perpetrated within the context of interpersonal and family relationships. Legislation should recognize that domestic violence is a form of gender-driven violence that is most commonly directed at women and girls. However, legislation should also recognize the circumstances of (young) boys who are survivors of domestic violence	All ASEAN member States, particularly Brunei, Malaysia
Assure survivors of domestic violence maximum protection from all types of violence including physical, emotional and, critically, sexual violence and abuse.	All ASEAN member States, particularly Brunei, Cambodia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand
Afford recognition to all relationships within which domestic violence may occur, including all current and former partners (whether married, cohabiting or otherwise) and all children within the household (whether legitimate, illegitimate, related or not, including domestic workers).	All ASEAN member States
Consider abolishing all exceptions and defences to acts of physical, emotional and sexual violence directed at children in the context of an intimate partner or care-giving relationship.	Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand
Consider specifically criminalizing marital rape within the law. Ensure that legislation provides that no marriage or other relationship status constitutes a defence against a charge of sexual assault.	Brunei, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand
Consider removing any provisions allowing a defence of honour for the assault or murder of any family member, including intimate partners and children.	Philippines
Consider prohibiting within law, all forms of corporal punishment and physical assault of children within the home. Ensure that there is no exception in law to assault provisions that allows for 'reasonable chastisement' of children in the context of discipline or punishment.	Brunei, Cambodia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand
Define sexual assault, including within the context of legal marriage (or any other relationship status) as a violation of bodily integrity and sexual autonomy.	All ASEAN member States
Consider removing any requirement that sexual assault be committed by force or violence; define sexual assault and rape as sexual activity that is perpetrated without the consent of the victim.	Cambodia, Lao PDR
Consider creating a wide range of flexible civil and penal remedies, including under special domestic violence legislation, to prevent domestic violence, and provide redress for survivors where such violence occurs.	All ASEAN member States, especially Brunei, Lao PDR, Myanmar, Viet Nam
Harmful Traditional Practices	
Consider non-punitive or civil law options for preventing forced marriage in the laws of ASEAN member States.	All ASEAN member States
Establish a minimum age of marriage for both boys and girls in line with international standards (18 years or above). In no circumstances should there be a difference in the minimum age of marriage for boys and girls.	Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Singapore, Thailand, Viet Nam

Consider removing any exceptions in law to the minimum age for marriage, except for those which are clearly defined in law, strictly regulated and in line with the 'best-interests' principle and the principle of 'evolving capacities' of the child. Parental consent to marriage should never be considered as a sufficient condition to warrant an exception to the minimum age for marriage.	Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Singapore, Thailand
Consideration should be given to eliminating all exceptions to the minimum age of consent (statutory rape) for children who are already married.	Brunei, Indonesia, Myanmar, Malaysia, Singapore, Thailand
Establish clear rules for verifying the age of marriage candidates	All ASEAN member States
Mandate the compulsory registration of all marriages, including religious and customary marriages.	Brunei, Malaysia, Myanmar, Philippines, Singapore
Consider explicitly prohibiting forced marriage and underage marriage within the law.	Brunei, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand
Consider developing a context appropriate, specialized set of legal provisions for forced and underage marriage (through revisions to the family, marriage or civil codes; through the development of a specialist Act; or within gender-based violence legislation) in line with the objective of providing the most effective protection for individuals subject to, or at risk of, forced and/or underage marriage.	All ASEAN member States
Consider criminalizing forced and underage marriage and introducing penalties within criminal law. This should be done with careful consideration of its potential to result in prosecutions leading to the elimination of these practices.	All ASEAN member States
Remove all provisions that absolve criminal responsibility for offenders of sexual violence in the circumstance that they are married to, or subsequently marry, their victim.	Brunei, Indonesia, Myanmar, Malaysia, Philippines, Singapore, Thailand
Introduce provisions prohibiting and criminalizing female genital mutilation/cutting within primary legislation, while establishing a range of other civil procedures and initiatives aimed primarily at preventing the practice from continuing.	All ASEAN member States
Violence in Education Settings	
Consider the removal of any provisions in law or guidance which permit corporal punishment (and other forms of cruel and degrading punishment).	Malaysia, Singapore
Consider adding an explicit prohibition on the use of corporal punishment in schools within laws on education, including regulatory laws on disciplinary practice in schools.	Brunei, Indonesia, Malaysia, Myanmar, Singapore
Consider adding an explicit prohibition on the use of corporal punishment in schools within laws on education, including criminal laws.	Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand, Viet Nam
Ensure that legal definitions specifically prohibit emotional and mental as well as physical forms of abuse.	Thailand, as well as all countries without prohibitions
States should distinguish in the law between prohibitions on behaviour used for punishment and behaviour used for other purposes.	Viet Nam, as well as all countries without prohibitions

Consider removing from legislation all exceptions and provisions which could be used to defend corporal punishment. Any justification of the use of force motivated by the need to protect a child must be distinguished from force used to punish, and must be the minimal amount of force necessary to contain the harm and for the shortest possible period of time.	Brunei, Cambodia, Lao PDR, Malaysia, Myanmar, Singapore
Consider developing preventative measures, including awareness-raising and educational measures and enshrining them in legislation.	Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines
Ensure preventative measures, including awareness-raising and educational measures are enforced.	Singapore, Thailand, Viet Nam
Amend law and link prohibitions on corporal punishment to penalties and legal sanctions; including rehabilitative measures and remedies for survivors.	Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines
Ensure rehabilitative measures and remedies for survivors are enforced.	Singapore, Thailand, Viet Nam
Consider enacting a law based on the proposed Philippines act 'Prohibiting all Corporal Punishment and All Other Forms of Humiliating or Degrading Punishment of Children And Promoting Positive and Non-Violent Discipline of Children, Appropriating Funds Therefore, and for Other Purposes (2009)'	All ASEAN member States
Violence against Children in the Community	
Physical violence	
Consideration should be given to raising the penalties for crimes of physical violence against children in order to afford them additional protection and strengthen deterrence.	Brunei, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand
It may be useful to have a blanket provision within Penal Codes providing that crimes committed against children count as an 'aggravated circumstance'.	Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand
It is also useful for legislation to contain specific provisions within relevant articles/sections that raise penalties for crimes of physical violence committed against children.	Brunei, Indonesia, Malaysia, Myanmar, Singapore, Philippines, Thailand
Consideration should be given to adding a provision that increases the penalty to be applied not only when a crime is committed against a child within a relationship (i.e. parent-child) but also when committed against non-family children.	Philippines
Consideration should be given to removing from the law all justifications of physical violence against children (such as punishment).	All ASEAN member States
Consideration should be given to becoming States parties to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.	Brunei, Malaysia, Myanmar, Singapore, Viet Nam
Consideration should be given to becoming party to the International Convention for the Protection of All Persons from Enforced Disappearance.	Brunei, Malaysia, Myanmar, Philippines, Singapore, Viet Nam
States should strengthen legislative frameworks to explicitly define, prohibit and criminalize all forms of torture and other cruel, inhuman or degrading treatment and punishment.	Indonesia, Thailand, Viet Nam

States should strengthen legislative frameworks to explicitly define, prohibit and criminalize enforced disappearance.	Brunei, Lao PDR, Cambodia, Indonesia, Malaysia, Myanmar, Singapore, Thailand, Viet Nam
Age of consent to sexual activity	
Consider raising the age of consent to 16 years for sexual activity occurring between young people under 16 years and adults or persons more than five years older.	Cambodia, Lao PDR, Myanmar, Philippines, Thailand
Consider removing the exception to criminalization of unlawful carnal knowledge/statutory rape for acts occurring between married couples, or preceding marriage.	Brunei, Indonesia, Malaysia, Myanmar, Singapore, Thailand
Ensure that the same age of consent applies for boys and girls and for heterosexual and homosexual acts.	Indonesia
Consider expanding the definition of sexual acts that are criminalized below the age of consent	Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand, Viet Nam
Consider making 'statutory rape' a strict liability offence.	Brunei, Indonesia
Child sexual abuse	
Consider extending the legal definition of rape so that it applies to all acts of sexual penetration.	Brunei, Lao PDR, Indonesia, Malaysia, Myanmar, Thailand, Viet Nam
Amend the legal definition of rape so that it covers male as well as female survivors.	Brunei, Lao PDR, Malaysia, Myanmar, Thailand
Consider removing the element of 'force' from legal definitions of rape.	Cambodia, Indonesia, Lao PDR, Thailand, Viet Nam
Ensure that all other acts of sexual violence, including both physical and non-physical acts of sexual violence, are criminalized.	All ASEAN member States
Include a separate provision criminalizing acts of sexual 'grooming' of children in criminal laws.	Brunei, Cambodia, Lao PDR, Indonesia, Malaysia, Myanmar, Thailand, Viet Nam
Provide clear definitions of consent within the criminal law.	All ASEAN member States
Child prostitution	
Consider ratifying the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.	Singapore
Consider enacting specific laws on child prostitution that criminalize offering, obtaining, procuring and providing children for child prostitution.	Indonesia, Lao PDR, Myanmar
Consider creating offences covering offering children for prostitution.	Brunei, Indonesia, Lao PDR, Myanmar, Singapore, Viet Nam

Consider creating offences covering obtaining children for prostitution.	Lao PDR, Indonesia, Myanmar
Consider creating offences covering procuring and providing a child for prostitution.	Indonesia, Viet Nam
Ensure that laws relating to child prostitution apply equally to boys and girls.	Brunei, Myanmar, Singapore
Consider expanding the definition of child prostitution to include a broad range of sexual activities, not just penetrative sex.	Brunei, Myanmar, Singapore, Viet Nam
Consider providing explicit recognition that children exploited as prostitutes are victims.	Brunei, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand, Viet Nam
Child sex tourism	
Consider enacting or extending laws establishing extraterritorial jurisdiction for offences related to child prostitution, sale of children, sexual exploitation and other related sexual offences against children.	Indonesia, Malaysia, Philippines, Thailand
Ensure that extraterritorial jurisdiction applies to residents as well as citizens.	Cambodia
Remove the 'double criminality' requirement for the exercise of extraterritorial jurisdiction.	Thailand
Consider criminalizing 'preparatory acts' carried out in relation to child sex tourism.	Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand
Child pornography	
Consider enacting specific, comprehensive laws on child pornography that are fully compliant with international law.	Brunei, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand, Viet Nam
Ensure that comprehensive and explicit legal definitions of child pornography are included in national laws.	Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand, Viet Nam
Ensure that child pornography laws impose mandatory reporting obligations on relevant bodies and individuals.	Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand, Viet Nam
Child trafficking	
Consider ratifying the Palermo Protocol	Brunei, Singapore
Consider enacting a specific law on human/child trafficking, setting out explicit offences in conformity with international law.	Singapore
Consider adding appropriate penalties for child trafficking offences to specialist trafficking laws.	Singapore
Consider removing from legislation the requirement that a particular means for gaining a child's consent be proved to prosecute child trafficking offences.	Cambodia, Indonesia, Myanmar, Singapore

Consider broadening the types of exploitation encompassed by child trafficking provisions.	Brunei, Malaysia, Myanmar, Philippines
Ensure that specific child trafficking laws have extraterritorial application.	Indonesia, Singapore, Thailand
Child abduction	
Ensure that laws explicitly criminalize unlawful removal of a child outside the territory of the State.	Indonesia, Lao PDR, Thailand, Philippines
Consider ratifying the Hague Convention on the Civil Aspects of International Child Abduction.	Brunei, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand
Violence against Children in Conflict with the Law	
States without a separate system for juvenile justice should consider developing a separate juvenile justice law, preferably as a stand-alone law, or, in the alternative, in the form of a detailed chapter within the Penal Code or Penal Procedure Code, accompanied by comprehensive practice guidance.	Brunei, Cambodia, Malaysia, Myanmar, Singapore, Viet Nam
Consideration should be given to including a specific amendment to enshrine the underpinning principles of the Convention on the Rights of the Child within the existing legislative framework relating to children in conflict with the law.	Particularly Cambodia, Malaysia; as well as Brunei, Myanmar, Singapore, Thailand, Viet Nam
Develop separate, child-specific legislation to protect children in conflict with the law from all forms of violence and ensure compliance with international standards. Seek support from UNICEF and other qualified agencies to provide technical assistance in this regard.	Brunei, Cambodia, Malaysia, Myanmar, Singapore, Viet Nam
Minimum age of criminal responsibility	
Consideration should be given to setting the minimum age of criminal responsibility no younger than age 12 in those States where it is currently below this age.	Brunei, Malaysia, Myanmar, Singapore, Thailand
Consideration should be given to eliminating 'split' ages or 'discernment', and to establishing one, clear age of criminal responsibility.	Brunei, Malaysia, Myanmar, Singapore, Thailand, Viet Nam
Consideration should be given to reviewing and amending laws to ensure that all children who are alleged as, accused of, or recognized as having infringed the penal law when below age 18 are treated as minors and have their cases dealt with according to juvenile justice rather than general adult provisions.	Myanmar, Singapore
Consideration should be given to clarifying whether the minimum age of criminal responsibility is qualified by conditions relating to awareness and mental competency.	Lao PDR
Violence in arrest of children	
States should consider strengthening legal provisions and in particular limiting the use of force and firearms when handling cases involving children in conflict with the law.	Brunei, Cambodia, Indonesia, Malaysia, Singapore, Thailand, Viet Nam
ASEAN member States should consider developing child-specific legislation for the administration of juvenile justice, or comprehensive child-specific sections within general legislation such as criminal or criminal procedural codes. Among other things, this legislation should include the following provisions in relation to violence by law enforcement:	
a) Clear provisions to ensure that the welfare, dignity and best interests of the child are upheld.	Particularly Cambodia, Malaysia; as well as Brunei, Myanmar, Singapore, Thailand, Viet Nam

b) Limitations on the use of force, such that it is only used if and to the extent that it is absolutely necessary, with a presumption against all use of force in handling cases involving children.	Brunei, Cambodia, Indonesia, Malaysia, Singapore, Thailand, Viet Nam
c) Prohibition of the use, handling or possession of firearms and weapons when arresting or dealing with children.	Brunei, Cambodia, Indonesia, Malaysia, Singapore, Thailand, Viet Nam
d) A clear provision that any confession obtained through force must be regarded as inadmissible.	Indonesia, Lao PDR, Myanmar, Thailand
States may wish to consider designating and training specialist law enforcement to handle cases involving children.	Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam
ASEAN member States should consider establishing effective, accessible complaints mechanisms for use by children in conflict with the law and their representatives, in order to hold perpetrators of violence to account, and to prevent the occurrence of violence where possible.	All ASEAN member States
ASEAN member States should consider compulsory training on children's rights and handling children's cases for all law enforcers, judges, social workers, prosecutors, lawyers and corrections officers.	All ASEAN member States
Violent sentences	
Legislation in should prohibit life imprisonment as a sentence that can be used against children.	Brunei, Malaysia, Singapore, Viet Nam
Consideration should be given to prohibiting all forms of corporal punishment used against children.	Brunei, Malaysia, Singapore
Consideration should be given to amending legislation relating to sentencing to include all child justice principles: that the best interests of the child shall be a primary consideration, the principle of proportionality, the promotion of rehabilitation and reintegration, and the deprivation of liberty as a matter of last resort and for the shortest appropriate period of time.	Brunei, Cambodia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand, Viet Nam
Violence within juvenile justice institutions	
Consider strengthening legislative recognition of the needs of the girl child and children with disabilities, or other special needs and vulnerabilities.	All ASEAN member States
Review current complaint mechanism and introduce or strengthen independent complaint mechanisms for children in institutions, taking particular care to ensure the protection of the rights and welfare of children accessing these mechanisms.	All ASEAN member States
Consider adding specific provisions to legislation to prohibit the use of corporal punishment, isolation, restriction of diet and other disciplinary measures against children as prohibited by the Havana Rules.	Brunei, Malaysia, Singapore, Thailand (possibly also Indonesia, Lao PDR, Myanmar, Viet Nam)
Consider adding specific provisions to legislation to prohibit violent forms of restraint, in line with the Havana Rules.	Brunei, Malaysia, Singapore, Thailand (possibly also Indonesia, Lao PDR, Myanmar, Viet Nam)
Develop or continue to develop alternatives to the criminal justice system (diversion and restorative justice options) in order to minimise the number of children who come into contact with law enforcement, and who are deprived of their liberty.	All ASEAN member States

Violence against Children in the Workplace	
Worst forms of child labour	
Consider withdrawing reservations to the Minimum Age Convention 1973 (No. 138) that limit its applicability to certain areas.	Thailand
Expand the crime of slavery to cover the enslavement of children in all contexts, and not just in the context of trafficking, crimes against humanity, relationships under employment contracts, or upon proof of coercion.	Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Singapore
Introduce into the law a specific crime against slavery.	Lao PDR, Viet Nam
Criminalize all three of the use, procurement and offering of children for the purposes of illicit activities.	Brunei, Malaysia, Myanmar, Singapore, Lao PDR, Viet Nam
Extend the crime of using, procuring and offering children for illicit activities to all offences under national laws, and to all persons under age 18 regardless of their marital status or whether an employment contract has been entered into.	Brunei, Cambodia, Indonesia, Myanmar, Thailand
Specifically criminalize the use, procurement and offering of children for the production and trafficking of drugs.	Brunei, Malaysia, Myanmar, Singapore, Thailand
Extend the application of provisions relating to hazardous work to all categories of workers (particularly domestic workers) regardless of whether or not the child labourer is under a contractual employment relationship or receives remuneration for his/her work.	Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Singapore, Thailand, Viet Nam
Introduce or increase the minimum age thresholds for conducting all forms of hazardous work in line with international standards.	Brunei, Cambodia, Malaysia, Myanmar, Singapore, Thailand, Viet Nam
Specify that all persons under age 18 employed or engaged in hazardous work must have their health, safety and morals fully protected, and receive adequate specific instructions or vocational training in the relevant branch of activity.	Brunei, Cambodia, Malaysia, Myanmar, Singapore, Thailand, Viet Nam
Fully criminalize a breach of the laws relating to hazardous work and impose a range of appropriate criminal sanctions for such offences.	Brunei, Cambodia, Indonesia, Lao PDR, Singapore, Viet Nam
Minimum working age and light work	
Ratify the Minimum Age Convention 1973 (No. 138).	Myanmar
Withdrawal the reservation to Article 32 of the Convention on the Rights of the Child.	Singapore
Introduce or fix a minimum working age that is not less than the age of completion of compulsory schooling and, in any case, not less than 15 years.	Brunei, Cambodia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam
Define 'light work' in line with international standards, in particular, clarifying that it must not be hazardous to the health or mental and physical development of the child and will not affect the child's schooling.	Brunei, Malaysia, Singapore, Viet Nam
Increase the minimum age for light work to at least 13 years.	Cambodia
Narrow the scope of exceptions to minimum age rules relating to family undertakings in line with international standards.	Malaysia, Philippines
Specify the number of working hours permitted for light work, sufficiently explain the activities which children undertaking light work may perform and specify the requisite conditions for such work.	Brunei, Indonesia, Philippines, Singapore, Viet Nam

Narrow the scope of or clarify the ambit of exceptions relating to: training; occupations or categories of employment which have been excluded from the minimum age rules due to difficulties in their implementation; and public entertainment, in line with international standards.	Indonesia, Malaysia, Philippines, Viet Nam
Impose a minimum age of at least 14 years for apprenticeship contracts and clarify the ambit of such exceptions to the general minimum age for employment in line with international standards.	Brunei, Malaysia, Cambodia
Narrow the scope of the general exceptions to minimum age rules in line with international standards.	Malaysia, Viet Nam, Philippines
Criminalize and impose a range of appropriate penal sanctions for perpetrators of all forms of child labour below the minimum working age and age for light work.	Brunei, Cambodia, Indonesia, Viet Nam, Lao PDR
Introduce and/or strengthen an appropriate range of civil sanctions for perpetrators of child labour below the minimum working age and age for light work.	Brunei, Cambodia, Indonesia, Malaysia, Singapore, Thailand, Viet Nam

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