

Disrupting Harm

Evidence from 13 countries on the context, threats, and children's perspectives of online child sexual exploitation and abuse.

Legal Analysis of OCSEA related Provisions in Malaysia

Last updated 13/4/21

This report is a summary of preliminary data collected for this research project. The perspectives contained herein represent the individuals interviewed and surveyed. Support from the Global Partnership to End Violence against Children does not constitute endorsement.

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International, Regional and National Commitments and Legislation on Sexual Exploitation of Children

Status of ratification of relevant international and regional instruments, reporting to human rights bodies and engagement with the special procedures of the Human Rights Council		
International Instruments	Date of ratification/accession	
Convention on the Rights of the Child - 1989	17 February 1995 (with reservations)	
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - 2000	12 April 2012 (with declarations) ¹	
Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure - 2011	No action	
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)	10 November 2000	
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – 2000 (supplementing the UN Convention against Transnational Organised Crime)	26 February 2009	
Regional Instruments	Date of ratification/accession	
ASEAN Convention against Trafficking in Persons, Especially Women and Children - 2015	21 November 2015	
Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (OPSC review)	No action	Due date: 12 May 2014

¹ Malaysia introduced a declaration regarding the definition of ‘child pornography’ as proclaimed in Article 2 (c) stating that “The Government of Malaysia declares that the words ‘any representation’ in article 2 paragraph (c), shall be interpreted to mean ‘any visual representation’”.

General Issues Related to Children’s Rights

Section 2 (1) of the Child Act defines a **child** as a person under the age of 18 years.² A similar definition is found in the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act of 2007.³⁴ However, the definition of a child is not consistent across national legislation, as a child is defined as “any person who has not completed his fifteenth year of age” in Act 350 on Children and Young Persons (Employment).⁵ Similarly, Section 2 of the Evidence of Child Witness Act 2007 (ECWA 2007) [Act 676] defines a “child witness” as a person under the age of 16 years who is called or proposed to be called to give evidence in any proceedings but does not include an accused or a child charged with any offence.⁶

Moreover, the national legislation contains **alternative terminologies** for persons under 18 years. For instance, Act 350 uses the term “young person” to refer to children between 16 and 18 years,⁷ and grants different protection to children under the age of 15 and to children aged between 16 and 18, as it lists different types of work that children can engage in⁸ and different amount of hours of work for each of these groups,⁹ although these provisions do not directly apply to OCSEA related offences.

Pursuant to Section 375 (g) of the Penal Code, the **age of sexual consent** is 16 years for girls.¹⁰ The age of sexual consent has not been defined for boys. Section 375(g) expressly refers to rape committed by men against women, thereby denying protection to boys against rape.¹¹ Malaysian legislation does not provide for criteria to determine whether the consent for sexual activities between peers under the age of 18 is **voluntary, well-informed and mutual**, nor for a **close-in-age exemption**.

As Malaysia has a dual legal system, the **legal age of marriage** differs according to the applicable law. According to the Law Reform (Marriage and Divorce) Act of 1976, the legal age to marry is 18 years old,¹² although consent in writing of the father (and in certain circumstances of the mother or guardian) is required for all persons below 21 years of age.¹³ A girl between 16 and 18 years of age is still allowed to get married if she obtains a special marriage license from the Chief Minister.¹⁴ No marriage is allowed if

² Government of Malaysia. (2001). [Laws of Malaysia - Act 611 - Child Act 2001](#), as amended in 2017, Section 2 (1).

³ Government of Malaysia. (2007). [Laws of Malaysia- Act 670- Anti-Trafficking In Persons and Anti-Smuggling of Migrants Act 2007](#), Section 2.

⁴ Government of Malaysia. (1966). [Laws of Malaysia - Act 350 - Children and Young Persons \(Employment\) Act 1966](#), as amended in 2011, Section 1A.

⁵ Government of Malaysia. (1966). [Laws of Malaysia - Act 350 - Children and Young Persons \(Employment\) Act 1966](#), as amended in 2011, Section 1A.

⁶ Government of Malaysia. (2007). [Laws of Malaysia – Act 676- Evidence of Children Witness Act 2007](#), Section 2.

⁷ Government of Malaysia. (1966). [Laws of Malaysia - Act 350 - Children and Young Persons \(Employment\) Act 1966](#), as amended in 2011, Sections 2 and 5.

⁸ Government of Malaysia. (1966). [Laws of Malaysia - Act 350 - Children and Young Persons \(Employment\) Act 1966](#), as amended in 2011, Sections 2(2) and 2(3).

⁹ Government of Malaysia. (1966). [Laws of Malaysia - Act 350 - Children and Young Persons \(Employment\) Act 1966](#), as amended in 2011, Sections 5 and 6.

¹⁰ Government of Malaysia. (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Section 375.

¹¹ Government of Malaysia. (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Section 375.

¹² Government of Malaysia. (1976). [Laws of Malaysia – Act 164 – Law Reform \(Marriage and Divorce\) Act 1976](#), Section 10.

¹³ Government of Malaysia. (1976). [Laws of Malaysia – Act 164 – Law Reform \(Marriage and Divorce\) Act 1976](#), Section 12.

¹⁴ Government of Malaysia. (1976). [Laws of Malaysia – Act 164 – Law Reform \(Marriage and Divorce\) Act 1976](#), Sections 10, 21(2) and 69(b).

the parties are below the minimum age requirement, and if any marriage is solemnised between them, such a marriage is considered void under the law.¹⁵

Muslim marriages are governed by the respective state Islamic laws, applicable only to the federal Territories of Kuala Lumpur, Putrajaya and Labuan.¹⁶ Boys and girls cannot marry below the age of 18 and 16 respectively.¹⁷ Below these ages, a marriage may be solemnised after obtaining written permission of a Syariah judge.¹⁸

The Attorney General of Malaysia (AGC) is evaluating how to best safeguard the welfare and interest of children in Malaysia. One of the proposals is to increase the minimum age of marriage for girls from 16 to 18 years old, and the introduction of more stringent procedures for a Syariah Court Judge to take into consideration before allowing a child below 18 years to enter into a marriage.¹⁹ The Malaysian labour law does not establish a **legal working age**²⁰ but it restricts child labour under the Act 350 – Children and Young Persons (Employment) Act 1966, that applies only to the States of Peninsular Malaysia.²¹ The Children and Young Persons (Employment) Act 1966 distinguishes between “children” (persons under the age of 15) and “young persons” (persons who not being a child, have not completed their eighteenth year of age) and establishes restrictions and types of work that can be carried out by “children” or “young persons”.²² The Act 350 also restricts female young persons from engaging in a number of employments.²³ Moreover, according to Section 2 (1) of the Act 350, hazardous work is prohibited for all persons under 18.²⁴ Rule 10(1)(a) Cyber Centre and Cyber Café Rules in 2012 prohibits cyber centres to employ any person who is under the age of 18 years.²⁵

According to Section 82 of the Penal Code, the **minimum age of criminal responsibility** in Malaysia is 10 years.²⁶ Nevertheless, a person above 10 years and under 12 years who has not attained sufficient maturity of understanding to judge of the nature and consequence of their conduct is not liable for any offence.²⁷

¹⁵ Government of Malaysia. (1976). [Laws of Malaysia – Act 164 – Law Reform \(Marriage and Divorce\) Act 1976](#), Section 10.

¹⁶ Government of Malaysia. (1984). [Laws of Malaysia – Act 303 - Islamic Family Law \(Federal Territories\) Act 1984](#), Section 1(1).

¹⁷ Government of Malaysia. (1984). [Laws of Malaysia – Act 303 - Islamic Family Law \(Federal Territories\) Act 1984](#), Section 8.

¹⁸ Government of Malaysia. (1984). [Laws of Malaysia – Act 303 - Islamic Family Law \(Federal Territories\) Act 1984](#), Section 8.

¹⁹ Malay Mail. (2020). [AGC scrutinising proposals to increase legal marrying age to 18](#).

²⁰ Government of Malaysia. (1955). [Laws of Malaysia - Act 265 - Employment Act 1955](#), as amended in 2012.

²¹ Government of Malaysia. (1966). [Laws of Malaysia - Act 350 - Children and Young Persons \(Employment\) Act 1966](#), as amended in 2011, Section 1(2).

²² Government of Malaysia. (1966). [Laws of Malaysia - Act 350 - Children and Young Persons \(Employment\) Act 1966](#), as amended in 2011,, Section 2 (2).

²³ Government of Malaysia. (1966). [Laws of Malaysia - Act 350 - Children and Young Persons \(Employment\) Act 1966](#), as amended in 2011,, Section 2 (3).

²⁴ Government of Malaysia. (1966). [Laws of Malaysia - Act 350 - Children and Young Persons \(Employment\) Act 1966](#), as amended in 2011, Section 2 (1).

²⁵ Government of Malaysia. (2012). [Cyber Centre and Cyber Café Rules 2012](#), Rule 10 (1)(a)

²⁶ Government of Malaysia. (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Section 82.

²⁷ Government of Malaysia. (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Section 83.

Online Child Sexual Abuse and Exploitation

Malaysia has taken a progressive step in the protection of children from SEC by enacting a new act, the Sexual Offences against Children Act 2017, that encompasses OCSEA manifestations, namely child sexual abuse material and online grooming.²⁸

Section 4 of the Act provides the **definition** of child sexual abuse material in line with the OPSC, stating that “child pornography means any representation in whole or in part, whether visual, audio or written or the combination of visual, audio or written, by any means including but not limited to electronic, mechanical, digital, optical or magnetic means, or manually crafted, or the combination of any means – (i) of a child engaged in sexually explicit conduct; (ii) of a person appearing to be a child engaged in sexually explicit conduct; (iii) of realistic or graphic images of a child engaged in sexually explicit conduct; or (iv) of realistic or graphic images of a person appearing to be a child engaged in sexually explicit conduct”.²⁹ According to this definition, **visual, audio and written materials** are covered, as well as computer or digitally generated child sexual abuse material (**virtual child sexual abuse material**) and materials that depict a **person appearing to be a minor** engaged in sexually explicit conduct.

Hence, UNICEF Malaysia has praised the country for bringing national legislation closer to international standards enshrined in the CRC and its OPSC.³⁰ The legislation prohibits a wide range of acts related to child sexual abuse material/child sexual exploitation material, such as using a child or causing a child to be used in the production of these materials,³¹ and making, **producing** and directing the making or production of child sexual abuse material/child sexual exploitation material.³² Taking any action in preparation for the above offences is also criminalised.³³ Moreover, the legislation criminalises the act of **distributing, promoting, importing, exporting and selling**, among other conducts, any child sexual abuse material/child sexual exploitation material.³⁴ Penalties prescribed by the law vary according to the gravity of the offence and can range from whipping to imprisonment up to 30 years.³⁵ The aforementioned provisions apply also specifically for conducts taking place in the **online environment** or through information and communication technologies as they can be included in the wording “in any manner”.³⁶

Before the Sexual Offences against Children Act 2017 was enacted, some of the abovementioned acts related to child sexual abuse material could be criminalised under Section 292 of the Penal Code, as it punishes (a) anyone who in any manner puts into circulation any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object, (b) anyone who imports, exports or conveys any obscene object or document for the purposes of sale, distribution or public exhibition, (c) anyone who takes part or receives profit and (d) anyone who advertises or makes known by any means from any business in the course of which he knows or has reason to believe that any such obscene objects

²⁸ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#).

²⁹ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 4.

³⁰ UNICEF. (2017). [UNICEF Malaysia applauds Sexual Offences Against Children Bill 2017](#).

³¹ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 7.

³² Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 5.

³³ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 6.

³⁴ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Sections 8-9.

³⁵ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Sections 5-7.

³⁶ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Sections 8-9.

or documents are put into circulation, and (d) anyone who advertises or makes known by any means whatsoever 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 or document can be procured from or through any person.³⁷ In addition, Section 293 of the Penal Code criminalises the sale, etc., of obscene objects or documents to young person.³⁸ The Penal Code (Amendment) Act 2017 had amended sections 292 and 293 of the Penal Code to include obscene documents as part of the things prohibited to be sold, etc. This includes obscene online contents.³⁹

Furthermore, pursuant to Section 10 of the Sexual Offences against Children Act 2017, **knowingly accessing and possessing child sexual abuse material** is prohibited and shall be punished with imprisonment for a term not exceeding five years or with a fine not exceeding 10,000 ringgits (approx. US\$2,418 as of April 2021) or both.⁴⁰

Recruiting, causing and coercing a child into participating in pornographic performances is criminalised pursuant to Section 7 of the Sexual Offences against Children Act 2017. Any person who commits this offence shall be punished with imprisonment for a term not exceeding twenty years and shall also be punished with whipping of not less than five strokes.⁴¹ Moreover, **knowingly attending pornographic performances** could be criminalised under Section 5 of the Sexual Offences against Children Act 2017 as it includes the participation, engagement or involvement, in any way, in the making, production or the directing of the making or production of any child sexual abuse material.⁴² However, these provisions fail to explicitly include cases when these performances are **live streamed online**. Notwithstanding, the live streaming of online child abuse offences can be charged under Section 4 of the Sexual Offences against Children Act 2017 together with section 8 (b) of the Sexual Offences against Children Act 2017 that criminalises exchanging, exhibiting, offering, or making available in any manner, child sexual abuse material⁴³ and also potentially under Sections 15 (d) and (e)⁴⁴ and 16 of the same Act.⁴⁵ In the absence of any provisions expressly criminalising live streaming of child sexual abuse, the discretion would probably lie with the public prosecutor to apply the charge which most suitably covers the constitutive elements of the offence in question.

Concerning child **grooming**, the law criminalises the act of sexually communicating with a child or encouraging a child to sexually communicate by any means.⁴⁶ The inclusion of the words “any means” implies that all kinds of communication are covered. Although not specific to online grooming, the broad wording of the legislation makes it possible to address grooming in the online context. The term ‘sexually communicating’ is understood when “(a) the communication or any part of the communication relates to

³⁷ Government of Malaysia. (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Section 292.

³⁸ Government of Malaysia. (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Section 293.

³⁹ Government of Malaysia. (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Section 292-293.

⁴⁰ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 10.

⁴¹ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 7.

⁴² Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 5.

⁴³ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 8(b).

⁴⁴ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Sections 15(f) and 15(e).

⁴⁵ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Sections 16.

⁴⁶ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section. 12.

an activity that is sexual in nature; or (b) any reasonable person would consider any part of the communication to be sexual.”⁴⁷ Additionally, the law imposes criminal liability for anyone that communicates with a child intending to commit or to facilitate offences related to child sexual abuse material/child sexual exploitation material and/or sexual assault and/or any offences specified in the Schedule of the Sexual Offences against Children Act 2017.⁴⁸ If the person meets with the child, the offender will be liable for the offence of meeting following child grooming.⁴⁹ The penalties prescribed by the law vary according to the gravity of the offence and can range from whipping to imprisonment up to 10 years.⁵⁰ Section 15(b) of the Sexual Offences against Children Act 2017 criminalises **sexual extortion**, stating that any person, for sexual purposes, “threatens to use any representation in whole or in part, whether visual, audio or written or the combination of visual, audio or written, by any means including but not limited to electronic, mechanical, digital, optical or magnetic means, or manually crafted, or the combination of any means, of a body of a child or any part of a body of a child or of a child engaged in an activity that is sexual in nature” commits an offence. Although the Sexual Offences against Children Act 2017 provides for better protection for children against sexual offences, it fails to **exempt children from criminal liability** for producing and sharing child sexual abuse material, especially when compelled to do so because they are in an abusive or exploitative situation.

The **attempt** of committing any of the above-mentioned crimes is criminalised according to Section 511 of the Penal Code that states that “whoever attempts to commit an offence punishable by this Code or by any other written law with imprisonment or fine or with a combination of such punishments, or attempts to cause such an offence to be committed, and in such attempt does any act towards the commission of such offence, shall, where no express provision is made by this Code or by such other written law, as the case may be, for the punishment of such attempt, be punished with such punishment as is provided for the offence: Provided that any term of imprisonment imposed shall not exceed one-half of the longest term provided for the offence”.⁵¹ Accordingly, Section 292 of the Penal Code criminalises the attempt to commit any of the listed offences.⁵² While the Penal Code does not define the actions that constitute an ‘attempt’, this has been clarified through national case law.⁵³

⁴⁷ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#),

⁴⁸ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 13.

⁴⁹ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 14.

⁵⁰ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Sections 12-14.

⁵¹ Government of Malaysia. (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Section 511.

⁵² Government of Malaysia. (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Section 292.

⁵³ High Court of Ipoh. (1958). [Munah Binti Ali v. Public Prosecutor](#), 24 MLJ 159, P. 161 : In this case, the court has defined the word attempt as follows: "It will be observed that section 511 does not define an attempt. It only states what attempts are themselves offences. It says in effect that before an attempt is itself an offence it must satisfy two conditions. The first of these is that it must be an attempt to commit an offence punishable by the Code or by any other written law. The other is that there must be an act towards the commission of the offence. In other words, before an offence is punishable it must be an attempt to do something which is an offence punishable under the Code or some other written law. It follows that an attempt to do something which is not an offence is not punishable. As was said by Birkett, J., in the case of Percy Dalton 33 Cr App R 110 :— "Steps on the way to the doing of something, which is thereafter done, and which is no crime, cannot be regarded as attempts to commit a crime."

Pursuant to Article 20 of the Sexual Offences against Children Act, the **ignorance of the age of the victim** cannot be pleaded by the offender in excuse of their conduct, unless they took all reasonable steps to ascertain the age of the child.⁵⁴

Similarly to the Council of Europe’s Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse -also known as the Lanzarote Convention-, the Sexual Offences against Children Act criminalises abuses committed by an individual “in the circle of trust”.⁵⁵ Hence, if the person who commits the aforementioned offences is in a relationship of trust with the child, in addition to the punishment to which the individual is liable, the offender will also respond to a specific criminal offence: offence committed by a person in a relationship of trust.⁵⁶ According to the legislation, a person is considered to be in a relationship of trust with the child “if the child is under his care, supervision or authority”, such as parents, teachers or public servants in the course of their duties under any written law in respect of the child.⁵⁷ As stated by YB Hannah Yeoh, the then Deputy Minister of Ministry of Women, Family And Community Development of Malaysia during the Global Summit To Tackle Online Child Sexual Exploitation held on 11 and 12 December 2019, in 2017 there were 271 cases recorded by police under this Act (which enforced in July 2017) and 631 cases in 2018.⁵⁸ The number of cases has not shown any decrease since in 2019 up to August, there are already 492 cases recorded.⁵⁹

For the time being, Malaysia has not established a legal obligation for **Internet Service Providers (ISPs)** to report, remove or block access to websites where sexual abuse materials representing children are available.⁶⁰ Nor does Malaysia have a legal framework that would ease the identification of suspects using ICT devices (e.g. through IP address detection, destination and source of a communication) to commit offenses against children.⁶¹ However, the Communications and Multimedia Act, enacted in 1998, addresses the criminal liability of ISPs who use content that is indecent, obscene or offensive in character with the intent to annoy, abuse, threaten, or harass any person. Those who contravene this provision shall be punished with a fine not exceeding 50,000 ringgits (approx. US\$12,091 as of April 2021), or with imprisonment not exceeding one year, or both.⁶² According to the Malaysian Communications and Multimedia Content Code issued in 2004, in compliance with Section 211 (1) of Act 588, “child pornography” is included within the category of prohibited obscene content.⁶³

⁵⁴ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 20.

⁵⁵ Council of Europe. (2007). [Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse](#), Section 18.

⁵⁶ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 17.

⁵⁷ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 17(2).

⁵⁸ Yeoh, YB MS Hannah (Minister of Women, Family and Community Development, Malaysia). (2019). *Speech delivered during the Global Summit To Tackle Online Child Sexual Exploitation held on 11 and 12 December 2019*.

⁵⁹ Yeoh, YB MS Hannah (Minister of Women, Family and Community Development, Malaysia). (2019). *Speech delivered during the Global Summit To Tackle Online Child Sexual Exploitation held on 11 and 12 December 2019*.

⁶⁰ The World Bank and International Centre for Missing & Exploited Children. (2015). [Protecting Children from Cybercrime – Legislative Response in Asia to Fight Child Pornography, Online Grooming and Cyberbullying](#), 48-49.

⁶¹ The World Bank and International Centre for Missing & Exploited Children. (2015). [Protecting Children from Cybercrime – Legislative Response in Asia to Fight Child Pornography, Online Grooming and Cyberbullying](#), 49.

⁶² Government of Malaysia (1998). [Laws of Malaysia - Act 588 - Communications and Multimedia Act 1998](#), Section 211.

⁶³ Communications and Multimedia Content Forum of Malaysia (CMCF). (2004). [The Malaysian Communications and Multimedia Content Code](#), Part 2 (3).

The Malaysian Government has partially ordered **cyber café owners** to take measures against obscene, indecent or pornographic materials online in some territories. The Federal Territory of Kuala Lumpur enacted the Cyber Centre and Cyber Café Rules in 2012 to supervise the granting of professional licenses (Section 3) and to require licensees to provide and keep records of computer usage for each computer available (Section 12 (1)), including personal information on the identity of the users.⁶⁴ The aforementioned is not a federal law and therefore creates gaps between the laws applicable in different territories across Malaysia.

The same year, Malaysia amended Section 114A of the Evidence Act and established a presumption of fact in publication. Section 114A presumes that owners, hosts, administrators, editors or sub-editors have published all the contents that appear under their name, using their photograph or pseudonym (paragraph 1). The same presumption applies to the subscriber of a network service provider (paragraph 2).⁶⁵ Subsequently, with the amendment of Section 114A, website hosts, forum administrators and even social media platforms may be held accountable for the publication of materials depicting sexual abuse of children. Section 114A, seen as a potential tool to prevent and combat the circulation of child sexual abuse material/child sexual exploitation material, was however the subject of protests online due to possible limitations it might cause on freedom of expression.⁶⁶

Extraterritoriality and Extradition

Malaysia has explicitly guaranteed **extra-territorial application** of its legal provisions related to some manifestations of OCSEA, namely child sexual abuse material/child sexual exploitation material and online grooming. The recent Sexual Offences against Children Act 2017 states that if the criminalised offences are committed by a Malaysian citizen against a child in any place outside Malaysia, the offender may be prosecuted as if the offence had been committed anywhere within Malaysia.⁶⁷ Hence, the Act establishes **active extraterritorial jurisdiction** over OCSEA offences.

Under Section 4 of the Malaysian Penal Code, Malaysia establishes extraterritorial jurisdiction for offences against the State, offences relating to terrorism, and organised crime.⁶⁸ Thus, even if the perpetrator is not a Malaysian citizen or resident but has perpetrated one of these crimes against a citizen of Malaysia, or property belonging to or operated by the Malaysian government, for the purpose of compelling the Malaysian government to commit or refrain from committing a certain act, or, if following the crime, the perpetrator is present in Malaysia, Malaysia has extraterritorial jurisdiction.⁶⁹ Unless committed by a “group of two or more persons, acting in concert with the aim of committing one or more serious offences, in order to obtain, directly or indirectly, a material benefit, power or influence” (i.e. the definition of

⁶⁴ Attorney General’s Chambers of Malaysia. (2012). [Cyber Centre and Cyber Cafe \(Federal Territory of Kuala Lumpur\) Rules 2012](#), Section 3 and 12.

⁶⁵ Government of Malaysia. (1950), [Laws of Malaysia – Act 56 - Evidence Act 1950](#), as amended in 2017, Section 114A.

⁶⁶ Centre for Independent Journalism. (n.d.), [Stop 114A, 14 August 2012 Internet Blackout page](#).

⁶⁷ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 3.

⁶⁸ Government of Malaysia. (1936). [Laws of Malaysia – Act 574 - Penal Code](#), as amended in 2017, Section 4 (1)(b) and (c).

⁶⁹ Government of Malaysia. (1936). [Laws of Malaysia – Act 574 - Penal Code](#), as amended in 2017, Section 4 (1)(h).

organised criminal group under the Penal Code),⁷⁰ a SEC offence committed abroad by a non-Malaysian citizen or resident cannot be tried in Malaysia, even if the victim was Malaysian. Hence it can be concluded that there is no passive criminal jurisdiction over OCSEA offences.

The Malaysian Extradition Act 1992 defines an **extradition** offence as an offence with a punishment of no less than one-year imprisonment/death under the laws of a state referred to in the Act, as well as under Malaysian law.⁷¹ The attempt, conspiracy to commit or abetment of the commission of an offence may also be subject to an extradition request.⁷² Consequently, OCSEA offences may be **extraditable** under the domestic law.

There are two bases for extradition. First, extradition may be granted to countries with which Malaysia has concluded an extradition treaty,⁷³ such as Australia,⁷⁴ Hong Kong⁷⁵ and the United States,⁷⁶ among others.⁷⁷ The second basis for extradition is the administrative decision, which requires the consent of the Minister of Home Affairs (Article 2(2)). In both cases, the request for extradition shall be presented before each House of Parliament.⁷⁸ Besides, the conditions for the return of accused or convicted persons to Malaysia are provided in Part VII of the Extradition Act.⁷⁹

The Government of Malaysia and the Governments of Brunei and Singapore have special agreements for extradition, which provide a simplified procedure for extradition.⁸⁰ Extraditions may be granted for offences punishable on conviction by imprisonment for a term exceeding six months, the arrest warrant may be issued without being examined by the Session Court and the Magistrate who received the extradition request directs the transfer of the person.⁸¹

It is noteworthy that Malaysia, being a signatory to the OPSC, could use it as the legal basis for extradition in respect of OCSEA offences in the absence of a treaty. This is set forth in Article 5.2 of the OPSC.

⁷⁰ Government of Malaysia. (1936). [Laws of Malaysia – Act 574 - Penal Code](#), as amended in 2017, Section 130U.

⁷¹ Government of Malaysia. (1992). [Laws of Malaysia – Act 479 - Extradition Act 1992](#), Section 6 paragraphs (1) and (2).

⁷² Government of Malaysia. (1992). [Laws of Malaysia – Act 479 - Extradition Act 1992](#), Section 6 (3).

⁷³ Government of Malaysia. (1992). [Laws of Malaysia – Act 479 - Extradition Act 1992](#), Section 2 (1).

⁷⁴ Government of Malaysia and Government of Australia. (2005). [Treaty between the Government of Australia and the Government of Malaysia on Extradition](#).

⁷⁵ Government of Malaysia and Government of Hong Kong. (2005). [Agreement between the Government of the Hong Kong and the Government of Malaysia for the surrender of Fugitive Offenders](#).

⁷⁶ Government of Malaysia and Government of the United States of America. (1995). [Extradition treaty between the Government of the United States of America and the Government of Malaysia](#).

⁷⁷ In total, however, there are only eight such bilateral treaties.

⁷⁸ Government of Malaysia. (1992). [Laws of Malaysia – Act 479 - Extradition Act 1992](#), Section 2 (3).

⁷⁹ Government of Malaysia. (1992). [Laws of Malaysia – Act 479 - Extradition Act 1992](#), Sections 32 to 36.

⁸⁰ Government of Malaysia. (1992). [Laws of Malaysia – Act 479 - Extradition Act 1992](#), Section 25.

⁸¹ Government of Malaysia. (1992). [Laws of Malaysia – Act 479 - Extradition Act 1992](#), Sections 26 to 28.

Other OCSEA-Related Provisions

Malaysian law does not establish the **confiscation** of any goods used to commit or facilitate OCSEA offences, nor the confiscation of proceeds derived from OCSEA offences.

Advertising and promoting OCSEA offences is prohibited pursuant to Section 8 of the Sexual Offences against Children Act 2017, as well as publishing, printing, reproducing, hiring, offering and making available, among others. Those who contravene Section 8 shall be punished with imprisonment for a term not exceeding fifteen years and shall also be punished with whipping of not less than three strokes.⁸²

Malaysian law provides for the criminal **liability of legal entities** for OCSEA-related offences. Section 2 of the Penal Code declares that “every person” shall be liable to punishment for every act or omission contrary to its provisions,⁸³ and Section 11 states that the word “person” includes any company or association or body of persons, whether incorporated or not”.⁸⁴ Furthermore, the Sexual Offences against Children Act incorporates a specific provision for offences committed by a corporate body. The legislation states that when any of the offences therein listed and related to child sexual abuse material are committed by a body corporate, “any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, or was in any manner responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall also be guilty of that offence unless he proves that the offence was committed without his knowledge, consent or connivance, and that he had exercised all due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances”.⁸⁵

Malaysia launched a **national child sex offender registry** that came into effect on April 2019. As of November 2019, 155 applications had been received for a background checking that involves 2,897 employees (existing staff and potential employees).⁸⁶ Before this date, the Registration of Criminals and Undesirable Persons Act 1969 provided for a register which included certain sexual crimes but which was not available for the public.⁸⁷ The new sex offenders’ registry, regulated in Sections 118 to 120 of the Child Act,⁸⁸ allows people to verify if the individual has committed any sexual offense against children by filling in a form and stating their relationship to the individual at the department’s state office, or the department district office.⁸⁹ However, even if government officials appealed to the public to remain vigilant and filter out repeat sexual offenders,⁹⁰ Malaysian laws do not prohibit **sex offenders to hold positions involving or facilitating contact with children**.

⁸² Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 8.

⁸³ Government of Malaysia (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Section 2.

⁸⁴ Government of Malaysia (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Section 11.

⁸⁵ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 23.

⁸⁶ Yeoh, YB MS Hannah (Minister of Women, Family and Community Development, Malaysia). (2019). Speech delivered during the Global Summit To Tackle Online Child Sexual Exploitation held on 11 and 12 December 2019.

⁸⁷ Government of Malaysia. (1969). [Laws of Malaysia - Act 7 - Registration of Criminals and Undesirable Persons Act 1969](#)

⁸⁸ Government of Malaysia. (2001). [Laws of Malaysia - Act 611 - Child Act 2001](#), as amended in 2017, Sections 118 to 120.

⁸⁹ Asia Times Staff (2019). [Malaysia launches child sex offenders registry](#), Asia Times.

⁹⁰ Asia Times Staff (2019). [Malaysia launches child sex offenders registry](#), Asia Times.

Regarding the criminalisation of **recidivism**, Section 75A of the Penal Code states that “whoever, having been convicted at least two times of a serious offence and was punished with at least two years of imprisonment for each of those convictions, shall be punished with mandatory imprisonment for the third and subsequent offences and the term of imprisonment shall not be less than double the term of the longer term of imprisonment imposed for the previous convictions”.⁹¹ According to this provision, recidivists who commit OCSEA-related crimes shall be punished with more severe sentences after their third conviction, and only if the punishment was at least two years of imprisonment for each of those convictions.

Concerning **data retention and preservation**, Section 268 of the Communications and Multimedia Act foresees the possibility for the Minister to make rules to provide for record-keeping and to require one or more licensees or persons to keep and retain records.⁹² However, specific rules on data preservation have yet to be published (as of April 2021) and the only Act that refers to data preservation is the Personal Data Protection Act. Its Section 10 states that “the personal data processed for any purpose shall not be kept longer than necessary for the fulfillment of that purpose. Also, a data user has a duty to take all reasonable steps to ensure that all personal data is destroyed or permanently deleted if it is no longer required for the purpose for which it was to be processed”.⁹³

⁹¹ Government of Malaysia (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Section 75A.

⁹² Government of Malaysia. (1998). [Laws of Malaysia - Act 588- Communications and Multimedia Act](#), as amended till 2006, Section 268.

⁹³ Government of Malaysia. (2010). [Laws of Malaysia - Act 709 - Personal Data Protection Act](#), Section 10.

Access to Justice and Remedies

National complaint mechanisms and reporting

The Malaysian legislation imposes **mandatory duties** on professionals working with children to report incidents that involve child sexual abuse to the authorities. Section 27 (1) of the Child Act provides for a duty of medical officers or practitioners to inform a Social Welfare Officer if they believe on reasonable grounds that a child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused.⁹⁴ Those who violate this provision are punished with a fine not exceeding 5,000 ringgit (approx. US\$1,209 as of April 2021) or with imprisonment for a term not exceeding two years or both.⁹⁵ The same duty and punishment applies to members of the family⁹⁶ of the child and to child care providers,⁹⁷ according to Articles 28 and 29 of the Child Act. However, this duty is only mandatory for the persons mentioned in Articles 27, 28 and 29, according to Article 29A of the Child Act.⁹⁸

Additionally, the Sexual Offences against Children Act imposes mandatory reporting duties on **private citizens** in relation to offences committed under the Act, including OCSEA offences. Pursuant to Section 20 of the Act, “any person who fails to give information of the commission of or the intention of any other person to commit any offence under this Act, or any offence under the Schedule where the victim is a child, to the officer in charge of the nearest police station commits an offence...”.⁹⁹ This offence is punishable with a fine up to 5,000 ringgit (approx. US\$1,209 as of April 2021).¹⁰⁰

Regarding the criminal sphere, the Malaysia legislation does not establish a specific **complaint mechanism** for child victims of OCSEA.

Notwithstanding, the Women, Family and Community Development Ministry hosts a 24-hours helpline called the "The Talian Kasih 15999 hotline", for the public to report, among other things, child abuse cases.¹⁰¹

Additionally, the Sexual, Women and Child Investigation Division or the D11 is a special division under Royal Malaysia Police called D11 that focuses specifically on investigating sexual offences against children.¹⁰² In February 2018, Malaysia officially launched the Malaysian Internet Crime Against Children Investigations Unit (MICAC), operating under the supervision of the Police’s Sexual, Women and Child

⁹⁴ Government of Malaysia. (2001). [Laws of Malaysia - Act 611 - Child Act 2001](#), as amended in 2017, Section 27 (1).

⁹⁵ Government of Malaysia. (2001). [Laws of Malaysia - Act 611 - Child Act 2001](#), as amended in 2017, Section, Section 27 (2).

⁹⁶ Government of Malaysia. (2001). [Laws of Malaysia - Act 611 - Child Act 2001](#), as amended in 2017, Section, Section 28.

⁹⁷ Government of Malaysia. (2001). [Laws of Malaysia - Act 611 - Child Act 2001](#), as amended in 2017, Section, Section 29.

⁹⁸ Government of Malaysia. (2001). [Laws of Malaysia - Act 611 - Child Act 2001](#), as amended in 2017, Section, Section 29A.

⁹⁹ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 20.

¹⁰⁰ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Section 20.

¹⁰¹ New Strait Times. (2020, April). [All calls to Talian Kasih taken seriously, says ministry](#).

¹⁰² End CSEC Network Malaysia; ECPAT International. (2018, March). [Sexual Exploitation of Children in Malaysia Submission for the Universal Periodic Review of the human rights situation in Malaysia to the Human Rights Council 31th Session \(October - November 2018\) UPR third cycle 2017 – 2021](#), P. 10.

Investigations Department (D11).¹⁰³ The MICAC was tasked with identifying and monitoring child sexual abuse material viewers and disseminators, to secure evidence for prosecution.¹⁰⁴

In the absence of any special legal mechanism, the provisions of the Criminal Procedural Code regarding investigation and prosecution of criminal offences could also be applicable in the case of OCSEA offences. Section 107 of the Criminal Procedure Code states that police officers are entitled to receive information in relation to offences committed anywhere in Malaysia.¹⁰⁵ Furthermore, the police officers must provide a report on the status of the investigation if requested by the person who gives the information under Section 107.¹⁰⁶

Furthermore, the legislation provides that Magistrates can also receive and examine complaints, as long as they submit the complaint to **public prosecutors**.¹⁰⁷ According to Section 376 of the Criminal Procedure Code, the Attorney General shall be the Public Prosecutor who shall have control and direction of all criminal prosecutions.¹⁰⁸ However, the investigation of crimes is the responsibility of law enforcement agencies¹⁰⁹ and the Public Prosecutor only decides whether to institute prosecution or not based on the outcome of the investigation.

Moreover, the Human Rights Commission of Malaysia can also receive and examine complaints associated with human rights violations, providing that the subject matter is not pending before a court or has not been finally determined by any court.¹¹⁰

According to Section 107 of the Criminal Procedure Code, all information relating to the commission of an offence given to a police officer shall be signed by the person giving it.¹¹¹ Thus, as per the provisions of the Criminal Procedure Code, an **anonymous complaint** cannot form the basis of investigation. Furthermore, the Criminal Procedure Code requires certain persons to complain in order to initiate the prosecution. Those persons are the person aggrieved, the husband or the Public Prosecutor.¹¹²

Concerning **statutory limitations**, Malaysian law does not provide for a limitation period for criminal offences. However, the Limitation Act establishes limitations period for civil cases that apply in the Peninsular Malaysia.¹¹³ Moreover, child victims could benefit from an extended limitation period as it starts running only when the child reaches 18 years old.¹¹⁴

¹⁰³ ECPAT International. (2019, October). [Malaysia Country Overview: A report on the scale, scope and context of the sexual exploitation of children](#), P. 7.

¹⁰⁴ ECPAT International. (2019, October). [Malaysia Country Overview: A report on the scale, scope and context of the sexual exploitation of children](#), P. 7.

¹⁰⁵ Government of Malaysia. (1935). [Laws of Malaysia – Act 593 - Criminal Procedure Code](#), as amended in 2012, Section 107 (4).

¹⁰⁶ Government of Malaysia. (1935). [Laws of Malaysia – Act 593 - Criminal Procedure Code](#), as amended in 2012, Section 107A.

¹⁰⁷ Government of Malaysia. (1935). [Laws of Malaysia – Act 593 - Criminal Procedure Code](#), as amended in 2012, Section 133.

¹⁰⁸ Government of Malaysia. (1935). [Laws of Malaysia – Act 593 - Criminal Procedure Code](#), as amended in 2012, Section 376 (3).

¹⁰⁹ Government of Malaysia. (1935). [Laws of Malaysia – Act 593 - Criminal Procedure Code](#), as amended in 2012, Part V.

¹¹⁰ Government of Malaysia. (1999). [Laws of Malaysia – Act 597 - Human Rights Commission of Malaysia Act 1999](#), as amended in 2010, Section 12.

¹¹¹ Government of Malaysia. (1935). [Laws of Malaysia – Act 593 - Criminal Procedure Code](#), as amended in 2012, Section 107.

¹¹² Government of Malaysia. (1935). [Laws of Malaysia – Act 593 - Criminal Procedure Code](#), as amended in 2012, Sections 130-132.

¹¹³ Government of Malaysia (1953). [Laws of Malaysia - Act 254 - Limitation Act 1953](#), as amended in 2019, Section 1 (2).

¹¹⁴ Government of Malaysia (1953). [Laws of Malaysia - Act 254 - Limitation Act 1953](#), as amended in 2019, Section 237.

Child-sensitive justice

Regarding the establishment of **child-friendly interview methods** for child victims, the Criminal Procedure Code incorporates a provision that allows live video or live television evidence for criminal trials and inquiries.¹¹⁵ It is a major improvement in child-sensitive procedures, even if children are not explicitly mentioned. Unfortunately, the court still has the power to refuse this evidence in cases where it considers these means to “[...] be inconsistent with the court’s duty to ensure that the proceedings are conducted fairly to the parties to the proceedings”.¹¹⁶ It has been stressed that guidelines should be provided for the courts to determine the conditions required for the use of live video and television in cases where children stand as witnesses. The tradition of the adversarial system in Malaysia may have appeared to limit the use of these technologies during criminal trials,¹¹⁷ but the adoption of the Evidence of Child Witness Act in 2007 affirmed Malaysia’s commitment to adapt its legal procedures to children.¹¹⁸ Evidence of Child Witnesses Act 2007 [Act 676] provides for a range of special measures to facilitate children’s testimony. But it applies only to children under 16 and is not consistently applied in all child victim cases.¹¹⁹ The Act 676 allows for a video-taped statement of the child’s police interview to be used as evidence in chief, but does not provide for pre-recording of the child’s full testimony (examination in chief, cross-examination and re-examination).¹²⁰ Under Section 4, the Act provides different ways to limit the contact between the child witness and the accused by holding a barrier between them or by live or recorded video.¹²¹

In respect to **psychological assistance and support**, there are no provisions to guarantee that child victims of OCSEA have access to psychological assistance and support during the legal proceedings. Furthermore, there is no duty to provide information related to legal proceedings in a **child-friendly manner**, nor any provision to ensure that **non-governmental organisations** can assist and/or support victims, at their request, during the investigation and judicial proceedings.

Concerning the right to access justice in Malaysia’s national jurisdiction, the Malaysian Rules of Court considers children to be unable to bring a claim, make a counterclaim, or intervene in any proceedings by themselves. All children must have a litigation representative, a role that must be endorsed by a solicitor.¹²²

As for the legal services provided to child victims, children and their representatives may be eligible for **legal aid** and assistance. The Malaysian Bar Council established Bar Council Legal Aid Centres which provide free legal advice, intervention and representation before the court to applicants who are not eligible for legal aid.¹²³ Another type of legal aid and assistance provided by the Legal Aid Department may

¹¹⁵ Government of Malaysia. (1935). [Laws of Malaysia – Act 593 - Criminal Procedure Code](#), as amended in 2012, Section 272(B).

¹¹⁶ Government of Malaysia. (1935). [Laws of Malaysia – Act 593 - Criminal Procedure Code](#), as amended in 2012, Section 272B, paragraph 3.

¹¹⁷ Nazeri, N.M. (n.d.). [Development in Child Evidence in Malaysia](#). P. 9.

¹¹⁸ Government of Malaysia. (2007). [Laws of Malaysia - Act 676 - Evidence of Child Witness Act 2007](#).

¹¹⁹ Government of Malaysia. (2007). [Laws of Malaysia - Act 676 - Evidence of Child Witness Act 2007, Section 2](#).

¹²⁰ Government of Malaysia. (2007). [Laws of Malaysia - Act 676 - Evidence of Child Witness Act 2007, Section 6](#).

¹²¹ Government of Malaysia. (2007). [Laws of Malaysia - Act 676 - Evidence of Child Witness Act 2007](#), Section 4, paragraph 1.

¹²² Government of Malaysia. (2012). [Rules of Court 2012](#), Order 76, rule 2 (3).

¹²³ The Malaysian Bar (n.d.). [Legal Aid Centres](#).

be available to child victims and their representatives; the same services as ones available in the Bar Council Legal Aid Centres are provided to applicants, who may be classified into two categories based on their income.¹²⁴ The Legal Aid Department provides legal advice and assistance to proceedings only in specific cases, but these include the criminal proceedings under the Child Act.¹²⁵

Additionally, the Legal Aid Department is authorised under the Legal Aid Act 1971 to provide “Legal Companion service” to a child victim of any criminal sexual assault. According to Section 29h of the Legal Aid Act 1971 [Act 26], “any person who is a child and is a victim of any offences as specified in the proposed Fifth Schedule and is still a child at the time the proceedings is commenced in court may apply for a legal companion service and be granted a legal aid certificate that the applicant is entitled to legal companion service”.¹²⁶ The purposes of a legal companion, *inter alia*, include providing legal advice to the guardian, or protector of the child victim, to obtain relevant legal information relating to any criminal proceedings to which the victim is a party and to accompany the victim in any court proceedings, and with permission of the court, to speak on behalf of the victim.¹²⁷

Unfortunately, no evidence is publicly available on how many children are recipients of this legal aid.

Child-sensitive procedures also include the support provided to children who stand as witnesses before the court. Specific procedures ensure that children are not required to confront their abuser or the accused.¹²⁸ The Malaysian Child Act guarantees the non-disclosure of the **child victim’s information** in a section dedicated to “Restrictions on media reporting and publication”.¹²⁹ The name, address, educational institution or picture of a child shall not be revealed in the mass media reports, in any criminal case, at the pre-trial, trial or post-trial stage.¹³⁰

Furthermore, Malaysian legislation does not include any provision to protect child victims and their families of witnesses on their behalf from **intimidation or retaliation**, but Act 191 on the Abduction and Criminal Intimidation of Witnesses Act 1947 criminalises the criminal intimidation of witnesses to impede the course of justice,¹³¹ as defined and punished in Sections 503 and 506 of the Penal Code.¹³² Similarly, the Malaysian legislation does not include any provision to protect the **safety and integrity** of those who are involved in helping child victims.

The Sexual Offences against Children Act 2017 states that in any proceedings related to any offence listed therein or any offence under the relevant offences where the victim is a child, that the “child is presumed to be competent to give evidence unless the court thinks otherwise.”¹³³ This provision enhances the status

¹²⁴ Legal Aid Department (n.d.). [Legal Aid - Eligibility of the applicant.](#)

¹²⁵ Government of Malaysia. (1971). [Laws of Malaysia – Act 26 - Legal Aid Act 1971](#), as amended in 2012, Section 10 and Second Schedule.

¹²⁶ Government of Malaysia. (1971). [Laws of Malaysia – Act 26 - Legal Aid Act 1971](#), as amended in 2017, Section 29H.

¹²⁷ Government of Malaysia. (1971). [Laws of Malaysia – Act 26 - Legal Aid Act 1971](#), as amended in 2017, Section 29I.

¹²⁸ Nazeri. N. M. (n.d.). [Development in Child Evidence in Malaysia](#). P. 9.

¹²⁹ Government of Malaysia. (2001). [Laws of Malaysia - Act 611 - Child Act 2001](#), as amended in 2017, Section 15.

¹³⁰ Government of Malaysia. (2001). [Laws of Malaysia - Act 611 - Child Act 2001](#), as amended in 2017, Section 15 (1) and (2).

¹³¹ Government of Malaysia. (1947). [Laws of Malaysia – Act 191 - Abduction and Criminal Intimidation of Witnesses Act 1947](#), as amended in 1977, Section 5.

¹³² Government of Malaysia. (1936). [Laws of Malaysia - Act 574 - Penal Code](#), as amended in 2017, Sections 503 and 506.

¹³³ Government of Malaysia. (2017). [Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](#), Article 18.

of children as witnesses so that their evidence is given appropriate weight in the court. The *Syariah* Court Evidence (Federal Territories) provides that “all Muslims are competent to give *syahadah* (religious creed) or *bayyinah* (clear proof) as witnesses provided that they are *`aqil* (intelligent), *baligh* (reached puberty), *`adil* (fair), have a good memory and are not prejudiced”.¹³⁴ Contrary to the Civil Law, the *Syariah* Law requires that the child witness has reached puberty, even if the other criteria are fulfilled.

Access to recovery and reintegration

In Malaysia, the national legislation ensures that the child victims of OCSEA fully enjoy their right to **recovery and rehabilitation**. The Child Act ensures the protection of children ‘in need of protection and rehabilitation’ under its Section 38. According to this article, a child victim of sexual exploitation shall be provided protection and rehabilitation.

The Malaysian Child Act also establishes ‘places of safety’ to ensure the care and protection of children¹³⁵ and ‘places of refuge’ to ensure the care and rehabilitation of children.¹³⁶ These places, institutions or centres are established or appointed by the Minister of Women, Family and Community Development. Following the adoption of the Child Act 2001, the Government created Children’s Homes (*Rumah Kanak-Kanak*).¹³⁷ In 2019, there were 13 Children’s Homes in Malaysia with a total capacity of 1,430 children.¹³⁸ Concerns may rise regarding the administration of the institutions, as juvenile offenders may also be housed in Children’s Homes. While acknowledging the importance of the government-run shelters in the protection of children, the UN Special Rapporteur on Trafficking expressed some concerns about the absence of specialised trainings and capacity-building sessions organised for the staff of the shelters.¹³⁹ Whilst there are some NGOs that have provided training for staff, in 2019 these programmes are still limited.¹⁴⁰

In terms of **programmes for support and reintegration** for child victims of OCSEA, the Malaysian government has established several other mechanisms to provide support services for children. For example, two units were created to ensure that child victims are identified, receive adequate treatment and, eventually, ensure that they are reintegrated and rehabilitated into their communities: The Suspected Child Abuse and Neglect (SCAN) Teams and the One-Stop Crisis Centre (OSCC). Both consist of multi-disciplinary groups of professionals from various medical fields, namely pediatricians, obstetricians and gynecologists, psychiatrists, forensic pathologists, as well as medical social workers. The core of the SCAN Teams and OSCC is a medical team but they also work closely with officers from the Department of Social Welfare and police officers.¹⁴¹ In practice, the composition of the SCAN Teams is not strictly uniform

¹³⁴ Government of Malaysia. (1997). [Laws of Malaysia – Act 561 - Syariah Court Evidence \(Federal Territories\) Act 1997](#), Section 83.

¹³⁵ Government of Malaysia. (2001). [Laws of Malaysia - Act 611 - Child Act 2001](#), as amended in 2017, Section 54.

¹³⁶ Government of Malaysia. (2001). [Laws of Malaysia - Act 611 - Child Act 2001](#), as amended in 2017, Section 55.

¹³⁷ Government of Malaysia. (2001). [Laws of Malaysia - Act 611 - Child Act 2001](#), as amended in 2017,, Part IX, Sections 51 and 55.

¹³⁸ Department of Social Welfare (n.d.). [Services – Welfare Organisations – Children’s Home](#).

¹³⁹ United Nations Human Rights Office of the High Commissioner. (2015). [“Preliminary findings, UN Special Rapporteur on Trafficking in persons, especially women and children, Maria Grazia Giammarinaro – Visit to Malaysia”](#).

¹⁴⁰ End CSEC Malaysia Network. (2019, July). Personal communication.

¹⁴¹ Ministry of Health Malaysia. (2009, June 12). [Guidelines for the hospital management of child abuse and neglect](#). MOH/P/PAK/130.07 (GU). Medical Development Division, Ministry of Health Malaysia.

across hospitals. The One-Stop Crisis Centre is a unit that provides an initial medical examination. The SCAN Teams and OSCC are different in that the former's objective is to collect testimonies from the child and their family.¹⁴² The OSCC intervenes only when the situation of the child is not critical. When the victim is in a critical or semi-critical situation, the child is referred to the emergency department first, before being brought to an OSCC.¹⁴³

It is noteworthy that the National Population and Family Development Board, established in 1966 under the National Population and Family Development Board Act, is currently focusing on initiatives aimed at, *inter alia*, promoting the online safety of children.¹⁴⁴ One such initiative is the implementation of Family and Child Safety Education Modules (PEKA) to create awareness amongst the masses on safety of children including education on cybersafety (cyberbully, sexting, child grooming, online child grooming).¹⁴⁵

The abovementioned provisions apply to both **girls** and **boys** with no distinction.

Access to compensation

In Malaysia, the power of the Criminal Court to order **compensation** derived from a criminal offence is awarded in Section 426 of the Criminal Procedural Code, and the general regime for compensation is provided under Section 432 of the Criminal Procedure Code. According to these provisions, child victims of OCSEA have the possibility to seek compensation in **criminal proceedings** from convicted perpetrators.¹⁴⁶ Moreover, Section 426 (4) of the Criminal Procedure Code entitles them to institute an **independent civil suit** for the recovery of any property or for the recovery of damages beyond the amount of compensation paid under the order.¹⁴⁷

However, compensation for the victims through the seizure of the offenders' assets is not provided by the law, nor it is through **country-managed funds**. Thus, it seems correct to affirm that the compensation of child victims of sexual exploitation is not a well-established process in Malaysia.

Another example of compensation in Malaysian legislation would be the Anti-Trafficking in Persons and Anti-Smuggling Act, which was amended in 2015 to enact the order for payment of compensation to the trafficked person.¹⁴⁸

¹⁴² Ministry of Health Malaysia. (2009, June 12), [Guidelines for the hospital management of child abuse and neglect](#). MOH/P/PAK/130.07 (GU). Medical Development Division, Ministry of Health Malaysia, 16-18.

¹⁴³ *Ibid.*, "Procedures for handling SCAN cases", 30. Ahmed, Y *et al.* (2015) '[Suspected Child Abuse and Neglect Team \(SCAN Team\): Early Establishment, success stories, challenges and the way forward](#)'. 60-72. *Journal of Administrative Science*. 12.1

¹⁴⁴ Daily Express. (2020, February). [Government takes cyber threats against children seriously](#).

¹⁴⁵ Daily Express. (2020, February). [Government takes cyber threats against children seriously](#).

¹⁴⁶ Government of Malaysia. (1935). [Laws of Malaysia – Act 593 - Criminal Procedure Code](#), as amended in 2012, Sections 426 and 432.

¹⁴⁷ Government of Malaysia. (1935). [Laws of Malaysia – Act 593 - Criminal Procedure Code](#), as amended in 2012, Section 426 (4).

¹⁴⁸ Government of Malaysia. (2015). [Anti-Trafficking in Persons and Anti-Smuggling of Migrants \(Amendment\) Act 2015](#), Section 66A and 66B.