



*This briefing paper has been compiled using information included in the **Out of the Shadows Index**<sup>1</sup> and the **ECPAT Country Overview for Malaysia**.<sup>2</sup>*

## What is the Out of the Shadows Index?

The **Out of the Shadows Index** measures how nations are addressing child sexual abuse and exploitation. Data released for the first 60 countries demonstrate that governments, the private sector and civil society need to do more to protect children from sexual violence and meet the commitments they made to Target 16.2 of the UN's Sustainable Development Goals, which calls for ending all forms of violence against children by 2030.

The **Index** was calculated by assessing legislation, policies and responses by national governments. It covers critical issues that underpin child sexual exploitation and abuse, including education, reproductive health, gender norms, victim support, law enforcement and the online world. The **Index** also addresses environmental factors such as the safety and stability of a country, social protections, and whether norms permit open discussion of the issue. It also focuses on the engagement of businesses in the technology and travel/tourism sectors in fighting child sexual abuse and exploitation.

## What are the ECPAT Country Overviews?

**ECPAT Country Overviews** comprehensively present all the existing, publicly available information, and a detailed analysis of the legal framework for sexual exploitation of children (SEC) in a country. They provide an assessment of achievements and challenges in implementation, counteractions to eliminate SEC and they suggest concrete priority actions to advance the national fight against SEC.

# MALAYSIA



## REGIONAL TRENDS

A number of factors shape children's vulnerability to sexual exploitation in the Southeast Asian region including, technology and high levels of tourism.<sup>3</sup> As technology evolves, forms and *modus operandi* of exploitation also evolve. As noted in the **Out of the Shadows Index**, industry engagement is needed to better protect children, especially against online child sexual abuse. Just 3 of the 14 middle-and lower-income countries across Asia assessed by the **Index** have an industry mobile telecommunications association that includes preventing sexual violence against children in its annual report or code of conduct as a clear priority in its scope of work.<sup>4</sup>

Child sex offenders in Southeast Asia are most likely to be nationals of the countries of the region, yet available evidence also suggests that foreign offenders come from a range of countries to engage in sexual exploitation of children.<sup>5</sup> Transnational child sex offenders are seeking access to children in the region through voluntary and professional engagement in schools, orphanages and NGOs.<sup>6</sup>

Although both boys and girls are reportedly victims of sexual exploitation in the region,<sup>7</sup> the **Out of the Shadows Index** highlighted that 9 of the 14 countries surveyed in Asia, do not have legal protections for boys within their child rape laws, while only three countries collect prevalence data about sexual abuse of boys.<sup>8</sup>

## DEFINING SEXUAL EXPLOITATION OF CHILDREN

A child is a victim of sexual exploitation when they take part in a sexual activity in exchange for something that either they or third parties receive. Different forms of SEC include exploitation of children in prostitution, online child sexual exploitation, sale and trafficking of children for sexual purposes, sexual exploitation of children in the context of travel and tourism and some forms of child, early and forced marriage.<sup>9</sup>

# MALAYSIA

## MALAYSIA:

23 out of 60 countries scored by the Out of the Shadows Index

SCORE : 54.5

Malaysia ranked 23 out of 60 countries scored by the **Out of the Shadows Index** on the country's response to child sexual abuse and exploitation, with a score of 54.5. Within the region of Southeast Asia, Malaysia was ranked ahead of Cambodia (53.7) and Indonesia (47.6) but behind the Philippines (56.7). Over the last several years, Malaysia has taken several practical steps to prevent and respond to SEC such as the adoption of the Sexual Offences against Children Act in 2017.<sup>10</sup> Issues that hamper progress in reducing SEC include a dual legal system, which leads to gaps in legislation, and a lack of data and research.

## ENVIRONMENT

The **Out of the Shadows Index** reports Malaysia as having a relatively stable and safe environment.<sup>11</sup> With less than 1 per cent of Malaysian households living in extreme poverty,<sup>12</sup> the country scored 80/100 on the **Out of the Shadows** indicator for livelihoods. Specific and contextual factors that exacerbate children's vulnerability to sexual exploitation in Malaysia include social norms and values and a tradition of shame and silence around the topic of sex which can inhibit quality and practical sexual education and allow sexual abuse to occur unreported. Malaysia's geographical location, sharing borders with Thailand and its close proximity to Myanmar, plus its perception as a stable economy means that Malaysia has a high migratory influx from neighbouring countries including as a destination for trafficking.

64 / 100

### Social Norms and Attitudes

Whilst positioning itself as a moderate Muslim nation, Malaysia continues to take some conservative approaches in the social, political and religious spheres that impact progress on preventing and responding to child sexual abuse and exploitation. For example, conservative pressure in Malaysia contributes to the continued practice of child marriage in the country. Some voices within Malaysia argue for its continuation, maintaining that protecting people's right to marry children reduces casual sex,<sup>13</sup> prevents sexual immorality and relieves families of financial burden.<sup>14</sup> Furthermore, conservative social norms and values hamper quality sexual and reproductive health education and reinforce gender-based roots of sexual abuse and exploitation.

Useful steps have been taken by the new government. For example, the new cabinet includes more women and minority representatives in key positions and human rights issues have gained prominent attention in the manifesto of the new Government.<sup>15</sup> Moreover, in 2018, the Human Rights Commission of Malaysia issued a press release against the Government's decision to introduce Standard Operating Procedures on the screening process of marriage as they felt this would only perpetuate and not eliminate the practice of child marriage.<sup>16</sup>

### Refugees

According to the United Nations High Commissioner for Refugees (UNHCR) as of August 2019, 177,690 refugees and asylum seekers are registered in Malaysia, some 45,470 were below the age of 18.<sup>17</sup> Most refugees and asylum seekers in Malaysia are from Myanmar, including 97,750 from the Rohingya population.<sup>18</sup> According to the 2019 UNHCR's Global Focus Report, there is also an estimated 10,931 stateless individuals in Malaysia.<sup>19</sup> These populations experience significant barriers to full participation in everyday life, particularly in regards to healthcare and education. Despite some government and civil society programmes being available for support, unaccompanied children within these vulnerable groups find themselves at risk. They are often denied access to basic services, and are exposed to different forms of violence, including sexual exploitation in all its different manifestations.<sup>20</sup>

Malaysia runs improved awareness training on SEC for and among children, in schools and in existing forums dedicated to children such as the Children's Activity Centres and Kafe@TEENS

Malaysia improves sexual and reproductive health education and gender-based attitudes towards sexual abuse and exploitation

## LEGAL FRAMEWORK

68 / 100

Malaysia has adequate laws against offences such as child rape, purchasing sexual services from children, procuring children for sexual activities, trafficking children and grooming children online. Malaysia has ratified all the major international conventions in the fight against SEC and is party to a number of international and regional frameworks. Malaysia has taken a progressive step in the protection of children from sexual exploitation by enacting the Sexual Offences against Children Act 2017, that encompasses online child sexual exploitation manifestations, namely conducts related to child sexual abuse/exploitation material and online grooming. However, limitations still exist in legislation, two of which are discussed below.

### Child Marriage

Malaysia received a score of 50/100 in the **Out of the Shadows** indicator for child marriage. This can be attributed to its standing as a controversial issue in the country. Legislation in Malaysia still allows for situations of exploitation to occur. A dual legal system allows Syariah law to govern some aspects of Malaysian life for the Muslim-majority population. For example, while the Law Reform (Marriage and Divorce) Act of 1976 stipulates that the legal age to marry is 18 years old,<sup>21</sup> with an exception for girls between 16 and 18,<sup>22</sup> under Islamic tradition, boys can marry at 18 and girls at 16 and a Syariah court can grant permission to marry below these ages.<sup>23</sup> Whilst Prime Minister Mahathir Mohammad issued a directive in 2018 to all state authorities that the legal minimum marriage age was set at 18 for Muslims and non-Muslims,<sup>24</sup> limited impact to this ongoing practice has been noticed. Indeed, as of August 2019, the only states who have stated that they will raise the minimum age of marriage to 18 are Selangor and Perak. Selangor has passed amendments to the Islamic Family Law (State of Selangor) Enactment 2003 and the Syariah Court Civil Procedure (State of Selangor) Enactment 2003 in regards to underage marriage.<sup>25</sup> Officials from the State of Perak have tabled in discussions to amend the law in July 2019.<sup>26</sup>

### Legislation for Online Child Sexual Exploitation

Approximately 80% of the population in Malaysia used the Internet in 2018.<sup>27</sup> Despite having a high level of connectivity, gaps persist in Malaysian legislative responses to online child sexual exploitation. Indeed, like most countries in the region,<sup>28</sup> Internet service providers in Malaysia are not required to block, delete or report offensive content involving child sexual abuse and exploitation. This explains Malaysia's score of 0/100 in the **Out of the Shadows** indicator for Internet protections.

Malaysia amends laws to mandate Internet service providers to block, delete and report offensive content involving child sexual abuse and exploitation

Malaysia amends the Law Reform (Marriage and Divorce) Act and the Islamic Family Laws to set the minimum age of marriage at 18 years old for boys and girls with no exceptions

Despite a robust legal framework for protection against sexual exploitation of children, there is a lack of confidence in the efforts of law enforcement and the judicial system to implement and provide protection.<sup>29</sup> For instance, the 2015 discovery of mass graves of Bangladeshi and Burmese Rohingya suspected to be victims of trafficking in Wang Kelian, Perlis State (in Northern Malaysia) has seen cumbersome and ineffective investigations. Media and NGOs reported that Thai officials were being investigated for their involvement in the border camp, but reportedly, although likely involved, no Malaysian officials or nationals have been convicted by Malaysian courts.<sup>30</sup>

### **National plans, policies and institutions**

*Malaysia has adopted three national plans of action to implement its policy for the protection of children and promotion of their development, two of which include the eradication of the sexual exploitation of children (2009 National Child Policy and 2015 Plan of Action on Child Online Protection), and one that specifically targets trafficking in persons (National Action Plan on Trafficking in Persons 2016-2020).*

*However, none of these plans have been evaluated making it difficult to ascertain their effectiveness. For example, the 2009 National Child Policy (ongoing) lacks a governing body to ensure its implementation. Despite some NGOs advocating for it, no government sources report progress.*

### **Cross border challenges, technology and innovation**

*Malaysia has initiated a number of key preventative measures to address the growing threats of child sexual exploitation via technology and the Internet, such as the launch of a specialized investigative Police task force (MICAC)<sup>31</sup> and national educational and awareness campaigns. Malaysia recently also formally connected up to Interpol's International Child Sexual Exploitation Database.<sup>32</sup>*

*Despite figures revealed in 2018 by the Royal Malaysia Police, which showed that 17,338 IP addresses downloaded and uploaded child sexual abuse material to and from the Internet and that over 400 Malaysian websites hosting child sexual abuse materials were blocked between 2015-2018 following public complaints, there has been no prosecutions or convictions.<sup>33</sup>*

*Although the Malaysian government collects reports of incidents of child sexual abuse, survey data on prevalence is collected erratically.<sup>34</sup> Despite limited information detailing that child victims of SEC may access formal complaint mechanisms, evidence does suggest that children's access is ineffective and scarce. This is illustrated by the low score (41.2) attributed to Malaysia in the Child Rights International Network's 2016 global ranking on access to justice for children.<sup>35</sup>*

**WAY  
FORWARD**

Malaysia introduces a more effective monitoring and evaluation process to assist in the delivery of the National Action Plans and more specific measures to ensure the protection, rehabilitation and reintegration of all child victims of trafficking

Malaysia adopts a consistent data collection system on SEC. This data will be collected in a disaggregated manner to provide a more accurate understanding of SEC in Malaysia which will help to develop appropriate policies to prevent and combat related crimes

In Malaysia, the efforts of civil society in preventing and raising awareness on sexual exploitation of children and related phenomena are praiseworthy. Engagement with the private sector occurs primarily through technology companies on prevention of online child sexual exploitation. Limited action has been taken by the travel and tourism industry.

### Private Sector Engagement

The involvement of the private sector in Malaysia has focused predominantly on issues related to online child sexual exploitation. This can be clearly viewed in the **Out of the Shadows Index** where Malaysia received a score of 100/100 for the technology industry engagement indicator. For example, the telecommunication company Digi participates in the CyberSAFE Initiative, which is a public prevention project.<sup>36</sup> Digi contributed to outreach programmes in schools that inform children about the risks of the misuse of the Internet.<sup>37</sup> Digi recently launched a new campaign called Yellow Heart, which aims to promote responsible digital usage amongst children.<sup>38</sup>

However, beyond technology, private sector actors have not been as committed in the fight against trafficking of children for sexual purposes, as noted by the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, following her 2015 visit.<sup>39</sup>

Furthermore, in regards to sexual exploitation of children in travel and tourism, as of 2019, only one Malaysian company has joined the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism; a global initiative which trains actors from the tourism industry to recognize and respond to sexual abuse and exploitation of children (although several international private companies operating in Malaysia are members).<sup>40</sup> The lack of response from the travel and tourism industry is corroborated by a score of 33/100 for travel and tourism industry engagement for the **Out of the Shadows Index**.

WAY  
FORWARD

Malaysian travel and tourism companies commit to The Code

Malaysian government implements a long term strategy aimed at engaging the private sector in prevention measures against SEC, particularly targeted at the tourism sector

## Endnotes

1. The Economist Intelligence Unit. (2019). *Out of the Shadows: Shining light on the response to child sexual abuse and exploitation*.
2. ECPAT International. (2019). *ECPAT Country Overview: Malaysia*. Bangkok: ECPAT International.
3. ECPAT International. (2017, September). *Regional Overview: South East Asia*. 4. ECPAT International: Bangkok
4. The Economist Intelligence Unit. (2019). *Out of the Shadows: Shining light on the response to child sexual abuse and exploitation*.; The Economist Intelligence Unit. (2019, May 22). '*Out of the Shadows Index*' highlights need for increased government and business response to sexual violence against children.
5. ECPAT International and Defence for Children-ECPAT Netherlands. (2016, May). *Global Study on Sexual Exploitation of Children in Travel and Tourism. Regional Report: Southeast Asia*. 35. Bangkok: ECPAT International.
6. *Ibid.*, 27.
7. *Ibid.*; ECPAT International. (2017, September). *Regional Overview: Sexual Exploitation of Children in Southeast Asia*. Bangkok: ECPAT International.
8. The Economist Intelligence Unit. (2019). *Out of the Shadows: Shining light on the response to child sexual abuse and exploitation*. The Economist Intelligence Unit. (2019, May 22). '*Out of the Shadows Index*' highlights need for increased government and business response to sexual violence against children.
9. Terminology and definitions surrounding the topic of sexual exploitation of children used in this briefing paper are consistent with the recommendations of the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse. Interagency Working Group. (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg*. Bangkok: ECPAT. International.
10. Government of Malaysia. (2017). *Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017*.
11. The Economist Intelligence Unit. (2019). *Out of the Shadows: Shining light on the response to child sexual abuse and exploitation*.
12. The World Bank. (2019, March). *The World Bank in Malaysia*. The World Bank Group.
13. Ram, Sadho. (2018, September 28). *Perak Mufti says teens would become adulterous if minimum age for marriage was raised to 18*. SAYS. Kow Gah. C. (2016, April 6). *MP: Banning child marriages will see lustful girls engaging in casual sex*. Malaysiakini.
14. Malaysian Child Resource Institute. (2013). *Submission to the OHCHR for its report on "Preventing and eliminating child, early and forced marriage with a particular focus on challenges, achievements, best practices and implementation gaps"*. 1. Kuala Lumpur: Malaysian Child Resource Institute.
15. Pakatan Harapan. (2018). *Buku Harapan: Rebuilding Our Nation, Fulfilling Our Hopes*.
16. Human Rights Commission of Malaysia (SUHAKAM). (2018, July 6). *Press Statement No.27 of 2018*.
17. UNHCR. (n.d.). *Figures at a glance*. UNHCR. (Accessed 24 September 2019).
18. *Ibid.*
19. UNHCR. (2019). *Global Focus Operation Malaysia*. UNHCR.
20. Towle, R. (2017, May 20). *Challenges and Way Forward in Handling Rohingya Refugees in Malaysia*. UNHCR; Institute of Human Rights and Peace Studies. (2016, June). *Child Rights Situation Analysis Within the ASEAN Region*. 23. Sweden: Save the Children. International Organisation for Migration and International Labour Organisation. (2013) *Children on the Move*. 66. (Geneva: IOM).
21. Government of Malaysia. (2006). *Laws of Malaysia – Act 164 – Law Reform (Marriage and Divorce) Act 1976*, articles 10 and 87, "Child" is defined as an individual under the age of eighteen years".
22. *Ibid.*, articles 21 and article 69 (b).
23. Government of Malaysia. (2006). *Laws of Malaysia – Act 303 - Islamic Family Law (Federal Territories) Act 1984*, Section 8.
24. UCAN. (2018, October 23). *Malaysia: PM Mahathir Mohamad Bans Child Marriage*. Euroasia review.
25. Government of Selangor. *Warta Kerajaan Negeri Selangor*. (MYS).
26. Looi, S. (2019, May 8). *Perak next in line to ban child marriage*. MalayMail.
27. International Telecommunication Union (ITU). (2018). *Country ICT: Statistics*. The World Bank Group.
28. See. UNICEF. (2016). *Child protection in the digital age. National responses to online child sexual abuse and exploitation in ASEAN Member States*. 18.; ECPAT International (2019). *Global database on national legal frameworks protecting children from sexual exploitation online*.
29. The Economist Intelligence Unit. (2019). *Malaysia. Out of the Shadows: Shining light on the response to child sexual abuse and exploitation*.
30. Fortify Rights and The Human Rights Commission of Malaysia (SUHAKAM). (2019, March). '*Sold Like Fish*' Crimes Against Humanity, Mass Graves, and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015.
31. Chin, E.S.M. (2018, February 9). *After four years polices anti child sexual crimes unit officially launched*. MalayMail.
32. INTERPOL. (n.d). *International Child Sexual Exploitation database*.
33. UN Human Rights Council. (2019, January 17). *Visit to Malaysia - Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse*. 7. A/HRC/40/51/Add/3. (UNHRC: New York).
34. The Economist Intelligence Unit. (2019). *Malaysia. Out of the Shadows: Shining light on the response to child sexual abuse and exploitation*.
35. Child Rights International Network. (2016). *Rights, Remedies & Representation: Global Report on Access to Justice for Children*. 43.
36. CyberSAFE Malaysia. (n.d.), *Cyber Safe Malaysia*.
37. CyberSAFE in Schools website (n.d.), *CyberSAFE*.
38. Digi. (n.d). *Yellow Heart*.
39. United Nations Human Rights Office of the High Commissioner. (2015, February 23-28). *UN Special Rapporteur on Trafficking in persons especially women and children, Maria Grazia Giammarinaro – Visit to Malaysia. A/HRC/29/38/Add.1*. New York: UNHRC.
40. The Code. (n.d.). *Members – Malaysia*.