STRENGTHENING LEGAL FRAMEWORKS TO PROTECT CHILDREN FROM SEXUAL EXPLOITATION IN TRAVEL AND TOURISM (SECTT)

WORKING GROUP 3: MALAYSIA REPORT

10TH AIPA CAUCUS MEETING

16 – 19 JUNE 2019

KUALA LUMPUR, MALAYSIA
For child trafficking, **Malaysia** is primarily considered as a:

- origin country
- transit country
- destination country
- internal/domestic country
Malaysia reaffirms our commitment to end child sexual exploitation

- Ratified the Convention on the Rights of Child since 1995 and Malaysia continues to uphold rights and freedoms in the interest of the child [not the Optional Protocol on the sale of children, child prostitution and child pornography]

- Ratified Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children

- Reaffirmed our commitment to the ASEAN Declaration Against Trafficking in Persons, particularly Women and Children, 2004

- Institutionalise children’s rights into domestic laws, policies and procedures.
SETTING CHILDREN’S RIGHTS STANDARDS

NATIONAL CHILD POLICY

Provides special programmes for vulnerable children and special measures to protect child victims of sexual exploitation, and ensure their rehabilitation and reintegration into their communities or their safe deportation back to their country of origin. The prevention of sexual exploitation of children is also mentioned in the Plan.

NATIONAL CHILD PROTECTION POLICY

Revolves around seven main objectives that could in turn be classified into four main themes: advocacy, prevention, support service, and research and development.
Note: The 5 identified threats in PTCOP are Cyberbullying, Cyber-grooming, Identity theft, Pornography, and Violence
SECTT IN MALAYSIA

“According to child rights activists in Malaysia, the capital Kuala Lumpur is home to a thriving sex industry in which children, some as young as thirteen, comprise an unknown proportion. It is claimed that these children are typically of Malaysian, Indonesian, Thai and Indian origin. These children, who number in the thousands, reportedly operate out of dilapidated low-cost apartments in the capital rather than brothels in order to avoid detection by the authorities. Estimates suggest that up to 150 children are forced into the sex industry each year.

Very little information is otherwise available pertaining to SECTT in Malaysia.”

Source: “Global Study On Sexual Exploitation Of Children In Travel And Tourism – South East Asia”, ECPAT International, May 2016
## DATA OF SEXUALLY ABUSED CHILDREN

<table>
<thead>
<tr>
<th>Type of Offence</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018 Jan-May</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>1790</td>
<td>1496</td>
<td>1324</td>
<td>1260</td>
<td>1163</td>
<td>371</td>
</tr>
<tr>
<td>Incest</td>
<td>210</td>
<td>246</td>
<td>210</td>
<td>193</td>
<td>253</td>
<td>88</td>
</tr>
<tr>
<td>Molest</td>
<td>821</td>
<td>770</td>
<td>764</td>
<td>670</td>
<td>453</td>
<td>0</td>
</tr>
<tr>
<td>Sodomy</td>
<td>134</td>
<td>145</td>
<td>200</td>
<td>223</td>
<td>234</td>
<td>48</td>
</tr>
<tr>
<td>Sexual Harassment</td>
<td>18</td>
<td>29</td>
<td>46</td>
<td>40</td>
<td>31</td>
<td>3</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>2,973</strong></td>
<td><strong>2,686</strong></td>
<td><strong>2,544</strong></td>
<td><strong>2,386</strong></td>
<td><strong>2,134</strong></td>
<td><strong>510</strong></td>
</tr>
</tbody>
</table>

*Source: Ministry of Women, Family and Community Development answers in Parliament, July 2018*
# DATA OF RAPE CRIME

<table>
<thead>
<tr>
<th>Age</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below 6</td>
<td>18</td>
<td>7</td>
<td>14</td>
<td>8</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>6 – 9</td>
<td>22</td>
<td>22</td>
<td>18</td>
<td>27</td>
<td>15</td>
<td>22</td>
</tr>
<tr>
<td>10 – 12</td>
<td>71</td>
<td>58</td>
<td>53</td>
<td>63</td>
<td>72</td>
<td>62</td>
</tr>
<tr>
<td>13 – 15</td>
<td>1152</td>
<td>961</td>
<td>859</td>
<td>752</td>
<td>808</td>
<td>671</td>
</tr>
<tr>
<td>16 – 18</td>
<td>638</td>
<td>535</td>
<td>465</td>
<td>508</td>
<td>355</td>
<td>310</td>
</tr>
<tr>
<td>Above 18</td>
<td>617</td>
<td>462</td>
<td>464</td>
<td>340</td>
<td>325</td>
<td>272</td>
</tr>
<tr>
<td>TOTAL</td>
<td><strong>2518</strong></td>
<td><strong>2045</strong></td>
<td><strong>1873</strong></td>
<td><strong>1698</strong></td>
<td><strong>1582</strong></td>
<td><strong>1343</strong></td>
</tr>
</tbody>
</table>

Source: Ministry of Home Affairs, May 2019
SUMMARY OF THE LEGAL CHECKLIST OF STRENGTHENING LEGAL FRAMEWORKS TO PROTECT CHILDREN FROM SECTT

<table>
<thead>
<tr>
<th>24 recommendations</th>
<th>9 relevant legislations</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 16 regulated</td>
<td>• Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007</td>
</tr>
<tr>
<td>• 3 partially regulated</td>
<td>• Child Act 2001</td>
</tr>
<tr>
<td>• 2 has not been regulated, other legal provisions could apply</td>
<td>• Sexual Offences against Children Act 2017</td>
</tr>
<tr>
<td>• 3 has not been regulated</td>
<td>• Extradition Act 1992</td>
</tr>
<tr>
<td></td>
<td>• Penal Code</td>
</tr>
<tr>
<td></td>
<td>• Immigration Act 1959/1963</td>
</tr>
<tr>
<td></td>
<td>• Tourism Industry Act 1992</td>
</tr>
<tr>
<td></td>
<td>• Evidence of Child Witness Act 2007</td>
</tr>
<tr>
<td></td>
<td>• Criminal Procedure Code</td>
</tr>
</tbody>
</table>
## SUMMARY OF THE LEGAL CHECKLIST OF STRENGTHENING LEGAL FRAMEWORKS TO PROTECT CHILDREN FROM SECTT

<table>
<thead>
<tr>
<th>7 relevant international conventions</th>
<th>3 relevant regional conventions</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Convention on the Rights of the Child</td>
<td></td>
</tr>
<tr>
<td>• Convention on the Elimination of All Forms of Discrimination against Women</td>
<td></td>
</tr>
<tr>
<td>• ILO Convention No. 138 (Minimum Age Convention)</td>
<td></td>
</tr>
<tr>
<td>• ILO Convention No. 182 (Worst Forms of Child Labour Convention)</td>
<td></td>
</tr>
<tr>
<td>• Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</td>
<td></td>
</tr>
<tr>
<td>• Convention on the Rights of Persons with Disabilities</td>
<td></td>
</tr>
<tr>
<td>• Declaration On The Elimination Of Violence Against Women And Elimination Of Violence Against Children In ASEAN <em>(adopted 2013)</em></td>
<td></td>
</tr>
<tr>
<td>• ASEAN Regional Plan of Action on Elimination of Violence against Children 2016 – 2025 <em>(ASEAN RPA on EVAC) (adopted 2015)</em></td>
<td></td>
</tr>
<tr>
<td>• Declaration On The Protection Of Children Against All Forms Of Online Sexual Exploitation And Abuse In ASEAN <em>(under drafting as of 2019)</em></td>
<td></td>
</tr>
</tbody>
</table>
Definition of Child: as a person who is under the age of 18 years.

Sex Offender Registry: “Register of Children” contains details of every case or suspected case of a child in need of protection, details of persons convicted of any offence in which a child is a victim.

Severe Penalties:
- RM50,000 fine
- Imprisonment not less than 3 years and not exceeding 15 years or both
- Whipping not more than 6 strokes

Sentences for recidivists:
- Whipping not more than 10 strokes

Reporting by professionals working with children:
- Duty of medical officer or medical practitioner,
- Duty of member of the family
- Duty of child care provider

Victim Care Centre (VCC) established for child victims to fully enjoy their right to recovery and rehabilitation.

Child Act 2001

Victim Care Centre (VCC) established for child victims to fully enjoy their right to recovery and rehabilitation.
SEXUAL OFFENCES AGAINST CHILDREN ACT 2017

Definition of Child:
Apply to a child who is under the age of 18 years

Provides extraterritorial jurisdiction over offences committed by a Malaysian citizen against any child in any place outside Malaysia

Sexual exploitation of children offences are extraditable offences

Severe sentences:
Physical sexual assault and non-physical sexual assault

Provision on solicitation of children (grooming):
Sexually communicating with a child, child grooming and meeting following child grooming

Sexual exploitation of children offences are extraditable offences
ANTI-TRAFFICKING IN PERSONS AND ANTI-SMUGGLING ACT 2007 (ATIPSOM ACT)

- Intentional omission to give information on any offence has occurred is itself an offence
- Informers are protected
- Compensation to child victims from the convicted perpetrators in national and native courts

IMMIGRATION ACT 1959/1963

- Person who has been convicted, sentenced, deemed to be an undesirable immigrant and may be prohibited entry, or cancel any pass or permit
- Examination of persons arriving and entering Malaysia

EVIDENCE OF CHILD WITNESS ACT 2007

- Child Interview Centre (CIC) established to provide a child-friendly interview place
- Witness Support Service established to reduce fright and trauma faced by children who are to be witnesses in Court proceedings
Legal requirement for the travel and tourism industry

The Tourism Industry Act 1992 indirectly comply with this legal requirement in the context of issuing and revoking the licence of the tourism enterprises.

National reporting systems with response protocols

Talian Kasih 15999 is a 24-hour helpline established for people who are abused

Liability of the private travel and tourism sector for SECTT

The private travel and tourism sector is bound by general provisions relating to the sexual exploitation of child namely in the offences listed in the Child Act 2001, ATIPSOM Act 2007, and the Penal Code.
SPECIAL COURT FOR SEXUAL CRIMES AGAINST CHILDREN

- Court recording transcription
- Waiting room for child witnesses
- Live video link
- Child witness screens
- Disabled-friendly facilities

1st Court
Putrajaya
June 2017

2nd Court
Kuching
April 2018
WAY FORWARD: Legal considerations

Set international legal standards to combat trafficking
- Multi-prong partnership with government, airline corporates, travel & tourism companies, international agencies and civil society to develop effective prevention of trafficking policies and laws

Criminalise trafficking in persons and by organised criminal groups
- Classify extraterritorial sexual exploitation of children as crime against humanity
- Impose strict sentencing for transnational sexual crimes against children carried out by organised criminal groups
- Develop effective and efficient intelligence network among ASEAN to legislate, detect and control sexual crimes against children

Jurisdiction
- Establish jurisdiction powers when crime is committed including extradition agreements and other arrangements to ensure that a sexual offender is prosecuted in another country
WAY FORWARD: Education and Resource Sharing

Strengthen the sex offender registry

- Parents and employers in child-related industries to apply for a screening to be conducted on any individual working with children.
- Strengthen the Child Registry and improve public access to the registry.

A comprehensive Working with Children Check (WCC) to include other criminal records in its database, such as drug and violent offences.

- Individual seeking child-related work to apply for a WCC clearance before engaging in any child-related work.

Research and resource sharing

- Encourage evidence based research to help develop effective methods to battle sexual exploitation
- Share data and research across ASEAN region, be it bilateral or multilateral, such cooperation is necessary to discourage trafficking
WAY FORWARD: Travel and Tourism

Travel, Enjoy and Respect
- Develop “soft” messaging to provide information to tourists to be more aware of sexual exploitation of children, via banners, brochures, advertisements, tourist gifts with messages, etc.
- Develop an ASEAN Code of Ethics for travel and tourism – zero tolerance for child sexual exploitation.

International volunteers (‘volun-tourism’) monitoring
- A comprehensive Working with Children Check (WCC) to include other criminal records in its database, such as drug and violent offences.
- Individual seeking child-related work to apply for a WCC clearance before engaging in any child-related work.

Research and resource sharing
- Share data and research across ASEAN region, be it bilateral or multilateral, such cooperation is necessary to ensure early detection of offenders.
- Develop regional training to governments and tourism industry to counter the sexual exploitation of children mainly in the travel and tourism sector.
CONCLUSION

Malaysia has made progress in tackling the issue of sexual exploitation of children most particularly by the Child Act 2001 and the Sexual Offences Against Children Act 2017.

The latter law is very progressive in terms of protecting children from online sexual exploitation and online grooming. This is a great step forward for protecting children. But, this law does not specifically mention the sexual exploitation of children through travel and tourism.

More initiatives and collaborations need to be done regionally in ASEAN context to protect children especially from sexual exploitation in the travel and tourism industry.

As we prepare for our ‘Visit Malaysia 2020’ year which is expected to bring in 30 million tourists, we are more committed than ever to combat SECTT.
THANK YOU