

**Workshop on A Legal Framework to Combating Child Sex Tourism
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**CHILD SEX TOURISM:
INTERNATIONAL STANDARDS AND
ANALYSIS OF VIETNAM'S LEGAL FRAMEWORK**

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SUMMARY

- What is child sex tourism?
- Key international legal standards relevant to child sex tourism
- Domestic law and policy of Vietnam: strengths, gaps and opportunities for development

WHAT IS CHILD SEX TOURISM?

ECPAT International definition:

...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.

WHAT IS CHILD SEX TOURISM?

- **Movement:** Travel from home
- **Citizenship:** Nationals or foreigners (from the Asia region or further abroad)
- **Gender:** Offenders may be male or female
- **Stay:** Passing through or longer term
- **Preparation:** Planned or situational offenders
- **Services:** Tourism services facilitate contact with children
- **Anonymity:** Offenders use to facilitate offences

WHAT IS CHILD SEX TOURISM?

Key sources that provide guidance on a definition for child sex tourism:

- ECPAT definition
- International legal standards
- Non-binding international statements

INTERNATIONAL LEGAL STANDARDS

Primary instruments:

- Convention on the Rights of the Child (1989)
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000)

Secondary instruments:

- United Nations Convention against Transnational Organised Crime (2000)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2005)
- ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

INTERNATIONAL LEGAL STANDARDS

Convention on the Rights of the Child (1989)

- Sets a broad human rights framework for the protection of the best interests of the child
- Widely adopted: 193 states parties
- Standards relevant to child sex tourism:
 - Protection of children from sexual exploitation and sexual abuse (Arts 34-35)
 - Appropriate mechanisms to allow for child participation in proceedings (Art 12)
 - Prevent abduction, sale or trafficking of children for any purpose or in any form (Art 35)

INTERNATIONAL LEGAL STANDARDS

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000)

- Acknowledges close links between sale of children, child prostitution and child pornography with child sex tourism
- Provides legal definitions for these terms
- Requires states to criminalise and set appropriate sanctions which reflect the gravity of offences
- Sets a benchmark for international cooperation
- Requires states to implement measures for children to participate in the justice process

INTERNATIONAL LEGAL STANDARDS

Optional Protocol: Definitions

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

- (b) 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.

INTERNATIONAL LEGAL STANDARDS

Optional Protocol: Criminalisation

States must criminalise offences:

- when committed by an individual or on an organised basis
- when committed domestically or transnationally
- including ancillary and preparatory 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.

INTERNATIONAL LEGAL STANDARDS

OP: Jurisdiction and International Cooperation

- States must exercise jurisdiction over offences:
 - when they occur within territory, and
 - if the state would refuse to extradite an alleged offender on the basis of nationality: (extradite or prosecute).
- States may assert extraterritorial jurisdiction over offences that do not occur within their territory if:
 - the alleged offender is a national or has habitual residence in the state, or
 - the victim is a national of the state.
- States to provide the widest measure of assistance:
 - to facilitate investigations, prosecutions and extradition proceedings relating to child sex offences, and
 - to take action to seize and confiscate the proceeds of such offences.
 - Includes ensuring offences are extraditable, and that a state can extradite regardless of whether it has a treaty relationship with the other state.
 - States required to work together to strengthen international cooperation.

INTERNATIONAL LEGAL STANDARDS

OP: Criminal justice participation measures

- Framework for appropriate measures to protect the rights and interests of child victims in the criminal justice process.
- Best interests of the child to be primary consideration.
- Comprehensive range of measures including:
 - Informing children of rights and the nature of the proceedings
 - Allowing children's views to be heard
 - Providing appropriate support services through the legal process
 - Protecting the privacy and identity of children
 - Providing for the safety of children and their family, and
 - Avoiding unnecessary delay in legal proceedings affecting children.

VIETNAM: LAW AND POLICY

Key questions considered in UNODC report:

- **Criminalisation and penalties for child sex tourism conduct:** *What offences and penalties are available under current legislation for child prostitution, sexual abuse against children, child pornography and child trafficking?*
- **Interaction between laws:** *How do the different laws of Vietnam relevant to child sex tourism operate together in practice?*
- **Child protection measures in the criminal justice process:** *What current measures are available to ensure the protection of child victims and witnesses in the criminal justice process?*
- **Measures for cross border law enforcement cooperation:** *How can Vietnam work best with other countries to ensure travelling child sex offenders are investigated and prosecuted across jurisdictional boundaries?*

VIETNAM: LAW AND POLICY

Criminalisation and penalties for child sex tourism conduct

- Current domestic law provides a good platform for combating child sex tourism:
 - *Penal Code* (1999)
 - *Law on Protection, Education and Care of Children* (2004) (Children's Law)
 - *Ordinance on the Prevention of Prostitution* (2003)
 - *Law on Anti Human Trafficking* (2012)

VIETNAM: LAW AND POLICY

Child prostitution

- Penal Code:
 - Procuring prostitution from a child
 - Paying for sexual intercourse with a child
 - Harboursing a child for prostitution
 - Sexual intercourse with a child under 13 years deemed rape
- Children's Law:
 - Prohibits seducing, deceiving, leading, harboursing or forcing children into prostitution
- Ordinance on the Prevention of Prostitution:
 - Prohibits the employment of workers under 18 in establishments such as hotels, restaurants, dance clubs, bars and massage for jobs which can negatively affect their physical and intellectual development and dignity

VIETNAM: LAW AND POLICY

Sexual abuse against children

- Penal Code
 - Basic rape offences carry strict penalties
 - Sexual intercourse and forcible sexual intercourse
 - Obscenity against children
- Law on Protection, Education and Care of Children
 - Prohibits sexual abuse against children, including for personal benefit

VIETNAM: LAW AND POLICY

Child pornography

- Penal Code:
 - disseminating debauched cultural products
 - making, duplicating, circulating, transporting, selling, purchasing, or stockpiling decadent books, newspapers, pictures, photographs, films, music or other objects, for the purpose of dissemination
- Ordinance on the Prevention of Prostitution:
 - 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
- Children's Law:
 - making, duplicating, circulating, transporting or storing pornographic cultural products

VIETNAM: LAW AND POLICY

Child trafficking

- Law on Anti Human Trafficking:
 - Comprehensive offences, including the transfer, receipt, recruitment transportation or harbouring of persons for sexual exploitation or forced labour
 - Offences of using coercion or acting as a broker
 - Incorporates Articles 119 and 120 of the Penal Code: offence to trade in, fraudulently exchange or appropriate children
 - Framework for international cooperation in the prevention and suppression of human trafficking
- Ordinance on the Prevention of Prostitution:
 - Prohibits trafficking in children for sexual purposes

VIETNAM: LAW AND POLICY

Child protection measures in criminal justice process

- Some laws and policy documents provide guidance:
 - Criminal Procedure Code (2003)
 - Trafficking Law (2012)
 - *National Program for Child Protection* (2011–15)

VIETNAM: LAW AND POLICY

Measures for cross border law enforcement cooperation

- *Criminal Procedure Code (2003)*: broadly provides for international cooperation in criminal matters—including extradition and mutual legal assistance
- *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
- **Trafficking Law**: framework for Vietnam to provide international legal cooperation in trafficking cases

NEXT STEPS

- Current domestic legal and policy frameworks demonstrate the commitment of the government of Vietnam to protect the rights and interests of children
- The recent entry into force of the Trafficking Law is a good example of this commitment
- We welcome the opportunity to learn more about the domestic experience in Vietnam, and to discuss options for next steps