

The Minimum Age of Criminal Responsibility in ASEAN: Legal and Human Rights Perspectives

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Abstract

Research on the minimum age of criminal responsibility (MACR) of children has been quite evident in the past decade. Determining the MACR of children is a challenge to the global perception to children's rights. The challenge is associated with ideological differences concerning concepts of the MACR by States based on social, religious and cultural structures. The concept of the MACR has evolved over history and has been interpreted in various ways with the absence of a precise definition by different worldviews. The MACR of children is significant because of its relevancy to one of the fundamental rights of the child. The MACR of children is the lowest statutory age at which children may potentially be held criminally liable for infringements of the penal law in a given State. The present article seeks to examine the MACR of children in Member States of the ASEAN and also as the signatories to the United Nations Convention on the Rights of the Child (UNCRC). This article adopts the legal and human rights analyses on the MACR of children from domestic legislations of ASEAN Member States such as Malaysia, Thailand and Indonesia. The results of this analysis can be used to find the standards MACR of children in Malaysia, Thailand and Indonesia.

Keywords: Age of criminal responsibility, children, human rights, ASEAN

Introduction

The MACR is one of the important rights of the children rights. The importance of childhood and the important role of MACR in future have led to the overwhelming ratification of international instruments geared towards promoting children's rights by States despite ideological differences concerning concepts associated with MACR. Significant progress has been made in defining both the status of children in international law and the broad range of rights which attached to that status since the 1980s.¹ It culminated in the adoption of UNCRC by

¹ Galdine Van Bueren, *The International Law on the Rights of the Child*, Kluwer Law International, The Hague, The Netherlands, 1998, p.57.

the United Nations General Assembly (UNGA) in 1989.² The UNCRC entered into force in 1990 and has been ratified by all the Member States of the UN, except for the United States and Somalia, making the UNCRC the closest instrument to a unanimously accepted international convention in the UN system.³ The UNCRC is an integrated approach to children's rights in international societies. States that have ratified the UNCRC are obliged to implement the provisions and submit reports for monitoring and complaints purposes to the Committee on the Rights of the Child (CRC). The UNCRC serves as the contemporary basis of international legal perspectives concerning the rights of the child regardless of race, religion or gender. The fundamental rights of the child have been protected in its Articles. The fundamental rights such as: those of life;⁴ identity and education;⁵ participation;⁶ expression;⁷ freedom of thought;⁸ protection from abuse;⁹ sexual exploitation¹⁰ and particularly MACR¹¹.

During the past two decades, the rights of child offenders in ASEAN community have been an important and controversial issue concerning the penal system, and particularly the situation of MACR of children in the penal system is a matter of grave concern in the ASEAN Member States such as Malaysia, Thailand and Indonesia. The MACR is one the most controversial issues amongst States. The determination of its parameters is an important and essential dimension of children's rights. A wide array of regional and international legal instruments creates legal obligations on States to give specific consideration to MACR.¹² However, Malaysian, Thai and Indonesian regulations concerning the MACR not only conflict with the provisions of international instruments, but are also inconsistent with scientific¹³ and legal principles. Unfortunately, the penal system of Malaysia, Thailand and Indonesia regarding the MACR of children, disregards aspects of children's physical and mental growth and, in fact, is contrary to contemporary trends in the global development of children's rights and the needs of the children. While, Malaysia, Thailand and Indonesia are State Parties to the UNCRC's that Article 1¹⁴ of the UNCRC regarding the MACR, reflected in an appropriate manner in the domestic legislation of Parties.

In this article, Malaysian, Thai and Indonesian Laws relating to the MACR of children will be reviewed. Who is a child and when will they have criminal responsibility, are the main questions that will be addressed in the following discussions.

² ANPPCAN Kenya (The African Network for the prevention and protection Against Child Abuse and Neglect), International Legal Instruments Providing for Child Rights and Child Protection (International Legal Instruments on children), <http://www.anppcankenya.co.ke> >accessed (25/5/2011).

³ Juvenile Death Penalty, p.1, www.worldcoalition.org >accessed (28/5/2011).

⁴ Article 6 of the UNCRC.

⁵ Articles 7 and 8, *ibid*.

⁶ Article 12, *ibid*.

⁷ Article 13, *ibid*.

⁸ Article 14, *ibid*.

⁹ Article 19, *ibid*.

¹⁰ Article 34, *ibid*.

¹¹ Article 1, *ibid*.

¹² Don Cipriani, *Children's Rights and the Minimum Age of Criminal Responsibility (A Global Perspective)*, Ashgate, UK, Farnham, 2009, p.41.

¹³ Sciences such as; psychology, social sciences, criminology and human rights.

¹⁴ Article 1 of the UNCRC: For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

The MACR under the Malaysian Law

The MACR of children is an important age to ascertain whether a child can be criminally liable. The MACR is essentially protecting children's rights because it will determine the age of a child.¹⁵ In Malaysia, the MACR is determined in Sections 82 and 83 of the Malaysia Penal Code. Section 82 provides that: "Nothing is an offence which is done by a child under ten years of age." It is based on the presumption that the child of 10 years is incapable of committing a crime is irrefutable. This principle is adopted from the doctrine of *doli incapax* with the exception of the differences of the age limit. The presumption of *doli incapax* is rebuttable depending upon his degree of understanding the nature and consequence of his act at the time of the crime.¹⁶ Section 83 of the Penal Code provides conditional protection for a child between 10 and 12 years old unlike Section 82 that gives full protection for a child below 10 who commits an offence, as he is *doli incapax*.¹⁷ According to Section 83, "nothing is an offence which is done by a child above 10 years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion".

In Malaysia the MACR of children is 10 years for both males and females. According to Section 2 of the Child Act 2001, "Child" is defined as a person under the age of 18 years, and for the purposes of criminal proceedings in the Juvenile Court¹⁸ (that was established under the Child Act) means a person who has attained the MACR as prescribed in Section 82 of the Penal Code (10 years old).¹⁹ There are also provisions pertaining to this matter in Evidence Act 1950 and Age of Majority Act 1971 (Act 21).^{20, 21} As Nasima stipulated, from the above provision it can be said that anybody who is below 18 years old will be treated differently from an adult, particularly in respect of procedure and punishment. In terms of civil liability, generally those who are below 18 years old will not be held liable. Nevertheless, in relation to criminal proceedings, as mentioned in the Child Act 2001, the MACR of a child is prescribed in section 82 of the Penal Code (574).²²

¹⁵ Nisrine Abiad and Farkhanda Zia Mansoor, *Criminal Law and the Rights of the Child in Muslim State (A Comparative and Analytical perspective)*, British Institute of International and Comparative Law, UK, London, 2010, p.196.

¹⁶ Hussin Nasima, *Juvenile Delinquencies in Malaysia: Legal Provisions and Prospects for Reforms*, International Islamic University Malaysia, Paper presented at 4th World Congress on Family law and Children's Rights, Cape Town, South Africa, 20-23 March 2005, p.6, www.childjustice.org/index.php?option=com_rubberdoc >accessed (2/6/2011).

¹⁷ *Ibid.*

¹⁸ The Juvenile Court was established under the Child Act 2001. The Court shall consist of a magistrate and shall, as the case may require, be assisted by two advisors.

¹⁹ James Nayagam, *Strengths and Weaknesses of the Protection Mechanism and Support System for Reintegration of Children in Conflict with Law, Human Rights and the Administration of Juvenile Justice*, Suhakam's Conference in Conjunction with Malaysian Human Rights Day 2008, Suruhanjaya Hak ASASI Manusia Malaysia / Human Rights Commission of Malaysia, 2009, p.53, http://www.suhakam.org.my/c/document_library/get_file?p_l_id=22118&folderId=64628&name=DLFE-5601.pdf >accessed (5/3/2012).

²⁰ Section of the Age of Majority Act 1971 provides that a minor is any female or male whose age is under 18.

²¹ Hussin Nasima, *Juvenile Delinquencies in Malaysia: Legal Provisions and Prospects for Reforms*, p.6.

²² *Ibid.*

As Abiad mentioned, in Malaysia, MACR of children can be divided into three different categories. First, complete immunity is available to a child below 10 years of age.²³ Second, partial immunity applies to children between 10 to 12 years of age.²⁴ Lastly, the MACR above 12 years of age is the same as that of adults irrespective of the kind of crime they have committed. However, a different criminal procedure²⁵ and different court disposals apply to them.²⁶ Despite the fact that their responsibility is the same as that of adults, the sentence applicable may vary. For example, children may not be sentenced to death, although an adult committing the same offence would be. Instead, and depending on the State law in which the crime was committed, the child will serve a prison sentence and the period of detention will be determined by the Ruler.^{27, 28} According to Nini Dusuki, in Malaysia, for purposes of criminal responsibility there are three different stages of children involved namely, complete immunity when a child is below 10²⁹, partial immunity when the child is between ten to 12 years old³⁰ and children above 12. Children of this last category are treated as adults for the purposes of criminal liability, regardless the nature of the crime although treated differently in terms of criminal procedure³¹ and the disposals available to the court. Nevertheless, whilst they could be held equally liable as adults, they might not be subjected to equal mode of punishment.³²

According to James, Malaysian Penal Code stipulates 10 to be the age of attainment of criminal responsibility but children between 10 and below 12 who have not shown sufficient maturity may be absolved from criminality as well. Evidence Act 1950 provides an additional protection for boys below 13 where they are presumed to be incapable of committing the offence of rape. Children within these categories, if 'arrested' on ground of any particular omission or commission of any criminal acts should be dealt by the other arm of the Court for Children, that is in the issuance of any of the protective orders available under Section 30. Alternatively, if the offence is petty, diversion, in a form of a caution from the police may be undertaken upon consultation with the family and social worker. Such procedure blends well within the principle of 'restorative justice'. On another extreme, should a child between 10 and 12 is charged; he may invoke 'infancy' as a defence. Finally, children from 10 to 18 may be liable for any criminal charges in the Court for Children unless the offence is punishable with death whereupon the trial will then be conducted in the High Court.³³

²³ Sec 82 Penal Code Act 574.

²⁴ Sec 83 Penal Code.

²⁵ See Child Act 2001, particularly Part X and XIII on criminal procedure for children.

²⁶ Child Act 2001, Part x, Chapter 3, ss 91-97.

²⁷ Sec 97 Child Act 2001.

²⁸ Nisrine Abiad and Farkhanda Zia Mansoor, *Criminal Law and the Rights of the Child in Muslim State (A Comparative and Analytical perspective)*, p.196.

²⁹ Section 82, Penal Code.

³⁰ Section 83, Penal Code.

³¹ See generally Child Act 2001, particularly Part X and XIII on criminal procedure for children.

³² Farah Nini Dusuki, *The Convention on the Rights of the Child and the Administration of Juvenile Justice in Malaysia: An Overview on the Legal Framework, Human Rights and the Administration of Juvenile Justice*, Suhakam's Conference in Conjunction with Malaysian Human Rights Day 2008, Suruhanjaya Hak ASASI Manusia Malaysia / Human Rights Commission of Malaysia, 2009, p.44-45, http://www.suhakam.org.my/c/document_library/get_file?p_l_id=22118&folderId=64628&name=DLFE-5601.pdf accessed (2/3/2012).

³³ James Nayagam, *Strengths and Weaknesses of the Protection Mechanism and Support System for Reintegration of Children in Conflict with Law*, pp.,52-53.

In addition, as Nasima mentioned, Section 51 of the *shariah* criminal offence (Federal Territories) Act 1977 (Act 559) that provides nothing is an offence which is done by a child who is not *baligh*. *Baligh* in Section 2(1) of the same Act that means the criminal responsibility of a person is determined upon attaining the age of puberty according the *Shariah* law but in this Act there is no specific age limit. However, in the *Shariah* Criminal Procedure (Federal Territories) Act 1997 (Act 560) youthful offender is interpreted by Section 2(1) of the Act as an offender above the age of ten and below the age of sixteen years. Apart from these provisions, Islamic Family Law Act (Federal Territories) 1984 Act 303 also has relevant provision on the issue of the determination on the age of a child. The discussion of Muslim jurists maintains that the criminal responsibility of a child begins at the age of seven years and continues to be treated as a child until he attains puberty. A child who commits a crime cannot be called a criminal even though he has been punished more than once. This means that if he commits the offence again after the age of puberty, he is considered as a first offender. The punishment to be imposed also should be moderate. Meanwhile, *Shariah* Criminal Procedure (Federal Territories) Act 1997 (Act 560) interprets youthful as an offender above the age of ten and below the age of 16 years.³⁴

Thus, from the above discussions we could conclude that the Malaysian laws do not protect the fundamental needs of children and do not guarantee executive measures for the protection of children. This is because the Malaysian laws in regards to the MACR is ambiguous, incomplete, insufficient and in conflict with the needs of society and in conflict with the UNCRC, while Malaysia ratified the UNCRC on 17 February 1995 with reservation. As noted by Nini Dusuki, initially there were reservations made to 12 of the Articles, generally on the grounds of inconsistencies with the State's Constitution, national laws and national policies.³⁵ However, Malaysia has acceded to the Article 51(b) of the UNCRC, which states: "a reservation incompatible with the object and purpose of the present Convention shall not be permitted". Thus, Malaysia is required to implement the provisions of the UNCRC.

The MACR under the Indonesian Law

According to International Bureau for Children's Rights (IBCR), there was no specific legal framework in Indonesia for children accused of a crime. The Law on Juvenile Court which was enacted in 1997 does not reflect the relevant requirements of the UNCRC. The law also sets a very low MACR for children.³⁶

According to Juvenile Court Act³⁷, children as young as eight can be formally prosecuted and held responsible for their acts. The MACR is set at eight years old and the law permits criminal investigation on children below that age. The number of children who entered the criminal justice system is quite low but once they enter it they are treated harshly and in violation of their rights under the UNCRC.³⁸ As Mardite mentioned, a child under the age of eight is free

³⁴ Hussin Nasima, *Juvenile Delinquencies in Malaysia: Legal Provisions and Prospects for Reforms*, pp.6-18.

³⁵ *Ibid.*, p.40.

³⁶ International Bureau for Children's Rights (IBCR), *Making Children's Rights Work: Country Profiles on Cambodia, Indonesia, Sri Lanka, Timor Leste, and Viet Nam*, ISBN 0-9738554-2-8, 2006, p.50, http://www.ibcr.org/editor/assets/thematic_report/1/cp_asia_5countries.pdf accessed (12/3/2012).

³⁷ Article 5, paras. 1-3 of the Juvenile Court Act: "child under the age of eight is free from all criminal responsibility".

³⁸ *Ibid.*, pp.,50-51.

from all criminal responsibility (Art. 5, paras. 1-3). Under Juvenile Court Act (LAW NO. 3, 1997), a child is defined as a person under the age of 18 years who has never been married. However, the procedure for court hearings is applicable to person up to the age of 21 (Art. 4, paras. 1 and 2). The limitation of age abovementioned shows that someone who can be considered a child who can be brought before the court is limited between eight and 18 years old. A child under 18 years old but who has been married should be treated as an adult instead of a child. Therefore, he/she will not be prosecuted under the Juvenile Court Act, instead under the Criminal Code. One weakness is that the Criminal Code does not establish the MACR for more serious crimes. Additionally, the concept of statutory crime under the Juvenile Court Act applied in a more general sense for all crimes perpetrated by children, although this Act comes under much criticism for setting the MACR too low at eight years.³⁹

According to the Communication Section of UNICEF Indonesia, the Indonesian government has ratified the UNCRC by Presidential Decree No. 36, 1990. The government also issued Law No. 3, 1997 (the Juvenile Court Act) and Law No. 5, 1998 to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Indonesian government has also issued Law No. 39, 1999 on Human Rights. In 2002, Law No. 23, the National Child Protection Act, was issued by the House of Representatives and in 2006 a special law was adopted for the protection of witnesses and victims.⁴⁰

As Mardite noted, all of these national law instruments were deemed to guarantee the protection of children's rights while they have to face the law and have to follow the justice process. In accordance with the spirit of the law to give certain protection to children who are in the legal process and children who are in detention or imprisonment, it is an unavoidable reality that a limitation of statistical data on children who face the legal process is the main obstacle to analyzing such a situation. The MACR of children which is different within institutions that handle children's cases, is one real example how the children's problem has to be maintained as a priority.⁴¹ Due to this reason, the CRC addressed many of these issues in its recommendations to Indonesia. In particular, it recommended for increasing of the MACR to an internationally acceptable level.⁴² While, a new draft of the juvenile delinquency law is being prepared and would raise the MACR from eight to 12 years old, this is still lower than UNICEF's recommendation of 14 years of age.⁴³ Yet, to the International Bureau for Children's Rights claimed that the MACR have been changed and there has been little action to implement the other recommendations.⁴⁴ On the other hand, Fagan stated that both Malaysia and Indonesia have enacted domestic legislation to give effect to the UNCRC within their own countries. Both countries also have full panoply of laws in their domestic penal codes prohibiting and mandating

³⁹Harlan Mardite, *The Juvenile Justice System in Indonesia*, 129th International Senior Seminar Participants' Papers (The Juvenile Court Act) (Law No. 3, 1997),p.191, http://www.unafei.or.jp/english/pdf/RS_No68/No68_16PA_Mardite.pdf pdf>accessed (2/3/2012).

⁴⁰ The Communication Section of UNICEF Indonesia, June 2010. www.unicef.org/indonesia>accessed (4/3/2012).

⁴¹Harlan Mardite, *The Juvenile Justice System in Indonesia*, p.191.

⁴² "Concluding Observations: Indonesia 24th Session, Committee on the Rights of the Child", CRC/C/15/Add.223, 30 January 2004, para 78.

⁴³The Communication Section of UNICEF Indonesia.

⁴⁴International Bureau for Children's Rights, *Making Children's Rights Work: Country Profiles on Cambodia, Indonesia, Sri Lanka, Timor Leste, and Viet Nam*, p.51.

conduct and prescribing punishments for failure to comply. Both codes contain laws which allow for punishments which conflicts with the provisions of the UNCRC.⁴⁵

The MACR under the Thai Law

According to Kalyanasuta, Thai law limits children's criminal responsibility by their age. Children under seven years old are not liable to criminal punishment. Those between seven and 14 are not liable to any punishment either. However, the law gives the court option to use juvenile procedures, depending on the children's behaviour and environment and other mitigating circumstances. This is to provide, children with opportunity to turn over a new leaf rather than punishing them severely as a deterrent. Above that age (15 years and older), youths may have to face criminal punishment, but the court may use its discretion to reduce the sentence.⁴⁶ As Noramalina binti Mustaffa noted, a juvenile is any person below 18 years of age. Children under the age of seven years old have no criminal responsibility in Thailand. Children between seven to 14 years of age can be charged in court and can be given probation and cautions by the court. Children aged 14 to 18 years old can be charged in court, can be imprisoned and can be placed in any training school deemed suitable by the court.⁴⁷

As Ratanadilok stated, in 2008 Thailand raised the age of criminal responsibility from seven years old to 10 years old. Between the years 2006 to 2008 there were 1,083 children aged between seven to 12 charged with crimes, and 234 of them were children between the ages of seven to 10.⁴⁸ According to Sukpanich, Thai law sets the MACR at 10, but breaks youthful offenders into several age groups. Those aged 10 to 15 appear before a juvenile court judge but are not normally subject to legal punishment. They may be reprimanded but are usually returned to the care of parents or legal guardians on the condition that they do everything to prevent the child from further misbehaving. If the court feels it is inadvisable for the offender to remain at home, the youngster will be placed in the care of a court-appointed guardian or non-governmental organisation. Offenders 15 to 18 years old face trial in juvenile court and if found guilty are handed over to remand homes and training centers where the focus is supposedly on rehabilitation. Courts determine the duration of their stay. Those over 18 but not yet 20 will be tried in adult criminal court and if found guilty will normally serve time in prison, but be segregated from the rest of the population. Moreover, sentences may be significantly reduced or suspended at the judge's discretion. Thawatchai Thaikeo, the director-general of the Juvenile Observation and Protection Department, said that his office will soon propose amendments to Sections 73 and 74 of the Criminal Code to increase the MACR from 10 to 12 to bring Thailand in line with a recommendation by the CRC adopted at the 18th session of the United Nations Human Rights Commission, held last September in Geneva. Thailand has already endorsed the

⁴⁵ Robin Fagan, Lia Giovanni, Anne Harris and Tess Tannehill, Practical Application of Corporal (and Capital?) Punishment in the Juvenile Justice Systems of Malaysia and Indonesia, p.6, <http://www.scribd.com/doc/53640282/Draft-ITP-Juvenile-Justice-Paper-v2>>accessed (10/3/2012).

⁴⁶ Kanokpun Kalyanasuta and Atchara Suriyawong, The Criminal Justice System and Community-Based Treatment of Offenders in Thailand, p.272, http://www.unafei.or.jp/english/pdf/PDF_rms/no61/ch17.pdf>accessed (8/3/2012).

⁴⁷ Noramalina binti Mustaffa, Punishing Delinquents: Incarceration vs. Community Work, A Study on Juvenile Justice Systems in Malaysia, Thailand and Japan, 2005-2006, p.88, <http://www.apimal.org/blogcms/media/13/File/Noramalina.pdf>>accessed (7/3/2012).

⁴⁸ Kattiya Ratanadilok, Consequences of Raising Minimum Age of Criminal Responsibility on Thai Young Offenders, (March 31, 2010), <http://ssrn.com/abstract=1773548> or doi:10.2139/ssrn.1773548>accessed (10/3/2012).

resolution.⁴⁹ The CRC also stated that MACR should be uniformly applied across a given State. States which have varying legal frameworks concerning MACR depending upon the jurisdiction in which the action was committed are in violation of the UNCRC. Due to this reason the CRC recommends that legal age should be established for the attainment of majority and the State Parties review its legislation in order to bring it into conformity with the provisions of the Convention.⁵⁰

The Government had wanted to raise the MACR to 12, but that legislation was reduced to ten years by certain unsympathetic parliamentarians. Attempts to increase the MACR to 12 years old were modeled after many developed countries. Moreover, this change in the law was pushed forward by the needs to follow the suggestion of the UNCRC. Also there are attempts to divert as many cases of children in conflict with law out of the justice system.⁵¹

Conclusion

From a legal perspective, a determination of the standard MACR requires putting aside different belief systems and exploring the convergence of views of different belief systems. The aim of this article is to study whether the MACR of children in Malaysia, Thailand and Indonesia correspond with MACR standards as contained in the UNCRC. The UNCRC, as a whole, can be adopted as a framework for all laws relating to children's rights. The UNCRC has been ratified⁵² by the majority of States such as Malaysia, Thailand and Indonesia which forbid the punishment of offenders below 18⁵³ years old by the UNCRC. In this study, the following findings are concluded:

- The mismatch of the MACR of children with physical and social realities in Malaysia, Thailand and Indonesia;
- The lack of attention to intellectual maturity for determining of the MACR in Malaysia, Thailand and Indonesia; and
- The conflict and inconsistency between the exemption of criminal responsibility for children under the age of 18 in provisions of the UNCRC with Malaysian, Thai and Indonesian laws as Member States of the UNCRC that prescribes punishment for children.

Without closing our eyes against progress that has been achieved by the government of Malaysia, Thailand and Indonesia in order to improve children's protection, supervision of the fulfillment of children's rights particularly in the low MACR of children who are in detention

⁴⁹Tunya Sukpanich, Rising Youth Crime Levels Confound Justice System, 22/1/2012, Newspaper section: Spectrum, <http://www.bangkokpost.com/news/investigation/276249/rising-youth-crime-levels-confound-justice-system>>accessed (29/1/2012).

⁵⁰ Report of the Committee on the Rights of the Child, General Assembly Official Records, Fifty-fifth Session Supplement No. 41 (A/55/41), Concluding observations: Thailand, Principal subjects of concern and Committee recommendations (No.413), United Nations, New York, 2000, p.71, <http://www.un.org/documents/ga/docs/55/a5541.pdf>>accessed (29/5/2011).

⁵¹ Kattiya Ratanadilok, Consequences of Raising Minimum Age of Criminal Responsibility on Thai Young Offenders.

⁵² Ratification means that States Parties to the UNCRC have committed themselves to promoting and protecting children's rights. They are therefore accountable before the international community and should ensure that their national laws are in accordance with the provisions of these treaties. Kelly-Anne Ramages, Investigation the Minimum Age of criminal Responsibility in African Legal Systems, University of the Western Cape, November 2008, p.12.

⁵³ Article 1 of the UNCRC.

and imprisonment should be intensively applied and regularly evaluated.⁵⁴ For example, the Malaysia Child Act's purpose is to ensure that protections are maintained for children caught up in the legal environment, either the criminal justice system or child protection and care.⁵⁵ As Beaulieu noted, while there are national human rights institutions in Southeast Asia (the Malaysia, Thailand and Indonesia), the region is one of the region without an intergovernmental human rights mechanism. Although ASEAN has long been perceived as a promising avenue for regional monitoring and promotion of children's rights, it appears as though human rights are not yet a priority on ASEAN's agenda. Under the auspices of ASEAN are achievements which remain quite remote, although some progress has been made since the idea of human rights mechanism was first introduced in 1993. The protection and promotion of the human rights of children, as set out in the numerous treaties and other existing instruments, lies primarily with the State. By signing and ratifying international and regional treaties, States commit themselves to protecting and promoting children's rights. This commitment includes the development of strong legal frameworks that define and prohibit violations of human rights an element that is still missing 18 years after the entry into force of the UNCRC.⁵⁶ As Nasima stated, thus a study should be carried out to consider this discrepancy to prevent different standards imposed on children upon entering the criminal justice system.⁵⁷

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⁵⁴ Harlan Mardite, *The Juvenile Justice System in Indonesia*, p.191.

⁵⁵ Robin Fagan, Lia Giovanni, Anne Harris and Tess Tannehill, Practical Application of Corporal (and Capital?) Punishment in the Juvenile Justice Systems of Malaysia and Indonesia, p.6.

⁵⁶ Catherine Beaulieu, STRENGTHENING Laws addressing child sexual exploitation, *ECPAT International*, Bangkok, 2008, pp.,33-34, http://ecpat.net/Ei/Publications/Legal_Reform/Strengthening_Law.pdf accessed (12/2/ 2012).

⁵⁷ Hussin Nasima, *Juvenile Delinquencies in Malaysia: Legal Provisions and Prospects for Reforms*, pp.6-18.

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