



# **Cross-border safeguards for children in conflict with the law in the ASEAN REGION**

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An illustration of several cartoon children of various ethnicities and ages. On the left, a group of four children (two girls and two boys) are peeking over a large, white, rounded rectangular sign. On the right, a vertical line of four children (two girls and two boys) are holding onto the edge of the sign. The children are smiling and looking towards the viewer. The sign is the central focus, containing the title text.

**Legislative Framework  
for Children in Conflict  
with the Law with  
Respects to Safeguards**



The Constitution of Malaysia guarantees everyone including children, equality before the law and freedom from arbitrary arrest and detention

In addition, the Child Act 2001 and its amendments 2016 provides certain safeguards for children in conflict with the law

The special juvenile justice protections generally apply to children below the age of 18.

They are also not apply to children charged with offences punishable by death (e.g. murder, drug trafficking and certain terrorism offences)

The Act provides safeguards to all children, irrespective of nationality, socio-economic status and religion

**Minimum age of criminal responsibility is 10.**

Also include *doli incapax* which states that a child who is above 10 but less than 12 years of age are not criminally responsible if “the child has insufficient maturity to understand and judge the nature and consequences of his/her conduct.”

Imprisonment can only be imposed on children over 14 years of age and must not be ordered if can be suitably dealt with in any other way.

The Act stipulates special procedures for dealing with children's cases at all stages of the criminal justice procedures

Arrest, detention and trial of any offence (subject to certain limitations) must be handled in accordance to the Child (Amendment) Act 2015.

The Criminal Procedure Code also requires the child's parents/guardian & probation office to be informed of the arrest, the grounds for arrest and to be allowed to consult and be defended by a legal practitioner of his /her choice.

Where a specific issue is not addressed in the Act, reference is made under the Criminal Procedure Code

More specifically, the Child Act: When a child is arrested, before questioning or recording any statement, the parent/guardian/relative and probation officer must be:

- informed of the arrest,
- the whereabouts of the child,
- ground of the child's arrest and
- the right to consult a counsel of the child's choice.

**They are required not to be present while the child is being questioned.**

Children in conflict with the law can be defended from the earliest possible stage (that is, from arrest) and investigation.

## **Pro-bono legal aid services are available from:**

- **Legal Aid Bureau which is under the Legal Affairs Division in the Prime Minister Office.**
- **Bar Council Legal Aid Centre.**
- **Many children and their parents are not cognizant of the availability of the pro-bono legal aid services.**

**The young offender has to be produced before a magistrate within 24 hours of the arrest**

**The Court must release the child on bond executed by his/her parents/guardian (with or without cash deposit) in an amount that the Court feels is sufficient to ensure that the child returns to the court for his/her hearing**

**No bail is permitted for grave crimes or in the best interest of the child.**

**The high rate of remand for minor offences are due to parents unable or unwilling to pay the bail.**



**The pre-trial detention should not exceed 6 months but quite a number of cases fail to meet the remand maximum period.**

**The presence of the parent/guardian at the hearing, the probation report and special sittings of the Court for children which are for the protection of the child are the causes for the delay in the hearing.**

**The Child (Amendment) Act 2015, which was passed by the Parliament in April 2016 requires the probation report to be ready within a month.**



**Male children in conflict with the law, whether pre-trial detention or detention after sentencing, are kept separate from adult offenders.**

**Female children in conflict with the law stayed with adult female offenders due to lack of facilities.**

**Most prisons where children in conflict with the law are placed have *sekolah integrity*. These schools provide education from “preschool” (for those who cannot read and write) to secondary level”**

**Prisons, probation hostels and approved schools provide educational and vocational training**

**These facilities are available to young offenders after sentencing but not to those in pre-trial detention.**


**The report on the Children Under Remand Research has recommended for these facilities to be available to children in pre-trial detention.**

## Protection of the Privacy of Children in Conflict with the Law

- **The Child Act has a number of provisions, starting from the point of arrest.**
- **The media are not allowed to photograph or record them while at the police station, while being transported to the Court and while waiting at the courthouse.**
- **Proceedings of the Court for Children are closed to all except for members and officers of the Court, parents/guardians, advocates, witnesses and persons directly concerned with the case.**
- **No publication of picture, name, address or any information leading to the identification of the child in conflict with the law.**

## Diversion

- **No formal programme through mediation or restorative approaches.**
- **Upon arrest and questioning, the police has the discretion to release young offenders for minor offences through warning or mediating an amiable resolution between the parties.**
- **The Public Prosecutor also has the discretion under the CPC to decide not to persecute or to advise the investigating officer to refer the child to the Department of Social Welfare for further action.**



**The Child (Amendment) Act 2015 states that  
“ If the Court for Children by or before which  
a child is found guilty of an offence, is of the  
opinion that it is appropriate to do so, the  
Court for Children may make an order  
requiring the child to perform community  
service ...”**



**Some background data on  
children in conflict with the  
law in Malaysia**

**Table 1: Number of children in conflict with the law according to offences and gender**

Offences	2009			2010			2011		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
Property-related	1872	53	1925	2060	49	2109	2678	65	2743
People-related	351	5	356	529	14	543	754	8	762
Minor offences	40	4	44	46	1	47	75	4	79
Infringement of supervised terms	8	2	10	2	2	4	30	0	30
Drugs	557	74	631	882	132	1014	978	118	1096
Gambling	27	1	28	17	7	24	36	6	42
Weapons/firearms	67	0	67	40	0	40	72	0	72
Traffic	340	9	349	219	5	224	241	21	262
Abscond from approved schools	2	0	2	1	0	1	3	0	3
Others	366	84	450	386	73	459	403	55	458
<b>Total</b>	<b>3630</b>	<b>232</b>	<b>3862</b>	<b>4182</b>	<b>283</b>	<b>4462</b>	<b>5270</b>	<b>277</b>	<b>5547</b>



**Table 1 shows that:**

- **more boys than girls are involved in conflict with the law**
- **the vast majority of the offences are related to property**

**The findings of the research on children under remand (or pre-trial detention) reveal more information about the offences of children in conflict are shown in Table 2**

# Study on Children under Remand

**Chiam Heng Keng (Leader)**, Hajah Shamsiah binti Abdul Rahman, **Hajah Fauziah binti Ramly**, Hajah Yasmeeen Haji Muhammad Sharif & **Hanib bin Ali**



**Table 2: Study on children under remand: Type of offences according to age**


Offences	14 & below (33)		15 yrs (40)		16 yrs (44)		17 yrs (77)		18-21 (92)		Total 286	
	No	%	No	%	No	%	No	%	No	%	No	%
Beyond control	21	63.6	15	37.5	7	15.9	2	2.6	2	2.2	47	16.4
Taking drug	0	0.0	7	17.5	5	11.4	17	22.1	22	23.9	51	17.8
Possession of drug	1	3.0	4	10.0	4	9.1	13	16.9	17	18.5	39	13.6
Theft	6	18.2	4	10.0	7	15.9	12	15.6	8	8.7	37	12.9
Burglary	2	6.1	3	7.5	12	27.3	6	7.8	8	8.7	31	10.8
Rape	0	0.0	1	2.5	2	4.5	5	6.5	7	7.6	15	5.2
Possession of stolen property	2	6.1	3	7.5	2	4.5	4	5.2	3	3.3	14	4.9
Murder	0	0.0	0	0.0	3	6.8	6	7.8	4	4.3	13	4.5
Drug trafficking	0	0.0	0	0.0	0	0.0	4	5.2	4	4.3	8	2.8
Robbery	0	0.0	0	0.0	1	2.3	3	3.9	5	5.5	9	3.1
Fighting	1	3.0	0	0.0	0	0.0	1	1.3	1	1.1	3	1.0

## Table 2 shows

- **Most of the offences are minor and they include:**
  - **Taking drug**
  - **Beyond control which are status offences and are committed by girls**
  - **Possession of drug**
  - **Theft**
- **The serious offences include:**
  - **Rape, Robbery and Drug trafficking**

**Table 3: Study on children under remand: Type of offences according to age**


Offences	14 & below (33)		15 years (40)		16 years (44)		17 years (77)		18-21 years (92)		Total (286)	
	No	%	No	%	No	%	No	%	No	%	No	%
Close proximity	0	0.0	0	0.0	0	0.0	0	0.0	3	3.3	3	1.0
Destroy of stolen property	0	0.0	0	0.0	0	0.0	1	1.3	2	2.2	3	1.0
Assault	0	0.0	0	0.0	0	0.0	1	1.3	1	1.1	2	0.7
No document	0	0.0	1	2.5	0	0.0	0	0.0	1	1.1	2	0.7
Possession of weapons	0	0.0	0	0.0	0	0.0	1	1.3	1	1.1	2	0.7
Sexual abuse	0	0.0	1	2.5	0	0.0	0	0.0	1	1.1	2	0.7
Escape from detention	0	0.0	0	0.0	1	2.3	0	0.0	0	0.0	1	0.3
Extortion	0	0.0	0	0.0	0	0.0	1	1.3	0	0.0	1	0.3
Sale of drugs	0	0.0	0	0.0	0	0.0	0	0.0	1	1.1	1	0.3
Snatched theft	0	0.0	1	2.5	0	0.0	0	0.0	0	0.0	1	0.3
Impersonation of police officer	0	0.0	0	0.0	0	0.0	0	0.0	1	1.1	1	0.3



**Table 3 shows the number of children in conflict with the law increases with age**

**Table 4: Study on children under remand-  
Nationality of the Subject**

Nationality	No	Percentage	Percentage
Malaysian	273	95.1	95.1
Indonesian	6	2.1	4.5
Filipino	7	2.4	
No information	1	0.4	0.4
Total	287	100	100



**Table 4 shows that the number of non-citizen child offenders is very small.**

**The offenders are 6 Indonesian and 7 Filipinos**

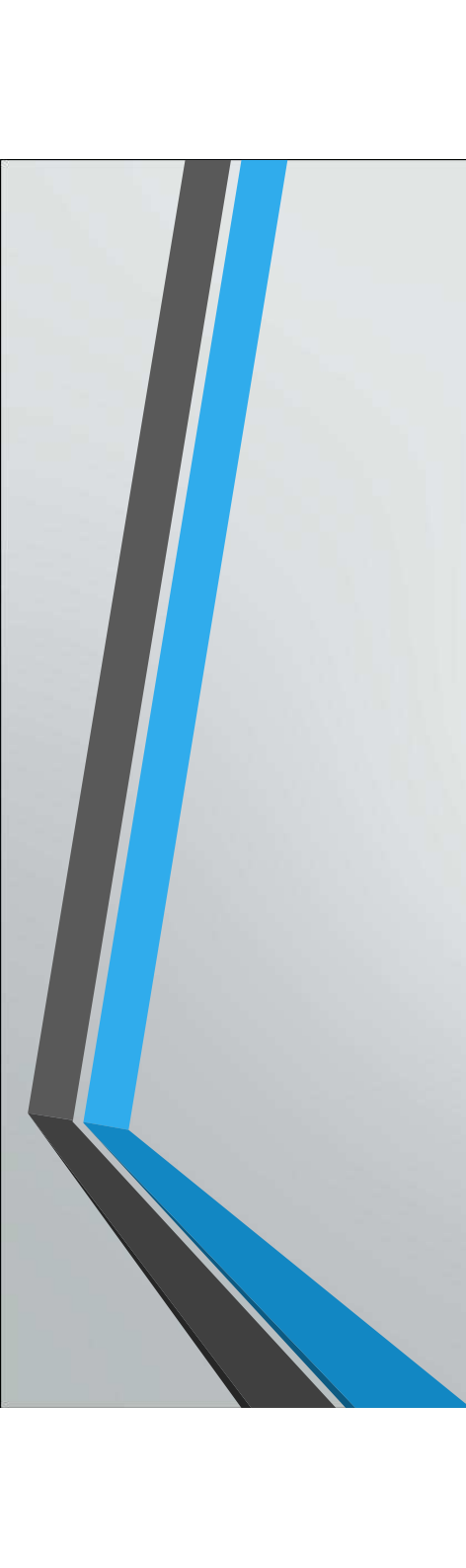
**The percentage is only 4.5%**




**Table 5: Department of Immigration's data on victims of trafficking disaggregated by gender and types of exploitation**

	January to December 2014			January to November 2015				
	Male	Female	Total	Male Adult	Female Adult	Male Child	Female Child	Total
<b>Sexual exploitation</b>		56	56		54			54
<b>Forced labour</b>	3	3	6	4	21			25
<b>Smuggling</b>	71	21	92	58	15	2	1	76
<b>Total</b>	74	80	154	62	90	2	1	155

Source: Department of Immigration, 2015 Regional Review of the Management and Treatment of Trafficked Women and Children – Striving for Consistent, Comprehensive and Complementary Treatment: Conducting a Review



**Table 5 shows the number of children who are trafficked is very small.**  
**There are none in 2014 and 3 children were smuggled in 2015**



Currently, there are two gazetted Shelter Homes for children while three are for women and one for men. These Shelters are under the supervision of the Ministry of Women, Family and Community Development.

The Malaysian government has undertaken various steps, solely and in collaboration with NGOs and international agencies to address victim support, recovery and assistance.



**Malaysia Plan of  
Action**

**Malaysia's National Policy and Plan of Action, 2009 outlines a number of priority areas to reform the juvenile justice system. They include:**

- **Create a child-friendly environment for all criminal justice system agencies, especially to provide support for witnesses and offenders**
- **Provide free legal aid services and counselling for children**
- **Develop special rehabilitative treatment programmes for child offenders**

...continue

- **Introduce diversion programmes (restorative justice, family conferencing, community service) for child in conflict with the law**
- **Develop standard and appropriate protection modules for all those working directly with children**



**Challenges towards  
safeguarding the  
rights of children in  
conflict with the  
law who are non-  
Malaysians**



**The safeguards stipulated in the Child Act are also applicable to children of all nationalities**

**In practice, some of the safeguards may not be applied to non-Malaysians and those without documents**

**Their parents/guardian are unlikely to be informed of their arrest**

**They are more unlikely to be released on bail and are therefore more likely to be held in detention pending trial**





**The vast majority of them are probably unaware of access to free legal assistance**

**Malaysia does not have a comprehensive specialized police response to children in conflict with the law.**

**Hence investigating officers have little understanding of children's rights and the necessary skills to handle children.**

**Inconsistent sentencing practices because the Child Act does not provide guidelines or standards for sentencing.**



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## At the national level

- **All children in conflict with the law, irrespective of nationalities have access to safeguards which are available.**
- **Parent/guardian, embassy representative (non-citizen) and/or probation officer must to be present and to participate in proceedings from the point of arrest.**
- **The right to pro-bono legal assistance must be clearly communicated to the young offender and her/his parent/guardian**

## ... At the national level

- **Deprivation of liberty should be the last resort. Formal programmes for alternative measures through restorative approaches to be introduced as soon as possible**
- **Setting up a special unit in the police force staffed with trained officers to handle child offenders in compliance with Part 2 Article 12 of the Beijing Rules.**
- **All personnel (e.g. social workers, enforcement officers and the judiciary) who handle children in conflict with the law must have specialized training and good understanding of the rights of children**

## At the regional level

**1. ACWC develops a declaration on the rights of children in conflict with the law. The reasons include:**

- **All the 10 Members have ratified the Convention on the Rights of the Child but some of them have reservations which affect the rights of children in conflict with the law .**
- **Diversity in the legislative framework in AMS for children in conflict with the law**

## ... At the regional level

- **Age of criminality varies widely –ranging from 8 years of age to 15 years**
- **Definition of child varies in the juvenile justice system – while for most AMS, a child is a person below 18 years of age, in 2 AMS, it is defined as a person below 16 years**
- **Most of the AMS have instituted diversion but they vary widely, ranging from measures based on restorative principles with proper trained staff and facilities to traditional restorative justice models**

## ... At the regional level

- **Declaration will circumvent the ASEAN's way of respecting the sovereignty of ASEAN Member States**
- **The development of a Declaration on the Rights of Children in Conflict with the law will be supporting (b) Child sensitive justice system under Action 3: Legal Framework, Prosecution and Justice System of the ASEAN Regional Plan of Action on the Elimination of Violence Against Children**

... At the regional level

**2. Since juvenile justice is one of the priority themes of ACWC 2016-2020 and as no project has been identified, ACWC can conduct a baseline study on the status of juvenile justice in AMS. From this study, the ACWC can establish standards for:**

- **Making arrest and conducting investigations**
- **Guidelines for sentencing**
- **Guidelines for diversion**



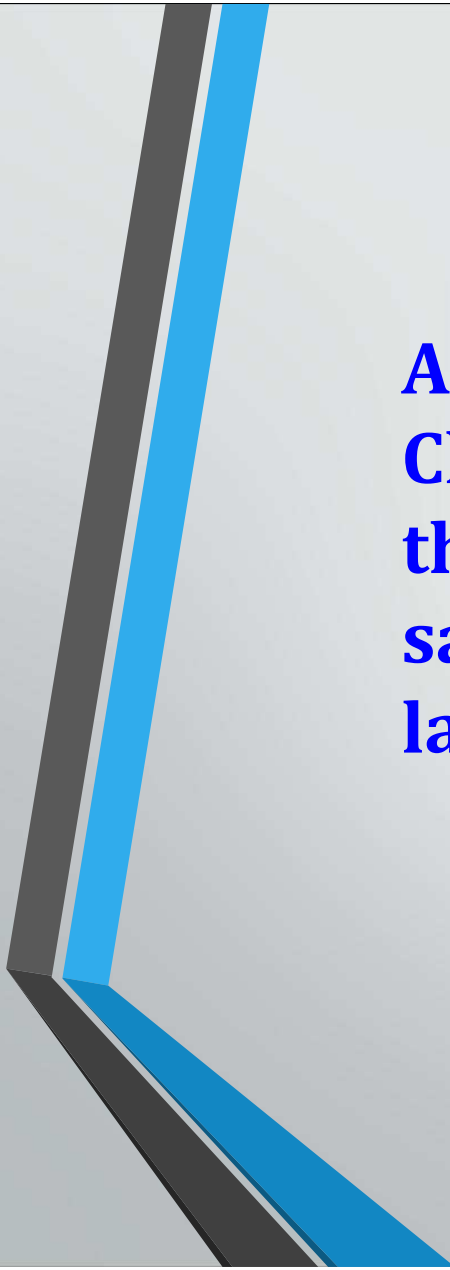
Conclusion





## **Cross-border safeguards are provided for children in conflict with the law:**

- **When the juvenile justice system in each ASEAN Member State respects the rights of children in conflict with the law and provides safeguards for them**
- **And the juvenile justice system applies equally to all children, irrespective of their nationalities**



**An ASEAN Declaration on the Rights of  
Children in Conflict with the Law is one of  
the means to achieve cross-border  
safeguards for children in conflict with the  
law in ASEAN**

Thank you

Thank you

