

# MIND THE GAPS

A Comparative Analysis  
of ASEAN Legal Responses  
to Child-Sex Tourism

June 2009



**BRUNEI DARUSSALAM**

**BURMA**

**CAMBODIA**

**INDONESIA**

**LAO PDR**

**MALAYSIA**

**PHILIPPINES**

**SINGAPORE**

**THAILAND**

**VIETNAM**

**Mind the Gaps: A Comparative  
Analysis of ASEAN Legal Responses  
to Child-Sex Tourism**

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# CONTENTS

Abbreviations	04
Acknowledgements	04
Recommendations	05
Regional Overview	09
International Laws	10
International Commitments	11
Regional Commitments	11
National Plans of Action	11
National Laws	12
Country Summaries	17
Brunei Darussalam	18
Burma	20
Cambodia	22
Indonesia	24
Lao PDR	27
Malaysia	29
Philippines	31
Singapore	34
Thailand	36
Vietnam	39
Appendix 1: Status of Ratification of International Laws	44
Appendix 2: Summary of National Laws relating to Child-Sex Tourism	45
Appendix 3: Summary of National Laws to Protect Child Victims and Witnesses	50

## Abbreviations

<b>ASEAN</b>	Association of South East Asian Nations
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>CSEC</b>	Commercial Sexual Exploitation of Children
<b>CTOC</b>	Convention against Transnational Organised Crime
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ILO</b>	International Labour Organisation
<b>NPA</b>	National Plan of Action
<b>OPSC</b>	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
<b>Trafficking Protocol</b>	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organised Crime
<b>UN</b>	United Nations
<b>UNWTO</b>	UN World Tourism Organisation

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## Preface

Since 1999, Child Wise (an Australian non-government organisation) has worked with the Association of South East Asian Nations (ASEAN) Member States to implement activities to counter child-sex tourism in the region. The ASEAN Member States are Brunei Darussalam, Burma, Cambodia, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand and Vietnam. In 2008 and early 2009, Child Wise conducted research and consultations with stakeholders to understand national legal frameworks and identify national laws that could be used to prosecute travelling child-sex offenders and those who assist or facilitate child-sex tourism. While further research is required to comprehensively analyse the legal response and understand how laws interact and are being implemented, this publication provides an initial high-level summary. This publication is intended to assist national action and enable regional comparisons to enhance the legal response to child-sex tourism in South East Asia.

## Recommendations

Based on research and analysis to date, the following broad recommendations may be offered. To improve the legal response to child-sex tourism in South East Asia, ASEAN Member States should ensure national laws:

- fully comply with relevant international instruments
- criminalise all forms of child sexual exploitation and abuse
- criminalise sexual exploitation through new technologies, including possessing and accessing child pornography
- provide a consistent definition of a child
- criminalise acts that assist or facilitate child-sex tourism
- criminalise attempts and preparation to commit child-sex offences, including grooming
- strengthen bilateral and regional cooperation to ensure successful prosecution
- provide proportionate sentencing and appropriate sanctions
- protect children and other witnesses throughout all stages of investigations and legal proceedings
- provide services and long-term support to child victims



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**CHILD-SEX TOURISM IS A SIGNIFICANT AND GROWING THREAT IN SOUTH EAST ASIA. GLOBAL TOURISM GROWTH HAS FACILITATED ACCESS TO THE REGION BY TRAVELLING CHILD-SEX OFFENDERS. OFFENDERS ARE ATTRACTED TO THE REGION DUE TO THE PERSISTENTLY POOR SOCIO-ECONOMIC CIRCUMSTANCES THAT PLAGUE LARGE SECTIONS OF THE POPULATION AND RENDER CHILDREN VULNERABLE. THE CURRENT GLOBAL FINANCIAL CRISIS WILL NO DOUBT INCREASE THIS VULNERABILITY. CHILDREN IN COMMUNITIES FACING ECONOMIC HARDSHIP AND UNEMPLOYMENT WILL BE MORE VULNERABLE TO OFFENDERS THAN EVER BEFORE. WEAK LAW ENFORCEMENT, AND IN SOME CASES CORRUPTION AND A LACK OF POLITICAL WILL, HAS FUELLED THIS CRIMINAL ACTIVITY. SIMULTANEOUSLY, TECHNOLOGICAL ADVANCES AND THE INTERNET HAVE CONTRIBUTED TO A DEMAND FOR, AND ACCESS TO, CHILDREN FOR THE PURPOSES OF SEXUAL EXPLOITATION.**

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# REGIONAL OVERVIEW



PHILLIPPINES

PACIFIC OCEAN

INDONESIA

AUSTRALIA

<sup>2</sup> Appendix 1 sets out the status of the ratification and accession of these instruments by ASEAN Member States.

<sup>3</sup> Article 34

<sup>4</sup> Article 35

<sup>5</sup> Article 10(1)

<sup>6</sup> Article 8

<sup>7</sup> Article 6

<sup>8</sup> Article 3(c)

## International Laws

By ratifying or acceding to international treaties, ASEAN Member States are obliged to align their domestic law and policy with international standards. The following instruments set out the international legal standards for the protection of children from sexual abuse and exploitation:<sup>2</sup>

- The **Convention on the Rights of the Child (CRC)** obliges State Parties to take all appropriate national, bilateral and multilateral measures to protect children from sexual exploitation and abuse<sup>3</sup> and abduction, sale and trafficking.<sup>4</sup> All ASEAN Member States are State Parties to the CRC.
- The **Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC)** obliges State Parties to take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements to prevent, detect, investigate, prosecute and punish those responsible for acts involving the sale of children, child prostitution, child pornography and child-sex tourism.<sup>5</sup> Brunei, Cambodia, Lao PDR, Philippines, Thailand and Vietnam are State Parties to the OPSC. Indonesia has signed the OPSC.
- The **International Covenant on Civil and Political Rights (ICCPR)** obliges State Parties to prohibit slavery and to ensure that no one is held in slavery or servitude, or required to perform forced or compulsory labour.<sup>6</sup> Cambodia, Indonesia, Philippines, Thailand and Vietnam are State Parties to the ICCPR. Lao PDR has signed the ICCPR.
- The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** obliges State Parties to take all appropriate measures to suppress the traffic in women and girls and the exploitation of women and girls through prostitution.<sup>7</sup> All ASEAN Member States are State Parties to the CEDAW.
- The **Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol)**, supplementing the United Nations Convention against Transnational Organised Crime, obliges State Parties to criminalise and prevent trafficking. Trafficking in persons includes the “recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation”.<sup>8</sup> Burma, Cambodia, Lao PDR, Malaysia and the Philippines are State Parties to the Trafficking Protocol. Indonesia, Thailand and Vietnam have signed the Trafficking Protocol.
- The **Convention Concerning Forced or Compulsory Labour (ILO Convention No 29)** obliges State Parties to suppress the use of any form of forced or compulsory labour. Except for Brunei, all ASEAN Member States are State Parties to ILO Convention No 29.
- The **Convention Concerning the Abolition of Forced Labour (ILO Convention No 105)** obliges State Parties to prohibit the use of any form of forced or compulsory labour. Cambodia, Indonesia, Philippines and Thailand are State Parties to ILO Convention No 105.
- The **Convention Concerning the Minimum Age for Admission to Employment (ILO Convention No 138)** obliges State Parties to fix a minimum age for employment, not less than the age for completing compulsory schooling and, in any event, not less than 15 years. Developing countries may set the minimum age at 14. Except for Brunei and Burma, all ASEAN Member States are State Parties to ILO Convention No 29.
- The **Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No 182)** obliges State Parties to prohibit and eliminate worst forms of child labour. “Worst forms of child labour” includes the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances. Except for Burma, all ASEAN Member States are State Parties to ILO Convention No 29.

## International Commitments

Although not legally binding, the following international instruments reflect strong government commitment to protect children from sexual abuse and exploitation:

- All ASEAN Member States adopted the **Stockholm Declaration and Agenda for Action** (1996) and the **Yokohama Global Commitment** (2001) against the sexual exploitation of children.<sup>9</sup>
- Except for Burma and Singapore, all ASEAN Member States are members of the UN World Tourism Organisation (UNWTO).<sup>10</sup> In 1999, UNWTO Members adopted a **Global Code of Ethics for Tourism** which expressly condemns the sexual exploitation of children and provides that all States must energetically combat and penalise such offences through national and extra-territorial legislation.<sup>11</sup>

## Regional Commitments

While no regional instrument expressly condemns or addresses child-sex tourism, the following are relevant:

- The **ASEAN Tourism Agreement** (2002) reaffirms States' adherence to the UNWTO Global Code of Ethics for Tourism and specifically commits to taking stern measures to prevent tourism-related abuse and exploitation of people, particularly women and children.
- The **ASEAN Declaration against Trafficking in Persons, Particularly Women and Children** (2004) affirms States' intention to embrace the spirit of international agreements against trafficking.
- The **ASEAN Treaty on Mutual Legal Assistance in Criminal Matters** (2004). Except for Cambodia, Philippines and Thailand, all ASEAN Member States have ratified or acceded to the Treaty.<sup>12</sup> All ASEAN Member States have signed this Treaty.

- The **ASEAN Political-Security Community Blueprint** (adopted at the 14th ASEAN Summit, February-March 2009) provides a roadmap and timetable to promote political development in adherence to principles of democracy, the rule of law and good governance, and human rights and fundamental freedoms as set out in the ASEAN Charter.
- The **ASEAN Charter** (adopted November 2007).

On a sub-regional level, Burma, Cambodia, China, Lao PDR, Thailand and Vietnam affirmed their commitment to the **Coordinated Mekong Ministerial Initiative against Trafficking** through a Memorandum of Understanding signed in October 2004.

## National Plans of Action

The Stockholm Agenda for Action required State Parties to develop and implement a National Plan of Action (NPA) against all forms of commercial sexual exploitation of children (CSEC). Only Lao PDR has a current NPA specifically focused on eliminating CSEC (2007-2011).

Indonesia is currently drafting an NPA for the Elimination of Trafficking in Persons and CSEC (2009-2014). Vietnam maintains that the Program on Prevention of, and Solution to, the Situation of Street Children, Sexually Abused Children and Children Subjected to Heavy Labour or Working Under Noxious and Hazardous Conditions (2004-2010) covers CSEC. Cambodia's Five Year Plan against CSEC expired in 2004, as did the Philippines National Framework for Action against CSEC.

<sup>9</sup> Singapore did not attend the First or Second World Congress however it attended World Congress III in Rio de Janeiro in November 2008 and adopted the Rio de Janeiro Pact. As the Rio de Janeiro Pact involves the adoption of the principles expressed in Stockholm Declaration and Yokohama Global Commitment, Singapore is now said to have adopted its predecessors: Email correspondence from ECPAT International to Child Wise, 25 February 2009. Except for Brunei, all ASEAN Member States attended World Congress III and adopted the Rio de Janeiro Pact: Email correspondence from ECPAT International to Child Wise, 10 April 2009.

<sup>10</sup> <http://www.unwto.org/states/index.php>, last viewed 15 June 2009.

<sup>11</sup> Article 2(3). Article 6(6) also provides that tourism stakeholders should not in any way promote sex tourism.

<sup>12</sup> <http://www.agc.gov.my/agc/sec/stat.htm>, last viewed 15 June 2009.

<sup>13</sup> Refer *Anti-Trafficking in Persons Act of 2003* (Republic Act No 9208), which expressly includes sex tourism as an act of trafficking in persons. Sex tourism is defined as "...a program organised by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilising and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military" (Section 10(a)).

<sup>14</sup> ECPAT International, *Combating Child Sex Tourism: Questions and Answers*, 2008, p 19.

<sup>15</sup> Appendix 2 summarises national laws that may be used to prosecute travelling child-sex offenders. To avoid duplication, provisions relating to trafficking are excluded from Appendix 2. Legislation relating to trafficking is set out in The ASEAN Secretariat, *ASEAN Responses to Human Trafficking: Ending Impunity for Traffickers and Securing Justice for Victims*, April 2006, and The ASEAN Secretariat, *ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Victims, Supplement and Update 2007*, February 2008.

<sup>16</sup> Section 376D

## National Laws

### Sex Offences Against Children

The Philippines is currently the only ASEAN Member State that expressly mentions sex tourism in its legislation.<sup>13</sup> However, the national laws of all ASEAN Member States cover the major categories of sex offences against children, including sexual abuse and assault, commercial sex acts or prostitution, and the use of children to produce sexually explicit images, albeit to varying degrees.

As set out in the Preamble to the OPSC, sex tourism directly promotes the sale of children, child prostitution and child pornography. There is also a direct link between trafficking in children and child-sex tourism. There are many instances of children trafficked internally or across borders for prostitution. Children trafficked for other purposes may also end up in sexually exploitative situations.<sup>14</sup> Accordingly, in the absence of legislation expressly criminalising child-sex tourism, laws relating to sex offences against children are relevant and must be strengthened and enforced.<sup>15</sup>

As this publication demonstrates, numerous laws exist that criminalise child-sex offences. However, there are gaps and inconsistencies within countries and across the region. Among other things, the definitions of a child (age of marriage, age of consent to sexual relations, and between girls and boys) should be consistent, all forms of child sexual exploitation and abuse should be criminalised, and offences relating to sexual exploitation through new technologies should include possessing and accessing child pornography.

### Facilitating Sex Offences Against Children

Numerous individuals and businesses assist or facilitate child-sex tourism. As this publication illustrates, national laws may be used to prosecute others involved in child-sex tourism, including persons who buy, sell, procure, employ, entice, harbour or detain children for the purposes of child prostitution, assist or facilitate child prostitution, knowingly or deliberately allow a child to be sexually exploited, manage, own or provide a premises for child prostitution, or are parents or carers of a child and allow that child to be prostituted.

Such provisions do not exist in each jurisdiction and were not necessarily drafted in response to the phenomenon of child-sex tourism. The 2007 amendments to Singapore's *Penal Code* are a useful model and respond to current exigencies. The *Penal Code* makes it an offence to transport another person outside Singapore with the intention of facilitating commercial sex with a child, whether or not such an offence is committed, and to print, publish or distribute any information that is intended to promote commercial sex with a child.<sup>16</sup>

## Preparing or Conspiring to Commit an Offence

National laws criminalise preparing for, conspiring to commit, and attempts to commit certain offences. In respect of child-sex offences, however, such provisions are not ubiquitous and exist in various forms. For example, the Philippines *Special Protection of Children against Abuse, Exploitation and Discrimination Act* (Republic Act No 7610) makes it an offence to attempt to prostitute a child. An attempt is where a non-relative of a child is found in a situation where a reasonable person would believe that the child is about to be exploited in prostitution, and when a person receives services from a child in a sauna parlour or bath, massage clinic, health club and similar establishments.<sup>17</sup>

The 2007 amendments to Singapore's *Penal Code* are pertinent and make it an offence to make or organise travel outside Singapore with the intention of facilitating commercial sex with a child, whether or not such an offence is committed.<sup>18</sup> It is also an offence to groom a child under 16 years to commit a sexual offence, whether or not the communications occur in or outside Singapore.<sup>19</sup>

## Extra-Territorial Laws and Bilateral and Regional Cooperation

Almost every ASEAN Member State has the ability to prosecute its citizens for child-sex offences committed abroad through extra-territorial legislation or extradition agreements.<sup>20</sup> Table 1 below highlights relevant national laws with extra-territorial application. Extra-territorial legislation and extradition agreements are important where the destination country has inadequate laws or resources, or if the offender leaves the country before the abuse is reported. Notwithstanding, it is generally preferable for an offender to be arrested, tried and sentenced by the country in which the offence is committed.<sup>21</sup>

<sup>17</sup> Sections 6(a), 6(b)

<sup>18</sup> Section 376D

<sup>19</sup> Section 376E

<sup>20</sup> Information about whether extradition agreements cover child-sex offences is currently lacking.

<sup>21</sup> Using domestic legislation (rather than extradition agreements or extra-territorial legislation) can avoid the complications of witnesses (including child victims) and forensic evidence travelling potentially long distances. It can also lessen the bureaucratic steps required and thereby ensure time lapses do not prevent successful prosecutions. Dealing with only one jurisdiction may lessen the complications of communication between the different stakeholders: ECPAT International, *Combating Child Sex Tourism: Questions and Answers*, 2008, p 32.

**Table 1: Relevant National Laws with Extra-Territorial Application**

COUNTRY	LEGISLATION
Brunei	<i>Trafficking and Smuggling of Persons Order</i> 2004 <i>Penal Code</i>
Burma	<i>Anti-Trafficking in Persons Law</i> 2005 <i>Penal Code</i> <i>Child Law</i> 1993 <i>Suppression of Prostitution Act</i> 1949
Cambodia	<i>Law on Suppression of Human Trafficking and Sexual Exploitation</i> 2008
Indonesia	<i>Criminal Code</i>
Lao PDR	<i>Penal Law</i>
Malaysia	<i>Anti-Trafficking in Persons Act</i> 2007
Singapore	<i>Penal Code</i> (Section 376)
Thailand	<i>Anti-Trafficking in Persons Act</i> BE 2551 2008 <i>Prevention and Suppression of Prostitution Act</i> BE 2539 1996
Vietnam	<i>Penal Code</i>

<sup>22</sup> Appendix 3 summarises national laws providing protections for child victims and witnesses before, during, and after legal proceedings.

## Criminal and Civil Procedure

Consistent with international law, children must be protected throughout all stages of investigations and legal proceedings. Adult witnesses supporting the prosecution case should also be protected. Across South East Asia, national laws protect child victims and witnesses to varying degrees, including through special provisions for interviews and giving evidence, the ability to apply for compensation for damages, and the ability to seek long-term assistance, including shelter, medical services, vocational training, and repatriation, where necessary.<sup>22</sup>

To better understand the implementation of laws in South East Asia, further research is required about legal processes and procedures, including who can file complaints (both civil and criminal), statutes of limitation, the provision of legal assistance, pre-trial detention and bail, and the right to appeal. Further research about defences available to alleged offenders is also required. A comprehensive analysis of legal processes may also highlight training needs for law enforcers, prosecutors, the judiciary and the legal sector.

## Penalties and Sentencing

The range of penalties prescribed for child-sex offences is broad. As an illustration, the penalties for a similar offence, broadly categorised as child prostitution, can range from three months up to 30 years imprisonment depending on the country in which the offence took place (refer Table 2 over). Sentencing should be consistent, proportionate and, where relevant, convicted persons should be restricted from obtaining child-related employment. The establishment of national and regional sex offender registration lists to monitor and/or restrict convicted child-sex offenders should be considered.



Table 2: Penalties for Child Prostitution

COUNTRY	OFFENCE	PENALTY	LEGISLATION
BRUNEI	Buy a person under 18 for prostitution or illicit intercourse	Up to 30 years imprisonment and whipping of not less than 12 strokes	<i>Penal Code</i> (Articles 372, 373)
BURMA	Hire any person under 18 with the intent that person be used for prostitution or illicit intercourse	Up to 10 years imprisonment and a fine	<i>Penal Code</i> (Section 373)
CAMBODIA	Purchase child prostitution	If child is 15 or above – 2 to 5 years imprisonment	<i>Law on Suppression of Human Trafficking and Sexual Exploitation</i> 2008 (Article 34)
INDONESIA	Employ tricks, lies or ruses to persuade, or entice, a child to engage in heterosexual acts	3 to 15 years imprisonment and a fine of 60 million to 300 million rupiah	<i>Child Protection Act</i> No 23 of 2002 (Article 81)
LAO PDR	Sexual relations with a child by paying or giving any type of benefit	Where the child is between 15 and 18 – 3 months to 1 year imprisonment or re-education without deprivation of liberty and a fine of 1 million to 2 million kip Where the child is between 12 and 15 – 1 to 5 years imprisonment and a fine of 2 million to 5 million kip Sexual relations with a child under 12 by any means is rape, with a penalty of 7 to 15 years imprisonment and a fine of 7 million to 15 million kip	<i>Law on the Protection of the Rights and Interests of Children</i> 2006 (Article 89)
MALAYSIA	Engage or hire, for any valuable consideration, a child to provide sexual services	3 to 15 years imprisonment and a fine of up to 50,000 ringgit	<i>Child Act</i> 2001 (Section 43(1)(j))
PHILIPPINES	Commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution	<i>Reclusion temporal</i> in its medium period to <i>reclusion perpetua</i> Where the child is under 12 – the offender will be prosecuted under the <i>Penal Code</i> for rape or lascivious conduct	<i>Special Protection of Children against Abuse, Exploitation and Discrimination Act</i> (Republic Act No 7610) (Section 5(b))
SINGAPORE	Obtain commercial sex with a minor under 18	Up to 7 years imprisonment, or a fine, or both	<i>Penal Code</i> (Section 376C)
THAILAND	Commit sexual intercourse against a child, with or without consent, in a place of prostitution	1 to 3 years imprisonment and a fine of 20,000 to 60,000 baht If the child is not over 15 – 2 to 6 years imprisonment and a fine of 40,000 to 120,000 baht	<i>Prevention and Suppression of Prostitution Act</i> 1996 (Section 8)
VIETNAM	Paid sexual intercourse with children aged 16 but under 18	1 to 5 years imprisonment If the child is 13 and under 16 – 3 to 8 years imprisonment Offenders may also be subject to a fine of 5 million to 10 million dong	<i>Penal Code</i> (Article 256)





# COUNTRY SUMMARIES

<sup>23</sup> Article 366A

<sup>24</sup> Article 366 B

<sup>25</sup> Article 372 and 373

<sup>26</sup> Explanation 2 following Section 372

<sup>27</sup> Any person liable to be tried for an offence committed outside Brunei Darussalam “shall be dealt with according to the provisions of this Code for any act committed beyond Brunei Darussalam in the same manner as if such act had been committed within Brunei Darussalam” (Section 3).

<sup>28</sup> Articles 3 and 5

<sup>29</sup> A man commits rape if has sexual intercourse with a woman against her will; or without her consent; or with her consent when her consent has been obtained by putting her in fear of death or hurt; or with her consent when the man knows that he is not her husband, and that the consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married; or with or without her consent when she is under 14 years of age. Penetration is sufficient to constitute the act of sexual intercourse necessary to the offence of rape. Sexual intercourse by a man with his wife, the wife not being under 13 years of age, is not rape (Article 375).

<sup>30</sup> Article 376

<sup>31</sup> Article 377A(1). The exception to this offence is that it does not apply to Malays and other races indigenous to Brunei who by their own law or custom are punishable for having sexual intercourse within prohibited degrees of relationships (Article 377A(2)).

<sup>32</sup> Article 2. Article 3 provides that it is a sufficient defence that the person charged had reasonable cause to believe that the girl was of or above 16 years of age.

<sup>33</sup> Section 28(1), (2). The Court may also order the offender to undergo counselling and psychotherapy.

<sup>34</sup> Section 2

## INTERNATIONAL LAWS

Brunei Darussalam has ratified the following relevant international instruments:

- Convention on the Rights of the Child
- ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

Brunei Darussalam has acceded to the following relevant international instruments:

- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention Against Transnational Organised Crime

## DOMESTIC LAWS

### Child-Sex Tourism

Brunei Darussalam does not have laws specifically concerning child-sex tourism. The following legislation could potentially be used to prosecute travelling child-sex offenders and those who assist or facilitate child-sex tourism.

### Child Prostitution

The *Penal Code* creates various offences relating to child prostitution, including to:

- induce any minor girl (under 18 years of age) to go from any place or to do any act with intent that such girl may be, or knowing that it is likely she will be, forced or seduced to illicit intercourse with another person (with a penalty of up to 30 years imprisonment and whipping of not less than 12 strokes)<sup>23</sup>
- import a girl under 21 years of age into Brunei Darussalam from any foreign country with the intent that she may be, or knowing that it is likely she will be, forced or seduced to illicit intercourse with another person (with a penalty of up to 30 years imprisonment and whipping of not less than 12 strokes)<sup>24</sup>

- sell, or buy, a person under 18 years of age for prostitution or illicit intercourse with any person (with a penalty of up to 30 years imprisonment and whipping of not less than 12 strokes)<sup>25</sup>

“Illicit intercourse” means sexual intercourse between persons not united by marriage or any other quasi-marital relationship.<sup>26</sup> Offences under the *Penal Code* have extra-territorial application.<sup>27</sup>

The *Woman and Girls Protection Act* 1972 also creates offences relating to prostitution of girls under 21 years of age (with a penalty of up to 5 years imprisonment and a fine of up to B\$20,000).<sup>28</sup>

### Child Sexual Abuse and Sexual Assault

The *Penal Code* creates various offences relating to rape and sexual assault, including:

- rape of a woman by a man<sup>29</sup> (with a penalty of up to 30 years imprisonment and a fine and whipping, or 8 to 30 years imprisonment and whipping of not less than 12 strokes for rape of a female under 14 years of age)<sup>30</sup>
- incest committed by either a male with a related female, or a female with a related male (with a penalty of up to 10 years imprisonment or a fine)<sup>31</sup>

The *Unlawful Carnal Knowledge Act* makes it an offence to have carnal knowledge of a girl under 16 years of age, except by way of marriage (with a penalty of 2 to 7 years imprisonment, and whipping not exceeding 24 strokes in the case of an adult and 12 strokes in the case of a youth offender).<sup>32</sup>

The *Children and Young Persons Order* 2006 makes it an offence for any person having the care of children and young people to sexually abuse, or cause the child to be so abused (with a penalty of a fine not exceeding B\$20,000, up to 10 years imprisonment with or without whipping not exceeding 10 strokes, or both).<sup>33</sup> A “child” is defined as a person under 14 years of age, and a “young person” is someone who has attained 14 years but not attained 18 years of age.<sup>34</sup>

## Child Pornography

There are no laws specifically concerning child pornography. Related offences include to:

- import, publish, sell, offer for sale, distribute or reproduce any prohibited publication or any extract (with a penalty of 3 years imprisonment and a fine of B\$3000, and in the case of subsequent offences, 4 years imprisonment and a fine of B\$5000)<sup>35</sup>
- sell obscene articles (with a penalty of a fine of B\$500 to B\$5000 and up to 2 years imprisonment, and in the case of subsequent convictions, a fine of B\$1000 to B\$30,000 and up to 5 years imprisonment)<sup>36</sup>

## Child Trafficking for Sexual Purposes

The trafficking of children is an offence under the *Trafficking and Smuggling of Persons Order* 2004 (with a penalty of 4 to 30 years imprisonment, whipping and a fine of up to B\$1 million).<sup>37</sup> A “child” is defined as a person under 18 years of age.<sup>38</sup> The consent of a trafficked person is irrelevant.<sup>39</sup> The same penalties apply to someone who engages in or profits from the exploitation of trafficked persons.<sup>40</sup> Offences under this Order have extra-territorial application.<sup>41</sup>

The trafficking of women or girls into Brunei Darussalam, whether or not for the purpose of present or subsequent prostitution, is an offence under the *Women and Girls Protection Act* 1972 (with a penalty of up to 5 years imprisonment and a fine of up to B\$20,000).<sup>42</sup> It is a defence if the acts were carried out for reasons of a bona fide marriage or adoption.<sup>43</sup>

The trafficking of a child or young person is also an offence under the *Children and Young Persons Order* 2006 (with a penalty of up to 5 years imprisonment, a fine of up to B\$20,000 with or without whipping of up to 10 strokes or both).<sup>44</sup> Every person who “takes part” in the trafficking may be liable.

## Victim and Witness Protection

Under the *Criminal Procedure Code*, the court may order payment for compensation to be made to any person injured by the crime or offence for which the sentence is passed. Such an order does not preclude the right to a civil remedy for recovery of damages.<sup>45</sup>

The *Criminal Procedure Code* provides that child witnesses (defined as under 14 years of age at the time of the alleged offence) and victims of trafficking may give evidence by remote video-link or on videotape, and prohibits cross-examination by the accused.<sup>46</sup>

The *Trafficking and Smuggling of Persons Order* 2004 establishes a fund to be used to repatriate smuggled or trafficked persons, for awareness raising campaigns and as rewards for those who prevent or suppress trafficking and smuggling.<sup>47</sup>

<sup>35</sup> Article 4, *Undesirable Publications Act*

<sup>36</sup> Section 292, *Penal Code*

<sup>37</sup> The offence of child trafficking prohibits any person recruiting, transporting, transferring, harbouring or receiving a child by any means for the purposes of exploitation (Section 5). “Exploitation” includes 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 (Section 2).

<sup>38</sup> Section 2

<sup>39</sup> Section 10

<sup>40</sup> Section 6

<sup>41</sup> Section 3. The offences apply, regardless of whether the conduct in whole or part took place within or outside Brunei if Brunei is the receiving country or the exploitation occurs in Brunei; or if the people trafficking or smuggling starts or transits in Brunei; or if the offender is a citizen of Brunei or a person to whom a Residence or Entry Permit has been issued.

<sup>42</sup> Section 4(1). It is an offence to buy, sell, procure, traffic, or import into Brunei any women or girl.

<sup>43</sup> Section 4(2)

<sup>44</sup> Section 35(1). The same penalties apply to those who harbour or have in their possession or control any child or young person (Section 35(2)).

<sup>45</sup> Section 382

<sup>46</sup> Sections 236B, C, D and E

<sup>47</sup> Section 19



<sup>48</sup> Section 366A

<sup>49</sup> Section 366B

<sup>50</sup> Section 372

<sup>51</sup> Section 373

<sup>52</sup> Sections 2, 3 and 4

<sup>53</sup> Sections 66(a) and (b)

<sup>54</sup> Section 65

<sup>55</sup> Section 2

<sup>56</sup> Section 12

## INTERNATIONAL LAWS

Burma has ratified the following relevant international instruments:

- Convention on the Rights of the Child
- ILO Convention No 29 concerning Forced or Compulsory Labour

Burma has acceded to the following relevant international instruments:

- Convention on the Elimination of All Forms of Discrimination against Women
- Convention Against Transnational Organised Crime
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime

## DOMESTIC LAWS

### Child-Sex Tourism

Burma does not have laws specifically concerning child-sex tourism. The following legislation could potentially be used to prosecute travelling child-sex offenders and those who assist or facilitate child-sex tourism.

### Child Prostitution

The *Penal Code* creates various offences relating to child prostitution, including to:

- induce any girl under 18 years of age to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to have illicit intercourse with another person (with a penalty of up to 10 years imprisonment and a fine)<sup>48</sup>
- import into Burma from any foreign country any girl under 21 years of age with intent that she may be, or knowing it to be likely that she will be, forced or seduced to have illicit intercourse with another person (with a penalty of up to 10 years imprisonment and a fine)<sup>49</sup>

- sell, let to hire, or otherwise dispose of any person under 18 years of age with intent that such person will be employed or used for prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will be employed or used for any such purpose (with a penalty of up to 10 years imprisonment and a fine)<sup>50</sup>

- buy, hire or otherwise obtain possession of any person under 18 years of age with intent that such person will be employed or used for prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will be employed or used for any such purpose (with a penalty of up to 10 years imprisonment and a fine)<sup>51</sup>

“Illicit intercourse” means sexual intercourse between persons not united by marriage or by any other quasi-marital relationship. The *Penal Code* has application to offences committed inside and outside of Burma by or against a Burma citizen.<sup>52</sup>

The *Child Law* 1993 has related offences, including:

- for a carer to neglect knowingly that a girl under his guardianship under 16 years of age is earning a living by prostitution, or to permit a child under his guardianship to live together or to consort with a person who earns a living by prostitution (with a penalty of up to 2 years imprisonment or a fine of up to 1000 kyats or both)<sup>53</sup>
- to employ or permit a child to perform work which is hazardous to the life of the child or which may cause disease to the child or which is harmful to the child’s moral character (with a penalty of up to 6 months imprisonment or a fine of up to 1000 kyats or both)<sup>54</sup>

Under the *Child Law* 1993, a “child” is a person under 16 years of age, a “youth” is person who has attained 16 years of age but has not attained 18 years of age.<sup>55</sup>

The *Suppression of Prostitution Act* 1949 makes it an offence to detain a woman against her will in any place of prostitution, with the intention that the woman will have sexual intercourse or other immoral acts with a man who is not her husband (with a penalty of up to 3 years imprisonment).<sup>56</sup>

## Child Sexual Abuse and Sexual Assault

The *Penal Code* makes it an offence for a male to rape a female.<sup>57</sup> A man is said to commit rape against a woman with or without her consent when she is 14 years of age or under. The penalty for rape is “transportation for life” or up to 10 years imprisonment and a fine. If the woman raped is his wife and is not under 12 years of age, the penalty is up to 2 years imprisonment or a fine or both.<sup>58</sup>

The *Penal Code* also makes it an offence to voluntarily have “carnal intercourse against the order of nature with any man, woman or animal” (with a penalty of “transportation for life” or up to 10 years imprisonment and a fine).<sup>59</sup>

## Child Pornography

The *Child Law* makes it an offence to use a child in pornographic cinema, video, television and photography (with a penalty of up to 2 years imprisonment or a fine of up to 1000 kyats or both).<sup>60</sup>

The *Anti-Trafficking in Persons Law 2005* makes it an offence to make use of or arrange with a trafficked victim for the purpose of pornography (with a penalty of 5 to 10 years imprisonment and a fine).<sup>61</sup>

The *Penal Code* creates various offences relating to pornography including the mere possession of obscene objects (with a penalty of up to 3 months imprisonment or a fine or both).<sup>62</sup> If the object is not in print form, the offender may be prosecuted under the *Television and Video Law*.<sup>63</sup>

## Child Trafficking for Sexual Purposes

The *Anti-Trafficking in Persons Law 2005* makes child trafficking an offence (with a penalty of 10 years to life imprisonment).<sup>64</sup> The law has extra-territorial application for a citizen or foreigner residing permanently in Burma who commits the offence outside the country.<sup>65</sup>

## Victim and Witness Protection

The *Anti-Trafficking in Persons Law* provides a range of protections for trafficked victims that are women, children and youth,<sup>66</sup> including the protection of their dignity and identification, provision of necessary security and assistance,<sup>67</sup> and special arrangements for remedying physical and mental damage.<sup>68</sup> For victims generally, the Law has a number of provisions relating to repatriation, reintegration and rehabilitation.<sup>69</sup> The Law also provides for the establishment of a fund for the suppression of trafficking in persons, repatriation and rehabilitation of trafficked victims.<sup>70</sup>

<sup>57</sup> Section 375

<sup>58</sup> Section 376

<sup>59</sup> Section 377

<sup>60</sup> Section 66(f)

<sup>61</sup> Section 27

<sup>62</sup> Section 292 makes it an offence to sell, let to hire, distribute, publicly exhibit or circulate, or for purpose of sale, hire, distribution, public exhibition or circulation, make, produce or have in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever; or import, export or convey any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or circulated; or take part in or receive profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or circulated; advertise or make known that any person is engaged or is ready to engage in any act which is an offence under this section or that any such obscene object can be procured from or through any person; or offer or attempt to do any act which is an offence under this section. Section 293 makes it an offence to sell, let to hire, distribute, exhibit or circulate to any person under 20 years of age any such obscene object, or to offer or attempt to do so (with a penalty of up to 6 months imprisonment or a fine or both). Section 294 makes it an offence to do any obscene act in any public space (with a penalty of up to 3 months imprisonment or a fine or both).

<sup>63</sup> Chapter IX

<sup>64</sup> Section 24

<sup>65</sup> Section 2

<sup>66</sup> Chapter VI

<sup>67</sup> Section 16(a)

<sup>68</sup> Section 16(e)

<sup>69</sup> Chapter VII

<sup>70</sup> Chapter VIII

<sup>71</sup> Article 3

<sup>72</sup> Article 7

<sup>73</sup> Article 28

<sup>74</sup> Article 29

<sup>75</sup> Articles 30, 31, and 33

<sup>76</sup> Article 34

<sup>77</sup> Article 35

## INTERNATIONAL LAWS

Cambodia has ratified the following relevant international instruments:

- Convention on the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- Convention Against Transnational Organised Crime
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime
- ILO Convention No 29 concerning Forced or Compulsory Labour
- ILO Convention No 105 concerning the Abolition of Forced Labour
- ILO Convention No 138 concerning the Minimum Age for Admission to Employment
- ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

Cambodia has acceded to the following relevant international instruments:

- International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination against Women

## DOMESTIC LAWS

### Child-Sex Tourism

Cambodia does not have laws expressly criminalising child-sex tourism. However, provisions in the *Law on Suppression of Human Trafficking and Sexual Exploitation* 2008 may be used to prosecute travelling child-sex offenders and those who assist or facilitate child-sex tourism. Offences under this law have extra-territorial application for Khmer citizens.<sup>71</sup> The other legislation outlined below may also be relevant.

### Child Prostitution

The *Law on Suppression of Human Trafficking and Sexual Exploitation* 2008 creates various offences relating to prostitution of a minor. A “minor” is defined as a person under 18 years of age.<sup>72</sup> It is an offence to:

- procure child prostitution (with a penalty of 7 to 15 years imprisonment)<sup>73</sup>
- procure prostitution by torture (with a penalty of 10 to 20 years imprisonment)<sup>74</sup>
- manage child prostitution, or manage an establishment for child prostitution, or provide a premises for child prostitution (with a penalty of 7 to 15 years imprisonment)<sup>75</sup>
- purchase child prostitution (with a penalty of 2 to 5 years imprisonment where the minor is 15 years of age or above, or 7 to 15 years imprisonment where the minor is under 15 years of age)<sup>76</sup>
- solicit another for child prostitution (with a penalty of 2 to 5 years imprisonment and a fine of 4 million to 10 million riels, or 5 to 10 years imprisonment where the offender commits the offence as a business)<sup>77</sup>

## Child Sexual Abuse and Sexual Assault

The *Law on Suppression of Human Trafficking and Sexual Exploitation* 2008 makes it an offence to have sexual intercourse with a minor under 15 years of age (with a penalty of 5 to 10 years imprisonment).<sup>78</sup> It is also an offence to commit an indecent act against a minor under 15 years of age (with a penalty of 1 to 3 years imprisonment and a fine of 2 million to 6 million riels).<sup>79</sup> A person who repeatedly commits either of these offences will receive double the term of imprisonment.<sup>80</sup>

The *Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodian During the Transitional Period* 1992 (the UNTAC Law) creates the following relevant offences:

- rape (with a penalty of 5 to 10 years imprisonment, and 10 to 15 years imprisonment for aggravated rape)<sup>81</sup>
- indecent assault by touching, caressing or any other sexual act not involving penetration (with a penalty of 1 to 3 years imprisonment, or double the sentence if the indecent assault is accompanied by fraud, violence or threat, or if it is committed by any person with authority over the victim, or if the victim is under 16 years of age)<sup>82</sup>
- to procure, entice or lead away for prostitution or to sexually exploit a minor, even with the consent of that minor (with a penalty of 2 to 6 years imprisonment)<sup>83</sup>

## Child Pornography

The *Law on Suppression of Human Trafficking and Sexual Exploitation* 2008 creates various offences relating to child pornography, including to:

- distribute, sell, lease, display, project or present in a public place child pornography (with a penalty of 2 to 5 years imprisonment and a fine of 4 million to 10 million riels)
- possess, transport, import, or export child pornography for use in the commission of the above offence (with a penalty of 2 to 5 years imprisonment and a fine of 4 million to 10 million riels)
- produce child pornography for use in the commission of the above two offences (with a penalty of 10 to 20 years imprisonment)
- produce child pornography (with a penalty of 5 to 10 years imprisonment)<sup>84</sup>

## Child Trafficking for Sexual Purposes

The *Law on Suppression of Human Trafficking and Sexual Exploitation* 2008 creates various offences relating to trafficking of persons.<sup>85</sup> Any attempt to commit the offence, and any accomplice or instigator, is liable to the same punishment.<sup>86</sup> If the victim is a “minor”, the penalty is 15 to 20 years imprisonment.

<sup>78</sup> Article 42

<sup>79</sup> Article 43

<sup>80</sup> Article 43

<sup>81</sup> Article 33

<sup>82</sup> Articles 42(1) and (2)

<sup>83</sup> Article 42(3). While a “minor” is not expressly defined in that Law, it may be implied by other provisions that a minor is a person under 18 years of age.

<sup>84</sup> Article 41

<sup>85</sup> These include unlawful removal with the purpose of profit making, sexual aggression, production of pornography, marriage against the will of the victim, adoption or any form of exploitation (Article 10); unlawful recruitment for exploitation (Article 12); and to sell, buy or exchange, or to transport or receive a person with the purpose of profit making, sexual aggression, production of pornography, marriage against the will of the victim, adoption or any form of exploitation (Articles 15, 17 and 19). For the purposes of these offences, “exploitation” includes 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 or organs (Article 10).

<sup>86</sup> Article 4



<sup>87</sup> Article 88

<sup>88</sup> Article 78

<sup>89</sup> Chapter XII, Article 81

<sup>90</sup> Chapter XII, Article 82

<sup>91</sup> Email correspondence from PKPA Indonesia to Child Wise, 22 January 2009.

<sup>92</sup> In practice, the relevant provisions of the *Child Protection Act*, rather than the *Criminal Code*, are used as the *Child Protection Act* provides more severe penalties: Email correspondence from PKPA Indonesia to Child Wise, 22 January 2009.

<sup>93</sup> Article 295

<sup>94</sup> Article 296

<sup>95</sup> This applies to Indonesian citizens, provided that the crime is also unlawful in the country in which it took place (Article 5). The principle of double criminality does not apply to certain offences against the security of the State and the dignity of the President.

<sup>96</sup> Chapter XIV, Article 56

## INTERNATIONAL LAWS

Indonesia has ratified the following relevant international instruments:

- Convention on the Rights of the Child
- Convention on the Elimination of All Forms of Discrimination against Women
- ILO Convention No 29 concerning Forced or Compulsory Labour
- ILO Convention No 105 concerning the Abolition of Forced Labour
- ILO Convention No 138 concerning the Minimum Age for Admission to Employment
- ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

Indonesia has acceded to the following relevant international instrument:

- International Covenant on Civil and Political Rights

Indonesia has signed the following relevant international instruments:

- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- Convention Against Transnational Organised Crime
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime

## DOMESTIC LAWS

### Child-Sex Tourism

Indonesia does not have laws specifically concerning child-sex tourism. The following legislation could potentially be used to prosecute travelling child-sex offenders and those who assist or facilitate child-sex tourism.

### Child Prostitution

The *Child Protection Act* No 23 of 2002 creates several offences relating to the sexual exploitation of children, including to:

- exploit a child for gain (with a penalty of up to 10 years imprisonment or a fine of up to 200 million rupiah or both)<sup>87</sup>
- knowingly and deliberately allow a child to be economically or sexually exploited when the child needs help and must be assisted (with a penalty of up to 5 years imprisonment or a fine of up to 100 million rupiah or both)<sup>88</sup>
- threaten or use violence to force a child engage in (heterosexual) sexual acts, or to employ tricks, lies or ruses to persuade, or entice, a child to engage in (heterosexual) sexual acts (with a penalty of 3 to 15 years imprisonment and a fine of 60 million to 300 million rupiah)<sup>89</sup>
- threaten or use violence to force a child engage in indecent behaviour, or to employ tricks, lies or ruses to persuade, or to encourage, a child to engage in indecent behaviour (with a penalty of 3 to 15 years imprisonment and a fine of 60 million to 300 million rupiah)<sup>90</sup>

Under the *Child Protection Act*, a “child” is defined as a person under 18 years of age, including unborn children.<sup>91</sup>

The *Criminal Code* contains several offences relating to child prostitution,<sup>92</sup> including to:

- deliberately cause or facilitate an obscene act between a minor and another person (with varying penalties depending on severity and relationship between offender and victim)<sup>93</sup>
- facilitate obscene acts that are conducted professionally or habitually (with a penalty of up to 16 months imprisonment or a fine)<sup>94</sup>

Under the *Criminal Code*, a “minor” includes boys and girls up to 21 years of age. The *Criminal Code* has extra-territorial application<sup>95</sup> and has provisions to punish complicity in a crime.<sup>96</sup>

## Child Sexual Abuse and Sexual Assault

The sections of the *Child Protection Act* No 23 of 2002 set out above are also relevant to sexual abuse and assault.

The *Criminal Code* contains several offences relating to child sexual abuse and sexual assault.<sup>97</sup>

The *Human Rights Law* No 39 of 1999 states that parents, guardians or whoever takes care of a child may be subject to penal sentence if they conduct certain acts including sexual harassment and rape.<sup>98</sup>

## Child Pornography

The *Electronic Information and Transaction Law* No 11 of 2008 makes it an offence to deliberately and without rights distribute and/or transmit and/or make electronic information and/or an electronic document containing immoral content accessible (with a penalty of up to 6 years imprisonment and/or a maximum fine of 1 billion rupiah – increased by one-third if the crime relates to morality or child sexual exploitation).<sup>99</sup>

The *Anti-Pornography Law* No 44 of 2008 defines pornography as:

“...any sexual materials created by human in the form of pictures, sketches, photos, writings, voices, sounds, motion pictures, animations, cartoons, poems, conversations, body movement, or other forms of message communication through various forms of communication media and/or representations in public that cause sexual arousal and/or violates norms in community.”<sup>100</sup>

While the law does not define child pornography, a “child” is defined as a person under 18 years of age. If the object of pornography is children, punishment will increase by one-third.

The *Manpower Act* No 13 of 2003 makes it an offence to use children to produce pornography or for pornographic performances (with a penalty of 2 to 5 years imprisonment or a fine of 200 million to 500 million rupiah or both).<sup>101</sup>

## Child Trafficking for Sexual Purposes

The *Eradication of the Criminal Act of Trafficking in Persons Act* No 21 of 2007 creates various offences relating to the trafficking of persons<sup>102</sup> (with a penalty of 3 to 15 years imprisonment and a fine of 120 million to 600 million rupiah – increased by one-third if the offences are against a child).<sup>103</sup> A “child” is defined as a person under 18 years of age, including an unborn baby.<sup>104</sup> The Act also makes it an offence to:

- adopt a child by promising or giving something with the intention of exploiting the child (with a penalty of 3 to 15 years and a fine of 120 million to 600 million rupiah)<sup>105</sup>
- send a child within the country or to another country using any means, causing the child to be exploited (with a penalty of 3 to 15 years and a fine of 120 million to 600 million rupiah)<sup>106</sup>

It is also an offence to attempt, assist, or plan or participate in an unlawful conspiracy, to commit trafficking.<sup>107</sup> The consent of a victim will not “eliminate” the prosecution of an offender.<sup>108</sup>

The *Child Protection Act* No 23 of 2002 makes it an offence to trade, sell or kidnap a child either for one’s own purposes or for sale (with a penalty of 3 to 15 years imprisonment and a fine of 60 million to 300 million rupiah).<sup>109</sup>

The *Criminal Code* also criminalises trading in women and children (with a penalty of up to 6 years imprisonment).<sup>110</sup> This provision specifically protects women of all ages and boys up to 21 years of age.

<sup>97</sup> Refer Articles 294, 290(2), 292, 287

<sup>98</sup> Article 52

<sup>99</sup> Articles 27(1), 45(1), 52(1)

<sup>100</sup> Article 1

<sup>101</sup> Articles 74 and 183

<sup>102</sup> These include Articles 2, 3 and 4

<sup>103</sup> Article 17

<sup>104</sup> Article 1(5)

<sup>105</sup> Article 5

<sup>106</sup> Article 6

<sup>107</sup> Article 9, 10 and 11

<sup>108</sup> Article 26

<sup>109</sup> Chapter 12, Article 83

<sup>110</sup> Chapter XIV, Article 297

<sup>111</sup> Article 64

<sup>112</sup> Article 71, paragraph 1

<sup>113</sup> Article 38

<sup>114</sup> Article 39

<sup>115</sup> Article 40

## Victim and Witness Protection

The *Child Protection Act* No 23 of 2002 provides certain services and rights for children, both as victims and perpetrators, such as the right to early assignment of counsellors, the provision of special infrastructure and facilities, and the right to not have their identities made public.<sup>111</sup> Children who become victims of abuse and negligence have a right to care and rehabilitation.<sup>112</sup>

The *Eradication of the Criminal Act of Trafficking in Persons Act* No 21 of 2007 has provisions relating to child witnesses and victims. The investigation, prosecution and court examination must be conducted with the interests of the child in mind, without the use of court apparels or official uniforms.<sup>113</sup> The examination must be conducted in a closed session, the child must be accompanied, and the examination must be conducted without the presence of the defendant.<sup>114</sup> Subject to the approval of the court, the examination of the child may be conducted outside the courtroom using a recording.<sup>115</sup>

## INTERNATIONAL LAWS

Lao PDR has ratified the following relevant international instruments:

- Convention on the Rights of the Child
- Convention on the Elimination of All Forms of Discrimination against Women
- ILO Convention No 29 concerning Forced or Compulsory Labour
- ILO Convention No 138 concerning the Minimum Age for Admission to Employment
- ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

Lao PDR has acceded to the following relevant international instruments:

- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- Convention Against Transnational Organised Crime
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime

Lao PDR has signed the following relevant international instrument:

- International Covenant on Civil and Political Rights

## DOMESTIC LAWS

### Child-Sex Tourism

Lao PDR does not have laws specifically concerning child-sex tourism. The following legislation could potentially be used to prosecute travelling child-sex offenders and those who assist or facilitate child-sex tourism.

### Child Prostitution

The *Penal Law* makes it an offence to:

- engage in prostitution (with a penalty of 3 months to 1 year imprisonment or by re-education without deprivation of liberty and a fine of 50,000 to 500,000 kip)<sup>116</sup>
- assist or facilitate prostitution (with a penalty of 3 months to 1 year imprisonment or re-education without deprivation of liberty and a fine of 300,000 to 1 million kip)<sup>117</sup>
- generate income through procuring prostitution (with a penalty of 6 months to 3 years imprisonment and a fine of 5 million to 10 million kip)<sup>118</sup>
- procure as a regular profession or procure female minors or force a female under the offender's guardianship into prostitution (with a penalty of 3 to 5 years imprisonment and a fine of 10 million to 50 million kip)<sup>119</sup>
- force a person under 18 years of age into prostitution (with a penalty of 10 to 20 years imprisonment and a fine of 20 million to 50 million kip)<sup>120</sup>

The *Law on the Protection of the Rights and Interests of Children* 2006 makes it an offence to:

- use children in hazardous sectors (a person who has been subject to administrative measures but has repeated the offence will face a penalty of 3 months to 1 year imprisonment and a fine of 1 million to 2 million kip)<sup>121</sup>
- have sexual relations with a child by paying or giving any type of benefit (with a penalty of 3 months to 1 year imprisonment or re-education without deprivation of liberty and a fine between 1 and 2 million kip where the child is under 18 years to 15 years of age, or 1 to 5 years imprisonment and a fine of 2 million to 5 million kip where the child is under 15 years to 12 years of age)<sup>122</sup>
- have sexual relations with a child under 12 years of age by any means, all instances of which are considered rape (with a penalty of 7 to 15 years imprisonment and a fine of 7 million to 15 million kip)<sup>123</sup>

A “child” is defined as any person under 18 years of age.<sup>124</sup>

<sup>116</sup> Article 131. While children are not expressly excluded from the operation of this provision, Article 40(1) of the *Penal Law* provides that circumstances conducive to the reduction of penal responsibilities include that an offender is less than 18 years of age. Article 7 of the *Penal Law* provides that a child under 15 years of age at the time of commission of an offence will not be considered an offender. Refer also Part V of the *Law on the Protection of the Rights and Interests of Children* 2006, which sets out the rights and protections afforded to children in conflict with the law.

<sup>117</sup> Article 131

<sup>118</sup> Article 132

<sup>119</sup> Article 132

<sup>120</sup> Article 133

<sup>121</sup> Article 87. Where such use of child labour causes disability or death to the child, the person will be punished by 3 to 7 years imprisonment and a fine of 3 million to 7 million kip.

<sup>122</sup> Article 89

<sup>123</sup> Article 89

<sup>124</sup> Article 2

<sup>125</sup> Article 128. Attempts to commit rape will also be punished.

<sup>126</sup> Article 129

<sup>127</sup> Article 135

<sup>128</sup> Article 137. This provision does not apply to offences set out in Article 128 (rape).

<sup>129</sup> Article 86

<sup>130</sup> Article 136

<sup>131</sup> Article 138

<sup>132</sup> Article 134. Article 100 of the *Penal Law* also contains the general offence of trading or abducting human beings for ransom, sale or other purposes (with a penalty of 5 to 15 years imprisonment and fine of 5 million to 50 million kip).

<sup>133</sup> Articles 3 and 4

<sup>134</sup> Article 49. In addition, the offender must also compensate the victim for damages such as cost of medical treatment, mental damage, travel, board and lodging (Article 52).

<sup>135</sup> Article 90

<sup>136</sup> Article 3

<sup>137</sup> Article 44. Those rights are to have their dignity and human value respected; to express their views, which will be considered based on the balancing of the child's age and level of discernment; to have support from parents, guardians or legal protectors at all stages of the proceedings to protect their legitimate rights and interests; to have their privacy protected; to be protected from coercion, threat, and all types of danger, including their family members; to have other rights as provided in the *Law on the Development and Protection of Women and the Law on Criminal Procedure*.

<sup>138</sup> Article 45. When interviewing, the investigator and public prosecutor must use sensitive and friendly methods; allow the child's parents, guardians or legal protectors to participate during each interview; use a special separate room with no disturbance; question children using simple language suitable to their age and level of discernment; use appropriate methods to prevent the child from having contact with the accused or defendant during the interview.

<sup>139</sup> Article 91

<sup>140</sup> Article 11

<sup>141</sup> Articles 25 and 28

<sup>142</sup> Article 33

## Child Sexual Abuse and Sexual Assault

The *Penal Law* contains several offences relating to child sexual abuse and sexual assault, including:

- rape (with a penalty of 5 to 10 years imprisonment and a fine of 2 million to 10 million kip where the female victim is between 15 to 18 years of age, or 7 to 15 years imprisonment and a fine of 5 million to 15 million kip in the event of rape by more than one person or rape of female under 15 years of age)<sup>125</sup>
- to engage in sexual intercourse with a child under 15 years of age (with a penalty of 1 to 5 years imprisonment and a fine of 2 million to 5 million kip)<sup>126</sup>
- to engage in sexual intercourse with a biological child, adopted child, step-child, grandchild or sibling (with a penalty of 6 months to 5 years imprisonment and a fine of 500,000 to 2 million kip)<sup>127</sup>
- to engage in any act that causes embarrassment of a sexual nature to another person against such other person's will (with a penalty of 6 months to 3 years imprisonment or re-education without deprivation of liberty and a fine of 100,000 to 500,000 kip)<sup>128</sup>

## Child Pornography

The *Law on the Protection of the Rights and Interests of Children* 2006 makes it an offence to produce, distribute, disseminate, import, export, display or sell child pornography (with a penalty of 1 to 3 years imprisonment and a fine of 2 million to 6 million kip).<sup>129</sup>

While it has no provisions specifically relating to child pornography, the *Penal Law* makes it an offence to:

- engage in sexual intercourse or expose sexual organs in the presence of members of the public (with a penalty of 3 months to 1 year imprisonment or re-education without deprivation of liberty and a fine of 50,000 to 200,000 kip)<sup>130</sup>
- engage in the widespread production, distribution, or dissemination of pornographic items, magazines, pictures, video cassettes and other materials contrary to fine traditions (with a penalty of 3 months to 1 year imprisonment and a fine of 200,000 to 5,000,000 kip)<sup>131</sup>

## Child Trafficking for Sexual Purposes

The *Penal Law* creates offences relating to the trafficking of persons (with a penalty of 15 to 20 years imprisonment and a fine of 100 million to 500 million kip and confiscation of assets where the victim is a minor, defined as under 18 years of age).<sup>132</sup> The *Penal Law* applies when a crime is committed inside Lao PDR or overseas by a Lao citizen.<sup>133</sup>

The *Law on the Development and Protection of Women* 2004 creates offences relating to the trafficking in women and children (with a penalty of 5 to 25 years imprisonment where the victim is a child).<sup>134</sup>

The *Law on the Protection of the Rights and Interests of Children* 2006 creates an offence of trafficking in children (with a penalty of 5 to 15 years imprisonment, a fine of 10 million to 100 million kip and the confiscation of assets).<sup>135</sup>

## Victim and Witness Protection

The *Law on the Protection of the Rights and Interests of Children* 2006 sets out the basic rights of children, including the right to be protected from all forms of physical and moral abuse and to receive special protection in legal proceedings.<sup>136</sup> Chapter 3 sets out those special protections, including the rights of children who are victims and witnesses in criminal proceedings.<sup>137</sup> Chapter 3 states that interviews of child victims and witnesses must be conducted by specially trained investigators and public prosecutors, in collaboration with social workers.<sup>138</sup>

The *Law on the Protection of the Rights and Interests of Children* 2006 also provides for compensation for damages such as medical treatment, moral injury, sick leave, travel, food and accommodation.<sup>139</sup> The Law also establishes a fund to ensure the development of children and the protection of their rights and interests.<sup>140</sup>

The *Law on Development and Protection of Women* 2004 gives women and children who are victims of trafficking certain rights and protections, including the right to request compensation and rehabilitation in order to reintegrate into society, the right to protection and care for their personal safety, the right not to be photographed, video-recorded or broadcast, and the right to receive suitable assistance in terms of shelter, food, clothing, medical service, vocational training, repatriation and other assistance as necessary.<sup>141</sup> Similar rights are afforded to women and children who are victims of domestic violence.<sup>142</sup>

## INTERNATIONAL LAWS

Malaysia has ratified the following relevant international instruments:

- Convention on the Rights of the Child
- Convention Against Transnational Organised Crime
- ILO Convention No 29 concerning Forced or Compulsory Labour
- ILO Convention No 138 concerning the Minimum Age for Admission to Employment
- ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

Malaysia has acceded to the following relevant international instrument:

- Convention on the Elimination of All Forms of Discrimination against Women

## DOMESTIC LAWS

### Child-Sex Tourism

Malaysia does not have laws specifically concerning child-sex tourism. The following legislation could potentially be used to prosecute travelling child-sex offenders and those who assist or facilitate child-sex tourism.

### Child Prostitution

The *Penal Code* (Act No 574) contains several offences relating to prostitution, including to:

- sell any person with intent that such person will be employed or used for prostitution or illicit intercourse or for any unlawful and immoral purpose, or knowing it to be likely that such person will be employed or used for any such purpose (with a penalty of up to 10 years imprisonment and a fine)<sup>143</sup>
- buy, hire or otherwise obtain possession of any person with intent that such person will be employed or used for prostitution or illicit intercourse or for any unlawful and immoral purpose, or knowing it to be likely that such person will be employed or used for any such purpose (with a penalty of up to 10 years imprisonment and a fine)<sup>144</sup>

The *Child Act* 2001 also contains several offences regarding child prostitution, including to:

- sell, let for hire or otherwise dispose of, or buy or hire or otherwise obtain possession of a child with intent that the child is to be employed or used for prostitution, either within or outside Malaysia, or knowing or having reason to believe that the child will be so employed or used (with a penalty of a fine not exceeding 50,000 ringgit or up to 15 years imprisonment or both)<sup>145</sup>
- procure a child for prostitution or for sexual intercourse with any other person, either within or outside Malaysia (with a penalty of a fine not exceeding 50,000 ringgit or up to 15 years imprisonment or both)<sup>146</sup>
- under false pretence or fraudulent means bring a child into Malaysia for the purposes of being employed or used for prostitution (with a penalty of a fine not exceeding 50,000 ringgit or up to 15 years imprisonment or both)<sup>147</sup>
- receive or harbour a child for the purposes of being employed or used for prostitution (with a penalty of a fine not exceeding 50,000 ringgit or up to 15 years imprisonment or both)<sup>148</sup>
- detain a child in a brothel against the child's will, or in any place against the child's will with intent that the child be employed or used for prostitution or any unlawful or immoral purpose (with a penalty of a fine not exceeding 50,000 ringgit or up to 15 years imprisonment or both)<sup>149</sup>
- engage or hire, for any valuable consideration, a child to provide sexual services for that person's sexual gratification (with a penalty of a fine not exceeding 50,000 ringgit, and 3 to 15 years imprisonment and whipping of not more than 6 strokes)<sup>150</sup>

A "child" is defined as any person under 18 years of age.<sup>151</sup>

<sup>143</sup> Section 372

<sup>144</sup> Section 373

<sup>145</sup> Section 43(1)(a)

<sup>146</sup> Section 43(1)(b)

<sup>147</sup> Section 43(1)(c)

<sup>148</sup> Section 43(1)(d)

<sup>149</sup> Sections 43(1)(e) and (f)

<sup>150</sup> Section 43(1)(j)

<sup>151</sup> Section 2



<sup>152</sup> Section 375<sup>153</sup> Section 376(1)<sup>154</sup> Section 376(2)<sup>155</sup> Section 354<sup>156</sup> Sections 377CA, 377D and 377E<sup>157</sup> Section 31(1)<sup>158</sup> Section 292<sup>159</sup> Section 14<sup>160</sup> Sections 3 and 4<sup>161</sup> Section 48<sup>162</sup> Section 49<sup>163</sup> Section 55A<sup>164</sup> Sections 54-57<sup>165</sup> Section 3<sup>166</sup> Section 4

## Child Sexual Abuse and Sexual Assault

The *Penal Code* (Act No 574) makes it an offence for a male to rape a female<sup>152</sup> (with a penalty of up to 20 years imprisonment and whipping).<sup>153</sup> A man is said to commit rape with or without consent when a girl is under 16 years of age. A higher penalty of 5 to 30 years imprisonment and whipping applies where the offence is committed:

- without her consent when she is under 16 years of age
- with or without her consent when she is under 12 years of age
- with consent when consent is obtained by using a position of authority because of a professional relationship or other relationship of trust<sup>154</sup>

While rape of a male is not an offence in Malaysia, alternative charges under the *Penal Code* may include outrage of modesty<sup>155</sup> or unnatural offences.<sup>156</sup>

The *Child Act* 2001 makes it an offence for a person having the care of a child to sexually abuse the child or cause or permit the child to be so abused (with a penalty of a fine not exceeding 20,000 ringgit or up to 10 years imprisonment or both).<sup>157</sup>

## Child Pornography

There are no laws specifically concerning child pornography. However, the *Penal Code* makes it an offence to sell, let to hire, distribute, publicly exhibit or put into circulation, or make for purposes of sale, hire, distribution, public exhibition or circulation, or produce or have in possession any obscene book, pamphlet, paper, drawing, painting representation or figure or any other obscene object whatsoever (with a penalty of up to 3 years or a fine or both).<sup>158</sup> It is also an offence to import, export or convey any obscene object for such purpose, take part in or receive profits from any business involved in such purpose, or advertise or make known that any person is engaged or ready to engage in any of the above acts. An offer or attempt to do any of the above acts is also an offence.

## Child Trafficking for Sexual Purposes

The *Anti-Trafficking in Persons Act* 2007 creates an offence of child trafficking (with a penalty of 3 to 20 years imprisonment and a fine).<sup>159</sup> A child is defined as under 18 years of age. The consent of the child is irrelevant. Trafficking offences apply regardless of whether they took place inside or outside Malaysia.<sup>160</sup>

The *Child Act* 2001 makes the unlawful transfer of possession, custody or control of a child an offence (with a penalty of a fine not exceeding 10,000 ringgit or up to 5 years imprisonment, or both).<sup>161</sup> The same penalty applies to the offence of the importation of a child by false pretences.<sup>162</sup>

The *Immigration Act* also contains trafficking provisions, including the offence of conveyancing through vehicles, vessels, or aircrafts (with a penalty of 2 to 5 years imprisonment and a fine of 10,000 to 50,000 ringgit).<sup>163</sup>

## Victim and Witness Protection

The *Child Act* 2001 has incorporated many of the principles of the Convention on the Rights of the Child, including the establishment and regulation of places of safety and places of refuge for children.<sup>164</sup>

The *Evidence of Child Witness Act* 2007 stipulates how children should give evidence<sup>165</sup> and the special protections for child witnesses, including screening,<sup>166</sup> evidence by live link, video recording of child witnesses and the witness support service.

## INTERNATIONAL LAWS

The Philippines has ratified the following relevant international instruments:

- Convention on the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention Against Transnational Organised Crime
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime
- ILO Convention No 29 concerning Forced or Compulsory Labour
- ILO Convention No 105 concerning the Abolition of Forced Labour
- ILO Convention No 138 concerning the Minimum Age for Admission to Employment
- ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

## DOMESTIC LAWS

### Child-Sex Tourism and Trafficking

The Philippines is the only country in the world that expressly includes sex tourism as an act of trafficking in persons.<sup>167</sup> The *Anti-Trafficking in Persons Act of 2003* (Republic Act No 9208) defines sex tourism as:

*“...a program organised by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilising and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military”.*<sup>168</sup>

The Act creates various offences relating to trafficking (with a penalty of 20 years imprisonment and a fine of 1 to 2 million pesos),<sup>169</sup> including to:

- undertake or organise tours and travel plans consisting of tourism packages or activities for the purpose of utilising and offering persons for prostitution, pornography or sexual exploitation<sup>170</sup>
- recruit, transfer, harbour, provide or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage<sup>171</sup>
- introduce or match for money, profit, or material, economic or other consideration, any person or any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him or her to engage in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage<sup>172</sup> offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading a person to engage in prostitution, pornography, sexual exploitation, forced labour or slavery, involuntary servitude or debt bondage<sup>173</sup>
- maintain or hire a person to engage in prostitution or pornography<sup>174</sup>
- adopt or facilitate the adoption of a person for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage<sup>175</sup>

<sup>167</sup>The Protection Project, The Johns Hopkins University, *International Child Sex Tourism: Scope of the Problem and Comparative Case Studies*, 2007, p 143.

<sup>168</sup>Section 3(e)

<sup>169</sup>Section 10(a)

<sup>170</sup>Sections 4(d)

<sup>171</sup>Sections 4(a)

<sup>172</sup>Sections 4(b)

<sup>173</sup>Sections 4(c)

<sup>174</sup>Sections 4(e)

<sup>175</sup>Sections 4(f)



<sup>176</sup> Sections 6(a) and 10(c). The penalty also increases where the adoption is effected through the *Inter-Country Adoption Act of 1995* (Republic Act No 8043) and is for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage and the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee.

<sup>177</sup> Section 3(b)

<sup>178</sup> Sections 5 and 10(b)

<sup>179</sup> The definition of a child is consistent with the *Anti-Trafficking in Persons Act of 2003* (Republic Act No 9208) (Section 3(a)).

<sup>180</sup> Section 7

<sup>181</sup> Section 8. The penalty for this is two degrees lower than for Section 7.

<sup>182</sup> Section 5(a)

<sup>183</sup> Section 5(b)

<sup>184</sup> Section 5(c)

<sup>185</sup> Section 6(a)

<sup>186</sup> Section 6(b)

<sup>187</sup> Section 6

<sup>188</sup> Sections 12-D, 16(b) and (c)

<sup>189</sup> Section 11

<sup>190</sup> Sections 3(c), 5 and 6

The penalty increases to life imprisonment and a fine of 2 to 5 million pesos in a number of circumstances, including where the trafficked person is a child.<sup>176</sup> A “child” is defined as a person under 18 years of age, or a person over 18 years of age but unable to fully take care of or protect himself or herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.<sup>177</sup>

The Act also criminalises acts that promote trafficking in persons, such as allowing a house to be used for the promotion of trafficking of persons (with a penalty of 15 years imprisonment and a fine of 500,000 to 1 million pesos).<sup>178</sup>

The *Special Protection of Children against Abuse, Exploitation and Discrimination Act* (Republic Act No.7610) makes it an offence to engage in trading and dealing with children (with a penalty of *reclusion temporal*, 12 to 20 years imprisonment, to *reclusion perpetua*, 30 years to life imprisonment).<sup>179</sup> The penalty will be imposed in its maximum period when the victim is under 12 years of age.<sup>180</sup> Under the Act, an attempt to commit child trafficking includes:

- when a child travels alone to a foreign country without valid reason and without clearance issued by the Department of Social Welfare and Development or written permission or justification from the child’s parents or legal guardian
- when a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking
- when a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking
- when a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centres, or other child-caring institutions who can be offered for the purpose of child trafficking<sup>181</sup>

## Child Prostitution

The *Special Protection of Children against Abuse, Exploitation and Discrimination Act* (Republic Act No.7610) creates various offences relating to child prostitution (with a penalty of *reclusion temporal* in its medium period to *reclusion perpetua*), including to:

- engage in or promote, facilitate or induce child prostitution<sup>182</sup>
- commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse (when the victim is under 12 years of age, the perpetrators will be prosecuted under Article 335 of the *Revised Penal Code* for rape or lascivious conduct)<sup>183</sup>
- derive profit or advantage, whether as manager or owner of the establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to the establishment<sup>184</sup>

Under the Act, an attempt to prostitute a child is an offence. Attempts are when non-relatives of children are found in situations where a reasonable person would believe that the child is about to be exploited in prostitution,<sup>185</sup> or when a person receives services from a child in a sauna parlour or bath, massage clinic, health club and other similar establishments.<sup>186</sup> The penalty for attempted child prostitution is lower than that for committing the offence of child prostitution.<sup>187</sup>

Using, offering or exposing a child for prostitution is also included as a worst form of child labour (with a penalty for employers or subcontractors of 12 years and 1 day to 20 years imprisonment, a fine of 100,000 to 1 million pesos, or both).<sup>188</sup> The *Anti-Trafficking in Persons Act of 2003* (Republic Act No 9208) makes it an offence to buy or engage the services of trafficked persons for prostitution (with a penalty of 6 months community service and a fine of 50,000 pesos for a first offence, or 1 year imprisonment and a fine of 100,000 pesos for second and subsequent offences).<sup>189</sup>

The *Anti-Violence against Women and their Children Act of 2004* (Republic Act No 9262) includes prostituting a woman or her child as an act of violence that is subject to criminal sanctions.<sup>190</sup>

## Child Sexual Abuse and Sexual Assault

The *Special Protection of Children against Abuse, Exploitation and Discrimination Act* (Republic Act No.7610) criminalises acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to a child's development (with a penalty of imprisonment and a fine of not less than 50,000 pesos). This includes any person who keeps or has in his company a minor (12 years and under) or who is 10 years or more his junior in any public or private place, hotel, motel, beer joint, disco, cabaret, pension house, sauna or massage parlour, beach and/or other tourist resort.<sup>191</sup>

The *Anti-Rape Law* (Republic Act No 8353) incorporates the offence of rape into the *Revised Penal Code*.<sup>192</sup> Statutory rape is committed against a girl under 12 years of age. The death penalty will be imposed if any of the listed aggravating/qualifying circumstances apply, including:

- when the victim is under 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<sup>193</sup>
- when the victim is a child below 7 years old<sup>194</sup>

## Child Pornography

The *Special Protection of Children Against Abuse, Exploitation and Discrimination Act* (Republic Act No.7610) makes it an offence to hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute such materials (with a penalty of *prison mayor* in its medium period).<sup>195</sup> If the child used as a performer, subject or seller/distributor is below 12 years of age, the penalty will be imposed in its maximum period. A carer of a child who causes or allows a child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section will be subject to the penalty of *prison mayor* in its medium period.

The *Anti-Trafficking in Persons Act of 2003* (Republic Act No 9208) criminalises trafficking for the purposes of pornography.

## Victim and Witness Protection

The *Special Protection of Children against Abuse, Exploitation and Discrimination Act* (Republic Act No.7610) penalises various forms of abuse against children and offers remedial procedures, such as protective custody.

The Philippines Supreme Court Rule on Examination of Child Witnesses governs the examination of child witnesses who are victims of crime, accused of crime and witnesses to crime. The Rule provides for:

- the participation of a facilitator, appointed by the court, to pose questions to a child
- a guardian ad litem, appointed by the court, to protect the best interests of a child
- a support person, chosen by the child, to accompany him or her to testify or attend proceedings
- an interpreter to allow communication to the child in a level due to his or her developmental characteristics and in a language known to the child
- a waiting area for children, separate from waiting areas used by other persons
- a more comfortable environment for the child, including the ability for a child to be permitted to testify from a place other than the witness chair, the judge not wearing his or her judicial robe, and the taking of testimony at a time of day when the child is well-rested
- the child to use testimonial aids such as dolls or drawings, and to have an item of his or her own choosing, such as a blanket, toy or doll
- the prosecutor, counsel or guardian ad litem to apply for an order that the testimony of the child be taken by video-link or for a videotaped deposition<sup>196</sup>

The *Anti-Trafficking in Persons Act of 2003* (Republic Act No 9208) provides that certain services will be made available to trafficked victims, including emergency shelter and housing, counselling, free legal services, medical and psychological services, skills training, and educational assistance.<sup>197</sup>

<sup>191</sup> Section 10

<sup>192</sup> Section 266-A

<sup>193</sup> Section 266-B(1)

<sup>194</sup> Section 266-B(5)

<sup>195</sup> Article V, Section 9

<sup>196</sup> Philippine Government response to United Nations Secretary General's Study on Violence Against Children, pp 42-44, <http://www2.ohchr.org/english/bodies/crc/study.htm>, last viewed 7 May 2009.

<sup>197</sup> Sections 23 and 24

<sup>198</sup> Section 376C

<sup>199</sup> Section 376B

<sup>200</sup> Section 377D(1)

<sup>201</sup> Section 377D(2)

<sup>202</sup> Section 376D

<sup>203</sup> Section 376E

<sup>204</sup> Section 140(1)(c)

<sup>205</sup> Section 375. This section provides that a man commits rape when he has sexual intercourse with a woman without her consent or with or without her consent when she is under 14 years of age. The penalty is increased to a minimum of 8 years imprisonment and caning of not less than 12 strokes in a number of circumstances, including if a man rapes a woman under 14 years of age without her consent (Section 375(3)). A man will not be guilty of an offence under this section against his wife, who is not under 13 years of age, except if his wife was living apart from him under various circumstances set out in Section 375(4).

<sup>206</sup> Section 376. The penalty is increased to a minimum of 8 years imprisonment and caning of not less than 12 strokes in a number of circumstances, including if a person commits the offence against a person under 14 years of age (Section 376(4)).

<sup>207</sup> Section 376A. The penalty is increased to up to 20 years imprisonment and a fine or caning if a person commits the offence against a person under 14 years of age (Section 376A(3)). No person will be guilty of the offence for an act of penetration against his or her spouse with their consent (Section 376A(4)). No man will be guilty of an offence under this section against his wife, who is not under 13 years of age, except if his wife was living apart from him under various circumstances set out in Section 376A(5).

<sup>208</sup> Sections 376G(1) and (3). The penalty is increased to up to 14 years imprisonment if the offence is committed against a woman under 14 years of age. If a woman of or above 16 years of age with consent permits a related male to commit incest, she also commits an offence (with a penalty of up to 5 years imprisonment) (Section 376G(5)).

<sup>209</sup> Section 354(1). If the offence is committed against a person under 14 years of age, the term of imprisonment may increase to 5 years (Section 354(2)).

## INTERNATIONAL LAWS

Singapore has ratified the following relevant international instruments:

- Convention on the Rights of the Child
- Convention Against Transnational Organised Crime
- ILO Convention No 29 concerning Forced or Compulsory Labour
- ILO Convention No 138 concerning the Minimum Age for Admission to Employment
- ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

Singapore has acceded to the following relevant international instrument:

- Convention on the Elimination of All Forms of Discrimination against Women

## DOMESTIC LAWS

### Child-Sex Tourism and Child Prostitution

In October 2007, Singapore amended its *Penal Code* to explicitly make it an offence for a Singapore citizen or permanent resident, while outside Singapore to:

- obtain commercial sex with a minor under 18 years of age (with a penalty of up to 7 years imprisonment or a fine or both)
- communicate with another person for the purpose of obtaining commercial sex with a minor under 18 years of age (with a penalty of up to 2 years imprisonment or a fine or both)<sup>198</sup>

It is also an offence to do these acts in Singapore.<sup>199</sup> A reasonable mistake as to the age of a person will not be a defence to any charge of an offence under these sections.<sup>200</sup> If the person charged was under 21 years of age at the time of the alleged offence, a reasonable mistaken belief that the minor was of or above 18 years of age will be a valid defence, unless the person has previously been charged for a listed offence.<sup>201</sup>

The amendments to the *Penal Code* also create the following offences:

- to make or organise travel outside Singapore with the intention of facilitating commercial sex with a minor, whether or not such an offence is committed (with a penalty of up to 10 years imprisonment or a fine or both)

- to transport another person outside Singapore with the intention of facilitating commercial sex with a minor, whether or not such an offence is committed (with a penalty of up to 10 years imprisonment or a fine or both)

- to print, publish or distribute any information that is intended to promote commercial sex with a minor, or to assist any other person to do this (with a penalty of up to 10 years imprisonment or a fine or both)<sup>202</sup>

Any person of or above 21 years of age commits an offence if he or she grooms a child under 16 years of age to commit a sexual offence as defined in the Act, whether or not the communications occur in or outside Singapore (with a penalty of up to 3 years imprisonment or a fine or both).<sup>203</sup>

The *Women's Charter* also creates offences relating to the prostitution of girls (with a penalty of 5 years imprisonment and a fine not exceeding \$10,000), including by threats or intimidation procuring any woman or girl to have carnal connection except by way of marriage with any male person, either in or out of Singapore.<sup>204</sup>

### Child Sexual Abuse and Sexual Assault

The *Penal Code* criminalises for a number of sex offences, including:

- rape of a woman by a man (with a penalty of up to 20 years and a fine or caning)<sup>205</sup>
- sexual assault by penetration (with a penalty of up to 20 years and a fine or caning)<sup>206</sup>
- sexual penetration of a minor under 16 years of age, including causing a minor under 16 years of age to penetrate any person (with a penalty of up to 10 years imprisonment or a fine or both)<sup>207</sup>
- incest by a man of or above 16 years of age against a related female (with a penalty of up to 5 years imprisonment)<sup>208</sup>
- to assault or use criminal force to any person intending to outrage or knowing it to be likely to outrage the modesty of that person (with a penalty of up to 2 years imprisonment or a fine or caning or any combination of such punishments)<sup>209</sup>

- to commit, or abet the commission of, or procure or attempt to procure the commission by any male person of, any act of gross indecency with another male, in public or private (with a penalty of up to 2 years imprisonment)<sup>210</sup>

The *Children and Young Persons Act* 1993 makes it an offence to commit or abet the commission of, or procure or attempt to procure the commission by, any person of any obscene or indecent act with any child or young person, in public or private (with a penalty of a fine not exceeding \$5000 or up to 2 years imprisonment or both and, in the case of a second or subsequent conviction, to a fine not exceeding \$10,000 or up to 4 years imprisonment).<sup>211</sup> A “child” is defined as any person under 14 years of age, and a “young person” is any person aged 14 years and below 16 years of age.<sup>212</sup>

## Child Pornography

There are no specific laws concerning child pornography. However, the *Undesirable Publication Act*<sup>213</sup> and the *Penal Code*<sup>214</sup> prohibit all forms of pornography. Relevantly, the *Children and Young Persons Act* 1993 restricts children and young persons from taking part in any form of public entertainment of an immoral nature.<sup>215</sup>

## Child Trafficking for Sexual Purposes

The *Children and Young Persons Act* 1993 offers protection for children and creates offences relating the trafficking of children, including:

- to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child for any valuable consideration (with a penalty of up to 4 years imprisonment)<sup>216</sup>
- without lawful authority or excuse, to harbour or have in his possession, custody or control of any child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person within or outside Singapore (with a penalty of up to 4 years imprisonment)<sup>217</sup>
- by or under any false pretence, false representations or fraudulent or deceitful means made or used either within or outside Singapore, bring or assist in bringing any child into Singapore (with a penalty of a fine not exceeding \$10,000 or up to 4 years imprisonment or both)<sup>218</sup>

The *Women’s Charter* also includes provisions relating to the traffic of girls, including the importation of a girl by false pretences with the intent that the girl be employed or used for prostitution either within or out of Singapore (with a penalty of up to 5 years imprisonment and a fine not exceeding \$10,000).<sup>219</sup>

## Victim and Witness Protection

The *Children and Young Persons Act* provides the basis for protection and intervention by the relevant authorities if a child or a young person is found to be abused or neglected. In respect of court proceedings, the Act also restricts the publication or broadcasting of:

- any information relating to any proceedings in any court or on appeal from any court that reveals the name, address or school or that includes any particulars that are calculated to lead to the identification of any child or young person concerned in the proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein
- any picture as being or including a picture of any child or young person concerned in any such proceedings<sup>220</sup>

The *Women’s Charter* makes special provisions for girls who are victims of crime under the Charter, including closed courts for victims under 16 years of age, prohibiting newspapers from revealing information that may lead to victims or witnesses being identified, the ability for courts to order detention of victims in a safe place until the completion of criminal proceedings, and the provision of places of safety for girls in urgent need of refuge.<sup>221</sup>

The Attorney General’s Chambers and the Singapore Police Force have collaborated to implement the Vulnerable Witness Support Program. A “vulnerable witness” is a person aged below 16 years of age (or with a mental capacity under 16 years of age) that is required by the Police or Public Prosecutor to give evidence in a criminal case in court. The Program allows for identified cases to be referred to the Singapore Children’s Society, who will arrange for the Volunteer Support Person.<sup>222</sup>

<sup>210</sup> Section 377A

<sup>211</sup> Section 7

<sup>212</sup> Section 2

<sup>213</sup> Section 4(2)(a)(ii) addresses the exploitation of the nudity of children as one consideration in determining whether a publication, online or otherwise, is objectionable within the meaning of the Act.

<sup>214</sup> Sections 202 to 294 criminalise the sale of obscene books, objects, songs, etc (including an obscene act in any public place).

<sup>215</sup> Section 11

<sup>216</sup> Section 12(1)

<sup>217</sup> Section 12(2). It will be a defence in Section 12 to prove that the transfer took place in contemplation of or pursuant to a bona fide marriage or adoption and that at least one of the natural parents of the child or the legal guardian was a consenting party to the marriage or to the adoption by the adopting party, and had expressly consented to the marriage or adoption (Section 12(3)).

<sup>218</sup> Section 13

<sup>219</sup> Section 142

<sup>220</sup> Section 35

<sup>221</sup> Sections 153, 155, 177, 160 and 163

<sup>222</sup> The Volunteer Support Person can give the witness, their parents or caregivers information on court procedures, can assist with stress management, can arrange for a visit to the courts to help the witness familiarise with the environment and court procedures, can accompany the witness while he or she is waiting to testify, and may be permitted by the judge to sit behind the witness as he or she testifies in court via real time video link in separate room.

<sup>223</sup> Prostitution means sexual intercourse, or any other act, or the commission of any other act in order to gratify the sexual desire of another person in a promiscuous manner in return for money or any other benefit, irrespective of whether the person who accepts the act and the person who commits the act are of the same sex or not (Section 4).

<sup>224</sup> Section 9. If the offence is committed by means of fraud, deceit, threat, violence, the exercise of undue influence or coercion against her or his will in any manner whatsoever, the offender will be liable to a one-third heavier penalty.

<sup>225</sup> Section 8

<sup>226</sup> Section 10. If the parent connives in the prostitution of child in violation of provisions relating to soliciting, associating or advertising, the public prosecutor can apply to the Court for the revocation of parental power (Section 13).

<sup>227</sup> Section 11

## INTERNATIONAL LAWS

Thailand has ratified the following relevant international instruments:

- Convention on the Rights of the Child
- ILO Convention No 29 concerning Forced or Compulsory Labour
- ILO Convention No 105 concerning the Abolition of Forced Labour
- ILO Convention No 138 concerning the Minimum Age for Admission to Employment
- ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

Thailand has acceded to the following relevant international instruments:

- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination against Women

Thailand has signed the following relevant international instruments:

- Convention Against Transnational Organised Crime
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime

## DOMESTIC LAWS

### Child-Sex Tourism

Thailand does not have laws specifically concerning child-sex tourism. The following legislation could potentially be used to prosecute travelling child-sex offenders and those who assist or facilitate child-sex tourism.

### Child Prostitution

The *Prevention and Suppression of Prostitution Act BE 2539 1996* creates a number of offences relating to child prostitution, including:

- to procure, seduce or traffic a person to commit the act of prostitution,<sup>223</sup> even with consent of the other person, no matter whether the commission of various acts which constitute the offence are committed inside or outside the territory of the Kingdom (with 1 to 10 years imprisonment and a fine of 20,000 to 200,000 baht, or 5 to 15 years imprisonment and a fine of 100,000 to 300,000 baht if the offence is against a child over 15 but not yet over 18 years of age, or 10 to 20 years imprisonment and a fine of 200,000 to 400,000 baht if the offence is against a child not over 15 years of age)<sup>224</sup>
- to commit sexual intercourse or any other act against a person who is over 15 years but not yet over 18 years of age, for sexual gratification of that person or of a third person, with or without his/her consent, in a place of prostitution (with a penalty of 1 to 3 years imprisonment and a fine of 20,000 to 60,000 baht, or 2 to 6 years imprisonment and a fine of 40,000 to 120,000 baht if the offence is committed against a child not over 15 years of age)<sup>225</sup>
- being a father, mother or parent of a child not over 18 years of age who knows of or connives to have the child procured, seduced or taken away for prostitution (with a penalty of 4 to 20 years imprisonment and a fine of 80,000 to 400,000 baht)<sup>226</sup>
- being an owner, supervisor or manager of a prostitution business or establishment, or the controller of prostitutes (with a penalty of 5 to 15 years imprisonment and a fine of 100,000 to 300,000 baht if the business or establishment has for prostitution children over 15 years but not under 18 years of age, or 10 to 20 years imprisonment and a fine of 200,000 to 400,000 baht if the person for prostitution is a child not over 15 years of age)<sup>227</sup>



- to detain or confine another person, or by any other means, deprive such person of the liberty of such person or cause bodily harm to or threaten in any manner whatsoever to commit violence against another person in order to compel such other person to engage in prostitution (with a penalty of 10 to 20 years imprisonment and a fine of 200,000 to 400,000 baht)<sup>228</sup>

Relevantly, the *Labour Protection Act BE 2541 1998* prohibits the sexual harassment of children by employers,<sup>229</sup> and contains a number of provisions regarding the employment of children, including the prohibition of:

- employment of a child under 15 years of age<sup>230</sup>
- causing a child under 18 years of age to work between 2200 hours and 0600 hours, except where written permission is granted by the Director-General or his designate<sup>231</sup>
- causing a child under 18 years of age to perform work in certain establishments including dance halls or “establishments where food, liquor, tea or other beverages are served and where services of prostitutes, sleeping facilities, or massage are offered”<sup>232</sup>

## Child Sexual Abuse and Sexual Assault

The *Penal Code*<sup>233</sup> creates a number of relevant offences, including:

- sexual intercourse with a girl not yet over 13 years of age, with or without her consent (with a penalty of 7 to 20 years imprisonment and a fine of 14,000 to 40,000 baht, or life imprisonment in circumstances such as if the offence is committed by participation of persons in the nature of destroying a girl, or by carrying or using a gun or explosive)<sup>234</sup>
- aggravated rape, for instance, if the commission of the offence causes grievous bodily harm to the victim (with a penalty of 15 to 20 years imprisonment and a fine of 30,000 to 40,000 baht, or life imprisonment)<sup>235</sup>
- indecent act on a child not over 13 years of age, with or without her consent (with a penalty of up to 10 years imprisonment or a fine not exceeding 20,000 baht)<sup>236</sup>

Thailand has extraterritorial jurisdiction over the offence of rape in the *Penal Code*.<sup>237</sup>

## Child Pornography

There are no laws specifically regarding child pornography. However, the *Penal Code* makes it an offence to trade, publicly distribute or exhibit, make, produce, possess, import, export or circulate by whatever means, any document, drawing, print, painting, printed matter, picture, poster, symbol, photograph, cinematograph film, noise tape, picture tape or any other thing which is obscene (with a penalty of up to 3 years imprisonment or a fine not exceeding 6000 baht, or both).<sup>238</sup>

## Child Trafficking for Sexual Purposes

The *Anti-Trafficking in Persons Act BE 2551 2008* creates various offences relating to the trafficking in persons<sup>239</sup> (with a penalty of 4 to 10 years imprisonment and a fine from 80,000 to 200,000 baht).<sup>240</sup> If the offence is committed against a child over 15 but under 18 years of age, the penalty is 6 to 12 years imprisonment and a fine of 120,000 to 240,000 baht. If the offence is committed against a child not over 15 years of age, the penalty is 8 to 15 years imprisonment and a fine of 160,000 to 300,000 baht.<sup>241</sup>

Aiding or abetting trafficking is punished as the offence of trafficking in persons.<sup>242</sup> Preparing to commit trafficking is punishable by one-third of the punishment stipulated for the offence of trafficking.<sup>243</sup> Conspiring to commit the offence, between two or more persons, is punished to no more than one-half of the punishment stipulated for the offence.<sup>244</sup> Committing the offence of trafficking outside Thailand is punishable under the Act.<sup>245</sup>

The *Penal Code*<sup>246</sup> makes it an offence to procure, lure, or traffic an adult or a child of both sexes for an indecent sexual act or for sexual gratification of another person, no matter where the offence is committed and whatever nationality the offender is (with a penalty of 3 to 15 years imprisonment and a fine of 6000 to 30,000 baht if the child was over 15 but not 18 years of age, or 5 to 20 years imprisonment and a fine of 10,000 to 40,000 baht if the child was not over 15 years of age).<sup>247</sup> Thailand has extraterritorial jurisdiction over this offence of the *Penal Code*.<sup>248</sup>

As noted above, the *Prevention and Suppression of Prostitution Act BE 2539 (1996)* also makes it an offence to traffic a person to commit prostitution.

<sup>228</sup> Section 12

<sup>229</sup> Section 16

<sup>230</sup> Section 44

<sup>231</sup> Section 47

<sup>232</sup> Section 50

<sup>233</sup> This legislation was not available to view. Information is taken from the Interpol website, <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaThailand.asp>, last viewed 26 March 2009.

<sup>234</sup> Section 277

<sup>235</sup> Section 277. Heavier penalties will also apply of the victim is a descendant, pupil, a person under his control according to his official authority, or a person under his tutorship, guardianship or curatorship. If the commission of the offence causes the death of the victim, the offender will be punished with death or life imprisonment.

<sup>236</sup> Section 279. If the offender commits the offence by threatening by any means whatsoever, by doing any act of violence, by taking advantage of such child being in the condition of inability to resist, or by causing such child to mistake him for another person, the offender will be punished with up to 15 years imprisonment or fine not exceeding 30,000 baht, or both.

<sup>237</sup> Section 8. Refer footnote 3, *Penal Code Amendment Act (No.14) BE 2540 1997*

<sup>238</sup> Section 287

<sup>239</sup> Section 6

<sup>240</sup> Section 52

<sup>241</sup> Section 52

<sup>242</sup> Section 7

<sup>243</sup> Section 8

<sup>244</sup> Section 9

<sup>245</sup> Section 11

<sup>246</sup> As amended by the *Penal Code Amendment Act (No.14) BE 2540 1997*

<sup>247</sup> Section 282. If the offender used deceitful means, threats, physical assault, immoral influence or mental coercion, the penalty increases to 7 to 20 years imprisonment and a fine of 14,000 to 40,000 baht; or life imprisonment if the child is over 15 years but not over 18 years; and 10 to 20 years imprisonment, a fine of 20,000 to 40,000 baht, or life imprisonment or death if the child is not over 15 years of age (Section 283).

<sup>248</sup> Section 7

<sup>248</sup> Section 133 *bis*

<sup>250</sup> Section 133 *ter*

<sup>251</sup> Section 172

<sup>252</sup> Chapter 4

<sup>253</sup> Chapter 5

<sup>254</sup> Thailand Government response to the United Nations Secretary General's Study on Violence Against Children, p 5, <http://www2.ohchr.org/english/bodies/crc/study.htm>, last viewed 7 May 2009. This legislation has not been viewed; it is unknown whether it covers victims of child-sex offences.

## Victim and Witness Protection

The *Criminal Procedure Code* contains several provisions to make criminal proceedings more child-friendly, including:

- children taking part in an inquiry can be examined separately in a place suitable for them, with a psychologist or social worker present<sup>249</sup>
- if a child has to identify an alleged offender, this can be done in a place suitable for the child, so that the alleged offender cannot see the child, and with a psychologist or social worker present<sup>250</sup>
- if children have to give evidence in court, all questions can be asked through a psychologist or social worker<sup>251</sup>

The *Anti-Trafficking in Persons Act BE 2551 2008* has provisions relating to the assistance and protection of trafficked persons, taking into account a number of factors including the age of the person.<sup>252</sup> The Act also creates a fund to provide assistance and safety to trafficked persons, as well as to prevent and suppress trafficking in persons.<sup>253</sup>

The *Redress for the Damaged and Compensation and Expenses for Offenders in Criminal Cases Act 2001* provides that victims of violence under the *Penal Code* can file for compensation.<sup>254</sup>

## INTERNATIONAL LAWS

Vietnam has ratified the following relevant international instruments:

- Convention on the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- Convention on the Elimination of All Forms of Discrimination against Women
- ILO Convention No 29 concerning Forced or Compulsory Labour
- ILO Convention No 138 concerning the Minimum Age for Admission to Employment
- ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

Vietnam has acceded to the following relevant international instrument:

- International Covenant on Civil and Political Rights

Vietnam has signed the following relevant international instrument:

- Convention Against Transnational Organised Crime

## DOMESTIC LAWS

### Child-Sex Tourism

Vietnam does not have laws specifically concerning child-sex tourism. The following legislation could potentially be used to prosecute travelling child-sex offenders and those who assist or facilitate child-sex tourism.

### Child Prostitution

The *Penal Code* creates the following offences relating to child prostitution:

- to harbour prostitutes (with a penalty of 5 to 15 years imprisonment if the child is aged 16 years and under 18 years, or 12 to 20 years imprisonment if the child is aged 13 years and under 16 years)<sup>255</sup>

- to entice or procure prostitutes (with a penalty of 3 to 10 years imprisonment if the child is aged 16 years and under 18 years, or 7 to 15 years imprisonment if the child is aged 13 years and under 16 years)<sup>256</sup>
- paid sexual intercourse with children aged 16 years and under 18 years (with a penalty of 1 to 5 years imprisonment, or 3 to 8 years imprisonment if the child is aged 13 years and under 16 years, or 7 to 15 years imprisonment if the offence is committed more than once against children aged 13 years and under 16 years)<sup>257</sup>

The offences in the *Penal Code* have extra-territorial application if the offender is a Vietnamese national or if the crimes are covered by a treaty that Vietnam has signed or acceded to.<sup>258</sup> The *Penal Code* also criminalises preparation for the commission of a very serious crime or a particularly serious crime.<sup>259</sup>

The *Law on Child Protection, Care and Education* 2004 prohibits seducing, deceiving, leading, harbouring or forcing children into prostitution and exploiting and using working children for heavy, dangerous or hazardous work.<sup>260</sup> “Children” are defined as Vietnamese citizens under 16 years of age.<sup>261</sup>

The *Labour Code* 2002 prohibits employment of workers under 18 years of age in hard, dangerous work and work exposed to harmful substances, abuse of workers under 18 years of age, and recruitment of children below 15 years of age, except in certain categories of occupation that promote a child’s talent as determined by the Ministry of Labour, War Invalids and Social Affairs.<sup>262</sup>

The *Ordinance on Prevention of Prostitution* 2003 provides that hotels, motels, restaurants, dance clubs, karaoke bars, massage parlours, saunas and other business service places, which can easily be misused for prostitution, must have the signed written labour contracts with labourers and be registered with the local labour management authority. The employment of labourers under 18 years of age for jobs which can negatively affect their physical and intellectual development and dignity is prohibited.<sup>263</sup>

<sup>255</sup> Article 254. The penalty increases to 20 years or life imprisonment if the crime causes particularly serious consequences. Offenders may also be subject to a fine of 5 million to 100 million dong, the confiscation of part or whole of property, and probation for 1 to 5 years.

<sup>256</sup> Article 255. The penalty increases to 12 to 20 years imprisonment if the crime causes particularly serious consequences. Offenders may also be subject to a fine of 1 million to 10 million dong.

<sup>257</sup> Article 256. Offenders may also be subject to a fine of 5 million to 10 million dong.

<sup>258</sup> Articles 5 and 6

<sup>259</sup> Article 17

<sup>260</sup> Articles 7(4) and 7(7)

<sup>261</sup> Article 1

<sup>262</sup> Articles 121, 119, and 120

<sup>263</sup> Article 15



<sup>264</sup> Article 112(1). The sentence is increased to 12 to 20 years imprisonment if the crime is incestuous; the victim is made pregnant; the victim's health is harmed with an infirmity rate between 31% and 60%; the victim is a person whom the offender has the responsibility to look after, educate or medically treat; or in the case of dangerous recidivism (Article 112(2)). The sentence is increased to 20 years imprisonment, life imprisonment or capital punishment if the crime is committed in an organised manner; more than one person rapes a person; the crime is committed more than once or against more than one person; the victim's health is harmed with an infirmity rate of 61% or higher; the offender knows that they are infected with HIV; or the crime causes the death of the victim or causes the victim to commit suicide (Article 112(3)). Offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for from 1 to 5 years (Article 112(5)).

<sup>265</sup> Article 112(4). Offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for from 1 to 5 years (Article 112(5)).

<sup>266</sup> Article 113(4).

<sup>267</sup> Article 114(1). The sentence is increased to 7 to 15 years imprisonment if the crime is incestuous; the victim is made pregnant; the victim's health is harmed with an infirmity rate between 31% and 60%; or in the case of dangerous recidivism (Article 114(2)). The sentence is increased to 12 to 20 years imprisonment or life imprisonment if more than one person commits forcible sexual intercourse against one person; the crime is committed more than once or against more than one person; the victim's health is harmed with an infirmity rate of 61% or higher; the crime is committed even though the offender knows that they are infected with HIV; or the crime causes the death of the victim or causes the victim to commit suicide (Article 114(3)). Offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for 1 to 5 years (Article 114(4)).

<sup>268</sup> Article 115(1). The sentence is increased to 3 to 10 years imprisonment if the crime is committed more than once or against more than one person; the crime is incestuous; the victim is made pregnant; the victim's health is harmed with an infirmity rate of from 31% to 60% (Article 115(2)). The sentence is increased to 7 to 15 years imprisonment if the victim's health is harmed with an infirmity rate of 61% or higher; or the crime is committed even though the offender knows that they are infected with HIV (Article 115(3)).

<sup>269</sup> Article 116(1). The sentence is increased to 3 to 7 years imprisonment if the crime is committed more than once, against more than one child or against a child whom the offender has the responsibility to take care of, educate or medically treat; the crime causes serious consequences; and in the case of serious recidivism (Article 116(2)). The crime is increased to 7 to 12 years imprisonment if the crime causes serious consequences or particularly serious consequences (Article 116(3)). Offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for 1 to 5 years (Article 116(4)).

<sup>270</sup> Articles 7(4) and 7(6). As noted, children are defined as "Vietnamese citizens aged under 16 years" (Article 1).

## Child Sexual Abuse and Sexual Assault

The *Penal Code* creates a number of relevant offences, including:

- rape of children aged between 13 years and under 16 years (with a penalty of 7 to 15 years imprisonment)<sup>264</sup>
- sexual intercourse with children under 13 years, all instances of which are considered rape (with a penalty of 12 to 20 years imprisonment, life imprisonment or capital punishment)<sup>265</sup>
- forcible sexual intercourses with children aged over 16 years and under 18 years (with a penalty of 2 to 7 years imprisonment)<sup>266</sup>
- forcible sexual intercourse with children aged between 13 years and under 16 years (with a penalty of 5 to 10 years imprisonment)<sup>267</sup>
- sexual intercourse with children aged between 13 and under 16 years by an adult (with a penalty of 1 to 5 years imprisonment)<sup>268</sup>
- obscene acts committed against children by adults (with a penalty of 6 months to 3 years imprisonment)<sup>269</sup>

The *Law on Child Protection, Care and Education* 2004 prohibits sexually abusing children, and torturing, maltreating, affronting, appropriating, kidnapping, trafficking in or fraudulently exchanging children for personal benefits.<sup>270</sup>

## Child Pornography

The *Law on Child Protection, Care and Education* 2004 prohibits using, luring and forcing children to buy and sell pornographic produces and producing, copying, circulating, transporting and stockpiling child pornography.<sup>271</sup>

The *Ordinance on the Prevention of Prostitution* 2003 prohibits agencies, organisations and individuals from producing, circulating, transporting, storing, buying, selling, exporting, importing or publishing pictures, materials, products or information which may be rated as pornographic.<sup>272</sup>

The *Penal Code* makes it an offence to disseminate “debauched cultural products” (with a penalty of a fine of 5 million to 50 million dong, non-custodial reform for up to 3 years, or 6 months to 3 years imprisonment, or 3 to 10 years imprisonment where the crime is “against juveniles”).<sup>273</sup>

## Child Trafficking for Sexual Purposes

The *Penal Code* makes it an offence to trade in, fraudulently exchange or appropriate children (with a penalty of 3 to 10 years imprisonment).<sup>274</sup>

The *Ordinance on Prevention of Prostitution* 2003 criminalises sex trafficking of children (with a penalty of 3 years to life imprisonment).

## Victim and Witness Protection

The *Criminal Procedure Code* provides some support for children involved in criminal proceedings, including:

- protection, if their life, health, honour or dignity is in the danger<sup>275</sup>
- closed hearings, when the victim is under 16 years of age or if the matter involves sensitive crimes<sup>276</sup>
- inviting parents or other legal representatives to attend the proceedings, where the witness is under 16 years of age<sup>277</sup>

The *Civil Code 2005* provides that people who damage the life, health, reputation, human dignity, prestige, property, rights and other legal interests of others are required to compensate the victim for their loss.<sup>278</sup>

The *Penal Code* also provides that convicted persons are required to compensate for material or mental damages caused by their crimes.<sup>279</sup>

The *Law on Child Protection, Care and Education* 2004 provides that sexually abused children are to be assisted by their families, the State and society through consultancy measurers, physical and mental restoration, and given conditions to stabilise their life.<sup>280</sup>

<sup>271</sup> Article 7(5)

<sup>272</sup> Article 16

<sup>273</sup> Article 253. The penalty may be increased to 7 to 15 years imprisonment where the objects involved in the offense are in particularly great quantity or very serious or particularly serious consequences are caused. Offenders may also be subject to a fine of 3 million to 30 million dong.

<sup>274</sup> Article 120. Offenders may also be subject to a fine of 5 million to 100 million dong, the confiscation of part or whole of property, probation for 1 to 5 years. The penalty is increased to 10 to 20 years imprisonment or life imprisonment if the offence is committed in an organised manner; being of professional character; for despicable motivation; trading in, fraudulently exchanging or appropriating more than one child; for the purpose of sending them abroad; for use for inhumane purposes; for use for prostitution purposes; dangerous recidivism; or causing serious consequences.

<sup>275</sup> Article 7. Under the Code, witnesses have the right to request protection from the court or institution that summonsed them (Article 55).

<sup>276</sup> Article 18

<sup>277</sup> Article 135

<sup>278</sup> Articles 604, 608-612

<sup>279</sup> Article 42

<sup>280</sup> Article 52(1)



# APPENDICES

# APPENDIX 1: STATUS OF RATIFICATION OF INTERNATIONAL LAWS

	BRUNEI DARUSSALAM	BURMA	CAMBODIA	INDONESIA	LAO PDR	MALAYSIA	PHILIPPINES	SINGAPORE	THAILAND	VIETNAM
Convention on the Rights of the Child (CRC) <sup>281</sup>	R	R	R	R	R	R	R	R	R	R
Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography <sup>282</sup>	A	-	R	S	A	-	R	-	A	R
International Covenant on Civil and Political Rights <sup>283</sup>	-	-	A	A	S	-	R	-	A	A
Convention on the Elimination of All Forms of Discrimination against Women <sup>284</sup>	A	A	A	R	R	A	R	A	A	R
Convention against Transnational Organised Crime (CTOC) <sup>285</sup>	A	A	R	R	A	R	R	R	S	S
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the CTOC <sup>286</sup>	-	A	R	S	A	A	R	-	S	-
ILO Convention No 29 concerning Forced or Compulsory Labour <sup>287</sup>	-	R	R	R	R	R	R	R	R	R
ILO Convention No 105 concerning the Abolition of Forced Labour <sup>288</sup>	-	-	R	R	-	d	R	d	R	-
ILO Convention No 138 concerning the Minimum Age for Admission to Employment <sup>289</sup>	-	-	R	R	R	R	R	R	R	R
ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour <sup>290</sup>	R	-	R	R	R	R	R	R	R	R

R = ratified; A = acceded; S = signed, d = denounced

<sup>281</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&lang=en) as at 28 June 2009, last viewed 29 June 2009.

<sup>282</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-11-c&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11-c&chapter=4&lang=en) as at 28 June 2009, last viewed 29 June 2009.

<sup>283</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&lang=en) as at 28 June 2009, last viewed 29 June 2009.

<sup>284</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-8&chapter=4&lang=en) as at 28 June 2009, last viewed 29 June 2009.

<sup>285</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=XVIII-12&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-12&chapter=18&lang=en) as at 28 June 2009, last viewed 29 June 2009.

<sup>286</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSOnline&tabid=2&mtmsg\\_no=XVIII-12-a&chapter=18&lang=en#Participants](http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSOnline&tabid=2&mtmsg_no=XVIII-12-a&chapter=18&lang=en#Participants) as at 28 June 2009, last viewed 29 June 2009.

<sup>287</sup> <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C029>, last viewed 28 July 2008.

<sup>288</sup> <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C105>, last viewed 28 July 2008.

<sup>289</sup> <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C138>, last viewed 28 July 2008.

<sup>290</sup> <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C182>, last viewed 28 July 2008.

<sup>291</sup> This summary excludes provisions relating to trafficking in children for sexual purposes. Refer footnote 15.



## APPENDIX 2: SUMMARY OF NATIONAL LAWS RELATING TO CHILD-SEX TOURISM<sup>291</sup>

	COMMERCIAL SEX ACTS AGAINST CHILDREN	CHILD SEXUAL ASSAULT AND ABUSE	CHILD PORNOGRAPHY
BRUNEI	<p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>induce any minor girl (under 18 years of age) to go from any place or to do any act with intent that such girl may be, or knowing that it is likely she will be, forced or seduced to illicit intercourse with another person</li> <li>import a girl under 21 years of age into Brunei with the intent that she may be, or knowing that it is likely she will be, forced or seduced to illicit intercourse with another person</li> <li>sell, or buy, a person under 18 years of age for prostitution or illicit intercourse with any person</li> </ul>	<p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>rape of a woman by a man</li> <li>incest</li> </ul> <p><i>Unlawful Carnal Knowledge Act</i></p> <ul style="list-style-type: none"> <li>carnal knowledge of a girl under 16 years of age, except by marriage</li> </ul> <p><i>Children and Young Persons Order 2006</i></p> <ul style="list-style-type: none"> <li>any person having the care of children and young people to sexually abuse, or cause the child to be so abused</li> </ul> <p>(Child defined as under 14 years of age, young person defined as someone who has attained 14 years but not attained 18 years of age)</p>	<p>No specific laws</p> <p>Related offences:</p> <p><i>Undesirable Publications Act</i></p> <ul style="list-style-type: none"> <li>import, publish, sell, offer for sale, distribute or reproduce any prohibited publication or any extract</li> </ul> <p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>sell obscene articles</li> </ul>
BURMA	<p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>induce any girl under 18 years of age to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person</li> <li>import into Burma from any foreign country any girl under 21 years of age with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person</li> <li>sell, let to hire, or otherwise dispose of any person under 18 years of age with intent that such person will be employed or used for prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will be employed or used for any such purpose</li> <li>buy, hire or otherwise obtain possession of any person under 18 years of age with intent that such person will be employed or used for prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will be employed or used for any such purpose</li> </ul> <p><i>Child Law 1993</i></p> <ul style="list-style-type: none"> <li>a carer to neglect knowingly that a girl under his guardianship under 16 years of age is earning a living by prostitution, or to permit a child under his guardianship to live together or to consort with a person who earns a living by prostitution</li> <li>employ or permit a child to perform work which is hazardous to the life of the child or which may cause disease to the child or which is harmful to the child's moral character</li> </ul> <p>(Child defined as under 16 years of age, a youth is person who has attained 16 years but has not attained 18 years of age)</p> <p><i>Suppression of Prostitution Act 1949</i></p> <ul style="list-style-type: none"> <li>detain a woman against her will in any place of prostitution, with the intention that the woman will have sexual intercourse or other immoral acts with a man who is not her husband</li> </ul>	<p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>rape of a female by a male</li> <li>voluntarily have "carnal intercourse against the order of nature with any man, woman or animal"</li> </ul>	<p><i>Child Law</i></p> <ul style="list-style-type: none"> <li>use a child in pornographic cinema, video, television and photography</li> </ul> <p><i>Anti-Trafficking in Persons Law 2005</i></p> <ul style="list-style-type: none"> <li>use or arrange with a trafficked victim for the purpose of pornography</li> </ul> <p>Related offences:</p> <p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>mere possession of obscene objects</li> </ul>

	COMMERCIAL SEX ACTS AGAINST CHILDREN	CHILD SEXUAL ASSAULT AND ABUSE	CHILD PORNOGRAPHY
CAMBODIA	<p><i>Law on Suppression of Human Trafficking and Sexual Exploitation</i> 2008</p> <ul style="list-style-type: none"> <li>procure child prostitution</li> <li>procure prostitution by torture</li> <li>manage child prostitution, or manage an establishment for child prostitution, or provide a premises for child prostitution</li> <li>purchase child prostitution</li> <li>solicit another for child prostitution</li> </ul> <p>(Minor defined as under 18 years of age)</p>	<p><i>Law on Suppression of Human Trafficking and Sexual Exploitation</i> 2008</p> <ul style="list-style-type: none"> <li>sexual intercourse with a minor under 15 years of age</li> <li>commit an indecent act against a minor under 15 years of age</li> </ul> <p><i>Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodian During the Transitional Period</i> 1992</p> <ul style="list-style-type: none"> <li>rape</li> <li>indecent assault by touching, caressing or any other sexual act not involving penetration</li> <li>procure, entice or lead away for prostitution or sexually exploiting a minor, even with the consent of that minor</li> </ul>	<p><i>Law on Suppression of Human Trafficking and Sexual Exploitation</i> 2008</p> <ul style="list-style-type: none"> <li>distribute, sell, lease, display, project or present in a public place, child pornography</li> <li>possess, transport, import, or export child pornography for the purpose of use in the commission of the above offence</li> <li>produce child pornography for the purpose of use in the commission of the two above offences</li> <li>produce child pornography</li> </ul>
INDONESIA	<p><i>Child Protection Act</i> No 23 of 2002</p> <ul style="list-style-type: none"> <li>exploit a child for gain</li> <li>knowingly and deliberately allow a child to be economically or sexually exploited when the child needs help and must be assisted</li> <li>threaten or use violence to force a child engage in (heterosexual) sexual acts, or employ tricks, lies or ruses to persuade, or entice, a child to engage in (heterosexual) sexual acts</li> <li>threaten or use violence to force a child engage in indecent behaviour, or employ tricks, lies or ruses to persuade, or encourage, a child to engage in indecent behaviour</li> </ul> <p>(Child defined as under 18, including unborn child)</p> <p><i>Criminal Code</i></p> <ul style="list-style-type: none"> <li>contains several offences relating to child prostitution<sup>292</sup></li> </ul>	<p>Refer offences in the <i>Child Protection Act</i> No 23 of 2002 (left)</p> <p>The <i>Criminal Code</i> contains several offences relating to child sexual abuse and sexual assault (refer footnote 292)</p>	<p><i>Electronic Information and Transaction Law</i> No 11 of 2008</p> <ul style="list-style-type: none"> <li>deliberately and without rights distribute and/or transmit and/or make electronic information and/or electronic document containing immoral content accessible</li> </ul> <p><i>Anti-Pornography Law</i> No 44 of 2008</p> <ul style="list-style-type: none"> <li>if object of pornography is children, punishment will increase by one-third</li> </ul> <p><i>Manpower Act</i> No 13 of 2003</p> <ul style="list-style-type: none"> <li>use children to produce pornography or for pornographic performances</li> </ul>

<sup>292</sup> In practice, the relevant provisions of the *Child Protection Act*, rather than the *Criminal Code*, are used as the *Child Protection Act* provides more severe penalties: Email correspondence from PKPA Indonesia to Child Wise, 22 January 2009.



	COMMERCIAL SEX ACTS AGAINST CHILDREN	CHILD SEXUAL ASSAULT AND ABUSE	CHILD PORNOGRAPHY
LAO PDR	<p><i>Penal Law</i></p> <ul style="list-style-type: none"> <li>engage in prostitution</li> <li>assist or facilitate prostitution</li> <li>generate income through procuring prostitution</li> <li>procure as a regular profession or procure <i>female</i> minors or force a <i>female</i> under the offender's guardianship into prostitution</li> <li>force a person under 18 years of age into prostitution</li> </ul> <p><i>Law on the Protection of the Rights and Interests of Children 2006</i></p> <ul style="list-style-type: none"> <li>use children in hazardous sectors</li> <li>sexual relations with a child by paying or giving any type of benefit</li> <li>sexual relations with a child under 12 years of age by any means, all instances of which are considered rape</li> </ul> <p>(Child defined as under 18 years of age)</p>	<p><i>Penal Law</i></p> <ul style="list-style-type: none"> <li>rape</li> <li>engage in sexual intercourse with a child under 15 years</li> <li>engage in sexual intercourse with a biological child, adopted child, step-child, grandchild or sibling</li> <li>engage in any act that causes embarrassment of a sexual nature to another person against such other person's will</li> </ul>	<p><i>Law on the Protection of the Rights and Interests of Children 2006</i></p> <ul style="list-style-type: none"> <li>produce, distribute, disseminate, import, export, display or sell child pornography</li> </ul> <p>Related offences:</p> <p><i>Penal Law</i></p> <ul style="list-style-type: none"> <li>engage in an act of sexual intercourse or expose sexual organs in the presence of members of the public</li> <li>engage in the widespread production, distribution, or dissemination of pornographic items, magazines, pictures, video cassettes and other materials contrary to fine traditions</li> </ul>
MALAYSIA	<p><i>Penal Code (Act No 574)</i></p> <ul style="list-style-type: none"> <li>sell any person with intent that such person will be employed or used for prostitution or illicit intercourse or for any unlawful and immoral purpose, or knowing it to be likely that such person will be employed or used for any such purpose</li> <li>buy, hire or otherwise obtain possession of any person with intent that such person will be employed or used for prostitution or illicit intercourse or for any unlawful and immoral purpose, or knowing it to be likely that such person will be employed or used for any such purpose</li> </ul> <p><i>Child Act 2001</i></p> <ul style="list-style-type: none"> <li>sell, let for hire or otherwise dispose of, or buy or hire or otherwise obtain possession of a child with intent that the child is to be employed or used for prostitution, either within or outside Malaysia, or knowing or having reason to believe that the child will be so employed or used</li> <li>procure a child for the purposes of prostitution or for having sexual intercourse with any other person, either within or outside Malaysia</li> <li>under false pretence or fraudulent means bring a child into Malaysia for the purposes of being employed or used for prostitution</li> <li>receive or harbour a child for the purposes of being employed or used for prostitution</li> <li>detain a child in a brothel against the child's will, or in any place against the child's will with intent be employed or used for the purposes of prostitution or any unlawful or immoral purpose</li> <li>engage or hire, for any valuable consideration, a child to provide sexual services for that person's sexual gratification</li> </ul> <p>(Child defined as under 18 years of age)</p>	<p><i>Penal Code (Act No 574)</i></p> <ul style="list-style-type: none"> <li>rape of a female by a male (a man is said to commit rape with or without consent when a girl is under 16 years of age)</li> <li>outrage of modesty</li> <li>unnatural offences</li> </ul> <p><i>Child Act 2001</i></p> <ul style="list-style-type: none"> <li>a person having the care of a child to sexually abuse the child or cause or permit the child to be so abused</li> </ul>	<p>No specific laws</p> <p>Related offences:</p> <p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>sell, let to hire, distribute, publicly exhibit or put into circulation, or make for purposes of sale, hire, distribution, public exhibition or circulation, or produce or have in possession any obscene book, pamphlet, paper, drawing, painting representation or figure or any other obscene object whatsoever</li> <li>import, export or convey any obscene object for such purpose, to take part in or receive profits from any business involved in such purpose, or to advertise or make known that any person is engaged or ready to engage in any of the above acts.</li> </ul> <p>(An offer or attempt to do any of the above acts is also an offence)</p>

	COMMERCIAL SEX ACTS AGAINST CHILDREN	CHILD SEXUAL ASSAULT AND ABUSE	CHILD PORNOGRAPHY
PHILIPPINES	<p><i>Special Protection of Children against Abuse, Exploitation and Discrimination Act</i> (Republic Act No 7610)</p> <ul style="list-style-type: none"> <li>engage in or promote, facilitate or induce child prostitution</li> <li>commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse</li> <li>derive profit or advantage, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to the establishment</li> <li>use, offer or expose a child for prostitution (Child defined as under 18 years of age or over 18 years but unable to fully take care of, or protect, him/herself because of physical or mental disability or condition)</li> </ul> <p><i>Anti-Trafficking in Persons Act of 2003</i> (Republic Act No 9208)</p> <ul style="list-style-type: none"> <li>buy or engage the services of trafficked persons for prostitution</li> <li>undertake or organise tours and travel plans consisting of tourism packages or activities for the purpose of utilising and offering persons for prostitution, pornography or sexual exploitation</li> </ul> <p><i>Anti-Violence against Women and their Children Act of 2004</i> (Republic Act No 9262)</p> <ul style="list-style-type: none"> <li>prostituting a woman or her child included as an act of violence</li> </ul>	<p><i>Special Protection of Children against Abuse, Exploitation and Discrimination Act</i> (Republic Act No 7610)</p> <ul style="list-style-type: none"> <li>acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development (includes any person who keeps or has in his company a minor (12 years and under) or who is 10 years or more his junior in any public or private place, hotel, motel, beer joint, disco, cabaret, pension house, sauna or massage parlour, beach and/or other tourist resort)</li> </ul> <p><i>Anti-Rape Law</i> (Republic Act No 8353)</p> <ul style="list-style-type: none"> <li>incorporates the offence of rape into the <i>Revised Penal Code</i> (statutory rape is committed against a girl under 12 years)</li> </ul>	<p><i>Special Protection of Children against Abuse, Exploitation and Discrimination Act</i> (Republic Act No 7610)</p> <ul style="list-style-type: none"> <li>hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute such materials</li> </ul> <p><i>Anti-Trafficking in Persons Act of 2003</i> (Republic Act No 9208)</p> <ul style="list-style-type: none"> <li>trafficking for the purposes of pornography</li> </ul>
SINGAPORE	<p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>obtain commercial sex with a minor under 18 years of age within or outside Singapore</li> <li>communicate with another person for the purpose of obtaining commercial sex with a minor under 18 years of age within or outside Singapore</li> <li>make or organise travel outside Singapore with the intention of facilitating commercial sex with a minor, whether or not such an offence is committed</li> <li>transport another person outside Singapore with the intention of facilitating commercial sex with a minor, whether or not such an offence is committed</li> <li>print, publish or distribute any information that is intended to promote commercial sex with a minor, or to assist any other person to do this</li> <li>groom a child under 16 years of age to commit a sexual offence, whether or not the communications occur in or outside Singapore</li> </ul> <p><i>Women's Charter</i></p> <ul style="list-style-type: none"> <li>by threats or intimidation procure any woman or girl to have carnal connection except by way of marriage with any male person, either in or out of Singapore</li> </ul>	<p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>rape of a woman by a man</li> <li>sexual assault by penetration</li> <li>sexual penetration of a minor under 16, including causing a minor under 16 to penetrate any person</li> <li>incest by a man of or above 16 years of age against a related female</li> <li>assault or use criminal force to any person, intending to outrage or knowing it to be likely to outrage the modesty of that person</li> <li>commit, or abet the commission of, or procure or attempt to procure the commission by any male person of, any act of gross indecency with another male, in public or private</li> </ul> <p><i>Children and Young Persons Act 1993</i></p> <ul style="list-style-type: none"> <li>to commit or abet the commission of or procure or attempt to procure the commission by any person of any obscene or indecent act with any child or young person, in public or private</li> </ul> <p>(Child defined as under 14 years of age, young person defined as person aged 14 years and below 16 years of age)</p>	<p>No specific laws</p> <p>Related offences:</p> <p><i>Undesirable Publication Act</i> and the <i>Penal Code</i></p> <ul style="list-style-type: none"> <li>prohibit all forms of pornography</li> </ul> <p><i>Children and Young Persons Act</i></p> <ul style="list-style-type: none"> <li>restricts children and young persons from taking part in any form of public entertainment of an immoral nature</li> </ul>

	COMMERCIAL SEX ACTS AGAINST CHILDREN	CHILD SEXUAL ASSAULT AND ABUSE	CHILD PORNOGRAPHY
THAILAND	<p><i>Prevention and Suppression of Prostitution Act BE 2539 1996</i></p> <ul style="list-style-type: none"> <li>procure, seduce or traffic a person to commit the act of prostitution, even with consent of the other person, no matter whether the commission of various acts which constitute the offence are committed inside or outside Thailand</li> <li>commit sexual intercourse or any other act against a person who is over 15 years but not yet over 18 years of age, for sexual gratification of that person or of a third person, with or without his/her consent, in a place of prostitution</li> <li>being a father, mother or parent of a child not over 18 years who knows of or connives to have the child procured, seduced or taken away for prostitution</li> <li>being an owner, supervisor or manager of a prostitution business or establishment, or the controller of prostitutes, if the business or establishment has for prostitution children over 15 years but not over 18 years</li> <li>detain or confine another person, or by any other means, deprive such person of the liberty of such person or cause bodily harm to or threaten in any manner whatsoever to commit violence against another person in order to compel such other person to engage in prostitution</li> </ul> <p><i>Labour Protection Act BE 2541 1998</i> prohibits the sexual harassment of children by employers and prohibits:</p> <ul style="list-style-type: none"> <li>employment of a child under 15 years</li> <li>causing a child under 18 years to work between 2200 hours and 0600 hours, except where written permission is granted by the Director-General or his designate</li> <li>causing a child under 18 years to perform work in certain establishments including dance halls or "establishments where food, liquor, tea or other beverages are served and where services of prostitutes, sleeping facilities, or massage are offered</li> </ul>	<p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>sexual intercourse with a girl not yet over 13 years of age, with or without her consent</li> <li>aggravated rape</li> <li>indecent act on a child not over 13 years, with or without her consent</li> </ul>	<p>No specific laws</p> <p>Related offences</p> <p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>trade, publicly distribute or exhibit, make, produce, possess, import, export or circulate by whatever means, any document, drawing, print, painting, printed matter, picture, poster, symbol, photograph, cinematograph film, noise tape, picture tape or any other thing which is obscene</li> </ul>
VIETNAM	<p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>harbour prostitutes</li> <li>entice or procure prostitutes</li> <li>paid sexual intercourse with children</li> </ul> <p><i>Law on Child Protection, Care and Education 2004</i></p> <ul style="list-style-type: none"> <li>seduce, deceive, lead, harbour or force children into prostitution</li> <li>exploit and use working children for heavy, dangerous or hazardous work</li> </ul> <p><i>Labour Code 2002</i></p> <ul style="list-style-type: none"> <li>employ workers under 18 years in hard, dangerous work and work exposed to harmful substances</li> <li>abuse of workers under 18 years</li> <li>recruitment children below 15 years, except in certain categories of occupation that promote a child's talent as determined by the Ministry of Labour, War Invalids and Social Affairs</li> </ul> <p>(Children defined as Vietnamese children under 16 years of age)</p>	<p><i>Law on Child Protection, Care and Education 2004</i></p> <ul style="list-style-type: none"> <li>sexually abusing children</li> <li>torture, maltreat, affront, appropriate, kidnap, traffic in or fraudulently exchange children for personal benefits</li> </ul> <p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>rape of children aged between 13 years and under 16 years</li> <li>sexual intercourse with children under 13 years, all instances of which are considered rape</li> <li>forcible sexual intercourses with children aged over 16 years and under 18 years</li> <li>forcible sexual intercourse with children aged between 13 years and under 16 years</li> <li>sexual intercourse with children aged between 13 and under 16 years by an adult</li> <li>obscene acts committed against children by adults</li> </ul>	<p><i>Law on Child Protection, Care and Education 2004</i></p> <ul style="list-style-type: none"> <li>use, lure and force children to buy and sell pornographic produces; producing, copying, circulating, transporting and stockpiling child pornography</li> </ul> <p>Related offences:</p> <p><i>Ordinance on the Prevention of Prostitution 2003</i></p> <ul style="list-style-type: none"> <li>produce, circulate, transport, store, buy, sell, export, import or publish pictures, materials, products or information which may be rated as pornographic</li> </ul> <p><i>Penal Code</i></p> <ul style="list-style-type: none"> <li>disseminate "debauched cultural products"</li> </ul>

## APPENDIX 3: SUMMARY OF NATIONAL LAWS TO PROTECT CHILD VICTIMS AND WITNESSES

	LEGISLATION/ PROCEDURE	RIGHTS AND PROTECTIONS	APPLIES TO
BRUNEI	<i>Criminal Procedure Code</i> (Sections 382, 236B, C, D, E)	Compensation	Victims of crime
		Special provisions for giving evidence, including by remote video-link or on videotape and the prohibition of cross-examination by the accused	Child witnesses (under 14 at time of alleged offence) and victims of trafficking
	<i>Trafficking and Smuggling of Persons Order</i> 2004 (Section 19)	Fund for repatriation	Smuggled or trafficked persons
BURMA	<i>Anti-Trafficking in Persons Law</i> (Chapters VI, VII, VIII)	Dignity and identification protected; provide necessary security and assistance, and carry out special arrangements for remedying physical and mental damage	Women, child and youth victims of trafficking
		Repatriation, reintegration and rehabilitation; fund for repatriation and rehabilitation	Victims generally
INDONESIA	<i>Child Protection Act</i> No 23 of 2002 (Articles 64, 71(1))	Early assignment of counsellors, provision of special infrastructure and facilities, and identities not made public	Child victims and perpetrators
		Care and rehabilitation	Child victims of abuse and negligence
	<i>Eradication of the Criminal Act of Trafficking in Persons Act</i> No 21 of 2007 (Articles 38, 39, 40)	Investigation, prosecution, and court examination conducted with the interests of the child in mind, including no use of court apparels or official uniforms; examination in a closed session, child accompanied, and examination conducted without presence of defendant; examination may be conducted outside courtroom using a recording	Child witness and victims of trafficking
LAO PDR	<i>Law on the Protection of the Rights and Interests of Children</i> 2006 (Chapter 3 and Article 91)	Respect dignity and human value; allow child to express views; support from parents, guardians or legal protectors at all stages of proceedings; privacy protected; protected from coercion, threat and all types of danger; interviews conducted by specially trained investigators and public prosecutors in collaboration with social workers; use special separate room; question in simple language; prevent child having contact with accused	Child victims and witnesses
		Compensation	Child victims
	<i>Law on Development and Protection of Women</i> 2004 (Articles 25, 28, 33)	Compensation and rehabilitation; protection and care for personal safety; not to be photographed, video-recorded or broadcast; receive suitable assistance in terms of shelter, food, clothing, medical service, vocational training, repatriation and other assistance as necessary	Women and child victims of trafficking and domestic violence
MALAYSIA	<i>Evidence of Child Witness Act</i> 2007 (Sections 3, 4)	Special provisions for giving evidence, including screening, live link and video recording; witness support service	Child witnesses
PHILIPPINES	Philippines Supreme Court Rule on Examination of Child Witnesses	Participation of a facilitator to pose questions to a child; a legal guardian to protect the best interests of a child; a support person to accompany child to testify or attend proceedings; an interpreter; a separate waiting area; a more comfortable environment, including the ability for a child to be permitted to testify from a place other than the witness chair, the judge not wearing his or her judicial robe, and the taking of testimony at a time of day when the child is well-rested; for the child to use testimonial aids such as dolls or drawings, and to have an item of his or her own choosing, such as a blanket, toy or doll; and for the prosecutor, counsel or guardian ad litem to apply for an order that the testimony of the child be taken by video-link or for a videotaped deposition	Child witnesses who are victims of crime, accused of crime and witnesses to crime
	<i>Anti-Trafficking in Persons Act of 2003</i> (Republic Act No 9208) (Sections 23, 24)	Emergency shelter and housing, counselling, free legal services, medical and psychological services, skills training, and educational assistance	Trafficked victims

## APPENDIX 3: SUMMARY OF NATIONAL LAWS TO PROTECT CHILD VICTIMS AND WITNESSES

	LEGISLATION/ PROCEDURE	RIGHTS AND PROTECTIONS	APPLIES TO
SINGAPORE	<i>Children and Young Persons Act</i> (Section 35)	Not to publish or broadcast any information relating to any proceedings in any court that reveals the name, address or school or any particulars that are calculated to lead to the identification of any child or young person concerned in the proceedings; not to publish or broadcast any picture as being or including a picture of any child or young person so concerned in any such proceedings	Children in legal proceedings
	<i>Women's Charter</i> (Sections 153, 155, 177, 160, 163)	Closed courts for victims under 16 years of age, a prohibition for newspapers revealing information that may lead to victims or witnesses being identified, the ability for courts to order detention of victims in a 'safe place' until the completion of criminal proceedings, and the provision of places of safety for girls in urgent need of refuge	Girl victims of crime
	Vulnerable Witness Support Program	Volunteer Support Person can give the witness, their parents or caregivers information on the court procedures; can assist with their stress management; can arrange for a visit to the courts to help the witness familiarise with the environment and court procedures; can accompany the witness while he or she is waiting to testify; and may be permitted by the judge to sit behind the witness, as he or she testifies in court via real time video link in separate room	Witnesses below 16 years (or with a mental capacity under 16 years)
THAILAND	<i>Criminal Procedure Code</i> (Sections 133 bis, 133 ter, 172)	Separate examination in a suitable place with a psychologist or social worker present; if a child has to identify an alleged offender, this can be done in a place suitable for the child, so that the alleged offender cannot see the child, and with a psychologist or social worker present; if children have to give evidence in court, all questions can be asked through a psychologist or social worker	Children in criminal procedures
	<i>Redress for the Damaged and Compensation and Expenses for Offenders in Criminal Cases Act</i> 2001	Compensation	Victims of violence
	<i>Anti-Trafficking in Persons Act BE 2551 2008</i> (Chapters 4, 5)	Assistance and protection taking into account a number of factors including the age of the person Fund to provide assistance and safety	Trafficked persons
VIETNAM	<i>Criminal Procedure Code</i> (Articles 7, 18, 135)	Protection	Person involved in proceedings in danger
		Closed hearings	Victims under 16 or if matter involves sensitive crimes
		Parents or other legal representative will be invited to attend the proceedings	Witness under 16
	<i>Civil Code</i> 2005 (Articles 604, 608-612)	Compensation	Victims of crime
	<i>Penal Code</i> (Article 42)	Compensation	Victims of crime





## **MIND THE GAPS**

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