

# Disrupting Harm

Evidence from 13 countries on the context, threats, and children's perspectives of online child sexual exploitation and abuse.

Legal Analysis of OCSEA related Provisions in Thailand

Last updated 24/03/21

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This report is a summary of preliminary data collected for this research project. The perspectives contained herein represent the individuals interviewed and surveyed. Support from the Fund to End Violence Against Children does not constitute endorsement.

## International, Regional and National Commitments and Legislation on Sexual Exploitation of Children

Status of ratification of relevant international and regional instruments, reporting to human rights bodies and engagement with the special procedures of the Human Rights Council		
International Instruments	Date of ratification/accession	
Convention on the Rights of the Child - 1989	27 March 1992	
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - 2000	11 January 2006	
Optional Protocol on a Communication Procedure - 2011	25 September 2012	
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)	16 February 2001	
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – 2000 (supplementing the UN Convention against Transnational Organised Crime)	17 October 2013	
Regional Instruments	Date of ratification/accession	
ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP)-2015	24 July 2016	
Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (OPSC review)	30 October 2009	

## General Issues Related to Children’s Rights

The Thai Penal Code defines a ‘child’ as anyone who is under the age of 18.<sup>1</sup> Similarly, the Anti-Trafficking in Persons Act defines a ‘child’ as any person under 18 years of age.<sup>2</sup> The Child Protection Act defines a ‘child’ as ‘a person below 18 years of age, but does not include those who have attained majority through marriage.’<sup>3</sup> Therefore, the definition of ‘child’ is not **consistent across national legislation**. It is also noteworthy that the laws cover boys and girls alike and cover all children below 18 years, without providing for any sub-categories or age groups.

The **age of sexual consent** for both boys and girls is 15 years.<sup>4</sup> Under the Thai Penal Code, sexual intercourse with a child below the age of 15 years, with or without consent has been criminalised.<sup>5</sup> The Thai Penal Code also provides for a **close-in age exemption** in case a child below 18 has sexual intercourse with another child aged 13-15 years of age with the consent of the latter.<sup>6</sup> However, there is no criterion to determine whether the consent is **voluntary, well-informed and mutual**.

With regard to the **minimum working age**, it is set at 15.<sup>7</sup> However, the minimum age for work involving **hazardous work** is 18.<sup>8</sup> Hazardous work includes metal smelting or pressing, work involving hazardous chemicals, work related to poisonous microorganisms, any underground work, etc.<sup>9</sup> Children between 15 to 18 years of age are not permitted to work in “an abattoir; a casino; a dance, folk dance or *ronggeng* hall; and a place which sells and provides food, alcohol, tea or other beverages, with hostesses to serve customers or with places for resting or sleeping or with massage services for customers”.<sup>10</sup> Further, the Public Entertainment Places Act also provides some protection for minors, including forbidding the hiring of staff under 18 years of age in places of entertainment like karaoke bars.<sup>11</sup> It also forbids those below the age of 20 years from entering such establishments.<sup>12</sup>

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<sup>1</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), proviso to Section 1(17).

<sup>2</sup> Government of Thailand. (2008). [Anti-Trafficking in Persons Act of 2008](#), Section 4.

<sup>3</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 4.

<sup>4</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 277.

<sup>5</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 277.

<sup>6</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 277, paragraph 5.

<sup>7</sup> Government of Thailand. (1998). [Labour Protection Act of 1998](#), Section 44.

<sup>8</sup> Government of Thailand. (1998). [Labour Protection Act of 1998](#) Section 49.

<sup>9</sup> Government of Thailand. (1998). [Labour Protection Act of 1998](#), Section 49.

<sup>10</sup> Government of Thailand. (1998). [Labour Protection Act of 1998](#), Section 50.

<sup>11</sup> Government of Thailand. (1966). [Public Entertainment Places Act of 1966](#), Sections 16.

<sup>12</sup> Government of Thailand. (1966). [Public Entertainment Places Act of 1966](#), Section 16/1.

The **minimum age of criminal responsibility** is 10 years. According to the Thai Penal Code, “a child not yet over ten years of age shall not be punished for committing what is provided by the law to be an offence”.<sup>13</sup> For children between 10-15 years, the court shall not punish them for offences under the Thai Penal Code but it has the discretion of imposing other measures such as admonishment or sending them to a school or training place.<sup>14</sup> For persons between 15-18, the court shall take into account the sense of responsibility and all other things concerning such a person to decide whether to punish them or not.<sup>15</sup> Although the term “all other things” has not been defined by the Penal Code, nevertheless, based on interpretation, it can be defined in at least two ways: conscience of the child offender and their characteristics or the surrounding environment.<sup>16</sup> Further, the Thai Penal Code allows the court to reduce the scale of punishment for persons of 18-20 years of age.<sup>17</sup> It is noteworthy that the Thai Penal Code uses different terms to refer to child offenders of different age groups. Children under 15 are called ‘children’ whereas children between 15-18 are referred to as ‘persons’.

The **legal age of marriage** in Thailand is 17 years for both boys and girls.<sup>18</sup> However, the court may allow a boy and a girl to marry before attaining this age, in case of appropriate reasons,<sup>19</sup> which are not defined by the law.

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<sup>13</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 73.

<sup>14</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 74

<sup>15</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 75.

<sup>16</sup> Department of Social Development and Welfare (Thailand). (2016). [Chapter 2: Concepts of literature and related researcher](#), P. 13.

<sup>17</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 76.

<sup>18</sup> Government of Thailand. (1925). [Thai Civil and Commercial Code of 1925](#), Section 1448.

<sup>19</sup> Government of Thailand. (1925). [Thai Civil and Commercial Code of 1925](#), Section 1448.

## Online Child Sexual Exploitation and Abuse

In Thailand, the offences relating to online child sexual exploitation and abuse (OCSEA) are mainly addressed through the Thai Penal Code.

The Thai Penal Code defines child sexual abuse material<sup>20</sup> as objects or things that show children below 18 years of age engaged in sexual acts through images, stories or in a manner that can be considered pornographic/obscene, whether in the form of **documents, drawings, illustrations**, printed matter, colouring, **publications**, pictures, advertisement images, marks, photos, movies, **audio recording**, video tape or any other formats and shall also include the aforementioned objects or things stored in a computer system or other electronic devices that can show understandable results.<sup>21</sup> The definition covers visual as well as **audio** and **written material**. The use of words “drawings” and “illustrations” can be used to cover cases of **virtual child sexual abuse material** (digitally generated child sexual abuse material, including realistic images of non-existent children).

This definition fails to explicitly cover materials that depict a person **appearing to be a child** engaged in sexually explicit conduct, unless such material is covered under virtual child sexual abuse material. Nevertheless, it is largely **in line with international standards** as enshrined in the OPSC.

The Thai Penal Code criminalises certain acts associated with child sexual abuse material. It criminalises **possession** of child sexual abuse material by anyone either for sexual benefit of oneself or another person.<sup>22</sup> Forwarding child sexual abuse material to another person is also an offence under the Code.<sup>23</sup> Further, the Code criminalises **producing, importing, exporting, selling, possessing** or circulating in any way child sexual abuse material for commercial purposes or trade, **distribution** or public display.<sup>24</sup>

Furthermore, the provisions of the Thai Penal Code relating to child sexual abuse material cover the acts carried out in the **online environment** or through information and communication technologies (ICTs).<sup>25</sup>

Additionally, the Child Protection Act criminalises the acts of **forcing, threatening**, inducing, instigating, encouraging or allowing a child to perform or act in a pornographic manner, irrespective of the intention

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<sup>20</sup> Note: ECPAT prefers the term ‘child sexual exploitation material’ or ‘child sexual abuse material’ over the often in legal context still used ‘child pornography’ in line with the recently widely adopted Terminology Guidelines. ECPAT International. (2016). “[Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg, 28 January 2016](#)”. P. 39.

<sup>16</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 1(17).

<sup>22</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 287/1.

<sup>23</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 287/1.

<sup>24</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 287/2.

<sup>25</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 1(17).

behind these acts.<sup>26</sup> However, the Act does not criminalise **knowingly attending pornographic performances** involving children.

Other laws that partially cover child sexual abuse material are the Anti-Trafficking in Persons Act and the Computer-Related Crime Act. Under the Anti-Trafficking in Persons Act, the term “exploitation” means, *inter alia*, seeking benefits from the production or distribution of pornographic materials.<sup>27</sup> It criminalises the acts of “procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receipt of a child for sexual exploitation”.<sup>28</sup>

Besides, the Computer-Related Crime Act criminalises the importation of any data of a pornographic nature to a computer system that is publicly accessible.<sup>29</sup> However, the Act does not define what constitutes data of a pornographic nature.

The national legislation does not criminalise conduct associated with child sexual abuse material in a comprehensive manner. **Knowingly obtaining access to child sexual abuse material** has not been criminalised. To keep in pace with the recent advancements in ICT, many countries with a well-developed ICT-infrastructure have identified access to child sexual abuse material as being of significant importance.<sup>30</sup> However, Thailand has failed to take note of the recent developments in ICT, such as cloud storage. Therefore, it is unclear if ‘cloud storage’ would be included in ‘any electronic device’ as under the definition of child sexual abuse material under the Thai Penal Code.

Presently, neither the Thai Penal Code nor any other law, explicitly criminalise other online child sexual exploitation and abuse (OCSEA) offences like ‘**live streaming of child sexual abuse**’, ‘**sexting**’, ‘**online sexual grooming**’, ‘**sexual extortion**’ or ‘**cyberbullying**’. Going by the definition of child sexual abuse material provided by the Thai Penal Code, live streaming of child sexual abuse would not be covered as such abuse is not stored on the computer of the receiver. The omission to cover the abovementioned criminal acts creates a legal vacuum in Thailand, which can be taken advantage of by the perpetrators of OCSEA. At the time of writing, a draft bill covering OCSEA-related crimes is being drafted by the Legal Expert Group under the Department of Children and Youth.

Furthermore, the Thai Penal Code criminalises **attempt** generally and not specifically in the context of OCSEA offences.<sup>31</sup> It is unclear which 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.

<sup>26</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 26(9).

<sup>27</sup> Government of Thailand. (2008). [Anti-Trafficking in Persons Act of 2008](#), Section 4.

<sup>28</sup> Government of Thailand. (2008). [Anti-Trafficking in Persons Act of 2008](#), Section 6.

<sup>29</sup> Government of Thailand. (2007). [Computer-Related Crime Act of 2007](#), Section 14(4).

<sup>30</sup> United Nations Office on Drugs and Crime, Regional Office for Southeast Asia, Bangkok, Thailand. (2015). [Working Paper Child Sex Offences Series 1: Child Pornography](#).

<sup>31</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Sections 80-82.

The **ignorance of the age of the victim** as an excuse to be pleaded by the offender in excuse of their conducts is not explicitly provided for under Thai legislation.

It is also noteworthy that the abovementioned provisions cover **boys** and **girls** alike as well as **all children below 18 years**, without providing for any sub-categories or age groups.

Thai laws do not contain any explicit provisions imposing legal duties on **Internet Service Providers** (ISPs) to filter and/or block and/or take down child sexual abuse material. They do not have any obligation to report companies and/or individuals disseminating, trading or distributing such material. Nevertheless, the Computer-Related Crime Act punishes service providers<sup>32</sup> that intentionally support or consent to an offence under the Act to be committed on a computer system under their control.<sup>33</sup> Accordingly, both ISPs and cybercafé owners are responsible if an offence relating to the ‘importation’ of pornographic data, including child sexual abuse material, is committed using a computer system under their control.

Surprisingly, the recently passed Cybersecurity Act does not contain any provisions relating to OCSEA.<sup>34</sup>

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<sup>32</sup> Government of Thailand. (2007). [Computer-Related Crime Act of 2007](#), Section 3: "Service Provider" shall mean: (1) A person who provides service to the public with respect to access to the Internet or other mutual communication via a computer system, whether on their own behalf, or in the name of, or for the benefit of, another person. (2) A person who provides services with respect to the storage of computer data for the benefit of the other person."

<sup>33</sup> Government of Thailand. (2007). [Computer-Related Crime Act of 2007](#), Section 15.

<sup>34</sup> Government of Thailand. (2019). [Cybersecurity Act of 2019](#).



## Extraterritoriality and Extradition

Pursuant to the provisions relating to **extraterritoriality** in the Thai Penal Code, if a person commits a sexual offence outside Thailand, they shall be punished in the Kingdom.<sup>35</sup> If a person commits a sexual offence<sup>36</sup> outside Thailand, they shall be punished in Thailand if they are a Thai citizen (**active extraterritorial jurisdiction**)<sup>37</sup> or the victim is a Thai citizen (**passive extraterritorial jurisdiction**).<sup>38</sup> However, at present, these provisions do not cover offences relating to child sexual abuse material or other OCSEA offences.

The Computer-Related Crime Act also provides for active as well as passive extraterritorial jurisdiction.<sup>39</sup> The Computer-Related Crimes Act extends extraterritorial jurisdiction to all offences committed under its provisions. The provisions relating to extraterritorial jurisdiction under this Act are subject to the principle of **double criminality**,<sup>40</sup> which establishes that the offence in question should constitute an offence in the State where it was committed as well as the State exercising jurisdiction.<sup>41</sup> This somewhat limits the scope of extraterritorial application of the Act. Despite this limitation, the Computer-Related Crime Act may still be more effective than the Thai Penal Code to prosecute the offenders who commit OCSEA offences outside Thailand.

The Anti-Trafficking in Persons Act also provides for extraterritorial jurisdiction but only with regard to child trafficking offences.<sup>42</sup>

Thailand is a party to the ASEAN Treaty on Mutual Legal Assistance on Criminal Matters (ASEAN-MLAT) (2004).<sup>43</sup> The treaty aims to “improve the effectiveness of the law enforcement authorities of the Parties in the prevention, investigation and prosecution of offences through cooperation and mutual legal assistance in criminal matters”. MLAT could have been a powerful instrument to tackle OCSEA offences in ASEAN Member States, had it not incorporated the principle of double criminality.<sup>44</sup> Nevertheless, MLAT provides that in the absence of double criminality, the requested party may provide assistance if the domestic laws permit so.<sup>45</sup> In the case of Thailand, domestic laws strictly follow the principle of double criminality. This implies that if OCSEA offences are not covered in the domestic laws of a particular

<sup>35</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 7(2 bis).

<sup>36</sup> Note: According to Section 8(3) of the Thai Penal Code, only sexual offences under Sections 276, 286 and 285 of the Thai Penal Code are covered.

<sup>37</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 8(a).

<sup>38</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 8(b).

<sup>39</sup> Government of Thailand. (2007). [Computer-Related Crime Act of 2007](#), Section 17.

<sup>40</sup> Government of Thailand. (2007). [Computer-Related Crime Act of 2007](#), Section 14.

<sup>41</sup> Redress; FIDH. (2010). [Extraterritorial Jurisdiction in the European Union](#).

<sup>42</sup> Government of Thailand. (2008). [Anti-Trafficking in Persons Act of 2008](#), Section 11.

<sup>43</sup> Association of Southeast Asian Nations (ASEAN). (2004). [Treaty on Mutual Legal Assistance in Criminal Matters](#).

<sup>44</sup> Association of Southeast Asian Nations (ASEAN). (2004). [Treaty on Mutual Legal Assistance in Criminal Matters](#), Article 3(1)(e).

<sup>45</sup> Association of Southeast Asian Nations (ASEAN). (2004). [Treaty on Mutual Legal Assistance in Criminal Matters](#), Article 3(1)(e).

Member State, Thailand would not be obliged to assist in prevention, investigation and prosecution of these offences, and vice-versa.

In terms of **extradition**, the Extradition Act provides that in order to be extraditable, an offence must be a criminal offence established by both the laws of the requesting State as well as Thailand. This means that the **principle of double criminality** is applicable in extradition cases. The Act further provides that the offence should be punishable either by death or imprisonment or deprivation of liberty in other forms for more than one year.<sup>46</sup> This means that OCSEA offences are **extraditable**, as they all carry more than one year's imprisonment. If less serious offences are committed in connection with serious offences as mentioned previously, the extradition request for such offences may be considered. It is noteworthy that individual extradition treaties may also provide for certain other offences to be extraditable. The Extradition Act provides for a designated Central Authority to make and receive requests.<sup>47</sup> The Central Authority can receive a request for extradition from a Requesting State either directly, in case an extradition treaty exists between Thailand and the Requesting State, or through diplomatic channels.<sup>48</sup> A request for extradition may be denied in case the offence is not extraditable and is prohibited by the Thai law or is of a political character or a military offence. Additionally, a request for extradition may be denied if the person requested has been found innocent, already punished for the crime (double jeopardy), or otherwise not eligible to face trial.<sup>49</sup>

In the concluding observations on the report submitted by Thailand under Article 12.1 of the OPSC, the Committee on the Rights of the Child (CRC committee) expressed disappointment over the fact that laws in Thailand do not explicitly allow extraterritorial jurisdiction for all cases referred to in Article 4.2 OPSC. It urged Thailand to take steps to ensure that domestic laws enable it to establish and exercise extraterritorial jurisdiction, without the criterion of double criminality, over crimes under the OPSC. It further recommended Thailand to consider the OPSC as a legal basis for extradition without the condition of the existence of a bilateral treaty, in line with article 5.2 OPSC.<sup>50</sup>

Following the recommendations of the CRC Committee, a draft work plan was drawn up by the Thai Government wherein it was stated that the government would take steps to ensure that the domestic law authorises cross-jurisdictional litigation for offences under the OPSC, without the requirement of double criminality.<sup>51</sup> The work plan affirmed Thailand's commitment towards establishing extraterritorial jurisdiction over all OCSEA offences in line with the OPSC.<sup>52</sup> Furthermore, the government decided to

<sup>46</sup> Government of Thailand. (2008). [Extradition Act of 2008](#), Section 7.

<sup>47</sup> Government of Thailand. (2008). [Extradition Act of 2008](#), Section 2: "central authority means the Attorney General or the person designated by the Attorney General having power and duty to coordinate the extradition for the Requesting State and the request for extradition to Thailand including other concerned activities".

<sup>48</sup> Government of Thailand. (2008). [Extradition Act of 2008](#), Section 8.

<sup>49</sup> Government of Thailand. (2008). [Extradition Act of 2008](#), Section 9.

<sup>50</sup> Committee on the Rights of the Child (CRC). (2012). [Concluding Observations: Thailand](#), CRC/C/OPSC/THA/CO/1, Paragraph 30.

<sup>51</sup> Government of Thailand. (n. d.) [Draft plan on children's rights upon the recommendation of the CRC Committee on the implementation of the OPSC](#). (in Thai).

<sup>52</sup> Government of Thailand. (n. d.) [Draft plan on children's rights upon the recommendation of the CRC Committee on the implementation of the OPSC](#). (in Thai).

adopt the OPSC as the legal basis of extradition without the conditions regarding bilateral treaties.<sup>53</sup> The government was supposed to take these steps and implement the changes within the timeframe 2013-2016.<sup>54</sup> However, it seems that the commitment expressed in the work plan is yet to be given a concrete shape in the form of amendments to the current laws.

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<sup>53</sup> Government of Thailand. (u. d.) [Draft plan on children's rights upon the recommendation of the CRC Committee on the implementation of the OPSC.](#) (in Thai).

<sup>54</sup> Government of Thailand. (u. d.) [Draft plan on children's rights upon the recommendation of the CRC Committee on the implementation of the OPSC.](#) (in Thai).

## Other OCSEA-Related Provisions

Pursuant to the provisions of the Thai Penal Code, the possession of child sexual abuse material is punishable either with imprisonment not exceeding 5 years or a fine not exceeding 100,000 baht (approx. US\$3,223 as of March 2021) or both.<sup>55</sup> Similarly, forwarding child sexual abuse material to another person is punishable either by imprisonment not exceeding 7 years, or a fine of up to 140,000 baht (approx. US\$ 4,513 as of March 2021), or both.<sup>56</sup>

Apart from the abovementioned penalties, the Computer-Related Crime Act entrusts a relevant competent official with the authority to instruct a person in possession or control of computer data or computer data storage equipment to deliver such data for investigation.<sup>57</sup> Furthermore, the official is authorised to **seize** or attach any computer system for obtaining details of an offence under the Act.<sup>58</sup> In case a person fails to comply with these instructions, they shall be subject to a fine of up to 200,000 baht (approx. US\$6,447 as of March 2021) and a further daily fine of up to 5,000 baht (approx. US\$161 as of March 2021) until the necessary instruction has been carried out.<sup>59</sup>

The Thai Penal Code criminalises publishing or disseminating information to **promote** the trade of child sexual abuse material.<sup>60</sup> This offence is punishable with 3-10 years of imprisonment and a fine of 60,000-200,000 baht (approx. US\$1,934 to US\$6,447 as of March 2021).<sup>61</sup> In addition, the Child Protection Act forbids persons from **advertising** or disseminating any information on a child or their guardian, with the intention of causing damage to the child’s reputation, mind, prestige or any other interests or seeking any benefit in an unlawful manner.<sup>62</sup>

In terms of liabilities of **legal entities** for OCSEA offences, the national legislation is a bit ambiguous. For instance, the Computer-Related Crime Act uses the term “any person” but fails to define it.<sup>63</sup> The Thai Penal Code is also silent on the criminal liability of legal entities. Notwithstanding, the Supreme Court in many cases has construed the terms “anyone” or “whoever” to include legal entities.<sup>64</sup> It is noteworthy that in 2017, the Thai Government enacted the Act Amending the Provisions Law on Criminal Liability of Representative of a Juristic Person, B.E. 2560, which provides that the representatives of juristic persons would be subjected to criminal liability if they are actively involved in committing an offence and, also, if

<sup>55</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 287/1.

<sup>56</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 287/1.

<sup>57</sup> Government of Thailand. (2007). [Computer-Related Crime Act of 2007](#), Section 18(5).

<sup>58</sup> Government of Thailand. (2007). [Computer-Related Crime Act of 2007](#), Section 18(8).

<sup>59</sup> Government of Thailand. (2007). [Computer-Related Crime Act of 2007](#), Section 27.

<sup>60</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 287/2.

<sup>61</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 287/2.

<sup>62</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Article 27.

<sup>63</sup> Government of Thailand. (2007). [Computer-Related Crime Act of 2007](#), Section 14.

<sup>64</sup> Sudti-autasilp, B. (n.d.). [Corporate Crime and the Criminal Liability of Corporate Entities in Thailand](#), *Resource Material Series No. 76*, P. 95.

they failed to perform their duty of care to prevent the occurrence of an offence.<sup>65</sup> In 2018, the Thai police arrested the administrator of a pornographic website with millions of views for, among other things, possessing child sexual abuse material for commercial use. According to the police, as an administrator, he was responsible for uploading the pornographic content for the members of the website to watch.<sup>66</sup> This might imply that the owners or representatives of companies can be held liable for OCSEA offences in Thailand.

Under the Penal Code, **recidivists** are dealt with seriously and are punished with harsher penalties than first-time offenders.<sup>67</sup> However, the provisions relating to recidivism are not specific to OCSEA offences, but rather apply generally to sexual offences under the Code.

Currently, national legislation in Thailand does not provide for the establishment of a **national sex offender registry**.

Moreover, the national legislation also does not prohibit sex offenders from **holding positions involving or facilitating contact with children**. It is noteworthy that the Immigration Act prohibits certain persons from entering Thailand.<sup>68</sup> 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”.<sup>69</sup>

In terms of **retention** and **preservation** of digital evidence, the Computer-Related Crime Act makes it mandatory for a service provider to retain computer traffic data 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.<sup>70</sup> Failure to comply with this provision attracts a fine of not more than 500,000baht (approx. US\$16,118 as of March 2021).<sup>71</sup> These provisions are general in nature and may be used in the case of OCSEA offences as well.

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<sup>65</sup> Chandler MHM. (2017). [New Act to Amend Director’s Criminal Liability under 76 Laws](#).

<sup>66</sup> Bangkok Post. (2019). [Child Porn Website Busted In Chiang Mai](#).

<sup>67</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Articles 92 and 93.

<sup>68</sup> Government of Thailand. (1979). [Immigration Act of 1979](#), Section 12.

<sup>69</sup> Government of Thailand. (1979). [Immigration Act of 1979](#), Section 12(8).

<sup>70</sup> Government of Thailand. (2007). [Computer-Related Crime Act of 2007](#), Section 26.

<sup>71</sup> Government of Thailand. (2007). [Computer-Related Crime Act of 2007](#), Section 26.

## Access to Justice and Remedies

### National complaint mechanisms and reporting

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.<sup>72</sup> Here, 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”.<sup>73</sup> Hence, this duty could apply in the case of OCSEA offences as well. Further, the Act affords **protection** to persons reporting in good faith and exempts them from liability for any civil, criminal, or administrative offence.<sup>74</sup>

Similarly, **private citizens** who witness a child being or appearing to be tortured, shall promptly report such acts to a relevant authority or official.<sup>75</sup> Such a person shall also be provided with **protection** and be exempted from liability for any civil, criminal or administrative offence.<sup>76</sup>

It is not clear whether Thai laws impose on the Public Prosecutors the duty to initiate investigations of OCSEA offences *ex officio* based on information obtained by any sources (e.g. a police report). In addition, the laws are silent on whether an **anonymous complaint** can form the basis of initiation of investigations or not.

The **statute of limitation** for sexual offences under the Thai Penal Code is 15 years.<sup>77</sup> It also imposes a shorter period for certain sexual offences, with only a 3-month period for compoundable offences, including rape and sexual assault of victims over age 15 when the crimes are committed in private without physical injury.<sup>78</sup>

### Child-sensitive justice

The Criminal Procedure Code provides for **child-friendly interview methods**. According to the Code, in case of sexual offences under the Thai Penal Code or any other law, if the victim is a child, the inquirer shall, upon the request of such a child, interrogate them separately at a suitable place and in presence of a **psychologist** or social worker, a person sought by the child and a public prosecutor. If the psychologist or social worker is of the opinion that such a questioning would be detrimental to the child’s mental condition, the inquirer is required to question the child only through the psychologist or social worker, in a way that prevents the child from hearing such questions. Unless there are justifiable reasons, a child

<sup>72</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 29.

<sup>73</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 4.

<sup>74</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 29.

<sup>75</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 41.

<sup>76</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 41.

<sup>77</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Section 95.

<sup>78</sup> Government of Thailand. (1956). [Thai Penal Code, 1956 \(as amended by the Amendment to the Criminal Law No. 24 of 2015\)](#), Sections 96 and 281.

shall not be questioned repeatedly.<sup>79</sup> The inquirer shall arrange to have the interrogation of the child recorded audio-visually as evidence that can be reproduced continuously.<sup>80</sup>

The Criminal Procedure Code requires the presence of a psychologist or a social worker with the child, even at subsequent stages of legal proceedings.<sup>81</sup> It allows the court to hold a trial in a closed room either on its own motion or upon request of either party, provided that it is in the interest of public order or good morals.<sup>82</sup> However, this provision applies generally to all criminal trials, not only trials involving child victims or witnesses.

The Thai legislation does not provide for **free legal aid** and representation to child victims of OCSEA. Although psychologists and social workers can assist child victims and witnesses, the Thai legislation does not ensure that **non-governmental organisations** can assist/support victims, at their request, during the investigation and judicial proceedings. Additionally, the Criminal Code entitles children to request any other person to be present during the interview or at any other stage of judicial proceedings.<sup>83</sup>

Moreover, there are no legal provisions that impose a duty to provide information to child victims in a **child-friendly manner**. Notwithstanding, the Criminal Procedure Code stipulates for providing translation services to all victims of crimes in general.<sup>84</sup>

The Child Protection Act protects the **privacy** of a child by forbidding the guardian of the child's welfare or welfare protector appointed under the Act from revealing the child's first and last names, photo or any information in a manner which would damage their reputation or their rights.<sup>85</sup> This provision applies to any competent official, social worker, psychologist or any other person having a duty to protect the child's welfare under the Child Protection Act. It is important to note that these provisions do not exclusively apply to children who are victims of crimes.

Furthermore, the Criminal Procedure Code incorporates special safeguards to protect the **identity** of the child victims and witnesses. If a person conducting an inquiry in a criminal case requires a child to identify an accused, such person must take measures to protect the identity of the concerned child. Moreover, such an identification can only take place in the presence of a psychologist, social welfare worker, any person requested by the child and the public prosecutor.<sup>86</sup>

Besides, the Witness Protection Act provides **protection** to all witnesses in criminal offences. These

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<sup>79</sup> Government of Thailand. (2008). [Criminal Procedure Code, 1934 \(as amended by Act No. 28 of 2008\)](#), Section 133 *bis*.

<sup>80</sup> Government of Thailand. (2008). [Criminal Procedure Code, 1934 \(as amended by Act No. 28 of 2008\)](#), Section 133 *bis*.

<sup>81</sup> Government of Thailand. (2008). [Criminal Procedure Code, 1934 \(as amended by Act No. 28 of 2008\)](#), Section 172 *ter*.

<sup>82</sup> Government of Thailand. (2008). [Criminal Procedure Code, 1934 \(as amended by Act No. 28 of 2008\)](#), Section 177.

<sup>83</sup> Government of Thailand. (2008). [Criminal Procedure Code, 1934 \(as amended by Act No. 28 of 2008\)](#), Section 177.

<sup>84</sup> Government of Thailand. (2008). [Criminal Procedure Code, 1934 \(as amended by Act No. 28 of 2008\)](#), Section 13.

<sup>85</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 50.

<sup>86</sup> Government of Thailand. (2008). [Criminal Procedure Code, 1934 \(as amended by Act No. 28 of 2008\)](#), Section 133 *ter*.

provisions could be invoked to provide secure protection of child victims of OCSEA and their family members against any kind of intimidation or retaliation from the offenders. It requires the competent official to put in place **protection** measures for a witness who faces threats to their life, body, health, liberty, honour, property or any lawful rights.<sup>87</sup> These measures include, *inter alia*, security services, a new place of accommodation, and food.<sup>88</sup> These protections are also available to the family members of the witness.<sup>89</sup>

In addition, the Witness Protection Act provides special protection to witnesses of certain sexual offences under the Thai Penal Code.<sup>90</sup> However, it is unclear whether these provisions apply to child victims of OCSEA.

These provisions apply to both **boys** and **girls**, with no distinction. They also apply to nationals and **non-nationals** equally.

### Access to recovery and reintegration

The Constitution of Thailand requires the State to provide assistance to children so that they can live a quality life. It is the duty of the State to protect children from violence or unfair treatment and provide treatment, rehabilitation, and remedies to child victims of violence or unfair treatment.<sup>91</sup> The Anti-Trafficking in Persons Act has entrusted the Ministry of Social Development and Human Security with the responsibility to support the needs of victims of trafficking, including mental and physical rehabilitation.<sup>92</sup>

The Child Protection Act entitles a child who has been abused or exploited or is in difficult circumstances otherwise, to receive welfare assistance.<sup>93</sup> Pursuant to this provision, a competent official, upon notification, shall provide support and assistance to such a child and their family.<sup>94</sup> Such a child may be sent to a Welfare Centre or to a Development and Rehabilitation Centre.<sup>95</sup> Furthermore, the Act guarantees welfare protection to “tortured children”.<sup>96</sup> Although the Act comprehensively covers welfare and protection needs of children, it does not provide for any **specific programmes** for the support and reintegration of child victims of OCSEA offences. Moreover, the Act does not cover the special case of child victims and witness in criminal cases.

Currently, the laws in Thailand do not contain any provisions to ensure that child victims of OCSEA enjoy their right to **recovery and rehabilitation**.

<sup>87</sup> Government of Thailand. (2003). [Witness Protection Act of 2003](#), Section 6.

<sup>88</sup> Government of Thailand. (2003). [Witness Protection Act of 2003](#), Section 10.

<sup>89</sup> Government of Thailand. (2003). [Witness Protection Act of 2003](#), Section 7 and 11.

<sup>90</sup> Government of Thailand. (2003). [Witness Protection Act of 2003](#), Section 8.

<sup>91</sup> Government of Thailand. (2017). [Constitution of the Kingdom of Thailand of 2017](#), Section 71.

<sup>92</sup> Government of Thailand. (2017). [Constitution of the Kingdom of Thailand of 2017](#), Section 33.

<sup>93</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 32(5) and (7).

<sup>94</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 33(1).

<sup>95</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 33(6) and (7).

<sup>96</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 40(1).



## Access to compensation

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.<sup>97</sup> This covers offences relating to sexual offences under the Thai Penal Code. Therefore, they are applicable to OCSEA offences to the extent covered by the Thai Penal Code. Damages can be sought for, *inter alia*, covering expenses for medical treatment.<sup>98</sup>

Furthermore, the child victims of OCSEA have the possibility of seeking compensation 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.<sup>99</sup> “Tortured children” (which include victims of sexual abuse, and therefore includes victims of OCSEA offences), 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**.

Victims of OCSEA can also seek compensation under the Civil and Commercial Code, which provides that a person who “wilfully or negligently unlawfully injures the life, body, health, liberty, property or any right of another person” must provide compensation for the harms caused.<sup>100</sup> Compensation can also be sought for pain and suffering incurred by the victim as a consequence of the acts of the offender.<sup>101</sup>

Child victims of OCSEA can seek compensation through the Anti-trafficking Fund established under the Anti-Trafficking in Persons Act<sup>102</sup> For several OCSEA related cases in Thailand, child victims have received compensation from this Fund if the court ruled that particular case as trafficking.<sup>103</sup>

Additionally, the Justice Fund Act provides for the establishment of a fund for, among other things, remedies for human rights violations.<sup>104</sup> A victim of OCSEA offences can receive support from the fund for covering medical and legal expenses.<sup>105</sup>

<sup>97</sup> Government of Thailand. (2001). [Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act of 2001](#), Section 17.

<sup>98</sup> Government of Thailand. (2001). [Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act of 2001](#), Section 18.

<sup>99</sup> Government of Thailand. (2003). [Child Protection Act of 2003](#), Section 68.

<sup>100</sup> Government of Thailand. (1925). [Thai Civil and Commercial Code of 1925](#), Section 420.

<sup>101</sup> Government of Thailand. (1925). [Thai Civil and Commercial Code of 1925](#), Section 446.

<sup>102</sup> Government of Thailand. (2008). [Anti-Trafficking in Persons Act of 2008](#), Section 42.

<sup>103</sup> Information received via personal communication.

<sup>104</sup> Government of Thailand. (2015). [The Justice Fund Act of 2015](#), Section 5.

<sup>105</sup> Government of Thailand. (2015). [The Justice Fund Act of 2015](#), Section 31.