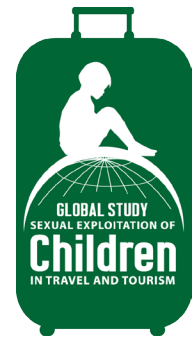


EXPERT PAPER

CHILD SEXUAL EXPLOITATION IN TRAVEL AND TOURISM:

A brief analysis of domestic legal frameworks
in Cambodia, Lao PDR, Thailand and Viet Nam



UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC)

INTRODUCTION



UNODC

United Nations Office on Drugs and Crime
Regional Office for South East Asia and the Pacific

In the past 25 years, good progress has been made on child rights in Southeast Asia, especially in preventing the sexual exploitation of children in travel and tourism. Cambodia, Lao PDR, Thailand and Viet Nam have variously ratified or acceded to the relevant international instruments,¹ and have taken legislative measures to protect children and uphold the rights of child victims and witnesses going through the criminal justice process.

However, a lot more work still needs to be done to address the gaps and inconsistencies that still exist in the domestic implementation of the relevant international standards. For example, a 2013 survey by the United Nations Office on Drugs and Crime (UNODC) found that police and justice officials in the region lack understanding of fundamental issues, among others, including: the legal definition of a child as anyone under the age of 18; photographing a child for sexual gratification or exposing a child to pornography are illegal acts of child sexual exploitation; children have the right to be heard in criminal proceedings; children have to be treated fairly when in conflict with the law; unsupervised use of the Internet by children as a potential risk factor to grooming for sexual exploitation; and that children in sex establishments should be treated as victims of exploitation and not criminals.²

The UNODC Regional Office for Southeast Asia and the Pacific recently undertook legislative reviews in the above four countries to examine the extent to which domestic legislation met key international legal standards applicable to child sexual exploitation in travel and tourism.³ Following extensive consultations with the respective governments, UNODC made recommendations intended to address gaps and strengthen domestic legislative frameworks.⁴ A general summary of the reviews' findings are as follows:⁵

Cambodia

Cambodian law contains a range of protections against child trafficking and the sexual exploitation of children and criminalises a wide range of conduct relevant to the sale of children, child prostitution and child pornography.⁶ However, additional legislative strengthening is required to achieve a comprehensive framework that meets international obligations and counters child sexual exploitation in travel and tourism. For example, sexual abuse of children under the age of 15 is criminalised under the Penal Code,⁷ but it is not clear whether similar offences are available to prosecute sexual abuse of children between 15 and 18 years of age, as distinct from an offence against an adult.⁸

Furthermore, the law does not criminalise grooming conduct and the possession of child pornography where it is held for personal use.⁹ Importantly, there are also significant gaps in the protections currently available to facilitate children's participation in criminal justice processes as victims and witnesses of sexual exploitation.¹⁰

Lao PDR

The domestic legal framework of Lao PDR provides a range of criminal offences relating to the sexual exploitation of children, sexual abuse against children, children exploited in prostitution, child pornography and the trafficking of children for sexual purposes, which could be used to prosecute conduct linked to child sexual exploitation in travel and tourism.¹¹ However, there are some significant gaps in the legislation when compared with the key international obligations.¹² For example, it is not clear how corresponding offences contained in the different pieces of legislation are applied in practice—and likewise, the penalties available for those corresponding offences are inconsistent.¹³ In addition, penalties

applicable to offences committed against male and female children between 12 and 18 years of age are unclear. Offences related to child pornography - producing, distributing, disseminating, importing, exporting, offering, selling or possessing—plus offences of attempt, complicity and participation are not criminalised.

To address these gaps, UNODC recommended that a legal reform program be undertaken that ensures domestic legislation is consistent, sets proportionate penalties to provide a clear deterrent and ensures that penalties relating to similar offences are appropriate.¹⁴ The Lao PDR National Plan of Action on Commercial Sexual Exploitation of Children has already outlined the government's clear intention to develop and improve legislation relevant to the commercial and sexual exploitation of children. This policy statement provides a solid platform to build on government momentum to strengthen legal frameworks against the sexual exploitation of children and can feed into the Legal Sector Master Plan, which sets an agenda for the development of law up to 2020.

Thailand

Thailand's domestic legal framework provides good coverage of the key international standards relevant to child sexual exploitation, but gaps pertaining to the criminalisation of child pornography and the protection of child victims and witnesses going through the criminal justice process are still apparent.¹⁵ UNODC recommended that the Thai government develop a specific child pornography offence with robust penalties, including criminalisation of the possession and production of child pornography.¹⁶

Using UNODC recommendations as a reference point, the Thai National Legislative Assembly voted unanimously

to amend the Criminal Code of Thailand to criminalise child pornography.¹⁷ The bill, which became law on 7 December 2015,¹⁸ prescribes punishment of up to five years of imprisonment for mere possession of child pornography, up to seven years for forwarding such material and up to ten years for trade and distribution of such material.¹⁹

Viet Nam

In Viet Nam, the domestic legal framework provides a range of criminal offences relating to the sexual exploitation of children, which could be used to prosecute child sex offences. However, there are significant gaps in the legislation particularly relating to the offences of child pornography and the exploitation of children in prostitution.²⁰

Viet Nam lacks a clear definition of the child and needs to ensure that the full range of legal protections is provided to all children under the age of 18 years, in line with the UNCRC. Sexual offences relating to sexual intercourse and obscenity against children, where committed against children between the ages of 16 and 18 years need to be developed. There is also a need to differentiate between trafficking of adults and trafficking of juveniles between the age of 16 and 18 years.

The government has demonstrated a clear intention to remedy the currently limited protection afforded to child victims and witnesses in the criminal justice process by proposing amendments to the Penal code and Criminal Procedures code.²¹ UNODC's recommendations on legislative reform have also been accepted by the Ministry of Justice (Department of Criminal and

Administrative Laws) and are being used as reference material for the Penal Code amendment process.²²

CONCLUSION

Regional integration in Southeast Asia in 2015 is expected to ease border restrictions and subsequently facilitate larger cross-border movements in coming years, meaning child sexual exploitation in travel and tourism may also increase.²³ If legal gaps remain, travelling child sex offenders (TCSOs) will seek to exploit those loopholes and will not be deterred from seeking to sexually exploit children. Importantly, the anonymity and mobility of offenders also present challenges in the detection of crimes and identification of child victims.

Effective criminal justice responses in the region need to harness regional and international cooperation to ensure that jurisdictional boundaries are not a barrier to prosecution.²⁴ Domestically, legal frameworks against child sexual exploitation should criminalise such conduct with strict penalties reflecting the severity of the crime. The development of child protection measures for victims and witnesses in the criminal justice process therefore becomes important. Robust criminal justice frameworks that reflect key international and regional standards and are effectively implemented at the domestic level will bolster law enforcement capacity to prevent and effectively respond to child sexual exploitation in travel and tourism.

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UNODC Southeast Asia and Pacific Website – Criminal Justice Systems (Child Sex Offences).
<http://www.unodc.org/southeastasiaandpacific/en/regional-programme/criminal-justice-systems/child-sex-offences.html>

UNODC Southeast Asia and Pacific Publications –Child Sexual Exploitation in Travel and Tourism: An Analysis of Domestic Legal Frameworks

<http://www.unodc.org/southeastasiaandpacific/resources/publications/2014/index.html>

ABOUT THE WRITER

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ENDNOTES

1. These include: the UNCRC, the Optional Protocol to the Convention on the Rights of the Child; the United Nations Convention against Transnational Organised Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; and the ILO Convention 182 On the Worst Forms of Child Labour.
2. UNODC. Knowledge Attitudes Practice Survey of Police, Prosecutors and Judges (2013)
3. UNODC. Child Sexual Exploitation in Travel and Tourism: An Analysis of Domestic Legal Frameworks in Cambodia, Lao PDR, Thailand and Viet Nam (2014) available at <http://www.unodc.org/southeastasiaandpacific/resources/publications/2014/index.html>
4. This work was undertaken within the framework of Project Childhood, an Australian Government initiative to combat the sexual exploitation of children in travel and tourism in the Mekong sub-region.
5. UNODC. Child Sexual Exploitation in Travel and Tourism: An Analysis of Domestic Legal Frameworks in Cambodia, Lao PDR, Thailand and Viet Nam (2014) available at <http://www.unodc.org/southeastasiaandpacific/resources/publications/2014/index.html>
6. Law on Suppression of the Kidnapping and Trafficking of Human Persons and Exploitation of Human Persons (1996) (“TIPSE”) and, to a lesser extent the Penal Code, stipulate a wide scope of criminal conducts—including offences of attempt and participation as an accomplice or instigator, extension of criminal liability to legal entities, robust penalties which reflect the gravity of offences and seek to prevent recidivism.
7. Chapter IV, Section 1 of the Penal Code
8. UNODC. Child Sexual Exploitation in Travel and Tourism: An Analysis of Domestic Legal Frameworks in Cambodia (2014), p. 19
9. Ibid. 20
10. Ibid. 21-23
11. The Penal Law (1990), the Law on the Protection of the Rights and Interests of Children (2006) (the Child Protection Law) and the Law on the Development and Protection of Women (2004) (the LDPW).
12. UNODC. Child Sexual Exploitation in Travel and Tourism: An Analysis of Domestic Legal Frameworks in Lao PDR (2014), pp. 18-24
13. The interaction between Penal Law offences relating to child prostitution and the Child Protection Law (particularly Article 89), the interaction of offences relating to sexual assault and rape under the Penal Law and Child Protection Law, the interaction of the Penal Law, the Law on the Development and Protection of Women (2004) (the LDPW) and Child Protection Law in relation to child trafficking offences
14. See UNODC. Child Sexual Exploitation in Travel and Tourism: An Analysis of Domestic Legal Frameworks in Lao PDR (2014), pp. 24-26
15. UNODC. Child Sexual Exploitation in Travel and Tourism: An Analysis of Domestic Legal Frameworks in Thailand (2014), pp. 18-25
16. Ibid. 24-25
17. UNODC assists Thailand to criminalise possession of child sex abuse material available at <http://www.unodc.org/southeastasiaandpacific/en/2015/05/childhood-sex-abuse-material/story.html>, See also Bangkok Post, “NLA mulls crackdown on child porn” 20/2-15 , available at <http://www.bangkokpost.com/news/crime/479253/nla-mulls-crackdown-on-child-porn>, accessed on 30 March 2015.

18. Thai Penal Code Amendments No.24 (2015) on child pornography offences
19. UNODC. Working Paper - Child Sex Offences: Series 1-Child Pornography – The amendments to the Criminal Code of Thailand, pp 11 (available on request). Note: No official English translation is available of the bill.
20. UNODC. Child Sexual Exploitation in Travel and Tourism: An Analysis of Domestic Legal Frameworks in Viet Nam(2014), pp. 18-25
21. Viet Nam Ministry of Justice. Amendments of Penal Procedure Code of 2003 – New articles: Article 301a (Procedural principles), Article Article 301b (Requirements of justice officers who conduct proceedings in cases involving a juvenile), Article 301c (Determining the age of the juvenile), Article 310d (Supporting juvenile victims during the justice process), Article 310đ (Participation of the persons who advocate for the juvenile victim’s rights and interests), Article 310e (Evidence gathering and interviewing juvenile victims and witnesses during the investigation and prosecution), Article 310g (Adjudicating cases involving juvenile victims and/or witnesses). Amendments of Penal Code (199) - Article 32. (Expulsion), Article 64 (Automatic remission of criminal records), Article 111 (Rape), Article 112 (Rape against children), Article 113 (Coercing other into sexual intercourse), Article 114 (Forcible sexual intercourse with children), Article 115 (Having sexual intercourse with children), Article 116 (Obscenity against children), Article 120 (Trading in, fraudulently exchanging or appropriating children), Article 253 (Disseminating debauched cultural products), Article 254 (Harboring prostitution), Article 255 (Procuring prostitutes), Article 256 (Buying sex from a juvenile)
22. UNODC. Child Sexual Exploitation in Travel and Tourism: An Analysis of Domestic Legal Frameworks in Viet Nam(2014), pp. 3
23. UNODC. Protecting the Future: Improving the Response to Child sex Offending in Southeast Asia (2014)
24. Further information on extraterritorial legislation can be found in the UNODC reports available at <http://www.unodc.org/southeastasiaandpacific/resources/publications/2014/index.html>