Strengthening Legislative Frameworks

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

Viet Nam

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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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Ms. Lindsay Buckingham, Independent Legal Expert engaged by UNODC Regional Office for Southeast Asia and the Pacific, for drafting the report. Ms. Buckingham received valuable assistance from Ms. Margaret Akullo (Project Coordinator, UNODC Regional Office for Southeast Asia and the Pacific), Ms. Annethe Ahlenius (INTERPOL Coordinator), Ms. Kanha Chan (National Project Officer, UNODC Cambodia), Ms. Sommany Sihathep (National Project Officer, UNODC Lao PDR), Ms. Snow White Smelser (National Project Officer, UNODC Thailand) and Ms. Do Thuy Van (National Project Officer UNODC Viet Nam).

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FOREWORD

MINISTRY OF JUSTICE

Over the last few years in Viet Nam, the situation of child abuse and child sexual abuse in particular, has become more complex in nature, scale and dangerousness. More and more foreigners come to Viet Nam to conduct business, to live here, to travel and study. Some of them have engaged in child sexual abuse. In addition, many domestic tourists have taken advantage of the difficult economic situation of children and have used these children for sexual exploitation and abuse. The protection of children from being sexually abused in the tourism industry, including legal measures to protect these children, has become an urgent issue. Currently, the Penal Code 1999 is undergoing a comprehensive amendment process. This legal reform process, aimed at protecting the rights of children, includes improvements to Penal Code provisions relating to juvenile offenders and juveniles who are abused, including children sexually abused in travel and tourism.

Under the framework of cooperative activities between the Ministry of Justice of Viet Nam and UNODC, the Department of Criminal and Administrative Laws also collaborated with international legal experts to analyse and assess the Viet Nam legal provisions on child sexual abuse in travel and tourism by comparing these provisions with international standards. In addition, legal experts from the Ministry of Justice in collaboration with the UNODC Viet Nam conducted a survey on the implementation of the law to combat child sex tourism crimes in nine localities of Viet Nam. The research and survey findings will be valuable reference material for drafting the law and the Penal Code amendments in particular.

On this occasion, we would like to extend sincere thanks to the Government of Australia for providing funding for the assessment and subsequent survey, Ms. Lindsay Buckingham (UNODC Legal expert), Ms. Margaret Akullo (UNODC Project Coordinator), Ms. Annethe Ahlenius (INTERPOL Coordinator), Ms. Zhuldyz Akisheva (Country Manager, UNODC Viet Nam) and Ms. Do Thuy Van (National Project Officer UNODC Viet Nam) for supporting us in completing this report. We look forward to future collaboration and support during the law drafting process.

Hoang The Lien
Vice Minister
Ministry of Justice
Viet Nam
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 Viet Nam 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, Lao PDR and Thailand. 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 Vietnamese, 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

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<th>Description</th>
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<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 International</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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EXECUTIVE SUMMARY

This report provides a comparative analysis of the domestic legal frameworks in Viet Nam 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 Vietnamese 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, Viet Nam 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 Viet Nam. It will help develop targeted programs of reform that bolster Viet Nam, 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. In Vietnam, 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. 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 presents specific challenges to law and justice institutions in developing and implementing effective responses. Firstly, 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). Secondly, tourist accommodation, transport and other services—particularly those which enable contact with children—may also be used by offenders to facilitate their crimes. Thirdly, 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 aims 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.

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2 http://www.unicef.org/eapro/activities_3757.html
This report focuses on work delivered by UNODC and INTERPOL under the Project Childhood (Protection Pillar)—in particular, Outcome 1 (Legislative frameworks relevant to combating travelling child sex offenders and 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 Viet Nam, and complements similar reports prepared for each of the Project Childhood partner countries. The report has been developed in consultation with the Ministry of Justice and other national counterparts, and provides a platform for implementing specific recommendations to strengthen the legal response to child sex tourism in Viet Nam.

Viet Nam has expressed a 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 domestic legal frameworks and inconsistencies in relation to international standards relevant to child sex tourism. The risk is that, while legal gaps remain, travelling child sex offenders in Viet Nam will seek to exploit those loopholes and will not be deterred from seeking to sexually exploit children in Viet Nam.

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 between Viet Nam and countries in the region 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 travelling child sex offenders have nowhere to hide.

2 SCOPE

This report considers the extent to which Viet Nam 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 in Viet Nam against key international obligations, Part 1 of the report considers the following questions:

- **Status of ratification of key international instruments**: Which instruments have been acceded to or ratified by Viet Nam?

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1 Project Childhood: Protection Pillar. Project Implementation Design Document
2 Ibid.
3 http://www.ecpat.net/worldcongressIII/PDF/Journals/EXTRATERRITORIAL_LAWS.pdf – p4
• **Criminalisation and penalties for conduct relating to child sex tourism:** Does Viet Nam 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?

• **Measures for cross border law enforcement cooperation:** Are travelling child sex offences extraditable? Does the law of the partner country create extraterritorial jurisdiction for those offences? Are there frameworks for mutual legal assistance?\(^7\)

• **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 closely with the law enforcement agencies of Viet Nam 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 Viet Nam Office and those available through reliable online sources. This 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. Noting these limitations the Ministry of Justice, together with UNODC, undertook field research (through surveys) and provided further review and analysis of legal and law enforcement responses to child sex tourism in Viet Nam and in the region.

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 Viet Nam.

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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 Viet Nam.


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. Viet Nam 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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\(^8\) 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
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 196 states parties.\textsuperscript{13} Viet Nam 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;

\textsuperscript{13} Art 3
\textsuperscript{14} UN Treaty Series <http://treaties.un.org> sourced at 28 August 2011
\textsuperscript{15} Art 34
\textsuperscript{16} Art 35
\textsuperscript{17} Art 12(2)
\textsuperscript{18} 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.  

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). 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:

- 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.

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). 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. 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 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. 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, and to take action for the seizure and confiscation of the proceeds of those offences. 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). 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 these crimes.

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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.

\textsuperscript{29} Art 10(1)
\textsuperscript{30} Art 8(1)
\textsuperscript{31} Art 8(3)
\textsuperscript{32} Art 8(1)
\textsuperscript{33} 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. Viet Nam 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, harbouring 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 attempt, 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:

- Protect the privacy and identity of victims, including by making legal proceedings relating to trafficking confidential.

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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.\textsuperscript{40}
- Ensure that the special needs of children are taken into account in the legal process.\textsuperscript{41}
- Endeavour to provide for the physical safety of victims.\textsuperscript{42}

Under the UNTOC, states are required to cooperate through extradition and mutual legal assistance, to the widest extent possible.\textsuperscript{43} UNTOC sets obligations similar to those provided under the CRC Optional Protocol for the establishment of jurisdiction over offences,\textsuperscript{44} 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{45} Both UNTOC and the TIP Protocol also call on states parties to cooperate at the agency level to share law enforcement information.\textsuperscript{46}

### 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{47} Viet Nam 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{48} and also the sale and trafficking of children.\textsuperscript{49} Measures to prohibit and eliminate the worst forms of child labour may include criminal or other sanctions, as appropriate.\textsuperscript{50} 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{51}

\textsuperscript{40} Art 6(2)
\textsuperscript{41} Art 6(4)
\textsuperscript{42} Art 6(5)
\textsuperscript{43} Arts 16; 18(1)-(2)
\textsuperscript{44} Art 15
\textsuperscript{45} Arts 15-16
\textsuperscript{46} TIP Protocol Art 10(1); also reflected in UNTOC Art 27
\textsuperscript{47} Art 1
\textsuperscript{48} Art 3(a)
\textsuperscript{49} Art 3(a)
\textsuperscript{50} Art 7(1)
\textsuperscript{51} CRC Optional Protocol, Arts 1 & 3
5 VIET NAM LEGAL FRAMEWORK

5.1 STATUS OF RATIFICATION OF KEY INTERNATIONAL INSTRUMENTS

Viet Nam has either ratified or acceded to each of the five international instruments that establish key obligations for states to implement criminal justice responses to combat child sex tourism: CRC, CRC Optional Protocol, UNTOC, TIP Protocol, and ILO Convention 182.

5.2 CRIMINALISATION AND PENALTIES FOR CHILD SEX TOURISM

The law of Viet Nam does not directly criminalise child sex tourism. However, some provisions of the Penal Code (1999) can be used to prosecute conduct of travelling child sex offenders.

Criminal offences under the Penal Code are subject to extraterritorial jurisdiction where the offender is either a Vietnamese citizen or a permanent resident without Vietnamese nationality. Foreign nationals may also be prosecuted for offences committed outside the territory of Viet Nam if international instruments to which Viet Nam is party require the exercise of such jurisdiction.\(^{52}\) The Penal Code establishes a broad range of offences for preparatory and ancillary conduct—including preparation of an offence, incomplete commission of an offence (also referred to as attempt), complicity (including organising, executing, instigating, helping), concealment of an offence, and failure to denounce an offence.\(^{53}\)

The Penal Code uses two terms for persons under the age of 18 years: ‘child’ and ‘juvenile’. These terms are defined in separate legislation. Under the Children’s Law (2004), a child is defined as a person under the age of 16 years. Under the Civil Code (2005), a ‘juvenile’ is a person under the age of 18 years. While both the terms ‘child’ and ‘juvenile’ are used in the Penal Code, use of the two terms may create an unintentional distinction between children under the age of 16 and those between 16 and 18 years of age. It is not clear whether this approach strictly accords with the age of majority under the key international standards, which require states to define a child as a person under the age of 18, and the protections which flow on from this. The Ministry of Justice advises that the criminal liability of children and juveniles is distinguished and assessed differently than criminal liability for adults. However, further analysis would be beneficial to confirm whether all young people under 18 years are accorded appropriate protections relating to sexual abuse and exploitation. This is a potential gap in the current legislation which requires review to ensure children are afforded the full range of protections as required under the international standards.

5.2.1 CHILD PROSTITUTION

The Penal Code criminalises three acts relevant to child prostitution—intermediation of prostitution, paying for sexual intercourse with a juvenile and harbouring prostitutes. However the current provisions do not fully comply with the requirements of the CRC Optional Protocol.

Intermediation of prostitution with a child between 16 and 18 years of age carries a penalty of between 3 and 10 years imprisonment; and where the child is between 13 and 16 years of age, between 7 and 15 years imprisonment.\(^{54}\)

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\(^{52}\) Art 6
\(^{53}\) Chapter III
\(^{54}\) Art 255
Paying for sexual intercourse with a child between 16 and 18 years of age carries a sentence of between 1 and 5 years imprisonment, and where the child is between 13 and 16 years of age imprisonment of between 3 and 8 years.55 These child prostitution offences may also be subject to a financial penalty, up to 10 million Dong. The procurement offence carries severe penalties which reflect the grave nature of the crime. However, it is not clear why the offence of paying for sexual intercourse with a child carries a lighter sentence than intermediation of prostitution with a child and harbouring children for prostitution.

Harbouring children for prostitution is also an offence, punishable by between 5 and 15 years imprisonment (where the child is between 16 and 18 years old) or between 12 and 20 years imprisonment (where the child is between 13 and 16 years old). These offences also carry financial sanctions of up to 100 million Dong, and may be subject to asset confiscation.56

While the child prostitution offences impose robust penalties for conduct committed against children between 13 and 18 years of age, there does not appear to be a specific offence for procuring or harbouring child prostitution where the child is under the age of 13 years. However, Article 112 of the Penal Code provides that all sexual intercourse with a child under the age of 13 years is deemed rape, carrying penalties of between 12 and 20 years imprisonment, life imprisonment, or capital punishment.57 It would be important to consider whether there would be benefit in developing an additional, specific child prostitution offence where the child is under the age of 13 years—to ensure that this conduct is prosecuted and to provide a clear deterrent to potential offenders. In addition, advice from the MOJ indicates that, in principle, in the case of harbouring prostitutes or intermediation of prostitution against a child or paying for sexual intercourse with a child, who is under 13 year of age, the offender will not be punished by the offences of harbouring prostitutes or intermediation of prostitution or paying for sexual intercourse with a child, but be punished for a rape of a child (in the case of or paying for sexual intercourse with a child) or as an accomplice, such as an instigator or helper to the rape of a child (in the two remaining cases). However, practice has shown that, it is difficult to define the offence and penalty in the case where the offender of harbouring prostitutes or intermediation of prostitution, or paying for sexual intercourse with a child have confused on the age of victims. The MOJ has noted that this issue be considered in the next amendment of the Penal Code.

Additional legal frameworks also prohibit child prostitution, but do not impose criminal liability. The Children’s Law prohibits seducing, deceiving, leading, harbouring or forcing children into prostitution—however, the law does not provide penalties for this conduct.58 The Ordinance on the Prevention of Prostitution provides that the employment of workers under the age of 18 in establishments such as hotels, restaurants, dance clubs, bars and massage parlours—which can be misused for prostitution—and for jobs which can negatively affect their physical and intellectual development and dignity, is prohibited.59 No criminal sanctions are imposed on this conduct under the Ordinance, because these sanctions are in the Penal Code.

### 5.2.2 SEXUAL ABUSE AGAINST CHILDREN

Prohibitions against sexual abuse or assault of a child are provided under the Penal Code and the Law on Protection, Education and Care of Children. Rape of a child between the ages of 16 and 18 years is punishable by five to ten years imprisonment,60 and of a child between 13 and 16 years old is punishable by seven to fifteen years imprisonment.61 Where the child is under the age of 13 years, all sexual intercourse is deemed

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55 Art 256  
56 Art 254  
57 Art 112  
58 Art 7  
59 Art 15; ECPAT, Mind the Gaps, p.41 – note that English version of the law was not available  
60 Art 111  
61 Art 112
rape and the offender may be sentenced to between 12 and 20 years imprisonment, life imprisonment, or capital punishment. These basic rape offences carry serious penalties, which reflect the grave nature of the offences.

The Penal Code also carries an offence of forcible sexual intercourse with children which carries a maximum penalty of 7 or 10 years imprisonment, depending on the age of the child. Rape offences are typically characterized by violence, the threat of violence, or taking advantage of a victim’s inability to defend themselves; whereas forcible sexual intercourse will be characterized by using trickery to induce a victim (who is dependent on the offender or otherwise in a vulnerable position) to have sexual intercourse against their will.

Sexual intercourse with a child between 13 and 16 years of age carries a penalty of between 1 and 5 years imprisonment. Obscenity against children, which is not clearly defined in the law, carries a sentence of 6 months to 3 years imprisonment (with potential for a stiffer penalty of either between 3 and 7 years imprisonment, or between 7 and 12 years imprisonment, in aggravating circumstances). The MOJ advises that obscenity offences include circumstances where an adult takes advantage of a child and engages them in sexually stimulating acts which do not constitute intercourse.

However, equivalent sexual intercourse and obscenity offences against children between 16 and 18 years of age are not provided under the Penal Code. This omission warrants review.

The Children’s Law also prohibits sexual abuse against children, including for personal benefit, however no criminal sanctions are imposed under this law.

The law relating to sexual abuse against children could also be 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. 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. 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. However, in Viet Nam grooming conduct may be covered stipulated in Article 17 of the Penal Code 1999 on the preparation of commission of crime.

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62 Art 112
63 Art 115
64 Art 116
65 Art 7
66 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.
68 See US legislation 18 USC 2422 and 18 USC 2252A
69 (Article 17- Preparation for crime commission - Preparation for crime commission is to search for, prepare instruments or create other conditions for committing crimes. Persons who prepare for the commission of a very serious crime or a particularly serious crime shall bear penal liability for their attempted crime.)
5.2.3 CHILD PORNOGRAPHY

Under Article 253 of the Penal Code, it is an offence to disseminate debauched cultural products, which consists of making, duplicating, circulating, transporting, selling, purchasing, or stockpiling decadent books, newspapers, pictures, photographs, films, music or other objects, for the purpose of dissemination or other acts of disseminating debauched cultural products. Where disseminating debauched cultural products against juveniles, the penalty is between 3 and 10 years imprisonment (or, where there are other aggravating circumstances—for example where there are very serious consequences or particularly serious consequences caused—between 7 and 15 years). Offenders may also be subject to an additional fine of between 3 and 30 million Dong.\(^\text{70}\)

The terms used under the Penal Code to criminalise the dissemination of debauched cultural products broadly cover the requirements of the CRC Optional Protocol, however some important gaps remain. The Penal Code does not criminalise possession of debauched cultural products, including child pornography. This is a critical element required in the law to ensure that child sex offenders who retain child pornography for their own use (and do not seek to distribute it) can be prosecuted. The law also lacks a clear definition of child pornography. It is essential that child pornography be distinguished from adult pornography, to ensure there is no ambiguity in the nature of exploitative material that is criminalised and to reflect the gravity of the offence. The current Penal Code provision does not currently address these issues.

The Ordinance on the Prevention of Prostitution also prohibits agencies, organisations and individuals from producing, circulating, transporting, storing, buying, selling, exporting, importing or publishing pictures, materials, products or information which may be rated as pornographic.\(^\text{71}\) However, no criminal sanctions are imposed on this conduct under the Ordinance. Like the Penal Code, the Ordinance does not distinguish clearly between child and adult pornographic material, and does not prohibit the possession of child pornography. Separate prohibitions are also contained in the Children’s Law—including making, duplicating, circulating, transporting or storing pornographic cultural products—however no criminal sanctions are imposed under this law.\(^\text{72}\)

5.2.4 CHILD TRAFFICKING

Trafficking in children for sexual purposes is criminalised under Viet Nam’s domestic legislation. The government of Viet Nam recently promulgated a new Law on Anti Human Trafficking which provides a broad counter-trafficking legal framework and contributes to domestic implementation of the TIP Protocol. The law came into force in January 2012. The Law on Anti Human Trafficking does not provide criminal offences and penalties—these are provided under the Penal Code which now requires revision for consistency with the new trafficking legislation, and to meet the TIP Protocol criminalization obligations.

Article 120 of the Penal Code provides an offence of trading in, fraudulently exchanging or appropriating children, with a penalty of between 3 and 10 years imprisonment. In aggravating circumstances (including where the conduct is for the purpose of prostitution) the penalty is 10 to 20 years imprisonment, or life imprisonment. An additional fine of 5 to 50 million Dong may also be imposed.\(^\text{73}\)

The Penal Code provides strong penalties for trafficking in children, especially trafficking in children for prostitution purposes. However, the Penal Code does not criminalise all forms of trafficking as required under

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\(^{70}\) Art 253

\(^{71}\) Art 16; Mind the Gaps, p.41 – note English version of the law was not available

\(^{72}\) Art 7

\(^{73}\) Art 120
the TIP Protocol (for example, it omits trafficking for the purpose of labour exploitation and the recruitment and harbouring of trafficking victims). Significantly, the Penal Code also does not set a lower threshold to establish child trafficking offences as required under the TIP Protocol. In addition, the Penal Code does not differentiate between trafficking of adults and trafficking of juveniles between the age of 16 and 18 years (Article 119), while the TIP Protocol requires a difference to be made in the ages. These significant legislative gaps did not adequately reflect the grave nature of trafficking in children for exploitative purposes.

Trafficking in children for sexual purposes is also prohibited under the Ordinance on the Prevention of Prostitution.74 However, no criminal sanctions are provided under the Ordinance, because these sanctions are in the Penal Code.75

5.3 CHILD PROTECTION MEASURES IN THE CRIMINAL JUSTICE PROCESS

The law of Viet Nam does not contain separate measures for the protection of child victims and witnesses in the criminal justice process. However, some instruments provide basic rights and protections which may be applied to child victims and witnesses of child sex tourism, and could be used as a basis for developing more robust frameworks.

The Criminal Procedure Code (2003) requires that children involved in criminal proceedings be afforded protection from danger, have their parents or legal representatives invited to attend proceedings for the taking of evidence and, in necessary cases, have proceedings conducted as closed hearings.76 In addition, advice from MOJ notes that Inter-agency Circular No. 01/2011/TTLT-VKSNDTC-TANDTC-BCA-BTP-BLDTBXH (dated 12 July 2012) provides guidance on some of the Criminal Procedure Code provisions relating to the participation of children in criminal proceedings, and includes detailed instruction on guardianship and assistance for juvenile victims, taking statements from juvenile victims and witnesses, and the conduct of trails involving juvenile victims.

Other laws, including the Penal Code and the Children’s Law, require broader measures of assistance to be provided to victims but do not relate specifically to the criminal justice process.

The new Law on Anti Human Trafficking provides basic measures to protect victims of trafficking, including child victims. These measures are applied not only during the criminal proceedings but also outside the proceedings. The law provides that information of the victims should be kept confidential unless otherwise provided by law, and that at the request of a victim (or their representative) courts shall consider using closed court sessions when hearing trafficking cases.77 However, these measures will be limited to child trafficking cases and may not be applied more broadly to other cases involving the sexual exploitation of children.

The National Program for Child Protection (2011–15) commits the Government to enhancing protections for children in the criminal justice process. Under Project 5 (Project of Enhancement of State Management on Child Care and Protection), the plan calls for reviews of child victims and witnesses in the justice system, and the review and amendment of laws on child care, protection and education.78 This policy statement demonstrates the government’s commitment to strengthening child protection measures in Viet Nam, and

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74 Mind the Gaps, p.41 – note English version of the law was not available
75 Advice from National Project Officer, UNODC Viet Nam country office
76 Arts 7, 135 and 307
77 Art 31
78 p27–28
could provide an opportunity to build on existing political will to strengthen measures for child protection in the criminal justice process.

5.4 MEASURES FOR CROSS BORDER LAW ENFORCEMENT COOPERATION

Chapters 36 and 37 of the Criminal Procedure Code (2003) broadly provide for international cooperation in criminal proceedings—including extradition and mutual legal assistance—which may be provided subject to treaties to which Viet Nam is party, or on the basis of reciprocity (in accordance with Viet Nam’s domestic law). The Law on Mutual Legal Assistance (2007) contains more comprehensive provisions for extradition and mutual legal assistance, including specific steps required to make and receive requests. While Viet Nam’s law permits the refusal of extradition on the basis of nationality,79 offences under the Penal Code apply to citizens of Viet Nam who commit those offences outside the territory of Viet Nam, through the application of extraterritorial jurisdiction—meaning that Vietnamese citizens may be prosecuted in lieu of extradition.80 An extraditable offence is defined as an offence punishable under the criminal law of both Viet Nam and the requesting state by imprisonment for a period of at least one year (or life imprisonment or the death penalty). This low threshold means that most offences under the Penal Code which relate to child sex tourism could be deemed extraditable offence.81

In addition, Chapter VII of the Law on Anti Human Trafficking provides a framework for Viet Nam to provide international legal cooperation in trafficking cases. While this framework does not specifically apply to child sex tourism offences, it provides an important precedent for cooperation to target serious offences linked to the sexual exploitation of children. Given the comprehensive coverage of the Law on Mutual Legal Assistance and the extraterritorial jurisdiction of the Penal Code, there is not currently a strong need for legal reform in Viet Nam to facilitate cross border law enforcement cooperation.

5.5 SUMMARY AND RECOMMENDATIONS

The domestic criminal legal frameworks of Viet Nam provide a range of criminal offences relating to the sexual exploitation of children, which could be used to prosecute child sex offences. However, there are significant gaps in the legislation particularly relating to child pornography and child prostitution offences. Protections for children who are victims and witnesses in the criminal justice process are also limited, though the government has demonstrated a clear intention to remedy this.

To ensure it fully 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 Viet Nam that focuses on comprehensive criminalisation of the key forms of conduct typically associated with child sex tourism—particularly addressing legal gaps relating to child prostitution and child pornography—and the development of measures for the protection of children through the criminal justice process.

A legal reform program for Viet Nam 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 Viet Nam seek to:

79 Criminal Procedure Code – Art 344(1)(a); MLA Law – Art 35
80 Art 6
81 Art 33
### DEFINITION: CHILD

- Ensure the law and relevant policy measures provides the full range of protections for all children under the age of 18 years

### CRIMINALISATION: CHILD PROSTITUTION

- To identify any gaps or overlap in these offences and develop legal reforms as required, clarify the distinction (if any) between Penal Code offences on intermediation of prostitution with a child and harbouring children for prostitution and paying for sexual intercourse with a child.
- confirm whether Article 112 of the Penal Code could be used to prosecute intermediation of prostitution with a child and harbouring children for prostitution where the child is under the age of 13 years—and, if not, consider developing a separate intermediation of prostitution with a child and harbouring children for prostitution in this age group, to maximise the legal protections and ensure this conduct is prosecuted
- confirm whether there are measures available to regulate breaches of the Ordinance on Prevention of Prostitution and Children’s Law provisions relating to child prostitution

### CRIMINALISATION: SEXUAL ABUSE

- develop sexual offences relating to sexual intercourse and obscenity against children, where committed against children between the ages of 16 and 18 years
- consider clarifying the definition of obscenity against children under the Penal Code
- consider opportunities to criminalise grooming of children for sexual abuse

### CRIMINALISATION: CHILD PORNOGRAPHY

- Develop strong child pornography offences that are distinct from any prohibition on adult pornographic material, and that criminalise the full range of conduct required under the CRC Optional Protocol (including possession of material, and coverage of all forms of material to ensure modern technologies are covered by the law)

### CRIMINALISATION: CHILD TRAFFICKING

- Ensure all forms of trafficking are criminalised, as required under the TIP Protocol
- Differentiate between trafficking of adults and trafficking of juveniles between the age of 16 and 18 years
CHILD PROTECTION MEASURES

- Ensure that the law provides full protection measures for persons under 18 years of age (children by the CRC)

- Develop comprehensive measures (legal or non-legal) for the protection of children through the criminal justice process as victims and witnesses, including measures which provide for:
  - informing child of rights and providing information on proceedings
  - allowing children’s views to be presented and considered
  - providing support services through the legal process
  - protecting the privacy and identity of child victims (noting that current measures allow for closed court proceedings, but that this could be expanded to provide greater protection of privacy)
  - providing for safety of child and family (noting that existing measures require children to be broadly protected from danger), and
  - avoiding unnecessary delay in proceedings.
6 REGIONAL FRAMEWORKS

6.1 REGIONAL CROSS BORDER LAW ENFORCEMENT COOPERATION

There is a strong basis under multilateral treaties for Viet Nam 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.82

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.83 A regional Association of South East Asian Nations (ASEAN) treaty on mutual assistance in criminal matters is also in place, however not all ASEAN members have ratified the treaty.84 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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83 Treaty between Lao PDR and Cambodia on Extradition (1999); Treaty between Lao PDR and Thailand 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, 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.85

More widely, 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

85 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 Viet Nam (and, in the context of regional frameworks, the other project partner countries Cambodia, Lao PDR and Thailand) against these key criteria. It is clear from the research that the legislation in Viet Nam is not sufficient to fully 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 Viet Nam 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 Viet Nam, and to build ownership and secure commitment from the government of Viet Nam.

The implementation plan provides a framework to take forward technical legal assistance activities with Viet Nam (and, in the context of regional frameworks, the other project 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: Viet Nam)

**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

<table>
<thead>
<tr>
<th>AIM</th>
<th>OBJECTIVE</th>
<th>ACTIVITY</th>
<th>TIMESCALE/ACTIVITY LEAD</th>
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<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>
<td>Preparation of discussion paper on each project country highlighting identified legislative gaps (and policy gaps where appropriate). To be presented at legal workshop.</td>
<td>Year 1: 2011/12 [Sept 2011 – Aug 2012] International Legal Consultant</td>
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<td>Translation and transmission of discussion paper to government counterparts for consideration.</td>
<td>National Project Officer</td>
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<td>Presentation of legal report findings specific to each country (using targeted discussion paper) at national workshops.</td>
<td>International Legal Consultant</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>
<td>National Legal Consultant [Supported by Protection Pillar team]</td>
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<td>Identify priorities for Viet Nam for legal reform.</td>
<td>Development of comprehensive project plan tailored to Viet Nam, 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>
<td>National Legal Consultant [Supported by Protection Pillar team]</td>
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<tr>
<td></td>
<td>Gauge commitment from Viet Nam for proposed technical legal assistance activities.</td>
<td>Translation and transmission of targeted project plan to government counterparts for consideration.</td>
<td>National Project Officer [Supported by Protection Pillar team]</td>
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### 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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</thead>
<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 [Sept 2011 – Aug 2012] Ministry of Justice [Supported by Protection Pillar team]</td>
</tr>
<tr>
<td>Development of legislation</td>
<td>Draft legislation by 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 UNODC Project Coordinator National Project Officer Ministry of Justice [Supported by Protection Pillar team]</td>
</tr>
<tr>
<td>Promulgation of legislation</td>
<td>Approval of legislation by National Assembly or other appropriate body. Passage of legislation and entry into force</td>
<td></td>
<td>Year 2: 2012/13 Year 3: 2013/14 Ministry of Justice [Supported by Protection Pillar team]</td>
</tr>
<tr>
<td>Legislative implementation</td>
<td>Provide support to Vietnam with passage of legislation through parliament and other domestic implementation</td>
<td>Promulgation of guiding legal documents</td>
<td>Year 2: 2012/13 Year 3: 2013/14</td>
</tr>
</tbody>
</table>
## 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

- **Objective 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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<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, legal aid provider and the judiciary.</td>
<td>Ministry of Justice [Supported by Protection Pillar team]</td>
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<td>Build awareness and support across government and non-government agencies of the legal reforms.</td>
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<td>Year 2: 2012/13</td>
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<td>Year 3: 2013/14</td>
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<td>Ministry of Justice</td>
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<td>Protection Pillar team</td>
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<tr>
<td>Regional conferences on strengthening legal frameworks to counter sexual abuse of children in travel and tourism in the Greater Mekong Sub-region and development of regional instruments, bilateral legal instruments for cross border cooperation on CST combating</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>
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<td>Year 2: 2012/13</td>
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<td>Year 3: 2013/14</td>
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<td>Ministry of Justice and relevant agencies</td>
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