Child Sexual Exploitation in Travel and Tourism: An Analysis of Domestic Legal Frameworks

Cambodia
Sponsorship: Government of Australia

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# CONTENTS

Acknowledgements .......................................................................................................................... 1

Foreword ............................................................................................................................................ 3

Cambodian National Council for Children ....................................................................................... 3

United Nations Office on Drugs and Crime ....................................................................................... 4

Acronyms .......................................................................................................................................... 5

Executive Summary .......................................................................................................................... 7

1 Introduction .................................................................................................................................... 9

2 Scope ........................................................................................................................................... 10

3 Limitations ..................................................................................................................................... 11

4 International Legal Frameworks .................................................................................................. 12

4.1 Convention on the Rights of the Child and Optional Protocol ............................................... 13

4.2 Trafficking in Persons Protocol .................................................................................................. 16

4.3 ILO Convention 182: Elimination of the Worst Forms of Child Labour ................................ 17

5 Cambodia Legal Framework .......................................................................................................... 18

5.1 Status of ratification of key international instruments ................................................................ 18

5.2 Criminalisation and penalties for child sex tourism conduct ................................................... 18

5.3 Child protection measures in the criminal justice process ......................................................... 22

5.4 Measures for cross border law enforcement cooperation .......................................................... 23

5.5 Summary and recommendations ............................................................................................... 23

6 Regional Frameworks .................................................................................................................. 27

6.1 Regional cross border law enforcement cooperation ................................................................. 27

6.2 Broader regional cooperation efforts ........................................................................................... 28

6.3 Summary and recommendations ............................................................................................... 28

7 Implementation Plan ..................................................................................................................... 29
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UNODC wishes to acknowledge the generous support provided by the Government of Australia.
FOREWORD

CAMBODIAN NATIONAL COUNCIL FOR CHILDREN

The Kingdom of Cambodia ratified the Convention of the United Nations on the Rights of the Child on 15 October 1992 and ratified the two Optional Protocols on the Sale of Children, Child Prostitution and Child Pornography and on the Involvement of Children in Armed Conflict on 21 February 2002. This ratification means that the Kingdom of Cambodia has a high commitment dedicated to children’s rights and the measures necessary to implement the meaning of the convention.

Under the precious leadership of Samdech Akaek Mohasenabatey Techo Hun Sen, Prime Minister of the Kingdom of Cambodia, Cambodia continues to develop in each and every area including child welfare. The government considers tourism a priority area among the key priority areas in economic and social development in which tourism industries importantly contribute to the domestic revenue and create many job opportunities for people. However, tourism brings negative effects to our society.

Human trafficking and child abuse is often linked to poverty. Child sexual abuse by travelling child sex offenders is a unique sort of crime that leads to many problems for law enforcement institutions. Offenders move from one geographical location to another, there is lack of cooperation from victims and their families and offenders’ are known to groom their victims and families. Law enforcement institutions aim to provide justice for the society and effectively respond to sexual exploitation by travelling child sex offenders. To respond to the challenges, the Cambodia National Council for Children and Ministry of Justice and other members collaborated with UNODC to examine the extent to which Cambodia meets international legal standards applicable to developing a criminal justice response to sexual abuse by travelling child sex offenders. The study identified gaps in existing legal frameworks, provided broad recommendations for areas for reform to address those gaps, and outlined an implementation plan for specific action to take forward those recommendations under the Project Childhood (Protection Pillar) program.

The Cambodia National Council for Children has incorporated the recommendations from this report into the Cambodian national report on legislative review on child protection. The Cambodia National Council for Children strongly believes that the findings of the study should be utilized as a tool within relevant ministries, institutions, and NGOs to effectively meet the goals of addressing sexual exploitation of children by travelling child sex offenders.

The Cambodia National Council for Children would like to express special thanks to UNODC and stakeholders for this significant study and hope that the findings of this study will provide an opportunity for Cambodia to develop focused legal reform efforts related to child protection, child prevention, child trafficking and child sexual exploitation suppression both at the domestic level and in the Greater Mekong sub-region.

Khiev Bory

General Secretary

Cambodian National Council for Children
Sexual exploitation of children is a serious violation of children’s rights and an intensely complex issue. In Southeast Asia, child sexual exploitation has been closely linked to the ever-growing regional and international tourism industry. Efforts are being made by countries in Southeast Asia to protect children, including through legislative reform, technical capacity building of investigators and prosecutors, and enhanced cross-border cooperation.

UNODC works with Member States to:

- Strengthen legislative and policy frameworks
- Enhance staff knowledge and skills
- Enhance bilateral, regional and international cooperation mechanisms
- Enhance information exchange mechanisms and networks

This legal report considers the extent to which Cambodia meets international legal standards applicable to developing a criminal justice response to child sexual exploitation in travel and tourism. It identifies gaps in existing legal frameworks, provides broad recommendations for areas for reform to address those gaps, and outlines an implementation plan for specific action to take forward those recommendations. The findings of the report have gone through a national consultation process with key law enforcement partners and been reviewed by independent national legal experts.

Of significance is that this report forms part of wider research undertaken in Lao PDR, Thailand and Viet Nam. The report therefore considers regional frameworks that underpin cross-border cooperation to investigate and prosecute travelling child sex offenders, whilst identifying opportunities to strengthen those frameworks. The report provides concrete recommendations on how to strengthen the legislative framework for the protection of children. These recommendations serve as a constructive basis for governments to progress with legal reforms to better address the fight against travelling child sex offenders.

The legal report, available in English and Khmer, was drafted under the framework of Project Childhood, an Australian Government initiative that addresses the serious issue of sexual exploitation of children in travel and tourism in the Greater Mekong sub-region.
### ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ASEAN</td>
<td>Association of South East Asian Nations</td>
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<tr>
<td>AusAID</td>
<td>Australian Agency for International Development (now DFAT)</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all forms of Discrimination against Women (1979)</td>
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<td>DFAT</td>
<td>Department for Foreign Affairs and Trade</td>
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<tr>
<td>ECPAT</td>
<td>End Child Prostitution Child Pornography and Trafficking of Children for Sexual Purposes</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights (1966)</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>ILO Convention 182</td>
<td>Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour</td>
</tr>
<tr>
<td>INTERPOL</td>
<td>International Criminal Police Organization</td>
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<tr>
<td>Lao PDR</td>
<td>Lao People’s Democratic Republic</td>
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<td>MOU</td>
<td>Memorandum of Understanding</td>
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<td>NPA</td>
<td>National Plan of Action</td>
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<td>TIP</td>
<td>Trafficking in Persons</td>
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<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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EXECUTIVE SUMMARY

This report provides a comparative analysis of the domestic legal frameworks in Cambodia against key international standards relevant to the abuse of children by travelling child sex offenders—including criminalisation of conduct, the protection of child victims and witnesses in the criminal justice process, and measures for cross border law enforcement cooperation in child sex abuse cases. The report also considers regional frameworks that underpin cross border cooperation to investigate and prosecute travelling child sex offenders, and identifies opportunities to strengthen those frameworks. Using this analysis as a basis, the report proposes recommendations for amendment of the Cambodian legislative framework and outlines an implementation plan to guide technical assistance activities to support those reforms.

These results provide an opportunity to develop focused legal reform efforts—both domestically and regionally—that meet the needs of partner countries, target legislative gaps specific to each country and the region, and complement existing legal frameworks.

With a diverse range of legal approaches to address sexual abuse of children in travel and tourism, Cambodia is well placed to share information and experience on best practice in order to develop reforms that are current, practical and harmonised with the laws of neighbouring countries. This report provides a platform to begin this important work in Cambodia. It will help develop targeted programs of reform that bolster Cambodia, including regional government efforts to tackle sexual abuse of children in travel and tourism.

NOTE:

1 INTRODUCTION

Strong legal and policy frameworks are essential tools in the fight against crime. A robust criminal justice framework which reflects key international standards and is effectively implemented at the domestic level, bolsters law enforcement capacity to prevent—and effectively respond to—child sex tourism.¹ In Cambodia, travelling child sex offenders pose a significant law enforcement challenge. Often undetected by authorities, offenders exploit the most vulnerable children and either return to their home countries with impunity or, in the case of long term residents, remain hidden in the community. With thriving tourism in the Greater Mekong Sub-region, western men are perhaps the most visible sex tourists—however, information indicates that local demand from Asian travellers actually represents the majority of travelling child sex offenders.² Travelling child sex offenders are not always foreigners; child sex tourism also includes offenders who move within the borders of their own country and sexually exploit children. The profile of offenders may include both passing travellers and longer term residents.

Child sex tourism is a unique type of criminal activity which likewise presents unique challenges to law and justice institutions in developing and implementing effective responses. A key feature of the conduct is that child sex offenders typically visit locations where they do not normally reside, and use their anonymity to facilitate their crimes. This is true both of offenders who plan their activities, and situational offenders (who are the most common perpetrators of travelling child sex offences). Tourist accommodation, transport and other services—particularly those which enable contact with children—may also be used by offenders to facilitate their crimes. Travelling child sex offenders are often not known to the community or, in the case of longer term residents, may have only limited ties to the community. Their anonymity and mobility mean that law enforcement responses need to be comprehensive and coordinated, in order to minimise legal loopholes and ensure that jurisdictional boundaries are not a barrier to prosecution.

As the main implementing agency for Project Childhood (Protection Pillar), the United Nations Office on Drugs and Crime (UNODC) is working with international and government partners to develop strong legal frameworks to target travelling child sex offenders in the region. The project falls under the broader Project Childhood program (2010 – 2014) funded by the Australian Government and administered in four priority partner countries—Cambodia, Lao PDR, Thailand and Viet Nam—and which adopts a two pillar strategy incorporating Protection and Prevention pillars. Through the Protection Pillar, UNODC, in partnership with the International Criminal Police Organization (INTERPOL) aims to enhance law enforcement capacity for national and transnational action to identify and effectively act upon travelling child sex offenders in the Greater Mekong Sub-region. The Protection Pillar aimed to deliver a consolidated package of capacity building to the project country governments and their law enforcement agencies through two components: Component 1, led by UNODC, focussed on the delivery of technical assistance activities responding to key legislative, training and cooperation gaps and needs of the four partner countries; Component 2, led by INTERPOL, comprised of time bound specialised operational activities aimed at pooling international and regional investigative resources to specifically target travelling child sex offenders. The Prevention Pillar is implemented by World Vision and aimed to strengthen the protective environment for children in travel and tourism—including building community awareness and resilience to sexual exploitation of children, and working with governments to develop effective national preventative measures.

This report focuses on work delivered by UNODC and INTERPOL under Project Childhood (Protection Pillar)—in particular, Outcome 1 (Legislative frameworks relevant to combating travelling child sex offenders and

³http://www.unicef.org/eapro/activities_3757.html
protecting victims are enhanced / improved), Output 1.1 (Legislative review undertaken), and Output 1.2 (Clear and practical recommendations presented to government counterparts with regard to improving legislative frameworks to combat travelling child sex offenders). The report focuses on the domestic legal framework of Cambodia, and complements similar reports prepared for each of the Project Childhood partner countries. The report has been developed in consultation with national counterparts, and provides a platform for implementing specific recommendations to strengthen the legal response to child sex tourism in Cambodia.

In Cambodia, there is strong government commitment to combating the sexual exploitation of children. The government has developed legislation and policies aimed at protecting children from sexual exploitation, criminalising conduct, and upholding the rights of child victims and witnesses through the criminal justice process. These measures are important in addressing child sex tourism, and broader sexual exploitation and abuse of children. However, there are gaps in the domestic legal framework and inconsistencies in the extent to which international standards relevant to child sex tourism have been implemented. The risk is that, while legal gaps remain, travelling child sex offenders in Cambodia will seek to exploit those loopholes and will not be deterred from seeking to sexually exploit children.

In addition, responses at both the domestic and regional levels are essential to building strong legal barriers to child sex tourism. Weak legal frameworks can encourage demand for the commercial sexual exploitation of children, and increase children’s vulnerability as offenders identify opportunities to exploit children that offer minimal risk of detection. Strict domestic laws that prohibit child sex offences and provide strict penalties are therefore important deterrents. However, where one country develops comprehensive legal frameworks against the sexual exploitation of children, travelling offenders are likely to simply move their activities to neighbouring countries where the law may not be as developed in this area. This means a coordinated regional response is essential—to ensure that domestic laws are harmonised and that a wide measure of international legal cooperation is available across the region—so that that travelling child sex offenders have nowhere to hide.

2 SCOPE

This paper considers the extent to which Cambodia meets the international legal standards applicable to developing a criminal justice response to child sex tourism. It identifies gaps in existing legal frameworks, provides broad recommendations for areas for reform to address those gaps, and outlines an implementation plan for specific action to take forward those recommendations under the Project Childhood (Protection Pillar) program.

To provide a consistent framework for comparison of the laws of Cambodia against key international obligations, the report considers the following questions:

- **Status of ratification of key international instruments**: Which instruments have been signed or ratified by Cambodia?

- **Criminalisation and penalties for conduct relating to child sex tourism**: Does Cambodia criminalise conduct relevant to travelling child sex offending? What are the relevant penalties?

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1 Project Childhood: Protection Pillar. Project Design Document
2 http://www.ecpat.net/worldcongressIII/PDF/Journals/EXTRATERRITORIAL_LAWS.pdf -- p4
3 Ibid.
4 http://www.ecpat.net/ie/Publications/CYP/YP_Guide_to_CST_ENG.pdf -- p8
• **Child protection measures in the criminal justice process:** Are there legal or policy measures for the protection of child victims and witnesses in the domestic criminal justice process?

• **Measures for cross border law enforcement cooperation:** Are travelling child sex offences extraditable? Does the law of Cambodia create extraterritorial jurisdiction for those offences? Are there frameworks for mutual legal assistance?  

• **Regional cooperation:** What frameworks are available to facilitate formal cross border legal cooperation (extradition and mutual assistance in criminal matters) with other project countries? What broader instruments are available to guide regional cooperation to combat child sex tourism?

This research framework has been adopted consistently in the individual reports addressing each project country.

This report has been developed as part of a wider implementation plan under UNODC’s Project Childhood (Protection Pillar). The recommendations and implementation proposal outlined in this report are intended to feed into broader project planning and, in particular, to complement the activities of INTERPOL under the Protection Pillar, and World Vision under the Prevention Pillar.

Noting that UNODC worked in partnership with INTERPOL to implement the Protection Pillar, and that INTERPOL will work closely with the law enforcement agencies of Cambodia and other partner countries in this capacity, this legal report does not assess the availability of informal law enforcement cooperation (for example, intelligence sharing directly between police agencies) amongst the measures available for responding to child sex tourism. Instead, this report focuses on formal government-to-government mechanisms for international legal cooperation (particularly extradition and mutual legal assistance).

### 3 LIMITATIONS

The research undertaken to prepare this report was based on legal and policy documents available in the English language through the UNODC Field Office in Cambodia and those available through reliable online sources. The report also draws on relevant materials published by UN agencies and NGOs on child sex tourism and related issues.

While these materials provided useful contextual information, many were either outdated or focused on addressing the sexual exploitation of children in broader contexts rather than child sex tourism specifically. Based on the experience of researching this report, further analysis and publication of materials on legal and law enforcement responses to child sex tourism in the region could help to fill gaps in the literature currently available.

The timeframes included in the implementation plan are intended as a guide only and should be adapted as the project progresses, according to the resources available to the project and the needs of Cambodia.

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7 While noting that international standards relating to child sex tourism include obligations on states to ensure that the proceeds of crime can be restrained and confiscated, this report will not directly consider partner countries’ compliance with this obligation. Mechanisms for managing the proceeds and instruments of crime can be complex—a full analysis of these mechanisms in each partner country is beyond the scope of this report.
4 INTERNATIONAL LEGAL FRAMEWORKS

There is currently no internationally agreed definition of child sex tourism. The definition developed by ECPAT International, and adopted by UNODC, describes child sex tourism as:

... the sexual exploitation of children by a person or persons who travel from their home district, home geographical region, or home country in order to have sexual contact with children. Child sex tourists can be domestic travellers or they can be international tourists. [Child sex tourism] often involves the use of accommodation, transportation and other tourism-related services that facilitate contact with children and enable the perpetrator to remain fairly inconspicuous in the surrounding population and environment.

Child sex tourism is a crime type that crosses traditional legal boundaries, with international obligations relating to the protection of children from child sex tourists traversing international criminal, human rights and labour law. This report will use the ECPAT definition of child sex tourism as a basis for understanding the international legal framework, and analysing the domestic response in Cambodia.


Non-binding international instruments also set important benchmarks for domestic responses to child sex tourism—for example, the Stockholm Declaration and Agenda for Action (1996) and the Yokohama Global Commitment (2001) against the sexual exploitation of children, and the Global Code of Ethics (1999) of member states of the UN World Tourism Organisation which condemns the sexual exploitation of children and calls on states to criminalise offences through national legislation (including legislation with extraterritorial reach). These documents are not legally binding, however their principles mirror many of the obligations outlined in the key international legal instruments.

The key international instruments relevant to combating child sex tourism have been widely adopted in the region. Cambodia is a State Party to all of these key international instruments. The table demonstrates the extent to which those instruments have been ratified (or acceded to) in each of the project countries:

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8 Child Wise, Travelling Child Sex Offenders in South East Asia: A Regional Review – 2007/2008, p3
10 For example, International Covenant on Civil and Political Rights (ICCPR), Committee on the Elimination of Discrimination against Women (CEDAW), ILO Conventions 29, 105 and 138
**Table: Status of ratification**

<table>
<thead>
<tr>
<th>Country</th>
<th>CRC</th>
<th>CRC Optional Protocol</th>
<th>UNTOC</th>
<th>TIP Protocol</th>
<th>ILO Convention 182</th>
</tr>
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Legend: ✓: State Party [the country has either ratified or acceded to the instrument]

### 4.1 CONVENTION ON THE RIGHTS OF THE CHILD AND OPTIONAL PROTOCOL

The CRC sets a broad human rights framework requiring states parties to act in the best interests of the child.\(^{12}\) It is a widely adopted treaty, with a total of 193 states parties.\(^{13}\) Cambodia is a State Party to the Convention.

The CRC sets important legal standards relevant to the fight against child sex tourism—in particular, for the protection of children from sexual abuse, and the provision of appropriate mechanisms to allow for child participation in legal or administrative proceedings. Articles 34 and 35 require states parties to take appropriate measures domestically and in cooperation with other states to protect children from all forms of sexual exploitation and sexual abuse—including the inducement or coercion of a child to engage in any unlawful sexual activity\(^{14}\)—and to prevent the abduction, sale or trafficking of children for any purpose or in any form.\(^{15}\) Under Article 12(2), states parties are required to provide a child with the opportunity to be heard in judicial or administrative proceedings affecting that child, either directly or through a representative or appropriate body. This requirement may be implemented by states in a manner consistent with the procedural rules of their domestic law.\(^{16}\)

The CRC Optional Protocol obliges states parties to take specific measures to prohibit the sale of children, child prostitution and child pornography\(^ {17}\)—activities which the instrument itself notes are closely linked to child sex tourism.\(^{18}\) The definitions provided in the Protocol of the sale of children, child prostitution and child pornography are broad, to encompass a wide range of conduct:

For the purpose of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

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\(^{13}\) Art 3

\(^{14}\) UN Treaty Series <http://treaties.un.org> sourced at 28 August 2011

\(^{15}\) Art 34

\(^{16}\) Art 35

\(^{17}\) Art 1; While some organizations prefer the terms ‘child abuse material’ or ‘child abuse images’, this report will use the term ‘child pornography’ for consistency with the terminology used in relevant international legal instruments.

\(^{18}\) CRC Optional Protocol, Preamble
(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.\textsuperscript{19}

The Protocol requires states parties to criminalise these acts regardless of the manner in which the offence is committed (for example, the conduct should constitute an offence regardless of whether it is committed by an individual or on an organised basis, or domestically or transnationally).\textsuperscript{20} In addition, the Protocol requires the following conduct relating to child sex tourism to be criminalised and made punishable by sanctions which reflect the grave nature of the offences:\textsuperscript{21}

- Offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation of the child
- Offering, obtaining, procuring or providing a child for child prostitution
- Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography, and
- Attempt to commit any of the acts listed above, and complicity or participation in any of these acts.\textsuperscript{22}

The CRC Optional Protocol requires states parties to exercise jurisdiction over these offences when they occur within the territory of the state (or on board a ship or aircraft registered to that state).\textsuperscript{23} In addition to this basic requirement to assert jurisdiction within the state’s territory, the Optional Protocol obliges states to assert jurisdiction in circumstances where that state would refuse to extradite an alleged offender on the basis of nationality and, in such cases, to refer the matter to their domestic prosecuting authority.\textsuperscript{24} This mandatory obligation under the Protocol reflects the international legal principle aut dedere aut judicare\textsuperscript{25}—which requires states to either extradite or prosecute alleged offenders and is typically applied to the most serious of crimes, to ensure no state can be a safe haven for persons responsible for serious criminal conduct.

The Protocol also provides states the opportunity to more broadly assert jurisdiction over offences that do not occur within their own territory.\textsuperscript{26} Although not a mandatory obligation, states parties may establish jurisdiction over offences outlined in Article 3 of the Protocol if the alleged offender is a national of that state (or has habitual residence in that state), or the victim is a national of that state. This option to establish extraterritorial jurisdiction has been implemented in the domestic law of some states parties to the Optional Protocol in order to allow for the prosecution of travelling child sex offenders—typically nationals or permanent residents of the prosecuting state—on their return home.

States parties are required to provide a wide measure of assistance to each other in order to facilitate investigations, prosecutions and extradition proceedings relating to child sex offences,\textsuperscript{27} and to take action for the seizure and confiscation of the proceeds of those offences.\textsuperscript{28} This includes ensuring that the offences outlined in Article 3 of the Optional Protocol are extraditable offences, and that a state can extradite regardless of whether it has a treaty relationship with a requesting state (with the exception of cases in which

\textsuperscript{19} Art 2
\textsuperscript{20} Art 3
\textsuperscript{21} Art 3(3)
\textsuperscript{22} Art 3(1)-(2)
\textsuperscript{23} Art 4(1)
\textsuperscript{24} Art 4(3); Art 5(5)
\textsuperscript{25} Latin for “extradite or prosecute”
\textsuperscript{26} Art 4(2)
\textsuperscript{27} Art 6
\textsuperscript{28} Art 7
a state wishes to exercise jurisdiction over its own nationals for prosecution, as outlined above). States parties are also obliged to work together to strengthen international cooperation through multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for the sale of children, child prostitution, child pornography and child sex tourism offences.

In addition to obligations relating to criminalisation, jurisdiction and international cooperation, the CRC Optional Protocol also sets a framework for states to adopt appropriate measures to protect the rights and interests of child victims through the criminal justice process and requires that, in the treatment of child victims in the criminal justice system, the best interests of the child is a primary consideration. In cases relating to child sex tourism, special measures for child victims participating in the criminal justice process are essential; they assist states in guaranteeing the protection of children’s rights and interests and by facilitating children’s participation in the criminal justice process, assist law enforcement agencies to use their evidence to compile more robust investigation briefs and increase the chances of successful prosecution. The CRC Optional Protocol provides a comprehensive list of measures to be adopted by states, including:

- Recognising the vulnerability of child victims and adapting procedures to recognise children’s special needs, including as witnesses
- Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases
- Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected
- Providing appropriate support services to child victims through the legal process
- Protecting, as appropriate, the privacy and identity of child victims and taking measures to avoid the inappropriate dissemination of identifying information
- In appropriate cases, providing for the safety of child victims (as well as their families and witnesses) from intimidation and retaliation, and
- Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

It is important to note that, under the CRC, a child is defined as a person under the age of eighteen years. While some international instruments allow states some discretion in determining the appropriate threshold for attaining majority, key instruments relevant to the protection of children from sexual exploitation—including the TIP Protocol and ILO Convention 182—maintain eighteen years as the threshold age for a child. For the purpose of this report, the CRC definition of child has been adopted.

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29 Art 5
30 Art 10(1)
31 Art 8(1)
32 Art 8(3)
33Art 8(1)
34 Article 1
4.2 TRAFFICKING IN PERSONS PROTOCOL

The TIP Protocol, supplementing UNTOC, obliges states to take action to prevent, suppress and punish trafficking in persons. Cambodia is a State Party to both UNTOC and the TIP Protocol.

While child sex tourism is a distinct form of criminal activity requiring the implementation of specifically targeted domestic measures, it is also closely linked with child trafficking. A child is defined under the TIP Protocol as any person under eighteen years of age. The TIP Protocol requires three elements to be satisfied for its definition of trafficking in persons:

- **Action**: the recruitment, transportation, transfer, harbouring or receipt of persons
- **Means**: by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person
- **Purpose**: for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

However, where a child is recruited, transferred, transported, harboured or received for the purpose of exploitation this still constitutes human trafficking even in the absence of the means referred to above. In other words, only the ‘action’ and ‘means’ elements are required to establish an offence of child trafficking. This is because a child can never give informed consent to be exploited, and so it is not necessary in such cases to show there was deception or coercion.

Acts intended to facilitate child sex tourism can also constitute human trafficking. For example, a person who recruits or procures a child for the purpose of causing or allowing that child to be sexually exploited, whether or not by travelling sex offenders, commits the offence of trafficking in persons according to the Protocol definition. On the other hand, if the travelling child sex offender abuses or exploits the trafficked child, they would be held accountable by other laws that cover the physical sexual abuse of children.

It is therefore important to identify the key obligations under the TIP Protocol as they relate to the criminalisation of acts associated with child sex tourism within national legislation, the implementation of measures for the protection of children through the criminal justice process, and the development of effective mechanisms for cross border law enforcement cooperation. The key obligations under the TIP Protocol also align closely with obligations under the CRC Optional Protocol.

States are required to criminalise the conduct outlined above, including establishing basic criminal liability and offences relating to attempting, participating as an accomplice, and organising or directing others to commit an offence. Other obligations on states parties to the TIP Protocol mirror some of the key obligations contained in the CRC Optional Protocol for the protection of child victims and witnesses. In particular, states are required to implement measures that:

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35 ECPAT, Mind the Gaps, p12
36 Art 3(d)
37 Art 3(a)
38 Art 3(c)
39 Art 4
• Protect the privacy and identity of victims, including by making legal proceedings relating to trafficking confidential.\textsuperscript{40}

• Provide information to victims on relevant court and administrative proceedings, and assistance to enable their views on concerns to be presented in criminal proceedings\textsuperscript{41}

• Ensure that the special needs of children are taken into account in the legal process\textsuperscript{42}

• Endeavour to provide for the physical safety of victims.\textsuperscript{43}

Under the TIP Protocol’s head convention, UNTOC, states are required to cooperate through extradition and mutual legal assistance, to the widest extent possible.\textsuperscript{44} UNTOC sets obligations similar to those provided under the CRC Optional Protocol for the establishment of jurisdiction over offences,\textsuperscript{45} and likewise contains similar obligations relating to the establishment of trafficking in persons as an extraditable offence and the requirement to honour the \textit{aut dedere aut judicare} principle.\textsuperscript{46} Both UNTOC and the TIP Protocol also call on states parties to cooperate at the agency level to share law enforcement information.\textsuperscript{47}

\section*{4.3 ILO CONVENTION 182: ELIMINATION OF THE WORST FORMS OF CHILD LABOUR}

ILO Convention 182 on the Elimination of the Worst Forms of Child Labour recognises the particular vulnerabilities of children, and limits the nature of the work they may engage in where that work is deemed to be most detrimental to children. The Convention requires states to take measures to secure the prohibition and elimination of the worst forms of child labour.\textsuperscript{48} Cambodia is a State Party to ILO Convention 182.

The worst forms of child labour includes the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances\textsuperscript{49} and also the sale and trafficking of children.\textsuperscript{50} Measures to prohibit and eliminate the worst forms of child labour may include criminal or other sanctions, as appropriate.\textsuperscript{51} ILO Convention 182 does not elaborate further measures required to prohibit and eliminate the worst forms of child labour. However, it broadly reflects the more specific obligations under the CRC Optional Protocol, including the requirement that states parties criminalise a range of conduct relating to the sale of children, child prostitution and child pornography.\textsuperscript{52}

\begin{itemize}
\item Art 6(1)
\item Art 6(2)
\item Art 6(4)
\item Art 6(5)
\item Arts 16; 18(1)-(2)
\item Art 15
\item Arts 15-16
\item TIP Protocol Art 10(1); also reflected in UNTOC Art 27
\item Art 1
\item Art 3(a)
\item Art 3(a)
\item Art 7(1)
\item CRC Optional Protocol, Arts 1 & 3
\end{itemize}
5 CAMBODIA LEGAL FRAMEWORK

5.1 STATUS OF RATIFICATION OF KEY INTERNATIONAL INSTRUMENTS

Cambodia has ratified each of the five international instruments that establish key obligations for states to implement criminal justice responses to combat child sex tourism. In particular, Cambodia has ratified both the CRC (15 October 1992) and the CRC Optional Protocol (30 May 2002).

5.2 CRIMINALISATION AND PENALTIES FOR CHILD SEX TOURISM CONDUCT

Cambodian law contains a range of protections against child trafficking and sexual exploitation of children. While the law does not refer specifically to child sex tourism, offences covering broader forms of sexual exploitation and child trafficking may be relevant to the prosecution of conduct relating to child sex tourism.

The protection of children from economic and sexual exploitation, in accordance with the provisions of the CRC, is also enshrined in Articles 46 and 48 of the 1993 Constitution of the Kingdom of Cambodia. Article 46 of the Constitution states that "The commerce of human beings, exploitation by prostitution and obscenity which affect the reputation of women shall be prohibited", and Article 48 states that "The State shall protect the rights of children as stipulated in the CRC, in particular, the right to life, education, protection during wartime, and from economic or sexual exploitation. The State shall protect children from acts that are injurious to their educational opportunities, health and welfare". In accordance with a decision of the Constitutional Council issued in 2007, courts must rely upon laws including the Constitution (being the supreme law of the country) as well as international conventions that have been recognised by Cambodia, especially the CRC. This confirms the application of CRC and the CRC Optional Protocol domestically by the courts of Cambodia. These statements of law set a solid platform for the state’s role in the protection of children from all forms of sexual exploitation, including sex tourism.

The Law on Suppression of Human Trafficking and Sexual Exploitation (2008) (the TIPSE Law) provides a comprehensive set of offences relating to child prostitution, sexual abuse, child pornography, and child trafficking for sexual exploitation purposes. The TIPSE Law aims to implement Cambodia’s obligations under the TIP Protocol and other international instruments relevant to trafficking in persons. However, the TIPSE Law is wide in its scope and application and provides criminal sanctions which also reflect obligations under the CRC Optional Protocol. Under the TIPSE Law, criminal responsibility is defined in broad terms to include attempt to commit an offence and acting as an accomplice and instigator (including organising or directing others in the commission of an offence), and criminal responsibility extends to legal entities in addition to individual legal persons.

In conforming to international standards, a minor is defined under the TIPSE law as a person under the age of 18 years. Article 7 of the TIPSE law assumes that a person who keeps a minor under his/her supervision or control shall be presumed to know the minor’s age unless the person proves that he/she reasonably believes the minor’s age to be eighteen years or more.

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51 Arts 46, 48
53 Art 1
54 Art 4
55 Art 7
Also under the TIPSE law, offences relating specifically to child trafficking and child sexual exploitation are afforded significantly greater penalties than corresponding offences relating to adults, reflecting the gravity of the offences when committed against children.

## 5.2.1 CHILD PROSTITUTION

Chapter IV of the TIPSE Law relates to child prostitution. Child prostitution is defined as ‘having sexual intercourse or other sexual conduct of all kinds between a minor and another person in exchange for anything of value.’ This wide definition of child prostitution could cover acts typically associated with child sex tourism, which often involve an offender having sex or other sexual conduct with a child in exchange for something of value. Importantly, for child prostitution under the TIPSE Law, the element of the offence relating to the ‘exchange of anything of value’ includes the providing, or promising to provide, anything of value either to the child or an intermediary, parent, guardian or any other person who has the supervision or control of the child. This distinction is important, as it ensures that the criminalisation of child prostitution is wide in scope, and includes circumstances where an offender provides payment (or another thing of value) to a person who organises the prostitution, rather than directly to the child. The penalties for child prostitution under the TIPSE Law are 2 to 5 years imprisonment where the child is 15 years of age or older, and 7 to 15 years imprisonment where the child is under 15 years of age.

Other offences under the TIPSE Law relating to child prostitution include: procurement of child prostitution (including drawing financial benefit from the prostitution, and recruiting or inducing a person into prostitution), management of child prostitution, management of a child prostitution establishment, and provision of premises for child prostitution—each punishable by imprisonment from 7 to 15 years; procurement of prostitution by torture—punishable by imprisonment from 10 to 20 years; soliciting for child prostitution (including soliciting or advertising as an intermediary)—punishable by 2 to 5 years imprisonment and a fine of between 4 and 10 million Riel or, in the event the offence is committed by a person operating as a business, imprisonment between 5 and 10 years. Importantly, the law exempts children from criminal responsibility if they are found to be soliciting for the purpose of prostituting themselves. Providing loans of money or other items of value, and entering into contracts, for the purpose of child prostitution, are also criminal offences.

The Cambodian Penal Code (2007) prohibits the procurement of child prostitution, including: drawing a financial benefit from the prostitution of another; assisting or protecting the prostitution of another or running the prostitution activities; recruiting, abducting or luring any person to become a prostitute; and exercising pressure on a person to become a prostitute. Where the person engaging in prostitution is a minor, the procurement offence is punishable by between 7 and 15 years imprisonment. Attempt is equally punishable by the same penalty as if the offence had been committed. However, the definition of a minor is unclear under the Penal Code. While a minor is considered a person under the age of 18 years for the purpose of determining criminal responsibility, it is not clear whether this definition also extends to children who are

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58 Art 23  
59 Art 34  
60 Arts 25; 28  
61 Arts 30 – 33  
62 Art 29  
63 Art 35  
64 Art 24  
65 Arts 36 & 37  
66 Art 284  
67 Art 289  
68 Art 294  
69 Art 38
victims of crime. Importantly, legal entities carry criminal responsibility and may be subject to penalties including fines (between 10 and 50 million Riels) and other sanctions including closure of business, asset confiscation, and publication of decisions relating to the criminal responsibility of the entity.\textsuperscript{70}

\subsection*{5.2.2 SEXUAL ABUSE AGAINST CHILDREN}

In addition to child prostitution offences, the TIPSE Law prohibits sexual conduct or intercourse with a child under the age of 15 years. Sexual intercourse with a minor under the age of 15 years is punishable by between 5 and 10 years imprisonment and indecent acts against a minor under the age of 15 years is punishable by between 1 and 3 years imprisonment, and a fine of between 2 and 6 million riel.\textsuperscript{71} Repeat commission of either of these offences carries a penalty of double the term of imprisonment.\textsuperscript{72} The offence of sexual intercourse with a minor under the age of 15 years has been applied in Cambodia to cases where child sex offenders have sexually abused children under the age of 15 years. However, the government of Cambodia also reports challenges with the application of this article. In some cases, boys between the ages of 15 and 18 have been prosecuted and face stiff jail penalties for having sexual intercourse with young girls in circumstances where there is no criminal intent. This application of the TIPSE law is problematic and does not allow scope for alternative remedies where perceived offenders are themselves under the age of 18.

The provisions of the TIPSE Law are consistent with the Penal Code which provides the legal age for consensual sex to be 15 years of age.\textsuperscript{73} Also under the Penal Code, rape is prohibited and carries a penalty of between 5 and 10 years imprisonment. Other forms of sexual assault (referred to in the law as ‘acts of immodest’) are also prohibited, and punishable by 1 to 3 years imprisonment and a fine of between 2 and 6 million Riels. Both categories of offences—rape and other forms of sexual assault—require the conduct to include violence, coercion, threat or surprise. The offences also carry heavier penalties where there are aggravating circumstances, for example, if the offence is committed: by a person with authority over the victim; by a person who abuses their power which was vested in him or her; by several persons as perpetrator, co-perpetrator, instigator or accomplice; or against a person who is particularly vulnerable due to their age. These categories of aggravating circumstances may be invoked in cases of sexual abuse against children by travelling child sex offenders.\textsuperscript{74}

\subsection*{5.2.3 CHILD PORNOGRAPHY}

The criminalisation of child pornography is an important element in fighting child sex tourism. Travelling child sex offenders often begin their search for opportunities to sexually exploit children online. This may involve chatting with other potential offenders online to share information and pornographic material.

Under the TIPSE Law, child pornography material may include visible materials such as photographs or video, and material in electronic form.\textsuperscript{75} It is an offence under the TIPSE Law to make child pornography available (through distribution, selling, leasing, displaying, projecting or presenting it in a public place) and to possess, transport, import or export child pornography for the purpose of making that material available – both offences carrying a penalty of imprisonment from 2 to 5 years, and a fine of between 4 and 10 million riel.

\begin{flushright}
\textsuperscript{70} Art 296
\textsuperscript{71} Art 42
\textsuperscript{72} Art 43
\textsuperscript{73} Art 239
\textsuperscript{74} Title 3, Chapters 1 & 2: Arts 239–252
\textsuperscript{75} Art 39
\end{flushright}
Producing child pornography carries an offence of between 5 and 10 years imprisonment or, if the material is produced for the purpose of making it available as outlined above, between 10 and 20 years.\textsuperscript{76}

While the TIPSE Law contains wide prohibitions against the use of child pornography for the purpose of distribution, it does not provide a basic offence of possessing child pornography for personal use. This is a significant gap in the current law. Likewise, Article 39 of the TIPSE Law does not address the distribution, sale, lease, displaying, projection or presentation of pornography in private places—it refers only to public places. The lack of criminalisation of using child pornography in private is a significant gap in the law. The Ministry of Justice has indicated that clarification of the meaning of ‘public place’ and ‘private place’ could assist law enforcement authorities with identifying the appropriate offence.

### 5.2.4 CHILD TRAFFICKING

A wide range of offences relating specifically to child trafficking are provided under the TIPSE Law. These include offences that fall under the broad categories of selling, buying or exchanging a child, and unlawful confinement,\textsuperscript{77} for the purpose of exploitation (defined to include prostitution, pornography, commercial sex acts, and child labour).\textsuperscript{78} As with the other elements of the TIPSE Law outlined above, the chapters relating to trafficking in persons provide stricter penalties where those offences are committed against children. The trafficking offences under the TIPSE Law, though linked, are distinct from conduct typically associated with child sex tourism—which is more closely covered by the child prostitution and pornography offences under the TIPSE Law already outlined above. In particular, many of the trafficking offences under the TIPSE Law require a connection between the exploitative conduct (for example, sexual exploitation in the form of prostitution) with transfer or removal of the child, including cross border transfer. As the trafficking offences under the TIPSE Law are less relevant to conduct more commonly associated with child sex tourism, these offences are not considered in detail in this report.

### 5.2.5 INTERACTION BETWEEN LAWS

Both the Penal Code and TIPSE Law provide offences relevant to the sexual exploitation of children in the context of child sex tourism, and overlap in some areas (in particular, in their respective offences relating to child prostitution). Article 50 of the TIPSE Law provides that, in the event of inconsistency between laws, the provisions of the TIPSE Law prevail. However, it would be relevant to seek advice from Cambodian officials to gain a clear picture of how the TIPSE Law and Penal Code interrelate, and to ensure that the TIPSE Law provisions are interpreted in practice as superseding the Penal Code offences.

### 5.2.6 ADMINISTRATIVE LAW

Administrative laws may also be of some relevance to combating child sex tourism in Cambodia. The Law on the Establishment of the Ministry of Tourism (promulgated by Royal Decree No: NS/RKM/0196/15 of 24 January 1996) entrusts the Ministry of Tourism with the power to manage and control the tourism sector. However, its mandate relating to combating child sex tourism is limited.

In addition to the criminal sanctions outlined above, the Law on Tourism provides that tourists or travellers who join in activities which involve sexual exploitation and publication of pornographic photos and materials shall have their tourist visa revoked, and be expelled or prohibited from tourism destinations of Cambodia for

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\textsuperscript{76} Art 41
\textsuperscript{77} Chapters 2 & 3
\textsuperscript{78} Art 10
a specified period of time (not exceeding five years) or permanently. While these administrative sanctions provide a deterrent for child sex tourists, it is not clear how the requirement under the Law on Tourism to revoke a tourist visa (and expel the tourist from Cambodia) would operate in conjunction with laying criminal charges for the same conduct.

The Law on Tourism also prohibits minors to enter premises of adult entertainment sites, and requires the management and owner of such facilities to ensure that children are not present.79 However, there is no clarification or classification of adult entertainment sites and the extent to which this aspect of the law is enforced is unknown.

A Sub-decree on the Establishment of the Tourism Police Department of the Ministry of Interior confirms the Tourism Police Department’s duties to cooperate with other competent institutions to combat crimes such as trafficking and use of drugs, human trafficking and confinement, child trafficking, sexual exploitation, and the dissemination of child pornography, under the direction of the General Commissariat of the Cambodian National Police.80 However, the duties of the Tourism Police overlap with those of the Anti Human Trafficking and Juvenile Protection Department, and their powers are limited to seeking cooperation from other institutions.

5.3 CHILD PROTECTION MEASURES IN THE CRIMINAL JUSTICE PROCESS

There are no specific measures for child protection in the criminal justice process under Cambodian law. However, policy documents provide guidance for law enforcement and justice agencies to ensure that child protection measures through the criminal justice process are implemented.

The Cambodia National Council for Children (CNCC) is a coordination mechanism within the Cambodian Government mandated to promote the survival, development and protection of children and to promote child welfare and participation.81 One of the strategic goals for the CNCC is ‘law and policy for children’, which includes outputs of analysis of current law and policy, advocacy and assistance to fill identified gaps, and integration of new laws and policies within government and non-government institutions.82 Policy documents developed by the CNCC provide important benchmarks for the protection of children as victims and witnesses in the criminal justice process. For example, the Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia (2007) provides guidelines to ensure that children’s’ rights are protected by all relevant agencies, including ensuring the best interests of the child are given paramount consideration, and recommendations for conducting child sensitive interviews, the security and protection of child victims and witnesses, and the conduct of criminal proceedings. This guideline demonstrates the government’s commitment to implementing protection measures for vulnerable child victims and witnesses in the criminal justice process. However, the CNCC’s guidelines and reports link sexual exploitation to child trafficking or deal with sexual exploitation more broadly. The CNCC has not published any policy instruments specific to the protection of child victims and witnesses in sex tourism cases.

The Ministry of Justice has issued an Instruction on the Prosecution and Punishment of Persons Who Commit Offences of Human Trafficking and Sexual Exploitation, focusing on how to implement the principles of national and international law relating to the protection of victims of criminal offences and to juvenile justice.

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79 Art 56, 57
80 Sub-decree No. 65, 8 April 2011
81 CNCC Strategic Plan, p13
82 p17–18
procedures. The Ministry also released a *Prakas*[^83] on the Use of Court Screens and TV Linked Testimonies from Child/Vulnerable Victims or Witnesses (October 6, 2008). Court screens and TV link facilities have been established in provincial and capital court rooms of five courts of first instance. However, this equipment has almost never been used.

Other policy guidelines also provide a broad basis for the protection of child victims and witnesses in the criminal justice process. For example, the *Work Platform of the Ministry of Social Affairs, Veterans and Youth Rehabilitation* (2008–13) provides that, under its priority to strengthen and expand child welfare and youth rehabilitation services, the Ministry promote the protection of children’s rights within the justice and judicial systems in accordance with CRC.[^84] Broader legal frameworks also provide some limited protections. Under the *Law on the Press Regime*, the press is prohibited from publishing information, photographs or drawings that may facilitate the identification of a person under the age of 18 years involved in any civil or criminal suit, unless the court grants permission to do so.[^85] And under the *Law on Domestic Violence*, victims have the right to legal representation at all stages of the proceedings. However, no single policy or law addresses the full range of protection measures required under the CRC Optional Protocol for child victims and witnesses; nor do the existing frameworks address this issue in the specific context of child sex tourism.

### 5.4 MEASURES FOR CROSS BORDER LAW ENFORCEMENT COOPERATION

Cambodia’s legal framework for extradition is provided under the Criminal Procedure Code.[^86] The Code provides a comprehensive set of requirements for carrying out extradition proceedings, however it is not clear whether extradition may be granted for any offence, or specific offences only.

The laws of Cambodia assert extraterritorial jurisdiction over offences relating to the sexual exploitation of children. The TIPSE Law, which criminalises the widest range of offences most directly relevant to child sex tourism, applies extraterritorial jurisdiction. Articles 2 and 3 apply the TIPSE Law to offences committed both within the territory of Cambodia and outside its territory—the latter jurisdiction applying when either the alleged offender or the victim is a Cambodian citizen.[^87] The Penal Code applies similar extraterritorial application to sexual abuse offences.[^88]

### 5.5 SUMMARY AND RECOMMENDATIONS

The current legal and policy framework demonstrates Cambodia’s firm commitment to protecting children from all forms of sexual exploitation. However, more can be done to address conduct specifically relating to child sex tourism. The Criminal Justice Strategy pillar of the draft *National Action Plan on Suppression of Human Trafficking, Smuggling, Labor, and Sexual Exploitation* (2011–13) (the NPA) specifies activities to be undertaken to strengthen legal frameworks, including drafting of law to fill gaps in the existing TIPSE Law. Although this policy statement is focused on trafficking in persons, given the links between trafficking for the purpose sexual exploitation and child sex tourism and the broad range of offences relating to the sexual

[^83]: Proclamations (Prakas): A proclamation is a ministerial or inter-ministerial decision signed by the relevant Minister(s). A proclamation must conform to the Constitution and to the law or sub-decree to which it refers.
[^84]: p6
[^85]: Art 15
[^86]: Criminal Procedure Code, Book 9, Articles 566 to 595.
[^87]: Arts 2 & 3
[^88]: Arts 20 & 21
exploitation of children which are covered under the TIPSE Law, the draft NPA may also be seen as an indicator of the government’s willingness to address broader legal gaps relevant to child sex tourism.

The existing law and policy in Cambodia provides a solid platform for the development of further legal reforms to criminalise all forms of conduct relating to child sex tourism. While a specific law directed at child sex tourism would send a strong message to potential offenders that such criminal activity will not be tolerated in Cambodia, the strength of existing legal mechanisms available to address child sex tourism mean that the development of separate legislation is not required.

Cambodian law already meets many of the key international obligations relating to child sex tourism, however some specific areas could be strengthened to provide a more comprehensive framework to counter child sex tourism. The TIPSE Law (and, to a lesser extent, the Penal Code) criminalises a wide range of conduct relevant to the sale of children, child prostitution and child pornography and is wide in scope—including offences of attempt and participation as an accomplice or instigator, extension of criminal liability to legal entities, robust penalties which reflect the gravity of offences and seek to prevent recidivism.

However one essential gap stands out from the current criminal offences; the law does not criminalise the basic offence of possession of child pornography where it is held for personal use (and not, for example, for the purpose of distribution). In addition, sexual abuse against children under the age of 15 is criminalised (under the Penal Code). However, it is not clear whether similar offences are available to prosecute sexual abuse against children between 15 and 18 years of age as distinct from an offence against an adult. Interaction between similar provisions of the TIPSE Law and Penal Code is also unclear.

The criminal law of Cambodia could be further strengthened by including specific criminalisation of grooming conduct. Grooming occurs when child sex offenders—including both those who travel and those who do not—seek to initiate and develop a relationship with a child, using that relationship to build trust, for the purpose of ultimately facilitating the sexual exploitation of that child. For example, to Europol’s interpretation of grooming, the elements of the crime consist of an adult forming an intentional proposal to meet a child (who has not reached the legal age for sexual activities) with the intention to commit sexual abuse. The United States considers grooming to be an act of deliberately establishing an emotional connection with a child to prepare that child for abuse. Grooming typically occurs through communication services like the internet or mobile phones, which offenders use to communicate with the child. In many cases, the offender will initially present himself as another child or young person, gradually introducing the child to sexual content or imagery, and in some cases inducing the child into producing child pornographic material. Specific criminalization of grooming is lacking in the legislation of all project partner countries, and a recommendation to criminalise grooming will therefore be included in the recommendations for each project country.

There are significant gaps in the protections currently available in Cambodia to facilitate children’s participation in criminal justice processes as victims and witnesses of sexual exploitation. This area requires substantive strengthening in order to comply with the key international obligations. In particular, while some legal and policy instruments touch on this issue, none address the comprehensive range of protections required under the CRC Optional Protocol or seek to facilitate child participation in the specific context of child sex tourism. Reforms to this area could be explored through legislation, policy instruments, or a combination of both.

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89 For example, the domestic laws of Australia, the United Kingdom and the United States demonstrate best practice on this issue by providing specific offences for grooming conduct.
91 See US legislation 18 USC 2422 and 18 USC 2252A
A legal reform program for Cambodia should aim to develop a robust legal response to child sex tourism, using the international standards as a benchmark. It is recommended that targeted activities to support legal reforms in Cambodia seek to:

**CRIMINALISATION: CHILD PORNOGRAPHY**
- consider options to criminalise the possession of child pornography for personal use
- clarify definition of ‘public place’ under the TIPSE Law to improve interpretation of the law relating to child pornography

**CRIMINALISATION: SEXUAL ABUSE**
- consider options to criminalise conduct where adults groom children for the purpose of sexual exploitation
- clarify the interpretation of offences under the TIPSE Law and Penal Code—particularly relating to sexual abuse and child prostitution—to ensure that law enforcement and judicial authorities are clear about which law should prevail in the event of inconsistency

**LEGISLATIVE INTERPRETATION**
- ensure that administrative sanctions (for example, under the Law on Tourism) do not impede the ability of law enforcement authorities to investigate and prosecute offenders

**CHILD PROTECTION MEASURES**
- develop comprehensive measures for the protection of child victims and witnesses, to facilitate their participation in the criminal justice process
- strengthen cooperation between the Government and Project Childhood (Protection Pillar) to ensure the use of child friendly procedures and tools by law enforcement authorities

**INTERNATIONAL COOPERATION**
- confirm that extradition is available for all offences relating to child sex tourism, even in the absence of a treaty relationship, and
- identify mechanisms for mutual legal assistance and ensure they facilitate provision of a wide measure of assistance.

**ADDITIONAL PROPOSALS: GOVERNMENT OF CAMBODIA**
In addition to the recommendations outlined above, officers of the Government of Cambodia has agreed further measures which could strengthen its response to child sex tourism:
- adult entertainment facilities to be required to post a sign indicating that children are prohibited to enter the premises
- the CNCC and UNODC to cooperate on the domestic analysis of child protection and child welfare laws, currently underway, to incorporate legal provisions relevant to combating child sex tourism
- clarification of penalties under Article 68 of the Law on Tourism
- review and, if necessary, establishment, of regulations governing border check points to improve identification of travelling child sex offenders and child victims
- definition of adult entertainment facilities by a sub-decree, in accordance with Articles 56 and 57 of the Tourism Law
- development of a joint Prakas between the Ministry of Interior and Ministry of Tourism, under Article 63 of the Law on Tourism, to clearly define the roles and responsibilities of the tourist police and tourist inspectors, and
- review of the Labour Law and its regulations to ensure children are not employed in adult entertainment facilities.

In order to achieve the project objectives, and to progress the recommendations outlined in this section, the Government of Cambodia notes that the Ministry of Interior, Ministry of Justice, Ministry of Tourism and the Cambodia National Council for Children each have respective responsibilities to combat child sex tourism (among other tasks). The Government recommends that the project cooperate with the current structure of the Ministry of Interior and the National Committee to lead the suppression of human trafficking, smuggling, labour exploitation, and sexual exploitation in women and children (NC-STSLs) with regard to law enforcement against child sex tourism and capacity building; with the Ministry of Tourism with regard to prevention of child sex tourism; and with Cambodia National Council for Children with regard to advocacy and policy development.
6 REGIONAL FRAMEWORKS

6.1 REGIONAL CROSS BORDER LAW ENFORCEMENT COOPERATION

There is a strong basis under multilateral treaties for Cambodia and the other project countries to provide international legal cooperation to investigate and prosecute offences relating to child sex tourism. Under international legal standards, each of the project countries is required to facilitate cross border cooperation for extradition and mutual legal assistance in criminal matters in cases relating to child sex tourism. As states parties to the CRC Optional Protocol, Cambodia, Lao PDR, Thailand and Viet Nam are obliged to provide the widest measure of assistance for the investigation, prosecution and extradition for child sexual exploitation offences, including conduct that constitutes child sex tourism. In addition, as states parties to the TIP Protocol, Cambodia, Lao PDR and Viet Nam are obliged to facilitate extradition and mutual legal assistance in relation to offences outlined under the TIP Protocol, with other states parties. These requirements under the CRC Optional Protocol and TIP Protocol apply regardless of whether a bilateral treaty relationship applies between a requesting and requested state. Although Thailand is not party to the TIP Protocol, as a signatory to the instrument it is bound under international law to not take steps that would defeat the object and the purpose of the treaty.92

Bilateral treaty relationships also provide a platform for cooperation between the project countries—however, cooperation need not be contingent on the existence of a treaty. Bilateral treaties can provide an important basis for cooperation in criminal matters, and clarify and streamline extradition and mutual legal assistance processes between countries. Bilateral treaties on extradition between the project partners are in force between countries.93 A regional ASEAN treaty on mutual assistance in criminal matters is also in place, however not all ASEAN members have ratified the treaty.94 Information on the operation and effectiveness of these treaties was not available.

Informal law enforcement cooperation is also an essential tool in fighting child sex tourism. Informal cooperation—also called ‘police to police’ or ‘agency to agency’ assistance—typically does not require a legislative basis, and can facilitate a wide measure of information sharing between the primary law enforcement agencies of different countries. Informal cooperation allows police to share law enforcement intelligence (for example, criminal histories and movement records) during the investigation stage, while evidence is still being gathered. It facilitates the quick flow of information and can be beneficial in identifying whether evidence is located in another jurisdiction, and therefore whether a formal mutual legal assistance process is required. The importance of informal law enforcement cooperation is noted in this report, because of its close links with the formal mechanisms of extradition and mutual legal assistance. However, information on the existence and efficacy of informal networks for assistance was not available. As noted earlier in the report, as INTERPOL is working with law enforcement agencies under the Protection Pillar to strengthen their capacity for investigating and cooperating in child sex tourism cases, this report focuses only on the formal legal frameworks required for cross border law enforcement cooperation.

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93 Treaty between Lao PDR and Cambodia on Extradition (1999)
6.2 BROADER REGIONAL COOPERATION EFFORTS

No instrument specifically addresses regional cooperation to combat child sex tourism. This is a significant gap in the framework for cooperation between Cambodia and other countries in the region.

Regional frameworks for international legal cooperation in other, closely linked areas provide a useful context which could be built upon to strengthen cross border cooperation in child sex tourism cases. For example, the Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region (2004), developed under the auspices of the Coordinated Mekong Ministerial Initiative against Trafficking (the COMMIT MOU), confirm states’ commitment to strengthening cross border cooperation in law enforcement in the Greater Mekong Sub-region to combat trafficking in persons. More widely, the Association of South East Asian Nations (ASEAN) has agreed to prevent abuse and exploitation through tourism—under the ASEAN Tourism Agreement (2002)—and to cooperate to combat trafficking in persons under the ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children (2004). Bilateral agreements between the partner countries also establish a commitment to working cooperatively to combat trafficking in persons, although they are not binding at law. Agreements or memoranda of understanding between Cambodia and Viet Nam, Cambodia and Thailand each underpin increased cross border cooperation in trafficking matters. These broader instruments may assist with guiding efforts to strengthen frameworks for regional cooperation to target a wider range of offences, however they provide little guidance for cooperation to specifically combat child sex tourism.

6.3 SUMMARY AND RECOMMENDATIONS

To ensure regional efforts meet key international standards and facilitate cross border coordination in response to child sex tourism, it is recommended that regional activities be undertaken that focus on developing frameworks to underpin cooperation (for example, through non-binding instruments), facilitate information sharing on key legal issues, and develop officer level networks. It is recommended that technical assistance activities focusing on regional cooperation:

- identify whether existing treaty relationships—under multilateral, regional and bilateral frameworks—provide a sufficient basis for cooperation between the project countries (through extradition and mutual legal assistance) and, if required, propose development of additional treaty frameworks
- provide a platform for the development of a regional instrument (non-binding, for example, an MOU) to underpin regional cross border cooperation in criminal justice responses to child sex tourism
- explore opportunities for bilateral instruments (non-binding, for example, MOUs) to underpin bilateral cooperation in child sex tourism cases
- provide opportunities to discuss shared priorities for legal reform and to maximise potential for harmonisation of criminal offences targeting child sex tourism, and
- facilitate information sharing between project countries on cross border cooperation in child sex tourism cases—including opportunities to build officer level networks to strengthen working relationships and maximise case outcomes.

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55 p3

Cambodia
7 IMPLEMENTATION PLAN

Working collaboratively with partner countries to strengthen legal and policy frameworks, in accordance with international standards and the rule of law, is a vital step towards ensuring that travelling child sex offenders do not escape prosecution and can be swiftly brought to justice. Undertaking a program of targeted and sustained technical legal assistance to remedy legislative gaps and bolster the capacity of law and justice institutions, is key to meeting the Project Childhood (Protection Pillar) objectives and central to ensuring countries of the Greater Mekong Sub-region have the legal tools to investigate and prosecute travelling child sex offenders.

With the key international legal standards as a benchmark, we know that effective legal frameworks against child sex tourism require:

- comprehensive criminalisation of conduct relating to child sex tourism
- strict penalties which reflect the severity of the crime
- child protection measures for victims and witnesses in the criminal justice process, and
- frameworks for cross border and regional cooperation.

This report provides a baseline assessment of Cambodia (and, in the context of regional frameworks, the other project partner countries Lao PDR, Thailand and Viet Nam) against these key criteria. It is clear from the research that the legislation in Cambodia is not sufficient to appropriately address child sex tourism. The law presents significant gaps which leave law and justice institutions exposed to the risk of regular and repeat offending, and leave children vulnerable to exploitation. While this report proposes the key areas recommended for focusing legal reform efforts, further work is required—in partnership with the government of Cambodia and other relevant stakeholders—to further refine proposals for legal reform, to define the parameters of technical legal assistance activities, to identify shared priorities between UNODC and Cambodia, and to build ownership and secure commitment from the government of Cambodia.

The implementation plan provides a framework to take forward technical legal assistance activities with Cambodia (and, in the context of regional frameworks, the other project partner countries). While specific activities will vary depending on identified needs and priorities (and the specific nature of the technical assistance proposed), the plan can be used as an overarching model to guide those activities. The plan allows for flexibility so that activities are adaptable as the program develops. As programs become more refined, more specific implementation plans may be developed.
### UNODC: Project Childhood (Protection Pillar: Cambodia)

<table>
<thead>
<tr>
<th>SUGGESTED PROJECT IMPLEMENTATION PLAN: 2011–14</th>
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<tbody>
<tr>
<td><strong>Outcome 1:</strong> Legislative frameworks relevant to combating travelling child sex offenders and protecting victims are enhanced / improved</td>
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<tr>
<td><strong>Output 1.1:</strong> Legislative review undertaken</td>
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<tr>
<td><strong>Output 1.2:</strong> Clear and practical recommendations presented to government counterparts with regard to improving legislative frameworks to combat travelling child sex offenders</td>
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<tr>
<th>AIM</th>
<th>OBJECTIVE</th>
<th>ACTIVITY</th>
<th>TIMESCALE/ACTIVITY LEAD</th>
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<tbody>
<tr>
<td>Development of project plan in partnership with counterpart government agencies and other stakeholders</td>
<td>Harness in-country expertise on key legal issues – in particular, identifying key areas for legislative reform and understanding requirements for effective practical implementation of the law.</td>
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<td>Identify priorities Cambodia for legal reform.</td>
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<td>Gauge commitment from Cambodia for proposed technical legal assistance activities.</td>
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<td>Preparation of discussion paper highlighting identified legislative gaps (and policy gaps where appropriate). To be presented at legal workshop. [This may draw on material prepared in this report, but would be developed specifically for the project country and highlight specific issues to be discussed with stakeholders]</td>
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<td>Translation and transmission of discussion paper to government counterparts for consideration.</td>
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<td>Presentation of legal report findings specific to each country (using targeted discussion paper) at national workshops.</td>
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<td>Scoping mission to meet with key government counterparts (and other stakeholders as appropriate): interviews and discussions to establish key legal issues, understand general requirements for effective implementation of law, and assess partner country needs.</td>
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<td></td>
<td>Development of comprehensive project plan tailored to each project country, reflecting outcomes of scoping mission discussions, incorporating a legislative assessment, and identifying tangible legal issues (and policy issues where appropriate) to be addressed, including specific recommendations.</td>
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<td>Translation and transmission of targeted project plan to government counterparts for consideration.</td>
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<tr>
<td>Workshops and information gathering across wide range of government partners and</td>
<td>Build domestic capacity and understanding of key international legal obligations.</td>
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<td>Legal workshops with key government officials to discuss proposed reforms.</td>
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<td>Establish a Working Group with government counterparts (and other</td>
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<td>[Sept 2011 – Aug 2012]</td>
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<td>Ministry of Justice [Supported by Protection Pillar team]</td>
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<td>other stakeholders</td>
<td>Discuss key areas proposed for legal reform and gain information on domestic context.</td>
<td>Stakeholders if appropriate) tasked with developing legislative reforms. In case there is an effective existing structure exists, establish link with the structure to implement the project.</td>
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<td>Development of legislation</td>
<td>Draft legislation in partnership with government counterparts. [Note: The development of policy documents could also come under this activity, if appropriate]</td>
<td>UNODC to provide technical assistance to the Working Group or existing structure assigned to draft proposed legislation. Another option is to support a draft law on Child Protection or Child Welfare. A comprehensive chapter of legal provisions on Child Sex Tourism can be included in this draft law, among other provisions. Regular Working Group meetings to discuss draft provisions. Draft legislation revised in accordance with suggestions from Working Group. Final draft completed and agreed by Working Group. Draft Law finalized at Ministerial level (year 2 and Year 3).</td>
<td>Year 2: 2012/13 Ministry of Justice Project Coordinator National Project Officer National Legal Consultant [Supported by Protection Pillar team]</td>
</tr>
<tr>
<td>Strengthening International Cooperation to combat child sexual exploitation in travel and tourism</td>
<td>Seek and promote international cooperation, especially among law enforcement agencies and project countries in the region (through an MOU if appropriate)</td>
<td>Provide technical and other assistance as needed to promote international cooperation. Hold regular meetings on child sexual exploitation in travel and tourism.</td>
<td>Protection Pillar team Police and Justice Ministries Year 1: 2011/12 Year 2: 2012/13 Year 3: 2013/14</td>
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<td>Training and awareness raising</td>
<td>Bolster capacity of domestic law enforcement agencies to understand,</td>
<td>Developing and testing training materials.</td>
<td>Year 2: 2012/13 Year 3: 2013/14</td>
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</table>
### SUGGESTED PROJECT IMPLEMENTATION PLAN: 2011–14

#### Outcome 1: Legislative frameworks relevant to combating travelling child sex offenders and protecting victims are enhanced / improved

**Output 1.1:** Legislative review undertaken

**Output 1.2:** Clear and practical recommendations presented to government counterparts with regard to improving legislative frameworks to combat travelling child sex offenders

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<td>interpret and apply new legislative provisions.</td>
<td>Delivery of training workshops: Focus on police, prosecutors and the judiciary.</td>
<td>Protection Pillar team [Supported by International Legal Consultant and National Legal Consultant]</td>
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<td>Build awareness and support across government and non-government agencies of the legal reforms.</td>
<td>Regional conferences hosted together with project countries (staggered across the beginning, middle and end of the project).</td>
<td>Year 1: 2011/12  Year 2: 2012/13  Year 3: 2013/14 [spread over the project period]</td>
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<td>Regional conferences on strengthening legal frameworks to counter sexual exploitation of children in travel and tourism in the Greater Mekong Sub-region</td>
<td>Facilitate information sharing between project countries on programs for legal reform.</td>
<td>Regional conferences hosted together with project countries (staggered across the beginning, middle and end of the project).</td>
<td>Year 1: 2011/12  Year 2: 2012/13  Year 3: 2013/14 [spread over the project period]</td>
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<td>Foster cross-border networks between law and justice agencies in the partner countries.</td>
<td>Development of regional instrument (non-binding) to facilitate cross border cooperation to combat sexual exploitation of children in travel and tourism.</td>
<td>Year 1: 2011/12  Year 2: 2012/13  Year 3: 2013/14 [spread over the project period]</td>
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<td>Maximise potential for harmonisation of criminal offences targeting sexual exploitation of children in travel and tourism in the region.</td>
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<td>Provide platform for the development of a regional instrument (non-binding) to facilitate cross border cooperation and confirm partner countries’ commitment to enhancing joint criminal justice responses to sexual exploitation of children in travel and tourism.</td>
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32 Cambodia