

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 Vietnam

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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 Fund to End Violence Against Children does not constitute endorsement.

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		28 February 1990
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - 2000		20 December 2001
Optional Protocol on a Communication Procedure - 2011		Neither signed nor ratified
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)		19 December 2000
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – 2000 (supplementing the UN Convention against Transnational Organised Crime)		8 June 2012
Regional Instruments		Date of ratification/accession
ASEAN Convention against Trafficking in Persons, Especially Women and Children		13 December 2016
ASEAN Declaration on the Protection of Children from all Forms of Online Exploitation and Abuse in ASEAN		2 November 2019
Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (OPSC review)	8 November 2005	

General Issues Related to Children's Rights

In Vietnam, only the Law on Children defines the term 'child', stating that a child is a human being below the age of 16 years.¹ The definition of a **child** is not **consistent across all national legislation**. Moreover, the legislation uses **alternative terminologies** to address persons under the age of 18. The Vietnamese Civil Code uses the term 'minor' for persons who are below the age of 18 years.² Minors have limited legal capacity and, in most cases, are required to obtain the consent of their legal representatives to enter into or perform civil transactions.³ The Criminal Code creates different age ranges for persons under the age of 18 years and accords them different protections based on these ranges, as described below. Additionally, the Code refers to children under 18 years of age using different terms like 'child', 'minor' and 'juvenile'.

Under the Criminal Code, engaging in sexual intercourse or other sexual activities with a person under the age of 13 is deemed rape (statutory rape).⁴ Therefore, the **age of sexual consent** in Vietnam is 13. Furthermore, the Criminal Code criminalises using violence or threatening to use violence or taking advantage of a victim's defencelessness or other tricks 'to engage in non-consensual sexual intercourse or other sexual activities' with persons between 13-16 years of age.⁵ Persons between 14-16 years of age bear criminal responsibility for rape and rape of a person under 16 years of age.⁶ The Criminal Code does not provide for any **close-in-age exception**. Also, it does not provide for any criteria to determine whether the consent for sexual activities between peers under the age of 18 is **voluntary, well-informed and mutual**.

According to the Labour Code, the **legal working age** in Vietnam is 15.⁷ It is the same for boys and girls. The Labour Code uses the term 'minor employees' to refer to employees under 18 years of age.⁸ There are different labour regulations for persons under 18 and under 15. Also, persons under 13 years are allowed to undertake light work as provided in a list issued by the Ministry of Labour, Invalids and Social Affairs.⁹ Employees are prohibited from employing minor employees for heavy and **hazardous work**, and exposing them to toxic substances or for undertaking work that is harmful to their dignity, as prescribed by the Ministry of Labour, Invalids and Social Affairs and the Ministry of Health.¹⁰ Furthermore, the Labour Code provides a non-exhaustive list of prohibited works and workplaces for minor employees.¹¹ For

¹ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 1.

² Socialist Republic of Vietnam. (2015). [Civil Code Law No. 91/2015/QH13](#), Article 21(1).

³ Socialist Republic of Vietnam. (2015). [Civil Code Law No. 91/2015/QH13](#), Article 21(2)-(3).

⁴ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 142(1)(b).

⁵ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 142(1)(a).

⁶ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 12(2).

⁷ Socialist Republic of Vietnam. (2012). [Labour Code Law No. 10/2012/QH13](#), Article 3(1).

⁸ Socialist Republic of Vietnam. (2012). [Labour Code Law No. 10/2012/QH13](#), Article 161.

⁹ Socialist Republic of Vietnam. (2012). [Labour Code Law No. 10/2012/QH13](#), Article 164(1).

¹⁰ Socialist Republic of Vietnam. (2012). [Labour Code Law No. 10/2012/QH13](#), Article 163(1).

¹¹ Socialist Republic of Vietnam. (2012). [Labour Code Law No. 10/2012/QH13](#), Article 165.

instance, minor employees are prohibited from working in massage rooms, saunas, bars, karaoke rooms, casinos, discotheques, hotels and hostels.¹²

Under the Criminal Code, a person of the age of 16 years or above bears **criminal responsibility** for all crimes, except for those otherwise prescribed by the Code.¹³ For children between 14-16 years of age, criminal responsibility arises in cases of very serious and extremely serious crimes, as specified in the Act itself.¹⁴

In Vietnam, marriage is governed by the Law on Family and Marriage. The **legal age of marriage** is 20 years for boys and 18 years for women.¹⁵ The Act defines ‘underage marriage’ as a marriage in which one or both partners have not reached the marriageable age as prescribed in the Act.¹⁶

¹² Socialist Republic of Vietnam. (2012). [Labour Code Law No. 10/2012/QH13](#), Article 165(2)(d).

¹³ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 12(1).

¹⁴ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 12(2).

¹⁵ Socialist Republic of Vietnam. (2014). [Law on Family and Marriage Law no. 52/2014/QH13](#), Article 8(1)(a).

¹⁶ Socialist Republic of Vietnam. (2014). [Law on Family and Marriage Law no. 52/2014/QH13](#), Article 3(8).

Online Child Sexual Exploitation and Abuse

The Constitution of the Socialist Republic of Vietnam guarantees to every child protection, care and education by the State, family and society and allow them to participate in children's affairs. It prohibits subjecting children to infringement, persecution, maltreatment, abandonment, abuse and exploitation of labour and other forms of violations of their rights.¹⁷

In Vietnam, there is no single legislation that exclusively and comprehensively deals with online child sexual exploitation and abuse (OCSEA) offences. OCSEA offences could potentially be addressed under the Criminal Code, the Law on Children, and the recently introduced Cybersecurity law.

The Criminal Code criminalises **distribution** of pornography.¹⁸ It penalises **making**, duplicating, publishing, transporting, **dealing in**, or **possessing** books, magazines, pictures, films, music, or other items that contain pornographic contents for distributing or for the purpose of distributing pornographic materials.¹⁹ This provision is narrower in scope than the similar provision under Article 3(1)(c) of the OPSC. The OPSC criminalises conducts associated with child sexual abuse material independently, irrespective of the purpose or intent or the final result whereas the Criminal Code of Vietnam criminalises those acts which are carried out to achieve the end result that is, the distribution of pornographic material. Consequently, acts such as **merely possessing** or **knowingly obtaining access** to pornography have not been criminalised.

Furthermore, Vietnam, being a party to the OPSC, is required to comprehensively cover acts constituting child sexual abuse material under its criminal law.²⁰ The Criminal Code does not put child sexual abuse material and adult pornography in separate provisions. All the offences related to pornographic content are clubbed under the aforementioned provisions. Although these provisions can be used to prosecute offences relating to child sexual abuse material, the importance of protecting children has been significantly underestimated through failing to define and criminalise child sexual abuse material in its own right.

Another limitation of the Criminal Code is that it does not define what constitutes pornography. Hence, it is not clear what type of materials are covered. Therefore, Vietnam's legal framework is not fully aligned with the CRC and OPSC.

Nevertheless, the abovementioned provisions apply for conduct carried out in the **online environment**.²¹

¹⁷ Socialist Republic of Vietnam. (2013). The [Constitution of the Socialist Republic of Vietnam](#), Article 37.

¹⁸ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 326(1).

¹⁹ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 326(1).

²⁰ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 326(1).

²¹ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Articles 326(2)(h).

The Criminal Code criminalises any person aged 18 or over who persuades, entices, forces a child under 16 to participate in a pornographic performance or watch a pornographic performance.²² According to the Code, “any person aged 18 or over who persuades, entices, **forces** a person under 16 to participate in a pornographic performance or watch a pornographic performance in any shape or form shall face a penalty of 6 - 36 months' imprisonment”.²³

The national legislation does not criminalise **knowingly attending pornographic performances involving children**. Moreover, there is no provision that criminalises the **live streaming** of such performances online.

The Law on Children provides for the rights and responsibilities of children in Vietnam. It imposes duties on individuals, families, organisations and others to enable children to exercise their rights and responsibilities.²⁴ It defines child sexual abuse “as the act of using violence, threatening to use violence, forcing, persuading or seducing a child to engage in sexual acts. It includes rape, aggravated rape, sexual intercourse or molestation with children and use of children in prostitution or pornography in any form.”²⁵ The Law prohibits sexual abuse of children and subjecting them to violence or exploitation²⁶ and guarantees them the right to be protected from sexual abuse, in any form.²⁷ Although the definition of sexual abuse covers child sexual abuse material, the law fails to provide any definition for the same. Notwithstanding, it prohibits “providing internet and other services; producing, reproducing, releasing, operating, disseminating, possessing, transporting, storing and trading in publications, toys, games, and other products whose contents cause adverse influence on children’s healthy development”.²⁸ This provision is vague and ambiguous. It uses the term ‘adverse influence’ without defining the acts that constitute or amount to the same. It can have different connotations and be subjective. Moreover, it does not meet the international standards as provided by the OPSC.

Currently, the national legislation does not criminalise relatively newer categories of OCSEA offences like **online grooming, sexual extortion, bullying through online sexual harassment** and unwanted **sexting**.

The Criminal Procedure Code punishes the **attempt** of the OCSEA offences currently criminalised in Vietnam.²⁹

In Vietnam, not all children under the age of 18 years, who experience sexual exploitation, are treated as victims.³⁰ Some of these children are arrested and subjected to administrative sanctioning.³¹ This

²² Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 147.

²³ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 147(1).

²⁴ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13, Article 2.](#)

²⁵ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 4(8).

²⁶ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 6(3).

²⁷ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 25.

²⁸ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 6(10).

²⁹ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 15.

³⁰ MOLISA and UNICEF Viet Nam. (2011). [An Analysis of the Commercial Sexual Exploitation of Children in Selected Provinces and Cities of Viet Nam](#), P.52.

³¹ MOLISA and UNICEF Viet Nam. (2011). [An Analysis of the Commercial Sexual Exploitation of Children in Selected Provinces and Cities of Viet Nam](#), P.52.

approach of treating children as offenders rather than victims could possibly be followed in child sexual abuse material related offences, given the existence of serious lacunae in the current legal framework. Firstly, by virtue of the definition of a child in the national legislation, children aged 16-18 years might not be protected against child sexual abuse material-related offences. Secondly, there is no legal provision which expressly excludes **children's liability for producing and sharing** child sexual abuse material.

It is worth noting that the Criminal Code does not extend protection to children aged 16 years and above from participation in pornographic performances but, at the same time, makes it illegal for them to receive pornographic material.³²

These provisions apply to both **boys** and **girls** without any distinction.

It seems that the **ignorance of the age of the victim** can be pleaded as an excuse by the offender for their conduct. There have been cases where offenders deliberately falsified a birth certificate of a victim.³³ However, it is not clear whether this defence is available in the case of OCSEA offences.

The new Cybersecurity Law came into effect on 1 January 2019 in Vietnam amidst criticism from free speech advocates.³⁴ The law defines cybersecurity as “the assurance that activities in cyberspace³⁵ will not cause harm to national security, social order and safety, or the lawful rights and interests of agencies, organizations and individuals”.³⁶ It has provisions for ensuring the cybersecurity of children.³⁷ The law makes agencies, organisations, parents, teachers, child carers and other relevant individuals responsible for guaranteeing children’s rights and to protect children in accordance with the Law on Children when they participate in cyberspace.³⁸ Children have been guaranteed the right to be protected; to access information; to participate in social, entertainment and recreational activities; to keep their personal secrets confidential, and other rights when they participate in cyberspace.³⁹ Accordingly, it is the responsibility of the information system administrators and cyberspace service providers for controlling the information on their information systems or on services provided by them.⁴⁰ Such information should not cause harm to or mistreatment of children or infringe their rights.⁴¹ It is the legal duty of the information system administrators and cyberspace service providers to delete information of which the content may cause harm to or mistreat children or infringe their rights; and to promptly notify (report)

³² Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 326(2)(e).

³³ See e.g. Phapluat. (2020). [Renewal of birth registration at age 14, inspection to 17](#).

³⁴ Winkels, L. (2019). [Vietnam cybersecurity law takes effect](#).

³⁵ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14, Section 2\(3\)](#): ‘cyberspace’ means the connected network of information technology [IT] infrastructure comprising telecom networks, the Internet, computer networks, information systems, information processing and control systems, and databases, where [being the environment in which] people perform social acts without being limited by space and time.

³⁶ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 2(1).

³⁷ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 29.

³⁸ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 29(4).

³⁹ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 29(1).

⁴⁰ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 29(2).

⁴¹ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 29(2).

and coordinate with the Cyber Task Force (CTF) under the Ministry of Public Security for resolution.⁴² Agencies, organisations and individuals participating in activities in the cyberspace are responsible for coordinating with competent State administrative agencies to guarantee children’s rights in the cyberspace, and to prevent (block) network information with contents causing harm to children, in accordance with this Law and the Law on Children.⁴³ CTF and other agencies are responsible for taking measures to ‘preclude, discover, prevent and strictly deal with the use of cyberspace to cause harm to or intrude on children or to infringe their rights’.⁴⁴

It is noteworthy that the term “cyberspace service providers” has not been defined in the Act. However, it is only logical that the term includes **Internet Service Providers (ISPs)**. Therefore, the abovementioned duties would be applicable to ISPs. In accordance with the Decree No. 72/2013/ND-CP, ISPs are considered as telecommunication enterprises providing internet services.⁴⁵

Similarly, the Cybersecurity law does not define the term “information system administrators”. Notwithstanding, the 2015 Law on Network Information Security defines the term “information system owners” as “an organization or individual who has the power to directly manage its/his/her own information system”.⁴⁶ This definition could be applied to interpret the meaning of the term “information system administrators” under the Cybersecurity law.

While the abovementioned provisions look promising, they are too broad and at times, quite vague and do not provide effective and explicit protection against various manifestations of OCSEA.

Currently, there are no explicit duties on **cybercafé owners** to report and prevent cases of OCSEA.

⁴² Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 29(2).

⁴³ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 29(3).

⁴⁴ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 29(5).

⁴⁵ Socialist Republic of Vietnam. (2015). Decree No. 72/2013/ND-CP on the management, provision and use of Internet services and online information, Article 3(4).

⁴⁶ Socialist Republic of Vietnam. (2015). [Law on Network Information Security No. 86/2015/QH13](#), Article 3(5).

Extraterritoriality and Extradition

The Criminal Code provides **extraterritorial jurisdiction** for all offences it criminalises, including child sexual abuse material-related offences. According to the Criminal Code, a citizen or corporate legal entity of Vietnam that commits an act abroad which constitutes an offence under the Code, shall face prosecution in Vietnam. This is also applicable in the case of stateless residents of Vietnam.⁴⁷

Further, the Criminal Code states that any foreigner or foreign corporate legal entity that commits a criminal offence abroad, shall face criminal prosecution in Vietnam if such offence infringes the lawful rights and interests of any citizen of Vietnam or interest of Vietnam or under any international agreement to which Vietnam is a signatory.⁴⁸ The Criminal Code further provides that, in case a criminal offence or its consequence occurs on a sea-going vessel or an airplane which does not have Vietnamese nationality, the offender shall face criminal prosecution under an international agreement to which Vietnam is a signatory, if any.⁴⁹ Hence, the Criminal Code establishes **active** as well as **passive extraterritorial jurisdiction**. The extraterritorial jurisdiction as established by the Code, is within the parameters of Article 4.1 of the OPSC.⁵⁰

The Law on Human Trafficking Prevention and Combat also provides for extraterritorial jurisdiction but only in terms of offences relating to trafficking.⁵¹

In terms of **extradition**, Chapters XXXV and XXXVI of the Criminal Procedure Code contain detailed provisions relating to extradition. According to the Code, “international cooperation in criminal procedure in the territories of the Socialist Republic of Vietnam shall be governed by international agreements that the Socialist Republic of Vietnam has signed or by the principle of reciprocity, in adherence to this Law, the laws on judicial assistance and other relevant laws of Vietnam”.⁵²

The Criminal Procedure Code is not very clear on the scope of **extraditable** offences. If offences under the Criminal Code are considered extraditable then the OCSEA offences covered by the Criminal Code would

⁴⁷ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 6(1).

⁴⁸ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 6(2).

⁴⁹ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 6(3).

⁵⁰ OPSC, Article 4: “1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State. 2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory; (b) When the victim is a national of that State. 3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals. 4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law”.

⁵¹ Socialist Republic of Vietnam. (2011). [Law on Human Trafficking Prevention and Combat No. 66/2011/QH12](#), Article 4.

⁵² Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 491(3).

be extraditable too. Notwithstanding, the Law on Legal Assistance provides that persons may be extradited if they have committed criminal offences which attract either an imprisonment of one year or more, life imprisonment or death penalty under the Criminal Code of Vietnam or the criminal law of the requesting country.⁵³ Accordingly, OCSEA offences are ‘extraditable’ under this Act.

The Cybersecurity Law also provides for international cooperation on cybersecurity for “preventing and combating cybercrime, and acts infringing cybersecurity; and preventing cybersecurity threats”.⁵⁴

In Vietnam, the principle of **double criminality** applies to the extradition law. This is clear from the provision under the Law on Legal Assistance which states that extradition request of a person may be refused if the acts committed by that person are not crimes under Vietnam’s Criminal Code.⁵⁵ In addition, the Criminal Procedure Code stipulates that one of the requirements for enforcing the criminal sentences and rulings of a foreign court against a Vietnamese citizen whose extradition is rejected, is “the criminal act committed by the Vietnamese citizen sentenced overseas constitute crimes according to the Criminal Code of the Socialist Republic of Vietnam”.⁵⁶ This implies that the offence has to be punishable both in Vietnam and in the requesting country.

⁵³ Socialist Republic of Vietnam. (2007). [Law on Legal Assistance No. 08/2007/QH12](#), Article 33(1).

⁵⁴ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 7(2)(d).

⁵⁵ Socialist Republic of Vietnam. (2007). [Law on Legal Assistance No. 08/2007/QH12](#), Article 35(2)(a).

⁵⁶ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 500(2).

Other OCSEA-Related Provisions

The Criminal Code imposes different kinds of **penalties** for OCSEA-related offences, based on the severity of the offence and the presence or absence of certain aggravating factors which have been prescribed in the Criminal Code itself.⁵⁷ For instance, if pornographic material is distributed to children under 18, it attracts harsher punishment.⁵⁸ Also, in case these offences are committed using the Internet, a computer network, telecommunications network, or electronic device⁵⁹, the penalty is much harsher, recognising the grave nature of such offences.⁶⁰

For breaching any of the provisions of the Law on Cybersecurity, depending on the nature and seriousness of the breach, a person may either be disciplined, subjected to a penalty for an administrative offence, or be criminally prosecuted.⁶¹

It is noteworthy that the Criminal Code deals severely with **recidivism** (repeating a crime) and dangerous recidivism.⁶² Recidivism and dangerous recidivism are treated as aggravating factors for punishment.⁶³ An offender may also be forbidden from accessing certain professions for 1 - 5 years.⁶⁴

Besides, the Criminal Code allows the courts to **confiscate** money and items directly related to the crime.⁶⁵

Additionally, the Law on Cybersecurity prohibits “disseminating, **advertising** or purchasing and selling goods or services on the list of those prohibited by law”.⁶⁶ This provision can also be applied to advertisements relating to OCSEA, as pornography in general is prohibited by the criminal law in Vietnam.

The Criminal Code does not make **legal entities** liable for OCSEA offences.⁶⁷ Nevertheless, the Law on Children makes it the duty of agencies, organisations and individuals that operate in cyberspace to apply

⁵⁷ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 147(2)-(4); Article 326.

⁵⁸ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 326(2)(e).

⁵⁹ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 326(2)(g).

⁶⁰ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 326(2)(h).

⁶¹ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 9.

⁶² Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 3(1)(c).

⁶³ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 52(h).

⁶⁴ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Articles 147(4); Article 326(4).

⁶⁵ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 46(1)(a).

⁶⁶ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 18(1)(d).

⁶⁷ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 76.

measures for safeguarding children and protecting their personal secrets.⁶⁸ The Ministry of Information and Communications is also entrusted with the duty to protect children in the online environment.⁶⁹ For violating any provisions of the Law on Children, agencies, organisations, and individuals would either be disciplined, face administrative penalties or criminal prosecution depending on the nature and level of their violations.⁷⁰

The current legislative framework in Vietnam does not provide for the establishment of a **national sex offender registry**.

In Vietnam, convicted sex offenders are prohibited from **holding positions involving or facilitating contact with children**. In this regard, the Law on Children prohibits persons who face any criminal prosecution or administrative penalties for acts of child abuse from providing child protective services.⁷¹

In terms of **retention and preservation of digital evidence**, the Law on Cybersecurity obligates “any domestic or foreign enterprise which provides services on telecom networks and on the Internet and other value added services in cyberspace in Vietnam” to collect and store data for a period stipulated by the Government.⁷² The Law further requires these enterprises “to provide user information to the Cybersecurity Task Force under the Ministry of Public Security when so requested in writing in order to serve investigation of and dealing with breaches of the law on cybersecurity”.⁷³ However, these provisions do not imbibe the principle of best interest of the child.

⁶⁸ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 54(2).

⁶⁹ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 87(3).

⁷⁰ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 105.

⁷¹ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 56(3).

⁷² Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 26(3).

⁷³ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 26(2)(a).

Access to Justice and Remedies

National complaint mechanisms and reporting

The national legislation does not impose any specific reporting duties on **professionals or institutions working with children**. Nevertheless, the Law on Children prohibits persons from refusing, failing to perform, or performing in an insufficient untimely manner the support, intervention or treatment required for children who have or are facing a threat or harm to their body, honour or dignity.⁷⁴ The Law provides for child protective measures that can be taken for children abuse victims at three levels: prevention, support and intervention. At the prevention level, measures aim at equipping the children, families, communities, caregivers, teachers and other people working in child protection services with skills to identify and recognise cases of child abuse.⁷⁵ At the intervention level, the law makes it the duty of individuals, families, agencies, organisations, etc. to report incidents of child sexual abuse.⁷⁶ It also makes it the duty of the government to establish an active national telephone exchange system for receiving and responding to information relating to child sexual abuse.⁷⁷ Pursuant to this provision, the Government of Vietnam established the National Call Centre for Child Protection with the objective of directly receiving and processing information, notices, risk denunciations and acts of child abuse.⁷⁸ In 2017, the call centre was assigned a new child protection helpline number, 111.⁷⁹

Notwithstanding, the Law on Children does not provide any specific guidelines for punishing and imposing sanctions on offenders. The abovementioned provisions are non-mandatory and are not backed by sanctions to make them binding. In terms of reporting duties of the **private citizens**, the Law on Cybersecurity makes it the responsibility of individuals, agencies and organisations to promptly report to the competent agency and CTF on, *inter alia*, cybersecurity threats and any cybersecurity intrusion/infringement.⁸⁰ Although the abovementioned provisions do not directly mention OCSEA offences, they can be construed to cover the same.

The present legislative framework lacks specific provisions dealing with **reporting mechanisms**. Also, it lacks provisions relating to the collection of evidence and initiation of criminal proceedings. For the latter, the general provisions relating to investigation and prosecution of criminal offences under the Criminal Procedure Code can be relied upon.

According to the Criminal Procedure Code, the government and the authorities responsible for investigation are tasked with forestalling crime and taking preventive action.⁸¹ Further, the authorities responsible for investigation “when detecting signs of criminal activities, are responsible for filing charges

⁷⁴ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 6(15).

⁷⁵ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 48.

⁷⁶ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 51(1).

⁷⁷ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 51(3).

⁷⁸ National Child Helpline. (n.d.). [Introduction to the national PBX protecting children](#). (in Vietnamese).

⁷⁹ Siagoneer. (2017). [Vietnam hopes to combat child abuse with new national child protection hotline at 111](#).

⁸⁰ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 42(2).

⁸¹ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 5.

and lawsuits within their duties and authority and for taking measures as defined by this Law to ascertain criminals and penalize persons and juridical persons found guilty”.⁸² This implies that these authorities, which potentially include the **public prosecutors**, are under a duty to initiate *ex officio* investigation of offences, including OCSEA offences.

In Vietnam, the Criminal Code prescribes **statutory limitations** for the prosecution of all criminal offences in general. The Code categorises all crimes into four categories: less serious, serious, very serious and extremely serious crimes.⁸³ Based on this categorisation, the statutory limitations apply as follows: (a) 5 years for less serious offences; (b) 10 years for serious offences; and (c) 20 years for very serious offences and extremely serious offences.⁸⁴ OCSEA offences under the Code may carry a statutory limitation ranging between 5-20 years, depending on its gravity and nature.⁸⁵

The abovementioned provisions apply equally to **boys and girls**. In terms of application of these provisions to **non-national victims**, the law does not seem to make any distinction.

Child-sensitive justice

The Criminal Procedure Code has various provisions dealing with child victims of crimes. In terms of **child-friendly interview methods**, the Code allows the courts to try in closed session for the protection of persons below the age of 18 years.⁸⁶ Chapter XXVIII of the Criminal Procedure Code deals exclusively with procedures to be followed in case of legal proceedings for persons below 18 years of age.⁸⁷ According to the Code, the legal proceedings must be conducted in a manner that is congenial and conformable to the age, maturity level, and awareness of persons below the age of 18 years.⁸⁸ Further, the Criminal Procedure Code stipulates that the session of questioning or debate in court for defendants, child victims and

⁸² Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 18.

⁸³ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 9: Crimes defined in this Code are classified into four categories according to their nature and danger to society: 1. Less serious crime means a crime whose danger to society is not significant and for which the maximum sentence defined by this Code is a fine, community sentence (non-custodial), or 3 years' imprisonment; 2. Serious crime means a crime whose danger to society is significant and for which the maximum sentence of the bracket defined by this Code is from over 3 years' to 7 years' imprisonment; 3. Very serious crime means a crime whose danger to society is great and for which the maximum sentence of the bracket defined by this Code is from over 7 years' to 15 years' imprisonment; 4. Extremely serious crime means a crime whose danger to society is enormous and for which the maximum sentence of the bracket defined by this Code is from over 15 years' to 20 years' imprisonment, life imprisonment, or death.

⁸⁴ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 27.

⁸⁵ Socialist Republic of Vietnam. (2015). [Criminal Code Law No. 100/2015/QH13](#) (as amended by [Amendment Law No. 12/2017/QH14](#) of 2017), Article 147 and 326.

⁸⁶ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 25; also Article 423(2).

⁸⁷ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 413.

⁸⁸ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 414(1).

witnesses must be in accordance with the age and growth level of the children involved.⁸⁹ In such proceedings, the Presiding Officers should be specially trained and experienced in dealing with children.⁹⁰

Although the Criminal Procedure Code does not provide for children to access **psychological support** during the legal proceedings, it requires the trial panel of the court of first instance to consist of a person who is a teacher or youth union's official or possesses experience and psychological knowledge regarding children.⁹¹ The Law on Children also provides that the judges, people's jurors and procurators who institute legal proceedings on cases involving children should be trained in children's rights, psychology and educational science relating to child.⁹²

The Criminal Procedure Code also entitles children the **right to legal assistance**⁹³ and the right to participate in legal proceedings through representatives like schools, youth unions, individuals with experience and knowledge of psychology and social affairs.⁹⁴ Additionally, the Law on Children provides children the right to **legal aid**, to state their opinions and to be protected from illegal deprivation of their right to freedom. Furthermore, the Law provides children the right to be protected during proceedings and the taking of actions against administrative violations.⁹⁵

There is no explicit legal duty to provide children **with information related to legal proceedings in a child-friendly manner**.

Moreover, the national legislation does not expressly ensure that non-governmental organisations are able to assist/support victims, at their request, during the investigation or legal proceedings. Notwithstanding, the representatives of children like teachers, representatives of schools and, organisations have been entrusted with rights and duties to participate in legal proceedings as per the decisions of investigation authorities, procuracies⁹⁶ and courts.⁹⁷

The Criminal Procedure Code also protects the **privacy** of child victims.⁹⁸ Accordingly, the Code stipulates that the "personal information of individuals below 18 years of age must be kept **confidential**".⁹⁹

⁸⁹ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 423(4).

⁹⁰ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 415.

⁹¹ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 423(1).

⁹² Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 81(5).

⁹³ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 414(5).

⁹⁴ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 414(3).

⁹⁵ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13, Article 30.](#)

⁹⁶ Note: The people's procuracies (also called the people's office of inspection and supervision) are the prosecutorial authority in Vietnam. They also supervise and inspect judicial compliance by government agencies and officials. For every people's court, there is a people's procuracy. (Source: [University of Melbourne Library Guide](#))

⁹⁷ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 420.

⁹⁸ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 414(2).

⁹⁹ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 414(2).

In order to **protect** child victims or child witnesses, the Code provides for limited interaction between child victims or witnesses and defendants, when children are called to give testimonies in court.¹⁰⁰ The court can conduct the session of questioning with the help of the representatives of the child victims or witnesses.¹⁰¹ Furthermore, child victims or witnesses are entitled to defend themselves or be defended and have their lawful rights and interests protected.¹⁰² In addition, they are protected from torture, extortion of deposition, defamation of the honour and dignity, acts violating their body, psychological pressure and other violations.¹⁰³

Finally, the Law on Children provides for the protection of human life, health, dignity, honour and privacy of child witnesses. The law states that the forced escort or placing child witnesses under psychological pressure should be minimised.¹⁰⁴ Further, the child victims and their families can “request competent procedural authorities to protect their life, health, honour, **dignity**, property, legitimate rights and benefits, kindred against menaces”.¹⁰⁵

The abovementioned provisions apply equally to **boys and girls**. In terms of application of these provisions to **non-national victims**, the law does not seem to make any distinction.

Access to recovery and reintegration

In Vietnam, the national legislation ensures that child victims of OCSEA offences fully enjoy their right to **recovery and rehabilitation**. It is pivotal to note that the provisions relating to recovery and rehabilitation are not exclusive to OCSEA offences but apply generally to child victims of sexual abuse.

According to the Law on Children, child protection initiatives should attach special importance to, *inter alia*, actively assisting disadvantaged children (which includes victims of child sexual abuse) with functional rehabilitation and social inclusion.¹⁰⁶ Chapter IV of the Law on Children deals exclusively with child protection. It provides various child protective measures that can be taken for child victims of abuse at three levels: prevention, support and intervention. At the intervention level, the child protective measures aim at assisting children who have suffered abuse with recovery and rehabilitation.¹⁰⁷ Some of these measures include 1) providing psychological treatment, health care and physical and mental health rehabilitation¹⁰⁸; 2) assisting them in their social integration¹⁰⁹; 3) providing them with legal assistance.¹¹⁰

¹⁰⁰ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 423(5).

¹⁰¹ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 423(5).

¹⁰² Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 423(5).

¹⁰³ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 30.

¹⁰⁴ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 71(3).

¹⁰⁵ Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 62(2)(l).

¹⁰⁶ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 47(6).

¹⁰⁷ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 50.

¹⁰⁸ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 50(2)(a).

¹⁰⁹ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 50(2)(d).

¹¹⁰ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 50(2)(h).

In addition, the Law provides that the Ministry of Education and Training should organize the implementation of policies and laws, and apply suitable educational support measures to victims of sexual abuse.¹¹¹

Apart from those mentioned above, there are no **specific programmes for support and reintegration** for child victims of OCSEA.

Again, the law does not seem to discriminate based on **gender** or **nationality**.

Access to compensation

The Criminal Procedure Code entitles crime victims or their legal representatives to recommend punitive measures, **compensation** level and guarantees of compensation.¹¹² Under the Law on Cybersecurity, if an offender causes loss and damage, they must pay compensation in accordance with the law.¹¹³ Therefore, child victims of OCSEA offences can seek compensation under these two laws. They can also institute an **independent civil case** under the Civil Code for infringement of their personal rights like right to protection of honour, dignity and prestige.¹¹⁴ However, since children have limited legal capacity under the Civil Code, their legal representatives can claim for compensation or damages on their behalf.¹¹⁵

Vietnamese laws do not provide for any **country-managed funds** through which child victims of OCSEA offences can seek compensation. The laws also do not cover cases where **non-national victims** of OCSEA offences can seek compensation from convicted perpetrators and/or through state managed funds.

¹¹¹ Socialist Republic of Vietnam. (2016). [Law on Children No. 102/2016/QH13](#), Article 85(4).

¹¹² Socialist Republic of Vietnam. (2015). [Criminal Procedure Code Law No. 101/2015/QH13](#), Article 62(2)(g).

¹¹³ Socialist Republic of Vietnam. (2018). [Cyber Security Law No. 24/2018 / QH14](#), Article 9.

¹¹⁴ Socialist Republic of Vietnam. (2015). [Civil Code Law No. 91/2015/QH13](#), Article 25; See also: Article 34.

¹¹⁵ Socialist Republic of Vietnam. (2015). [Civil Code Law No. 91/2015/QH13](#), Article 25(2).