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

Thailand

2014
Printed: 2014

Sponsorship: Government of Australia

Authorship: United Nations Office on Drugs and Crime, Regional Office for Southeast Asia and the Pacific, Project Childhood (Protection Pillar), Bangkok, Thailand

Contributors from the Project Childhood (Protection Pillar) Team:
Ms. Lindsay Buckingham, Independent Legal Expert
Ms. Margaret Akullo, UNODC Project Coordinator
Ms. Kanha Chan, UNODC National Project Officer, Cambodia
Ms. Sommany Sihathep, UNODC National Project Officer, Lao PDR
Ms. Snow White Smelser, UNODC National Project Officer, Thailand
Ms. Supapim Wannopas, UNODC Project Assistant, Thailand
Ms. Van Do, UNODC National Project Officer, Viet Nam
Ms. Annethe Ahlenius, INTERPOL Coordinator

Disclaimer: This document has not been formally edited. The designations employed and the presentation of the material in the document does not imply the expression of any opinion on the part of the United Nations concerning the legal status of any country, territory, city or area under its authority or concerning the delimitations of its frontiers and boundaries.
## 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 Thailand 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 ......................................................................................................................................... 26

  6.1 Regional cross border law enforcement cooperation ................................................................................... 26

  6.2 Broader regional cooperation efforts .............................................................................................................. 27

  6.3 Summary and recommendations ..................................................................................................................... 27

7 Implementation Plan ........................................................................................................................................... 29
ACKNOWLEDGEMENTS

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.

The United Nations Office on Drugs and Crime would like to extend special thanks to:

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. 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), Ms. Do Thuy Van (National Project Officer UNODC Viet Nam) and Ms. Annethe Ahlenius (INTERPOL Coordinator).

The United Nations Office on Drugs and Crime is especially grateful for the assistance and support of the following government counterparts:

Mr. Pongpat Riangkuar (Ministerial Advisor on Public Law of Ministry of Justice) and Dr. Phiset Sa-ardyen (Director of International Affairs Division of the Ministry of Justice) for taking the lead in coordinating the national consultation process on the report’s findings and for leading discussions during consultations and revisions of the report. This report has been revised to incorporate feedback from the Ministry of Justice and the Office of the Attorney General. It has been endorsed by the Ministry of Justice.

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

MINISTRY OF JUSTICE


Whilst Thailand’s legal framework regarding child sexual exploitation in travel and tourism is considered to be comprehensive, the UNODC legal analysis report identifies gaps in domestic laws when compared against standards stipulated within the UNCRC and other key international instruments. The report’s observations and recommendations serve as a fundamental basis to guide efforts on enhancing the relevant Thai legislation to better protect children. For example, Thailand has responded with draft legislation to criminalise the mere possession of child sexual abuse material. The report also highlights the issue of grooming and computer-facilitated crimes against children. High-level discussions between relevant government agencies have already begun in order to address these important issues.

The establishment of the ASEAN Economic Community in 2015 will be the result of an economic integration process of ten countries in Southeast Asia. In light of this development, the freer movement of tourists is anticipated in the region, and as such, the investigation and prosecution of travelling child sex suspects is expected to become more challenging. This report provides a platform for a proactive approach to harmonizing our laws and strengthening cooperation among agencies in the criminal justice process responsible for the protection of children from sexual abuse and exploitation by travelling child sex offenders.

Ministry of Justice extends its appreciation to UNODC for producing the legal analysis report, which contributes to Thailand’s legal reform efforts on enhancing child protection.

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

This report provides a comparative analysis of the domestic legal frameworks in Thailand 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 Thai 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, Thailand 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 Thailand. It will help develop targeted programs of reform that bolster Thailand, 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 Thailand, 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

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 Thailand, 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 Thailand.

In Thailand 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 Thailand 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 travelling child sex offenders have nowhere to hide.

2 SCOPE

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

To provide a consistent framework for comparison of the laws of each project country 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 the Thailand?
- **Criminalisation and penalties for conduct relating to child sex tourism:** Does the Thailand 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?

---

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 Thailand 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 Thailand 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 Thailand 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.

---

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.
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.8

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 domestic response in Thailand.


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

---

9 For example, International Covenant on Civil and Political Rights (ICCPR), Committee on the Elimination of Discrimination against Women (CEDAW), ILO Conventions 29, 105 and 138
Table: Status of ratification

<table>
<thead>
<tr>
<th>Country</th>
<th>CRC</th>
<th>CRC Optional Protocol</th>
<th>UNTOC</th>
<th>TIP Protocol</th>
<th>ILO Convention 182</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cambodia</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Lao PDR</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Thailand</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Viet Nam</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

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

4.1 CONVENTION ON THE RIGHTS OF THE CHILD AND OPTIONAL PROTOCOL

The CRC sets a broad human rights framework requiring states parties to act in the best interests of the child. It is a widely adopted treaty, with a total of 193 states parties. Thailand 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—and to prevent the abduction, sale or trafficking of children for any purpose or in any form. 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.

The CRC Optional Protocol obliges states parties to take specific measures to prohibit the sale of children, child prostitution and child pornography—activities which the instrument itself notes are closely linked to child sex tourism. The definitions provided in the Protocol on 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;

---

11 Art 3
13 Art 34
14 Art 35
15 Art 12(2)
16 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 legal terminology used in relevant international legal instruments.
17 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.18

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).19 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:20

- 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.21

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).22 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.23 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.24 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,25 and to take action for the seizure and confiscation of the proceeds of those offences.26 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).27 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

---

18 Art 2
19 Art 3
20 Art 3(3)
21 Art 3(1)-(2)
22 Art 4(1)
23 Art 4(3); Art 5(5)
24 Art 4(2)
25 Art 6
26 Art 7
27 Art 5

Thailand
of those responsible for the sale of children, child prostitution, child pornography and child sex tourism offences.\(^{28}\)

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\(^{29}\) and requires that, in the treatment of child victims in the criminal justice system, the best interests of the child is a primary consideration.\(^{30}\) 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.\(^{31}\)

It is important to note that, under the CRC, a child is defined as a person under the age of eighteen years.\(^{32}\) 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.

\(^{28}\) Art 10(1)
\(^{29}\) Art 8(1)
\(^{30}\) Art 8(3)
\(^{31}\) Art 8(1)
\(^{32}\) 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. Thailand 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 of or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person
- **Purpose**: for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

However, where a child is recruited, transferred, transported, harboured or received for the purpose of exploitation this still constitutes human trafficking even in the absence of the means referred to above. In other words, only the ‘action’ and ‘means’ elements are required to establish an offence of child trafficking. This is because a child can never give informed consent to be exploited, and so it is not necessary in such cases to show there was deception or coercion. Acts intended to facilitate child sex tourism can also constitute human trafficking. For example, a person who recruits or procures a child for the purpose of causing or allowing that child to be sexually exploited, whether or not by travelling sex offenders, commits the offence of trafficking in persons according to the Protocol definition. On the other hand, if the travelling child sex offender abuses or exploits the trafficked child, they would be held accountable by other laws that cover the physical sexual abuse of children.

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

States are required to criminalise the conduct outlined above, including establishing basic criminal liability and offences relating to 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

---

33 ECPAT, Mind the Gaps, p12
34 Art 3(d)
35 Art 3(a)
36 Art 3(c)
37 Art 4
38 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 and 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. Thailand 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.

---

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

5.1 STATUS OF RATIFICATION OF KEY INTERNATIONAL INSTRUMENTS

Thailand 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 CONDUCT

Several Thai laws may be used to prosecute conduct committed by travelling child sex offenders. The Prevention and Suppression of Prostitution Act (1996), Child Protection Act (2003), Penal Code (1956) and Anti-Trafficking in Persons Act (2008) prohibit a broad range of conduct relevant to child sex tourism.

The Penal Code includes attempt provisions, which also apply to all other criminal laws. Extraterritorial jurisdiction is applied to a wide range of offences under Thai law. The application of this form of jurisdiction is separated across several pieces of legislation, particularly the Penal Code, Prevention and Suppression of Prostitution Act, and Anti-Trafficking in Persons Act, and is considered in the relevant sections below.

5.2.1 CHILD PROSTITUTION

The Prevention and Suppression of Prostitution Act criminalises a wide range of conduct relating to child prostitution. Prostitution is defined broadly in the Act to include sexual intercourse or any other act to gratify sexual desire in return for earning or any other benefit. This definition is wide enough to include the giving of money or other consideration in exchange for sexual services from children, as required under the CRC Optional Protocol. When committed against a child between the ages of 15 and 18, the offence is punishable by between 1 and 3 years of imprisonment and a fine of between 20,000 and 60,000 Baht. If the child is under the age of 15 years, the term of imprisonment is between 2 and 6 years and a fine of between 40,000 and 120,000 Baht. This conduct, when committed against children, constitutes an offence regardless of whether the child has indicated their consent.

The Prevention and Suppression of Prostitution Act also criminalises conduct linked to child trafficking for the purpose of prostitution. Procuring, seducing or taking away a person for the purpose of prostitution is prohibited under Section 9. This conduct constitutes an offence regardless of whether the person indicates their consent, and is criminalised even if elements of the offence are committed outside the territory of Thailand. Offences under this article which are committed against a child between 15 and 18 years of age carry imprisonment of between 5 and 15 years, and a fine between 100,000 and 300,000 Baht; where the offences are committed against a child who is under 15 years, the offence is punishable by between 10 and 20 years of imprisonment, and a fine of between 200,000 and 400,000 Baht. Parents of children who know of the commission of an offence under Section 13, and are complicit in that offence, may be punished by imprisonment of between 4 and 20 years, and a fine of between 80,000 and 400,000 Baht as specified in

51 Section 4
52 Section 8
Section 10. Further, if the Section 9 offences are committed by means of fraud, deceit, threat, violence, exercising undue influence or coercion, heavier penalties will be imposed.\(^{53}\)

Owning, supervising, managing or controlling a business or establishment for child prostitution is an offence under the Prevention and Suppression of Prostitution Act. Aggravated offences, where the place of prostitution houses children, carry heavier penalties. Where the business or establishment includes children between 15 and 18 years of age for the purpose of prostitution, the owner may be imprisoned between 5 and 15 years and fined between 100,000 and 300,000 Baht.\(^{54}\) In such places where the children are under the age of 15, the penalty for the owner is between 10 and 20 years of imprisonment and a fine between 200,000 and 400,000 Baht.\(^{55}\) The Act alsocriminalises aggravated circumstances where a person detains or confines another or by any other means deprives them of liberty, causes bodily harm, or threatens them in order to compel them into prostitution, which carry a penalty of between 10 and 20 years of imprisonment and a fine of 200,000 and 400,000 Baht, with heavier penalties where the commission of the offence results in grievous bodily harm or death of the victim.\(^{56}\)

It is also an offence under the Prevention and Suppression of Prostitution Act to advertise, induce or introduce to the public—through documents, printed material or any other means—or to solicit prostitution (of oneself or of another person). The penalty is imprisonment of between 6 months and 2 years, and/or a fine of between 10,000 and 40,000 Baht.\(^{57}\) This offence is important as it could allow for the prosecution of persons who offer or advertise children for prostitution.

While the Prevention and Suppression of Prostitution Act provides comprehensive primary offences relating to child prostitution together with strong penalties for those offences, it does not appear to criminalise ancillary acts (such as complicity or participation). This is a key area in which the current legislation could be strengthened, to align more closely with the CRC Optional Protocol.

Other laws can also be interpreted as prohibiting child prostitution, but do not impose criminal sanctions as strict as those found under the Prevention and Suppression of Prostitution Act. The Child Protection Act provides that causing the exploitation of a child through force, threats, inducement or any other means, and requiring a child to work or act in a way that may be physically or mentally harmful to the child, is prohibited.\(^{58}\) The Act imposes a low level sanction on this conduct, of imprisonment up to 3 months or a fine up to 30,000 Baht. This penalty can also be imposed on those who allow a child to enter into a brothel and on those who force, threaten, use, induce, instigate, encourage or allow a child to act in a pornographic manner, whether or not for remuneration or compensation in any form. Despite the low penalty, heavier penalties for such offences under other laws may also be imposed.

The Labour Protection Act sets standards for the employment of children which may be relevant to the exploitation of children through prostitution. Under that Act, it is prohibited for employers to sexually harass a child, to employ a child under 15 years of age, to cause a child to work between 10pm and 6am (unless an exception is granted), and to cause a child under 18 years of age to perform work in entertainment.

---

\(^{53}\) Section 9  
\(^{54}\) Section 11, Paragraph 2  
\(^{55}\) Section 11, Paragraph 3  
\(^{56}\) Section 12  
\(^{57}\) Section 7  
\(^{58}\) Section 26; Section 78
establishments including dance halls or those where food, liquor, tea, or other beverages are served and where services of prostitutes, sleeping facilities or massages are offered.\(^{59}\)

### 5.2.2 SEXUAL ABUSE AGAINST CHILDREN

Basic criminal offences relating to the sexual abuse and assault of children are provided under Thailand’s Penal Code, which imposes harsh penalties on offenders. Attempt to commit offences under the Penal Code are punishable by two thirds the penalty of the head offence.\(^{60}\)

Sexual intercourse with a child under the age of 15 years, with or without consent, is punishable by 4 to 20 years of imprisonment and between 8,000 and 40,000 Baht or, in aggravated circumstances (including the use of violence), life imprisonment; where the child is under the age of 13 years, the offence is punishable by 7 to 20 years of imprisonment and a fine between 14,000 and 40,000 Baht or, in aggravated circumstances (including the use of violence), life imprisonment.\(^{61}\) Aggravated rape, for example where the offence causes grievous bodily harm or death to the victim, is punishable by penalties of 15 to 20 years of imprisonment and a fine between 30,000 and 40,000 Baht, or life imprisonment, or the death penalty.\(^{62}\)

An indecent act against a child not over 15 years of age, committed by threat, violence, taking advantage of the child or deception, is punishable by imprisonment of up to 10 years and a fine of up to 20,000 Baht.\(^{63}\) An indecent act committed against a child not over 13 years of age—regardless of whether the child indicates their consent—is punishable by the same penalties or, in aggravating circumstances (including violence or threat), up to 15 years of imprisonment or a 30,000 Baht fine.\(^{64}\) Heavier penalties apply where the commission of these offences results in grievous bodily harm or death of the victim.\(^{65}\)

These 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.\(^{66}\) 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.\(^{67}\) The United States considers grooming to be an act of deliberately establishing an emotional connection with a child to prepare that child for abuse.\(^{68}\) 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

---

\(^{59}\) ECPAT, Mind The Gaps, p37 – note no English version of law available

\(^{60}\) Chapter 5

\(^{61}\) Section 277

\(^{62}\) Section 277

\(^{63}\) Section 278

\(^{64}\) Section 279

\(^{65}\) Section 280

\(^{66}\) 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
countries, and a recommendation to criminalise grooming will therefore be included in the recommendations for each project country.

5.2.3 CHILD PORNOGRAPHY

Child pornography is not specifically prohibited under Thailand’s legislation; however, the Penal Code criminalises a broader range of conduct relating to the production, possession, import or export, circulation of documents, drawings, prints, paintings, printed matter, pictures, posters, symbols, photographs, film, tape, picture tape or any other thing which is obscene in certain conditions. Importantly, the Penal Code does not criminalise mere possession. Possession is criminalised only if it can be proven that the possession is for or by trade, for distribution, or for public flaunting. Offences carry a penalty of imprisonment up to 3 years, and/or a fine up to 6,000 Baht.\(^{69}\)

Additionally, despite the wide drafting of this provision, this offence under the Penal Code does not define the meaning of ‘obscene’, and it is therefore unclear whether it would be interpreted to apply to child pornography.

Development of a clear and separate child pornography offence is critical to ensure that child pornography is prohibited in Thailand, and that offenders face serious penalties. The current provision under the Penal Code carries a penalty that is too lenient for cases of child pornography, and does not appropriately reflect the gravity of the crime. As mentioned above, it is also unclear whether the Penal Code would apply to child pornography.

The law relating to child pornography could be further strengthened through measures that ensure the law keeps pace with technological developments. In particular, the law should criminalise child pornography material in all its forms, and not be limited in its wording to specific types of material (for example only print media, DVDs or image files).

The government of Thailand has recently demonstrated its commitment to addressing this issue. The Ministry of Social Development and Human Security is reviewing a draft ‘Materials Inciting Dangerous Behavior Act’, which would directly criminalise child pornography.

5.2.4 CHILD TRAFFICKING

The Anti-Trafficking in Persons Act (2008) provides a comprehensive framework for the prosecution of trafficking in persons. A child is defined under the Act as a person under the age of 18 years.\(^{70}\) The Anti-Trafficking in Persons Act applies extraterritorial jurisdiction over trafficking offences committed outside the territory of Thailand.\(^{71}\)

Trafficking in children, including for the purpose of sexual exploitation, carries greater penalties than the trafficking in adults. Where children are between 15 and 18 years of age, child trafficking is punishable by between 6 and 12 years of imprisonment and a fine between 120,000 and 240,000 Baht. If the child is under 15 years, the penalty is between 8 and 15 years of imprisonment and a fine between 160,000 and 300,000 Baht.\(^{72}\)

---

\(^{69}\) Section 287
\(^{70}\) Section 4
\(^{71}\) Article 11
\(^{72}\) Sections 6 & 52
A wide range of ancillary offences are punishable under the Act, to the same extent as the head offence. These include supporting the commission of an offence, aiding by contributing property including a meeting place for the primary offender, assisting the primary offender to avoid arrest, taking a benefit to assist the primary offender to avoid punishment, and inducing, suggesting or contacting a person to participate in the commission of an offence. Preparation and conspiracy to commit an offence are also punishable (by one third or one half of the punishment for the head offence, respectively).

The Penal Code also criminalises conduct relevant to child trafficking for sexual purposes. Under Section 282, it is an offence to procure, lure, or traffic a child for an indecent sexual act or for sexual gratification of another person. This offence is punishable in Thailand regardless of where the offence occurred or the nationality of the offender. Where the child is between 15 and 18 years old, the penalty is between 3 and 15 years of imprisonment and a fine between 6,000 and 30,000 Baht, and where the child is under 15 years, the penalty is between 5 and 20 years of imprisonment and a fine between 10,000 and 40,000 Baht.

The Prevention and Suppression of Prostitution Act also criminalises trafficking for the purpose of prostitution, as outlined above.

5.3 CHILD PROTECTION MEASURES IN THE CRIMINAL JUSTICE PROCESS

Through amendments to the Criminal Procedure Code (made in 1999), the law provides measures for the protection of child victims and witnesses in the criminal justice process. Where the witness is not over 18 years of age, authorities are required to make available a room specifically for the purpose of taking a child’s statement, to make available support persons for the child, which include a psychologist or social worker, a public prosecutor, and any other person requested by the child, and to have a child to give evidence through a psychologist or social worker when the psychologist or social worker sees fit. Where a witness is not over 18 years of age, the court may also allow for the child to provide a testimony in the form of an audio or video recording in a room separate from the court. These provisions provide important measures for child friendly procedures in the criminal justice process.

The Child Protection Act prohibits advertising or disseminating—through the media or any other kind of information technology—any information on a child or the child’s guardian, with the intention of causing damage to the mind, reputation, prestige or other interests of the child, or seeking benefit in an unlawful manner. This offence is punishable by imprisonment up to 6 months, and/or a fine up to 60,000 Baht. While this offence could potentially be invoked to protect the identity of child victims of sexual offences from being revealed during the criminal justice process, information indicated that this provision has not recently been used for this purpose.

The Anti-Trafficking in Persons Act provides a wide range of protections for victims of trafficking, including access to social services. However, few provisions relate specifically to special measures through the criminal

---

73 Section 7
74 Sections 8 & 9
75 Section 282
76 Section 133 bis
77 Section 172 ter, Paragraph 5
78 Section 27
79 Section 79
80 Advice received from UNODC Thailand country office
justice process. Authorities are required to provide for the safety and protection of the victim, including before, during, and after criminal proceedings and, where the person will provide evidence as a witness, the victim is afforded protections according to the Witness Protection in Criminal Cases Act (2003). While providing important protections, these framework are limited in application to victims of trafficking and are also not specific to the needs of children. It is therefore unlikely that the Anti-Trafficking in Persons Act could be invoked to provide child friendly procedures to victims of offences relating to child sex tourism—particularly if the offender has not been charged with an offence under the anti-trafficking legislation.

Likewise, the National Policy and Plan on Prevention, Suppression, and Combating Domestic and Transnational Trafficking in Children and Women (2003-2010) also provides a basis for the protection of victims. Under the strategy on protection and assistance, the National Policy includes as one of its aims the protection of witnesses and individuals close to those witnesses. However, while this policy demonstrates the government’s commitment to strengthening important protections for victims and witnesses of trafficking, it does not extend to victims and witnesses of other crime types.

5.4 MEASURES FOR CROSS-BORDER LAW ENFORCEMENT COOPERATION

Thai domestic law provides clear mechanisms for cross-border law enforcement cooperation. The Extradition Act (1929) provides a comprehensive framework for cooperation in criminal matters. The Act outlines the requirements for making and receiving requests for extradition, and stipulates that extradition may be granted in the absence of a bilateral treaty relationship. For an offence to be extraditable, it must be punishable under the law of Thailand by a minimum of 1 year of imprisonment. The Act does not state clearly whether extradition of a Thai citizen may be refused on the basis of nationality; however, it does provide that the court may hear evidence in relation to a person’s nationality. The Mutual Assistance in Criminal Matters Act (1992) sets out Thailand’s domestic requirements for the provision of formal assistance in criminal matters.

Although it is unclear from the Extradition Act whether a person’s extradition may be refused by the Thai government on the basis of nationality, many laws relating to child sex tourism conduct apply extraterritorially, as outlined above—ensuring that a Thai national could be prosecuted for conduct relating to child sex tourism in lieu of extradition.

The Penal Code creates extraterritorial jurisdiction over some offences committed outside of Thailand, which may be prosecuted in a Thai court if the offender is a Thai national and a request is made to prosecute the offender either by the government of the country in which the offence occurred or by the victim, or where the offender is not a Thai national and the victim is the Thai Government or a Thai national and a request is made to prosecute the offender by the victim. While the basic rape offence is clearly included in the category of offences over which extraterritorial jurisdiction is exercised, it is not clear whether the sexual assault offences specifically relating to children are likewise included. It is possible that offences against children are intended to carry extraterritorial jurisdiction but this has not been reflected in the law following amendments to the legislation. It will be important to clarify this point in order to determine whether legal reform is recommended to extend extraterritorial jurisdiction over this category of child sex offences. However, it is

\[83\] Art 36
\[84\] p9
\[85\] Art 4
\[86\] Art 4
\[87\] Section 8
noted that the exercise of extraterritorial jurisdiction over child sex offences is not mandatory under the international legal standards.

Given these strong existing legal frameworks for extradition and mutual legal assistance, and the extraterritorial jurisdiction exercised over a range of offences, there is not currently a strong need for legal reform in Thailand to facilitate formal cross-border law enforcement cooperation.

5.5 SUMMARY AND RECOMMENDATIONS

The current domestic legal framework in Thailand provides good coverage of the key international standards relevant to child sex tourism. However, some gaps remain which require attention to ensure all forms of sexual exploitation against children are criminalised. Gaps relating to child pornography and the protection of child victims and witnesses in the criminal justice process are particularly apparent.

Thailand’s domestic policies on trafficking in persons and the worst forms of child labour demonstrate the government’s commitment to legislative reform programs to strengthen legal frameworks against these abuses—conduct which has close links to child sex tourism. This commitment provides a strong platform on which to further strengthen the legal response to child sex tourism in Thailand.

A legal reform program for Thailand should aim to build on existing laws to further 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 Thailand seek to:

CRIMINALISATION: CHILD PROSTITUTION

- develop offences relating to complicity or participation, to ensure all forms of conduct relating to child prostitution are criminalised

CRIMINALISATION: SEXUAL ABUSE AGAINST CHILDREN

- consider options to criminalise grooming conduct

CRIMINALISATION: CHILD PORNOGRAPHY

- develop a specific and comprehensive child pornography offence with robust penalties, including criminalisation of the possession and the production of child pornography, whether or not the possession or production is for trade, distribution, or public use
- ensure child pornography offences can be interpreted to cover a wide range of material and adapt to new technologies (for example, pornographic material should be defined broadly and not limited to only print media, DVD, image files etc)

INTERNATIONAL COOPERATION

- assess the extent to which existing laws apply extraterritorial jurisdiction over child sex offences—and, if necessary, consider developing legislative provisions that provide consistent coverage of extraterritorial application (noting that this is not a compulsory requirement under the CRC Optional Protocol)
5.6 OBSERVATIONS

It is observed that targeted activities to support legal reforms in Thailand shall:

- build on existing measures under the Criminal Procedure Code, Juvenile and Family Procedure Act of 2010, and Child Protection Act to strengthen child protection measures (either legal or non-legal) in the criminal justice process that can be applied to cases relating to child victims of travelling sex offenders.

Such measures should include the full range of protections required under the CRC Optional Protocol, and in particular address current gaps relating to:

- informing child of rights and providing information on proceedings
- providing for safety of child and family, 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 Thailand 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 Vietnam 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.86

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.87 A regional ASEAN treaty on mutual assistance in criminal matters is also in place, however not all ASEAN members have ratified the treaty.88 Information on the operation and effectiveness of these treaties was not available.

In addition, Thailand’s Ministry of Justice is currently reviewing, for finalisation, a draft protocol on inter-agency cooperation against travelling child sex offenders, which will address suspects fleeing bail and recidivism on bail.89 While this is a domestic initiative, it will also make an important contribution to regional and wider international cooperation particularly in cases where suspects flee across borders to avoid prosecution.

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

87 Treaty between Lao PDR and Cambodia on Extradition (1999); Treaty between Lao PDR and Thailand on Extradition (1999)
89 Information received from Thailand government officials
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.

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.90 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

90 p3
provide opportunities to discuss shared priorities for legal reform and to maximise potential for harmonisation of criminal offences targeting child sex tourism, and

facilitate information sharing between project countries on cross border cooperation in child sex tourism cases – including opportunities to build officer level networks to strengthen working relationships and maximise case outcomes.
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 Thailand (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 Thailand is strong against child sex tourism. However, there remains some legislative 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 Thailand 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 Thailand, and to build ownership and secure commitment from the government of Thailand.

The implementation plan provides a framework to take forward technical legal assistance activities with Thailand (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.
### SUGGESTED PROJECT IMPLEMENTATION PLAN: 2011–14

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

**Output 1.1:** Legislative review undertaken

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

<table>
<thead>
<tr>
<th>AIM</th>
<th>OBJECTIVE</th>
<th>ACTIVITY</th>
<th>TIMESCALE AND ACTIVITY LEAD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development of project plan in partnership with counterpart government agencies and other stakeholders</td>
<td>Harness in-country expertise on key legal issues – in particular, identifying key areas for legislative reform and understanding requirements for effective practical implementation of the law. Identify priorities of partner country for legal reform. Gauge commitment from partner country 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.</td>
<td>Year 1: 2011/12 [Sept 2011 – Aug 2012] International Legal Consultant National Project Officer International Legal Consultant National Legal Consultant [Supported by Protection Pillar team] National Legal Consultant [Supported by Protection Pillar team]</td>
</tr>
</tbody>
</table>
### SUGGESTED 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 AND ACTIVITY LEAD</th>
</tr>
</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>Translation and transmission of targeted project plan to government counterparts for consideration.</td>
<td>National Project Officer</td>
</tr>
<tr>
<td>Workshops and information gathering across wide range of government partners and other stakeholders</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 International Legal Consultant and National Legal Consultant [Supported by Protection Pillar team]</td>
<td></td>
</tr>
<tr>
<td>Development of legislation [Note: The development of policy documents could also come under this activity, if appropriate]</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 Project Coordinators National Project Officer National Legal Consultant [Supported by Protection Pillar team]</td>
</tr>
<tr>
<td>Legislative implementation [Note: Domestic processes can provide support to project country with passage of legislation through parliament and other domestic implementation]</td>
<td>Provide support to project country with passage of legislation through parliament and other domestic implementation</td>
<td>Approval of legislation by National Assembly or other appropriate body.</td>
<td>Year 2: 2012/13 Year 3: 2013/14 National Legal Consultant</td>
</tr>
</tbody>
</table>
**SUGGESTED 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 AND ACTIVITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Be slow, and may take longer than 6 months. Timeframes can be difficult to predict</td>
<td>processes</td>
<td>Passage of legislation and entry into force.</td>
<td>[Supported by Protection Pillar team]</td>
</tr>
<tr>
<td>Training and awareness raising</td>
<td>Bolster capacity of domestic law enforcement agencies to understand, interpret and apply new legislative provisions. Build awareness and support across government and non-government agencies of the legal reforms.</td>
<td>Delivery of training workshops: Focus on police, prosecutors and the judiciary.</td>
<td>Year 2: 2012/13  Year 3: 2013/14  Protection Pillar team [Supported by International Legal Consultant and National Legal Consultant]</td>
</tr>
<tr>
<td>Regional conferences on strengthening legal frameworks to counter child sex tourism in the Greater Mekong Sub-region</td>
<td>Facilitate information sharing between project countries on programs for legal reform. Foster cross-border networks between law and justice agencies in the partner countries. Maximise potential for harmonisation of criminal offences targeting child sex tourism in the region. Provide platform for the development of a regional instrument (non-binding) to facilitate cross border cooperation to combat child sex tourism.</td>
<td>Regional conferences hosted together with project countries (staggered across the beginning, middle and end of the project). Development of regional instrument (non-binding) to facilitate cross border cooperation to combat child sex tourism.</td>
<td>Year 1: 2011/12  Year 2: 2012/13  Year 3: 2013/14 [spread over the project period]  Protection Pillar team  International Legal Consultant  National Legal Consultant</td>
</tr>
</tbody>
</table>
SUGGESTED PROJECT IMPLEMENTATION PLAN: 2011–14

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

**Output 1.1:** Legislative review undertaken

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

<table>
<thead>
<tr>
<th>AIM</th>
<th>OBJECTIVE</th>
<th>ACTIVITY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>facilitate cross border cooperation and confirm partner countries’ commitment to enhancing joint criminal justice responses to child sex tourism.</td>
<td></td>
</tr>
</tbody>
</table>