**Thailand**



ECPAT International has developed [a legal checklist](https://ecpat.org/wp-content/uploads/2021/09/SECTT-Checklist_ENG-1.pdf) for governments providing guidance for legal interventions and measures to adopt in order to improve their national legal frameworks. This will help to effectively address the crime of sexual exploitation of children in travel and tourism, including its online elements.

The legal checklist was developed based on the recommendations of the first [Global Study](https://ecpat.org/wp-content/uploads/2021/08/Global-Report-Offenders-on-the-Move.pdf) on sexual exploitation of children in the context of travel and tourism. Following the development of this legal checklist, ECPAT International conducted country legal analysis for Thailand and other countries in Southeast Asia, as well as Africa, Asia and the Americas.

The country analysis serves as a baseline to indicate and track the implementation status of the legal interventions within and across the four regions. It provides governments with clear directions for improving their actions with respect to child protection against sexual exploitation in the context of travel and tourism, including its online elements.

The table below allows easy assessment of existing legislation against the 24 measures of the legal checklist. It will be updated as the laws and policies change. An [explanatory note](https://ecpat.org/wp-content/uploads/2021/08/SECTT-Checklist_ENG_Explanatory-note.pdf) and an [assessment matrix](https://ecpat.org/wp-content/uploads/2021/09/Assesment-Matrix_2021SEP_ENG_v2.pdf) can be consulted for further reference.

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|  | **Recommendations** | **Implemented** | **Legislation** |
|  | Establish by law **extra-territorial jurisdiction**, within the parameters of Article 4 OPSC, for all offences of sexual exploitation of children, including those occurring in the online environment. | **Yes** | Section 4 of the Criminal Code B.E. 2499 (1956) meets the minimum requirements of art. 4 (1) OPSC. Sections 7 and 8 meet the measures as advised in art. 4 (2) OPSC with active and passive nationality principle regarding Thai jurisdiction.  The Criminal 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 Thai and the victim is, the Thai Government and a request is made to prosecute the offender by the victim.  The current provisions on extraterritorial jurisdiction included in the Thai Penal Code do not cover offences relating to child sexual abuse material. |
|  | Include in extradition treaties the sexual exploitation of children as **extraditable offences** and apply when appropriate the rules of article 5 OPSC, regardless the nationality of the (alleged) offender. | **Partially** | The Extradition Act B.E. 2551 (2008 applies to all extradition proceedings from Thailand. Article 4 stipulates that an offence is extraditable, if it is punishable under the law of Thailand by a minimum of 1 year of imprisonment. This low threshold means that most offences under the Criminal Code which relate to sexual exploitation of children in travel and tourism could be deemed extraditable offence.  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 Act is subject to the provisions of any treaties concerning extradition between the government of Thailand or any other international agency.  Contents of extradition treaties have not been reviewed. |
|  | Do NOT require the principle of **double criminality** for proceeding with extraterritorial jurisdiction or extradition for sexual offences against children. | **No** | Extraterritorial jurisdiction:  Two types of sexual offences do not require double criminality (Section 7 of the Criminal code): Section 282 Indecency (=procuring, seducing or taking away a child for the sexual desire of another person), and Section 283. Indecency for Another Person by Deception, Threat, or Force  However, other crimes do (section 8 of the criminal code):  Section 8 “Whoever commits an offence outside the Kingdom shall be punished in the Kingdom; provided that, and, provided further that the offence committed be any of the following namely:  (a) The offender be a Thai person, and there be a request for punishment by the Government of the country where the offence has occurred or by the injured person; or  (b) The offender be an alien, and the Thai Government or a Thai person be the injured person, and there be a request for punishment by the injured person.”  Extradition  Under the Extradition Act, Thailand adheres to the principle of “double criminality” for foreign states which do not have an extradition treaty with Thailand. Extraditable offenses include those crimes which are punishable by death, by imprisonment, deprivation of liberty, and other form of detention for a period not less than one year, whether it be the offence of the same chapter or designation under the law of both States. The commission of other offences with punishment by  imprisonment or deprivation of liberty in other forms less than one year may be the basis for requesting extradition if it relates to the offence for which the extradition has been granted whether the request has been made at the same time with the initial request or afterward. |
|  | Abolish **statutory limitations** for the prosecution of ALL offences of sexual exploitation of children. | **No** | Statute of Limitations: 10-20 years, but only 3 months for compoundable offences, including rape, sexual assault and false imprisonment of victims age 15 or older when committed in private without injury. (Sections 95, 96, 281 and 321 of the Criminal Code) |
|  | Set up **conditions for any travel** by persons convicted of sexual exploitation of children. | **Partially** | Article 12 of the Immigration Act 1979 prohibits certain persons from entering Thailand. This includes persons “having been indicated under certain circumstances as likely to engage in prostitution, woman or child trafficking, drug trafficking, evasion of customs duty, or to engage in other activities contrary to public order or good morals”.  Immigration has denied entry to child sex offenders from the UK, the US and other places that share entries in their sex offender registries with Thai immigration. However, there are no restrictions to travel for Thai national convicted child sex offenders.  According to section 12 of the Immigration Act B.E. 2522 (1979), “*Aliens which fall into any of the following categories are excluded from entering into the Kingdom:*  *[…]Having been indicated under certain circumstances as likely to engage in prostitution, woman or child trafficking, drug trafficking, evasion of customs duty, or to engage in other activities contrary to public order or good morals.*” |
|  | Ensure **consistency in the definition of a ‘child’** as anyone under the age of 18 for all crimes of sexual exploitation, regardless of the age of sexual consent | **Yes** | The most important acts criminalising sexual exploitation of children offences are the Criminal Code, the Prevention and Suppression of Prostitution Act B.E. 2539 (1996), the Anti-Trafficking in Persons Act B.E. 2551 (2008) and the Child Protection Act B.E. 2546 (2003).  The Criminal Code and the Prevention and Suppression of Prostitution Act criminalise sexual intercourse with a child below 18 years of age.  The Anti-Human Trafficking in Persons Act considers as a child any person under 18 years of age (Section 4).  The Penal Code does criminalise child sexual exploitation material, including possession after the 2015 amendment of the Penal Code. |
|  | Ensure that the **age of sexual consent** for both males and females is 18 and a close in age exemption (up to 3 years) is provided for consensual sexual relationships between adolescents in order to allow voluntary, well-informed and mutual sexual contact between close in age peers and to prevent criminalization of young people in willing sexual relationships. | **No** | The age of sexual consent for both boys and girls is 15 years (Article 277 Penal Code). Under the Thai Penal Code, sexual intercourse with a child below the age of 15 years, with or without consent has been criminalised. Section 277 of the Criminal Code (Paragraph 5) postulates that the court has the discretion not to prosecute sexual activities committed by a person under the age of 18 against a child under 15 years old (but over 13 years old) if consent was given by the victim.  A recent amendment to section 277 provides that the following factors should be taken into consideration in determining whether to prosecute the offender: the age, history, behaviour, intelligence, education, health, mental capacity, occupation, personality and environment of the offender and the victim. |
|  | Have a law or regulation establishing a **mechanism for centrally registering sex offenders** that has been implemented/setup. | **Partially** | Although, data on offenders are collected in Thailand, these are not disaggregated by typology of committed crimes. |
|  | Establish **bail conditions** that prohibit individual accused of sexual offences against children from traveling outside of the country. | **No** | Sections 106 to 119bis of the Criminal Procedural Code B.E 2477 (1934) prescribe the conditions for provisional release, but none are restricted based on the types of offences |
|  | Provide in law that the **mere attempt** to commit a crime of sexual exploitation of children is criminalised. | **Yes** | Sections 80-82 of the Thai Penal Code criminalise **attempt** generally and not specifically in the context of offences of sexual exploitation of children. However, it is unclear what acts constitute an attempt. This creates a legal lacuna which could make it difficult to prosecute persons for acts that fall short of definitions under the Thai Penal Code. |
|  | Impose more severe sentences for **reoffending** in case of sexual exploitation against children, e.g. by defining reoffending as an aggravating circumstance, regardless of whether the crimes were perpetrated abroad or in-country. | **Partially** | Thai Criminal Code:  Section 92. Subsequent Convictions  “*If whoever, having been adjudged finally to be convicted by imprisonment, has committed any subsequent offence during the time still having to undergo the punishment, or within five years as from the date of passing the punishment, if the Court will sentence for the subsequent offence to be imprisoned, the Court shall increase the punishment to be inflicted upon such person by one-third of the punishment as prescribed by the Court for the subsequent offence.*”  Section 93. Recidivist  “*Whoever, having been convicted of a prior offence by a final judgment, commits any subsequent offence as specified in the following sub-sections during the time he still has to undergo the punishment, or within three years as from the date of passing the punishment, both the prior and subsequent offences falling under the same sub-section, and if the Court is to inflict the punishment of imprisonment for the subsequent offence, the punishment to be inflicted upon him shall, if the punishment inflicted by the judgment for the prior offence was imprisonment of not less than six months, be increased by one-half of the punishment imposed upon him by the Court for the subsequent offence:* Offences Relating to Sexuality as provided in Section 276 to Section 285 |
|  | Provide for **mandatory reporting** for particular professions that have likelihood to have contact with kids who might disclose. | **Yes** | Article 29 of the Child Protection Act imposes on professionals working with children, such as teachers, instructors, doctors, social workers, public health officials, who come across children who have or appear to have been tortured, the duty to report this to a competent official. According to Article 4, torture means “any commission or omission of acts which cause the deprivation of freedom of, or mental or physical harm to, a child; sexual abuses committed against a child”. |
|  | Establish obligatory government-regulated child protection standards for the tourism industry for example, attach responsibility to an appropriate regulatory authority and/or implement industry specific **national codes for child protection** as a legal requirement for the travel and tourism industry to operate. | **No** |  |
|  | Ensure the **liability of travel and tourism businesses** (in operations and supply chains) for criminal conduct including:   * Organising travel arrangements or transportation that are explicitly or implicitly meant to create or facilitate opportunities to engage (involve) children in sexual activities; * Procuring, aiding or abetting the exploitative sexual conduct with a child; * Advertising or promoting sexual exploitation of children; * Benefitting, by any means, from any form of sexual exploitation of a child (or children) in the context of their travel and tourism business. | **Partially** | It is 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).  Owning, supervising, managing or controlling a business or establishmentfor ‘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. There is no similar prohibition for the organisation of travel or transport of clients to facilitate children in sexual activities.  Although criminal and civil corporate liability exist, there is no specific regulation on corporate liability with regards to sexual exploitation of children offences. |
|  | Criminalise the **grooming of children for sexual purposes** (often called ‘solicitation’ in law) including through Internet and other communication technologies to facilitate either online or offline sexual exploitation. | **No** |  |
|  | Establish legislation requiring for a **criminal background check** for every person (national or non-national) applying for work with or for children or who is currently working with or for children. Introduce legislation prohibiting convicted sex offenders to hold positions involving or facilitating contact with children. | **No** | A mandatory criminal background check was introduced in 2015 for foreign teachers working in public schools.  However, generally, the law does not explicitly impose conditions on employers carrying out background checks. However, some legal provisions may apply indirectly. For example, any disclosure of personal health information would require the consent of the data subject. The medical facility possessing such information would therefore require the data subject’s consent before releasing it to the employer. Similarly, the Royal Thai Police require consent of the data subject to process a criminal records check. |
|  | Regulate and monitor the use of volunteers (including in **‘voluntourism’**) in settings and activities that involve direct contact with children, particularly prohibiting visits to orphanages/residential care settings in favour of redirecting the industry towards solutions that support community-based care. | **No** |  |
|  | Ratify and implement relevant **regional and international instruments** related to child’s rights and sexual exploitation of children. | **Partially** | * Convention on the Rights of the Child (CRC) Accession in 1992 * Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography Accession in 2006 * Optional Protocol to the CRC on a Communications Procedure (OP3 CRC) Ratified in 2012 * ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.182 Ratified in 2001 * UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children - Ratified in 2013 * The United Nations’ World Tourism Organisation’s (UNWTO) Framework Convention on Tourism Ethics - Not ratified * Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) - Not Ratified * Council of Europe Convention on Cybercrime (Budapest Convention) – Not ratified * ASEAN Convention Against Trafficking in Person, Especially Women and Children – Ratified in 2016 |
|  | Establish **protection measures** for child victims at any stage of the legal process against the suspected offender. | **Partially** | 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.  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 also provides protection measures for the victim of trafficking, but they might not always be applicable for victims of other crimes of sexual exploitation of children.  The Thai legislation does not provide for free legal aid and representation to child victims of OCSEA. |
|  | Establish **child-friendly interviewing practices by professionally trained police**. | **Yes** | Through amendments to the Criminal Procedure Code (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.(section 133 bis) 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. (Section 172 ter para 5) These provisions provide important measures for child friendly procedures in the criminal justice process.  Child Advocacy Centres exist and function through the country. |
|  | Ensure that national legislation provides the **right for child victims to receive support in their recovery and rehabilitation**, including accessing re-integration services. | **Yes** | Chapter IV of the Anti-Trafficking in Persons Act provides for assistance and protection of safety of trafficking victims including rehabilitation.  Moreover, integrated medico-legal services and specialized residential rehabilitation centres have been developed in the country.  The Child Protection Act entitles a child who has been abused or exploited or is in difficult circumstances otherwise, to receive welfare assistance. Furthermore, the Act guarantees welfare protection to “tortured children”. |
|  | Establish a **national reporting mechanism (e.g. hotline)** that coordinates access to services, and helps to overcome reluctance to report sexual exploitation of children. | **Yes** | A 24-hour telephone helpline, SaiDek 1387, Childline (SaiDek) 1387, is operative in the country. Moreover, Thailand has an online reporting mechanism, associated with the INHOPE Foundation, which can receive online reports of illegal content, including child abuse materials. |
|  | Create **data retention and** preservation laws, regulations and procedures, to ensure the retention and preservation of digital evidence and enable cooperation with law enforcement which applies to ISPs, mobile phone companies, digital social media and communication companies, cloud storage companies, based in/operating in national jurisdiction. | **Yes** | Section 26 of the Computer-related Crime Act B.E. 2550 (2007) establishes that ISPs must store content and data concerning website users for at least 90 days from the date on which the data is inserted into a computer system. If necessary, the relevant authorities may instruct a service provider to store such data for more than 90 days but not exceeding 1 year on a temporary basis or a special case by case basis. |
|  | Ensure that national legislation provides the **right for all child victims of sexual exploitation to seek compensation** in national courts from convicted perpetrators who harmed them and/or through state-managed funds. | **Yes** | The Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act entitles victims to seek damages resulting from offences mentioned in the list annexed to the Act. This covers offences relating to sexual offences under the Thai Penal Code. Furthermore, the child victims of sexual exploitation have the possibility of seeking fund through various country -managed funds. The Child Protection Act provides for the creation of a Child Protection Fund to be used for providing assistance and welfare protection for children. “Tortured children” (which include victims of sexual abuse), are eligible to receive assistance through the Child Protection Fund. This act is applicable to all children below the age of eighteen years, irrespective of their gender or nationality |

**Legal sources:**

[Anti-Trafficking in Persons Act of 2008](http://web.krisdika.go.th/data/outsitedata/outsite21/file/ANTI_HUMAN_TRAFFICKING_ACT,B.E._2551_(2008).pdf)

[Child Protection Act of 2003](http://web.krisdika.go.th/data/outsitedata/outsite21/file/CHILD_PROTECTION_ACT_B.E._2546.pdf)

[Computer-Related Crime Act of 2007](https://freedom.ilaw.or.th/sites/default/files/CCA_EN.pdf)

[Criminal Procedure Code, 1934 (as amended by Act No. 28 of 2008](https://www.icj.org/wp-content/uploads/2012/12/Thailand-Criminal-Procedure-Code-1934-2008-eng.pdf))

[Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act of 2001](http://asean-law.senate.go.th/file/law/pdf/file-260-22.pdf)

[Extradition Act of 2008](https://www.unodc.org/res/cld/document/tha/2008/extradition_act_b_e__2472_html/Thai_Extradition_Act_Eng_Final_2551_R09-19.pdf)

[Immigration Act of 1979](https://web.krisdika.go.th/data/outsitedata/outsite21/file/Immigration_Act_B.E._2522.pdf)

[Penal Code, 1956 (as amended by the Amendment to the Criminal Law No. 24 of 2015)](http://www.krisdika.go.th/librarian/get?sysid=443287&ext=pdf)

[Prevention and Suppression of Prostitution Act of 1996](https://www.ilo.org/dyn/natlex/docs/WEBTEXT/46403/65063/E96THA01.htm#:~:text=Any%20person%20who%20procures%2C%20seduces,years%20and%20to%20a%20fine)

[Witness Protection Act of 2003](https://sherloc.unodc.org/cld/en/legislation/tha/witness_protection_act_b.e._2546/section_1-23/witness_protection_act_b.e._2546.html)