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

Lao PDR
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# CONTENTS

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

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

Ministry of Justice .................................................................................................................................. 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 Lao PDR 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 .................................................................................................. 24

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 ............................................................................................................................. 30
This report was developed under the framework of Project Childhood, a $7.5 million Australian Government initiative to combat the sexual exploitation of children in travel and tourism in the Mekong sub-region. Project Childhood builds on Australia’s long-term support for programs that better protect children and prevent their abuse. Project Childhood brings together the United Nations Office on Drugs and Crime (UNODC), INTERPOL and World Vision to address the serious issue of sexual exploitation of children in travel and tourism. The project works in Cambodia, Lao PDR, Thailand and Viet Nam and takes a dual prevention and protection approach.

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H.E. Prof. Ket Kiettisak (Vice Minister of Justice), Mr. Bounta S. Phamixay (Director General), Mr. Latsamy Phetravanh (Deputy Director General) and Ms. Lodchana Khemthong (Chief of Division, Judicial Administration System Department). The report was revised and finalized by these senior legal experts from the Ministry of Justice of Lao PDR. The report’s recommendations on legislative review have been accepted by the Ministry of Justice, and will be used as reference material for the legal amendment process under the framework of the Lao National Assembly Legislative Program.

UNODC wishes to acknowledge the generous support provided by the Government of Australia.
FOREWORD

MINISTRY OF JUSTICE

The UNODC Legal Analysis and Implementation Report is an important document for Lao PDR. The findings of the report have demonstrated that improvements in the Lao PDR legal framework are necessary to ensure that we meet international standards regarding sexual exploitation of child.

This report has had the benefit of being reviewed by an independent national legal expert, the Ministry of Justice and other relevant agencies. Under my close supervision, Mr. Bounta S. Phabmixay (Director General), Mr. Latsamy Phetravanh (Deputy Director General) of Judicial Administration System Department, and Ms. Lodchana Khemthong (Chief of Division, Judicial Administration System Department) and members of the Responsible Committee on child protection, which was established to also work with Project Childhood (Protection Pillar), reviewed and made valuable comments to the report.

I urge all legal officials, law enforcement officials - police, prosecutors and judges - to utilize this report in their respective areas of work. It is recommended that the findings of this report are used as a fundamental basis for revising laws related to protecting children in Lao PDR. This is a start to ensuring that our laws are comprehensive and that they address the issue of child sexual exploitation in travel and tourism.

H.E. Prof. Ket Kiettisak
Vice Minister
Ministry of Justice
Lao PDR
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 Lao PDR 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 Cambodia, 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 Lao, 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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<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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<td>ILO</td>
<td>International Labour Organization</td>
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<td>ILO Convention 182</td>
<td>Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour</td>
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<td>INTERPOL</td>
<td>International Criminal Police Organization</td>
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<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 Lao PDR 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, Lao PDR 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 Lao PDR. It will help develop targeted programs of reform that bolster Lao PDR, 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 Lao PDR, 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

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2 http://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 Lao PDR, 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 Lao PDR.

In Lao PDR, 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 Lao PDR 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 Lao PDR meets 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 Lao PDR 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 Lao PDR?
- **Criminalisation and penalties for conduct relating to child sex tourism**: Does Lao PDR criminalise conduct relevant to travelling child sex offending? What are the relevant penalties?
- **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?

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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/ei/Publications/CYP/YP_Guide_to_CST_ENG.pdf -- p8
• **Measures for cross border law enforcement cooperation:** Are travelling child sex offences extraditable? Does the law of Lao PDR 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 Lao PDR 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 Lao PDR 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 each partner country.

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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 countries is beyond the scope of this report.
There is currently no internationally agreed definition of child sex tourism.\(^8\) 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.\(^9\)

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 Lao PDR.


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. Lao PDR is a State Party to all of these key international instruments. The table below demonstrates the extent to which those instruments have been ratified (or acceded to) in each of the project countries:

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\(^8\) ChildWise, 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
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.\textsuperscript{12} It is a widely adopted treaty, with a total of 193 states parties.\textsuperscript{13} Lao PDR 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\textsuperscript{14}—and to prevent the abduction, sale or trafficking of children for any purpose or in any form.\textsuperscript{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.\textsuperscript{16}

The CRC Optional Protocol obliges states parties to take specific measures to prohibit the sale of children, child prostitution and child pornography\textsuperscript{17}—activities which the instrument itself notes are closely linked to child sex tourism.\textsuperscript{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;

\begin{table}[h]
\centering
\caption{Status of ratification\textsuperscript{11}}
\begin{tabular}{|c|c|c|c|c|c|}
\hline
\hline
Cambodia & ✓ & ✓ & ✓ & ✓ & ✓ \\
Lao PDR & ✓ & ✓ & ✓ & ✓ & ✓ \\
Thailand & ✓ & ✓ & ✓ & ✓ & ✓ \\
Viet Nam & ✓ & ✓ & ✓ & ✓ & ✓ \\
\hline
\end{tabular}
\end{table}

Legend: ✓: State Party [the country has either ratified or acceded to the instrument]

\textsuperscript{11}UN Treaty Series \texttt{<http://treaties.un.org>} sourced at 15\textsuperscript{th} January 2013; and \texttt{http://www.ilo.org/ilolex/english/}
\textsuperscript{12}Art 3
\textsuperscript{13}UN Treaty Series \texttt{<http://treaties.un.org>} sourced at 28 August 2011
\textsuperscript{14}Art 34
\textsuperscript{15}Art 35
\textsuperscript{16}Art 12(2)
\textsuperscript{17}Art 1; While some organisations 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.
\textsuperscript{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.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).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: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.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).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.24 This mandatory obligation under the Protocol reflects the international legal principle aut dedere aut judicare—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.25 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,26 and to take action for the seizure and confiscation of the proceeds of those offences.27 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 a state wishes to exercise jurisdiction over its own nationals for prosecution, as outlined above).28 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

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19 Art 2
20 Art 3
21 Art 3(3)
22 Art 3(1)-(2)
23 Art 4(1)
24 Art 4(3); Art 5(5)
25 Art 4(2)
26 Art 6
27 Art 7
28 Art 5
of those responsible for the sale of children, child prostitution, child pornography and child sex tourism offences.\textsuperscript{29}

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\textsuperscript{10} and requires that, in the treatment of child victims in the criminal justice system, the best interests of the child is a primary consideration.\textsuperscript{31} 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.\textsuperscript{32}

It is important to note that, under the CRC, a child is defined as a person under the age of eighteen years.\textsuperscript{33} 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.
4.2 TRAFFICKING IN PERSONS PROTOCOL

The TIP Protocol, supplementing UNTOC, obliges states to take action to prevent, suppress and punish trafficking in persons. Lao PDR 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.\(^{34}\) A child is defined under the TIP Protocol as any person under eighteen years of age.\(^{35}\) 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.\(^{36}\)

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.\(^{37}\) 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 attempt, participating as an accomplice, and organising or directing others to commit an offence.\(^{38}\) 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:

- Protect the privacy and identity of victims, including by making legal proceedings relating to trafficking confidential\(^{39}\)

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34 ECPAT, Mind the Gaps, p12  
35 Art 3(d)  
36 Art 3(a)  
37 Art 3(c)  
38 Art 4  
39 Art 6(1)
- Provide information to victims on relevant court and administrative proceedings, and assistance to enable their views and concerns to be presented in criminal proceedings.  
- Ensure that the special needs of children are taken into account in the legal process.  
- Endeavour to provide for the physical safety of victims.

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

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. Lao PDR 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 and also the sale and trafficking of children. Measures to prohibit and eliminate the worst forms of child labour may include criminal or other sanctions, as appropriate. 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.
5 LAO PDR LEGAL FRAMEWORK

5.1 STATUS OF RATIFICATION OF KEY INTERNATIONAL INSTRUMENTS

Lao PDR has ratified each of the five international instruments that establish key obligations for states to implement criminal justice responses to combat child sex tourism.

5.2 CRIMINALISATION AND PENALTIES FOR CHILD SEX TOURISM CONDUCT

The law of Lao PDR contains a range of instruments which are relevant to addressing child sex tourism—in particular, the Penal Law (1990), the Law on the Protection of the Rights and Interests of Children (2006) (the Child Protection Law) and the Law on the Development and Protection of Women (2004) (the LDPW). While there is no specific legislation targeting child sex tourism, these existing laws provide a suite of offences relating to sexual abuse against children, child prostitution, child pornography and the trafficking of children for sexual purposes. These laws lay the foundation for further legal development to strengthen Lao PDR’s implementation of the key obligations under the CRC Optional Protocol.

The Penal Law appears to limit criminal responsibility to individuals, and does not extend responsibility to legal entities.52 The Law allows scope for offences relating to attempt, preparation and participation, which may be punishable in accordance with the penalties determined for the head offence. However, these ancillary offences may only be invoked if they are deemed dangerous for society, and specifically provided for under the Penal Law.53 The Penal Law offences relevant to child sex tourism do not appear to include these types of ancillary offences.54 The Penal Law applies extraterritorially to citizens and residents of Lao PDR. It may also be applied to foreign nationals who commit offences outside the territory of Lao PDR, where such extension of jurisdiction is required under an international instrument.55 Although the term ‘child’ is not formally defined in the Penal Law, the law consistently refers to children as being under the age of 18 years. Children are also defined under the Child Protection Law as persons under the age of 18 years.56

5.2.1 CHILD PROSTITUTION

The Penal Law carries a basic offence of assisting and facilitating prostitution which carries a sentence of between 3 months and 1 year imprisonment (or re-education) and a financial penalty (300,000 to 1 million Kip).57 This offence carries a low penalty and is not matched by a separate offence of assisting or facilitating child prostitution. The procurement of prostitution—meaning generating income through prostitution—in cases where the prostitution involves female children or forcing a female person into prostitution, is a separate offence punishable by 3 to 5 years imprisonment and a fine between 10 and 50 million Kip.58 Significantly, this procurement offence only applies to female child victims and would not allow for prosecution of an offender for procuring prostitution from a male child.

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52 Chapter 2, Art 16
53 Chapter 2
54 Note there is no reference in Chapter 6 of the Law
55 Art 4
56 Art 3
57 Art 131
58 Art 132
A new provision in the Penal Law applies more broadly to both male and female victims, when the circumstances amount to forced prostitution. Article 133 requires a person forcing another into prostitution to be punished by between 5 and 10 years imprisonment and a fine of between 10 and 20 million Kip. Where the person forced into prostitution is a child, the punishment is elevated to between 10 and 20 years imprisonment and a fine of between 20 and 50 million Kip. Importantly, this new provision does not distinguish between male and female child victims, however it is not clear how the forced prostitution offence would be interpreted by Lao PDR authorities. In the context of child prostitution, it would be important to have a clear legal understanding of the elements that would constitute forced prostitution, and how this might interact with child trafficking offences.

The Child Protection Law criminalises sexual relations with children older than 12 years (both male and female) in exchange for paying or giving any type of benefit: an offence of this nature against a child between 15 and 18 years of age carries a maximum penalty of 1 year imprisonment (or re-education) and a fine between 1 and 2 million Kip, and against a child between 12 and 15 years old a maximum term of imprisonment of 5 years and a fine of 2 – 5 million Kip. These offences broadly cover conduct linked to travelling child sex offenders, including child prostitution, and could be used to prosecute that type of crime. The offences do not cover conduct relating to children under the age of 12 years, because under the Child Protection Law all sexual relations with children in this age group are deemed to constitute rape (see section below for further information). However, while the rape of a child under 12 years of age carries a relatively strong maximum prison term of 15 years, the offences against older children relating to sexual relations in exchange for a benefit carry far lower penalties (maximums of 1 or 5 years imprisonment, depending on the age of the child).

These penalties may not provide a sufficient deterrent to potential perpetrators. However, the Child Protection Law also provides that a person who requests, receives or recruits a child into prostitution shall be prosecuted in accordance with Article 134 of the Penal Law. Article 134 criminalises trafficking in persons (see below for further information on offences and penalties under this section). However, while the trafficking offences under Article 134 of the Penal Code provide broader coverage of conduct relevant to child prostitution, it is not clear how this provision would be interpreted in conjunction with other articles of the Penal Law which could cover the same conduct.

The use of child labour in hazardous sectors is also an offence under the Child Protection Law. While ‘hazardous sectors’ is not defined in the law, it is possible that the commercial sexual exploitation of children, or child prostitution, could be included in this category (in line with the obligations under ILO Convention 182). Penalties for this offence are imprisonment between 3 months and 1 year, and a fine between 1 – 2 million Kip; however, these criminal sanctions may only be invoked if the offender has been previously subject to administrative measures and has repeated the offence. The Child Protection Law provides an aggravated offence, which imposes harsher penalties in cases where the hazardous child labour leads to the disability or death of the child.

While the Penal Law and Child Protection Law criminalise some offences relating to child prostitution, the law does not sufficiently meet the requirements of the CRC Optional Protocol. The law lacks comprehensive child prostitution offences that cover the full range of conduct contemplated by the CRC Optional Protocol—in particular, offering, obtaining, procuring or providing a child for child prostitution. The Penal Law does not identify that child prostitution may involve remuneration but could also include any other kind of consideration in exchange for sexual activities with the child; and neither the Penal Law or the Child Protection Law...

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59 Art 133  
60 Art 89  
61 Art 89  
62 Art 87
Law provide that the definition of prostitution could be met regardless of whether the remuneration or consideration is provided directly to the child, or to another person. Finally, the laws should clearly indicate that child prostitution offences are punishable by persons acting individually or in a group, and should clearly include ancillary offences so that attempt, complicity and participation in child prostitution can be prosecuted.

5.2.2 SEXUAL ABUSE AGAINST CHILDREN

The Penal Law prohibits sexual assault and sexual abuse against women and girls, including aggravated offences of rape which carry stiff penalties in cases where the victim is less than 15 years old (7 to 15 years imprisonment, and 5 to 15 million Kip fine), or between 15 and 18 years old (5 to 10 years imprisonment, and 2 – 10 million Kip fine).\(^63\) Attempt to commit rape is also punishable by the same penalties as the head offence.\(^64\) These offences relating to rape apply only when the victim is female, and this aspect of the law therefore does not provide appropriate protection for boys.

Broader offences under the Penal Law, and also the Child Protection Law, provide additional protections for children—both male and female. Under the Penal Law, sexual intercourse with a child under the age of fifteen years is punishable by 1 to 5 years imprisonment and between a 1 and 5 million Kip fine.\(^65\) This offence carries a relatively low penalty which may not appropriately reflect the gravity of the crime. However, under the Child Protection Law, where a child victim is under 12 years of age, any sexual relations with that child will be considered rape, carrying a punishment of between 7 and 15 years imprisonment and a fine between 7 and 15 million Kip.\(^66\) This offence under the Child Protection Law carries a far harsher penalty to reflect the gravity of the offence. However, it is not clear how these Penal Law and Child Protection Law offences would be interpreted in conjunction with the Penal Law provisions criminalising sexual assault against girls.

The core offences relating to sexual abuse against children 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.\(^67\) According 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.\(^68\) The United States considers grooming to be an act of deliberately establishing an emotional connection with a child to prepare that child for abuse.\(^69\) 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.

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\(^{63}\) Art 128  
\(^{64}\) Art 4  
\(^{65}\) Art 129  
\(^{66}\) Art 89  
\(^{67}\) 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.  
\(^{69}\) See US legislation 18 USC 2422 and 18 USC 2252A
5.2.3 CHILD PORNOGRAPHY

Under the Child Protection Law, the production or dissemination of child pornography is punishable by imprisonment between 1 and 3 years, and a fine between 2 and 6 million Kip. This offence closely mirrors a broader pornography offence under the Penal Law, however the penalties provided under the Child Protection Law for the specific offence of child pornography are slightly greater.

Offences under the Penal Law, though not specific to conduct against children, may also be invoked to prosecute travelling child sex offenders. An offence of pornography under the Penal Law criminalises engaging in sexual intercourse or exposing sexual organs in the presence of members of the public or a public place—punishable by 3 months to 1 year imprisonment (or re-education) and a fine between 50 and 200 thousand Kip. It is also an offence to produce and disseminate pornographic objects—punishable by 3 months to 1 year imprisonment and a fine between 200,000 and 5 million Kip (however, this offence carries a more lenient penalty than the equivalent offence under the Child Protection Law). Under Article 137, a person engaging in any act that causes embarrassment of a sexual nature to another person against their will may be punished by 6 months to 3 years imprisonment or re-education, and fined between 100,000 and 500,000 Kip.

While the Penal Law offences may ostensibly be sufficiently broad to apply to conduct relating to child sex tourism, they are not specifically directed at offences against children and do not adequately reflect the severity of the offences—which ultimately may not be an effective deterrent. Likewise, the specific child pornography offence under the Child Protection Law carries a relatively light penalty. It also only applies to the production and dissemination of child pornography, meaning that individuals who possess the material for their own use, without actually producing or distributing it, cannot be prosecuted. This is a significant gap in the existing law relating to child pornography.

5.2.4 CHILD TRAFFICKING

The Child Protection Law, Penal Law and the Law on the Development and Protection of Women (2004) (the LDPW) each criminalise trafficking in children. Under the Child Protection Law, it is an offence to traffic children—punishable by 5 to 15 years imprisonment and a fine between 10 and 100 million Kip, and subject to asset confiscation.

The LDPW criminalises trafficking in women and children, which broadly matches the definition of trafficking in persons under the TIP Protocol. Trafficking in children appears to be criminalised by two overlapping provisions of the law. Trafficking in women and children is broadly punishable by imprisonment of between 5 and 15 years imprisonment and between a 10 and 100 million Kip fine. However, the law also specifies that in aggravating circumstances—including where the victims are children—the penalty is increased to imprisonment between 15 and 20 years and a fine of 100 – 500 million Kip. Preparatory acts and attempt to commit a trafficking offence are punishable under the LDPW, however penalties are not specified. It is also an offence to participate as an accomplice by cooperating or providing various forms of assistance to commit an offence, carrying a penalty of 4 to 10 years imprisonment, and a fine between 5 and 50 million Kip. All child trafficking offences under Article 49 of the LDPW are also subject to asset confiscation under the Penal Law.

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70 Art 86
71 Art 136
72 Art 137
73 Art 90
74 Art 24
75 Art 49
76 Art 49
Separately, the Penal Law also contains a trafficking offence. Like the LDPW, this offence is broadly consistent with the definition of trafficking in persons under the TIP Protocol. The Penal Law contains the same penalties as the LDPW for broad trafficking offences, and the specific trafficking in children offence. Attempt is criminalised and punishable by the same sanctions as the head offences. The Penal Law also indicates that the LDPW may be used to prosecute trafficking offences.

With trafficking offences appearing in three separate pieces of legislation in Lao PDR, it is not clear how these laws interact and which would take precedence. It would be beneficial to identify how these provisions are interpreted in practice, to identify clearly whether any legal reforms may be required.

5.2.5 INTERACTION BETWEEN LAWS

The Child Protection Law provides that any provisions which contradict the Child Protection Law are repealed. The effect of repealing contradicting provisions of other laws may be beneficial in relation to some older offences which carry relatively low penalties and can now be superseded by harsher provisions under more recent legislation. However, information is not available on how the repealing power is implemented in Lao PDR and there could be some challenges in legislative interpretation of repealing provisions.

For example, under the LDPW child trafficking carries a maximum term of imprisonment of 20 years and a maximum fine of 500 million Kip. Under the Child Protection Law, child trafficking carries a maximum term of imprisonment of 15 years and a maximum fine of 100 million Kip. Both the LDPW and the Child Protection Law provide that regulations and provisions which contradict the law are void or repealed. However, it is not clear which provision should prevail. In this case, it is particularly difficult to interpret the law because, while the Child Protection Law is the more recent piece of legislation and therefore would seem to supersede the LDPW, it is the LDPW offence that carries the heavier penalty and may therefore serve as a greater deterrent. Information was not available to confirm how the judiciary would determine the appropriate legislation applicable to each particular case. It will be important to clarify this interpretation and identify how the repealing power is applied, to identify whether further clarity is required in the legislation.

5.3 CHILD PROTECTION MEASURES IN THE CRIMINAL JUSTICE PROCESS

The law of Lao PDR contains strong measures for the protection of child victims and witnesses in the criminal justice process. The Child Protection Law enshrines the best interests of the child in decision making about issues relating to a broad range of child protection issues, and identifies specific basic rights to be enjoyed by children including the right to special protection in legal proceedings. These basic principles provide the basis for the specific legislative requirements contained in the Child Protection Law for protection of the rights of child victims and witnesses in criminal proceedings, and the conduct of interviews of children.

Article 44 requires that children who are victims and witnesses have the right to the a range of measures including: to express their views, to have their privacy protected, to be protected from coercion or threat or

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77 Art 134
78 Art 4
79 Art 134
80 Art 93
81 Art 49
82 Art 90
83 LDPW – Art 54; Child Protection Law – Art 93
84 Art 4
85 Art 3(9)
other danger, and to have their rights respected as provided under the LDPW and the Law on Criminal Procedure. Interviews of child victims and witnesses are required to be conducted by specially trained investigators and prosecutors, in collaboration with social workers, and must be conducted:

- with sensitivity and child friendly methods
- allowing for parents, guardians or legal protectors to be present
- in a special, separate room
- in language appropriate to the age of the child, and
- in a manner that prevents the child from having contact with the accused.

Under the LDPW, child victims of trafficking are afforded a range of rights under the LDPW relating to their welfare and protection. In the criminal justice process, child victims are provided the right to testify and present evidence relating to their case and have the right not to be prosecuted or detained on any criminal charge of prostitution, trafficking in women and children, or immigration. However, the Amended Law on Criminal Procedure (2004) (Criminal Procedure Law) specifies that children may be brought before the courts to give testimony but shall not be deemed to be witnesses. It is not clear how this provision of the Criminal Procedure Law would interact with the provisions of the Child Protection Law and LDPW which seek to facilitate children’s participation in the criminal justice process.

The Lao PDR laws, and particularly the Child Protection Law, provide comprehensive measures for the protection of children who are victims and witnesses. While several gaps remain, overall the laws provide a good framework for child protection in the criminal justice process. The law could however be strengthened by the inclusion of measures to ensure children are informed of their rights and provided information on legal proceedings, and to avoid unnecessary delay in legal proceedings affecting the child.

5.4 MEASURES FOR CROSS BORDER LAW ENFORCEMENT COOPERATION

The National Plan of Action against Commercial and Sexual Exploitation against Children of Lao PDR (2007 – 11) (NPA–CSEC) establishes a program of protection as one of its project pillars to implement the NPA–CSEC. The program aims include collaboration and cooperation with neighbouring countries, to ensure offenders are punished. Under both the Child Law and LDPW, it is made clear that the government promotes international cooperation for the protection of the rights and interests of children and women. Legal provisions relating specifically to international legal cooperation and the extension of extraterritorial jurisdiction support these policy statements under the NPA–CSEC and the Child Law and LDPW.

While it is not clear from the laws available whether offences relating to child sex tourism are extraditable, the Criminal Procedure Law appears to provide a framework for cooperation which could be used in extradition and mutual legal assistance matters. In addition, offences committed outside the territory of Lao PDR by its

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86 Art 44
87 Art 45
88 Art 25(3)
89 Art 25(6)
90 Art 34
91 p5
92 Child Protection Law – Art 12; LDPW – Art 5
93 Part XI – see in particular Art 119
citizens, and which would constitute offences under the Penal Law, may be prosecuted in Lao PDR. This means that Penal Law offences carry extraterritorial jurisdiction—however, the offences relevant to child sex tourism under the Child Protection Law and LDPW do not equally apply extraterritorially to citizens of Lao PDR.

5.5 SUMMARY AND RECOMMENDATIONS

The domestic legal frameworks of Lao PDR provide a range of criminal offences relating to the sexual exploitation of children, which could be used to prosecute conduct linked to child sex tourism. However, there are some significant gaps in the legislation when compared with the key international obligations. Further, it is not clear how corresponding offences contained in different pieces of legislation are applied in practice—and likewise, the penalties available for those corresponding offences are inconsistent. This lack of clarity in the application of offences leaves the law open to different interpretation which may not have been the intention of the National Assembly of Lao PDR.

The Lao PDR NPA–CSEC outlines the government’s clear intention to develop and improve legislation relevant to the commercial and sexual exploitation of children. Importantly, the NPA–CSEC includes child sex tourism within the broader definition of the commercial and sexual exploitation of children and makes clear that the NPA–CSEC applies to child sex tourism. This policy statement provides a solid platform to build on government momentum to strengthen legal frameworks against child sex tourism and the sexual exploitation of children more broadly.

To ensure it meets key international standards and develops a robust legal response to child sex tourism, it is recommended that a legal reform program be undertaken in Lao PDR that ensures domestic legislation relevant to child sex tourism is consistent, sets proportionate penalties to provide a clear deterrent, and ensures that penalties relating to similar offences are appropriate. These important changes may feed into the Legal Sector Master Plan, which sets an agenda for the development of law up to 2020.

A legal reform program for Lao PDR should aim to build on existing laws to develop a strong legal response to child sex tourism, using the international standards as a benchmark. It is recommended that targeted activities to support legal reforms in Lao PDR seek to:

CRIMINALISATION: CHILD PROSTITUTION

- clarify interaction between Penal Law offences relating to child prostitution and the Child Protection Law (particularly Article 89)
- develop comprehensive offences for child prostitution with robust penalties, to include a wide range of conduct (including offering, obtaining, procuring or providing a child for prostitution) and to clarify that these acts are criminalised whether the child victim is male or female
- provide a definition of remuneration to ensure that child prostitution offences encompass a wide range of conduct—including where either remuneration or other consideration is provided in exchange for sexual activities, and regardless of whether that remuneration or consideration is provided directly to the child or to another person

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94 Penal Law – Art 4  
95 p5  
96 p4  
97 Advice received from UNODC Lao PDR country office
• provide harsher penalties for existing offences relating to sexual relations with children between the ages of 12 and 18 in exchange for paying or giving any type of benefit

• develop ancillary offences for child prostitution (particularly conduct relating to attempt, complicity, and participation) and clearly identify that child prostitution offences apply to individuals and those acting in a group

**CRIMINALISATION: SEXUAL ABUSE**

• develop robust penalties for offences relating to sexual abuse, including rape, against children of all ages and genders (in particular, strengthen the penalties applicable to offences committed against male and female children between 12 and 18 years of age)

• ensure grooming conduct is criminalised, and if necessary, develop legislative provisions

• clarify how offences relating to sexual assault and rape under the Penal Law and Child Protection Law interact and in particular, which provisions are superseded

**CRIMINALISATION: CHILD PORNOGRAPHY**

• develop a comprehensive offence of child pornography which criminalises producing, distributing, disseminating, importing, exporting, offering, selling or possessing—plus offences of attempt, complicity and participation

• strengthen penalties available for child pornography offences

• ensure child pornography offences can be interpreted to apply to all forms of material, including new technologies—and, if necessary, develop new provisions to address this

**CRIMINALISATION: TRAFFICKING**

• clarify how the Penal Law, LDPW and Child Protection Law interact in relation to child trafficking offences, to identify whether any clarification is required in the legislation

**LEGISLATIVE INTERPRETATION**

• clarify interpretation of repealing provisions under legislation, to understand how the laws are implemented in practice and identify whether any clarification is required in the legislation

**CHILD PROTECTION MEASURES**

• clarify intention of the Amended Law on Criminal Procedure relating to children’s status before the courts, and how this interacts with the LDPW and Child Protection Law provisions on the welfare and protection of children in the criminal justice process

• identify opportunities to strengthen measures to ensure children are informed of rights and provided information on legal proceedings, and to avoid unnecessary delay in legal proceedings affecting the child (these measures may be legislative or policy)
INTERNATIONAL COOPERATION

- confirm whether there are existing frameworks that would allow Lao PDR to extradite a person for offences relating to child sex tourism, including whether a treaty would be required, and if Lao PDR policy would prevent extradition of a Lao PDR citizen

- identify whether offences under the Child Protection Law and LDPW could be widened to apply extraterritorial jurisdiction [note: progress on this point will be affected by the outcome of other enquiries relating to the interaction of laws, as outlined above]

- confirm whether there are existing frameworks that would allow Lao PDR to provide mutual legal assistance in criminal matters for offences relating to child sex tourism, and

- if a need is identified for formal extradition or mutual legal assistance frameworks—develop legislation to facilitate these forms of cooperation.
6 REGIONAL FRAMEWORKS

6.1 REGIONAL CROSS BORDER LAW ENFORCEMENT COOPERATION

There is a strong basis under multilateral treaties for Lao PDR 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 purpose of the treaty. 98

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 Lao PDR and Cambodia, and Lao PDR and Thailand.99 A regional ASEAN treaty on mutual assistance in criminal matters is also in place, however not all ASEAN members have ratified the treaty.100 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.

99 Treaty between Lao PDR and Cambodia on Extradition (1999); Treaty between Lao PDR and Thailand on Extradition (1999)
100 ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (2004)
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, Lao PDR, Thailand and Viet Nam.

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, Lao PDR and Viet Nam, Lao PDR and Thailand, and Thailand and Viet Nam 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

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101 p3
• 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.
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 Lao PDR (and, in the context of regional frameworks, the other project partner countries Cambodia, Thailand and Viet Nam) against these key criteria. It is clear from the research that the legislation in Lao PDR 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 Lao PDR 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 Lao PDR, and to build ownership and secure commitment from the government of Lao PDR.

The implementation plan provides a framework to take forward technical legal assistance activities with Lao PDR (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.
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<th>AIM</th>
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<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. Identify priorities of Lao PDR for legal reform. Gauge commitment from Lao PDR for proposed technical legal assistance activities.</td>
<td>Preparation of discussion paper on each project country 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] Translation and transmission of discussion paper to government counterparts for consideration. Presentation of legal report findings specific to each country (using targeted discussion paper) at national workshops. 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. 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. Translation and transmission of targeted project plan to government counterparts for consideration.</td>
<td>Year 1: 2011/12 [Sept 2011 – Aug 2012] International Legal Consultant National Project Officer International Legal Consultant (Supported by Protection Pillar team) National Legal Consultant (Supported by Protection Pillar team) National Project Officer</td>
</tr>
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</table>
# Lao PDR

## PROJECT IMPLEMENTATION PLAN: 2011–14

**Outcome 1:** Legislative frameworks relevant to combatting 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

<table>
<thead>
<tr>
<th>AIM</th>
<th>OBJECTIVE</th>
<th>ACTIVITY</th>
<th>TIMESCALE/ACTIVITY LEAD</th>
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<tbody>
<tr>
<td>Workshops and information gathering across wide range of government partners and other stakeholders</td>
<td>Build domestic capacity and understanding of key international legal obligations. Discuss key areas proposed for legal reform and gain information on domestic context. Foster whole of government commitment (and, where appropriate, engagement from non-government stakeholders) to proposed legal reforms.</td>
<td>Legal workshops with key government officials to discuss proposed reforms. Establish a Working Group with government counterparts (and other stakeholders if appropriate) tasked with developing legislative reforms.</td>
<td>Year 1: 2011/12&lt;br&gt;International Legal Consultant and National Legal Consultant [Supported by Protection Pillar team]</td>
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<tr>
<td>Development of legislation</td>
<td>Draft legislation in partnership with government counterparts.</td>
<td>UNODC to provide technical assistance to the Working Group assigned to draft proposed legislation. 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.</td>
<td>Year 2: 2012/13&lt;br&gt;Project Coordinators&lt;br&gt;Year 3: 2013/14&lt;br&gt;National Project Officer&lt;br&gt;National Legal Consultant [Supported by Protection Pillar team]</td>
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<tr>
<td>Legislative implementation</td>
<td>Provide support to project country with passage of legislation through parliament and other domestic implementation processes.</td>
<td>Approval of legislation by National Assembly or other appropriate body. Passage of legislation and entry into force.</td>
<td>Year 2: 2012/13&lt;br&gt;Year 3: 2013/14&lt;br&gt;National Legal Consultant [Supported by Protection Pillar team]</td>
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<tr>
<td>Training and awareness raising</td>
<td>Bolster capacity of domestic law enforcement agencies to understand, interpret and apply new legislative provisions.</td>
<td>Delivery of training workshops: Focus on police, prosecutors and the judiciary.</td>
<td>Year 2: 2012/13</td>
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<td></td>
<td>Build awareness and support across government and non-government agencies of the legal reforms.</td>
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<td>Year 3: 2013/14</td>
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<td>Protection Pillar team</td>
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<td>[Supported by International Legal Consultant and National Legal Consultant]</td>
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<td>Regional conferences on strengthening legal frameworks to counter</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</td>
<td></td>
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<tr>
<td>child sex tourism in the Greater Mekong Sub-region</td>
<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 child sex tourism.</td>
<td>Year 2: 2012/13</td>
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<td></td>
<td>Maximise potential for harmonisation of criminal offences targeting child sex tourism in the region.</td>
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<td>Year 3: 2013/14</td>
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<td></td>
<td>Provide platform for the development of a regional instrument (non-binding) to facilitate cross border cooperation and confirm partner</td>
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<td>[spread over the project period]</td>
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<td>countries’ commitment to enhancing joint criminal justice responses to child sex tourism.</td>
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<td>Protection Pillar team</td>
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