

UNTOC Review Mechanism

Self-assessment questionnaire submitted by Thailand

UNTOC

Step A

Article 2 - Use of Terms.

1. Does your country's legal framework include the definitions set forth in article 2?

No

Yes

Yes, in part

1(a). Please explain

Section 3 of the Prevention and Suppression of Involvement in Transnational Criminal Organization Act, B.E 2556 (2013) includes the following definitions as set forth in article 2 of the Convention:

“Transnational organized crime” means an organized criminal group committing a crime having one of the following characteristics:

(1) it is committed in more than one State;

(2) it is committed in one State but a substantial part of its preparation, planning, direction, support or control takes place in another State;

(3) it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State;

(4) it is committed in one State but has substantial effects in another State.

“Serious crime” means conduct constituting a criminal offence punishable by a maximum imprisonment of at least four years or a more serious penalty;

“Investigator” means an inquiry official according to the Criminal Procedure Code;

“Officer” means a person whom the Attorney General or the Commissioner General of the Royal Thai Police has appointed to provide assistance to an investigator in investigation, prevention and suppression of an offence of participating in transnational organized crime of this Act

2. Does your country's legal framework permit it to implement the Convention without adopting the specific definitions set forth in article 2?

No

Yes

Yes, in part

2(a). Please explain

Thailand has a dualism approach to incorporate the Convention into domestic law. Therefore, Thailand enacted the Prevention and Suppression of Involvement in Transnational Criminal Organization Act, B.E 2556 (2013).

After signing the Convention, Thailand reviewed existing domestic legislation and the obligations set forth in the Convention many times until we fully complied with the obligations and then ratified the Convention.

Article 5 - Criminalization of participation in an organized criminal group.

3. Is participation in an organized criminal group criminalized under your country's legal framework, in accordance with article 5?

No

Yes

3(a). If the answer to question 3 is "Yes", does participation in an organized criminal group consist of agreeing with one or more other persons to commit a serious crime in order to obtain, directly or indirectly, a financial or other material benefit (art. 5, para. 1 (a) (i))?

No

Yes

Yes, in part

3(a)(i). If the answer to question 3 (a) is "Yes", does the criminal offence as provided in your domestic law require an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group (art. 5, para. 1 (a) (i))?

No

Yes

Yes, in part

3(b). If the answer to question 3 is "Yes", does participation in an organized criminal group consist of taking an active part in the criminal activities of an organized criminal group with knowledge of either the aim and general criminal activity of that group or its intention to commit the crimes concerned, or taking an active part in other activities of an organized criminal group in the knowledge that such participation will contribute to the achievement of the criminal aim of that group (art. 5, para. 1 (a) (ii))?

No

Yes

Yes, in part

3(c). If the answer to question 3 (a) is "Yes", please cite the applicable laws and/or other measures, including the applicable sanctions for this offence.

***THE PREVENTION AND SUPPRESSION OF INVOLVEMENT IN
TRANSNATIONAL CRIMINAL ORGANISATION ACT, B.E. 2556 (2013)***

Section 3. In this Act:

"organized criminal group" means a group of three or more persons, existing for a period of time and acting in concert with the aim of committing a serious offence in order to obtain, directly or indirectly, a financial, proprietorial or other material benefit;

“transnational criminal organisation” means an organized criminal group who has committed an offence with one of the following characteristics:

(1) an offence committed in more than one State;

(2) an offence committed in one State but its preparation, planning, direction, support or control of the commission of the offence takes place in another State;

(3) an offence committed in one State but involves an organized criminal group that commits an offence in more than one State;

(4) an offence committed in one State but has substantial effects in another State;

“serious offence” means a criminal offence punishable by imprisonment with the maximum terms of at least four years or a more serious penalty;

Section 5. Any person who commits one of the following acts:

(1) being a member of or a part of a working network of a transnational criminal organisation;

(2) agreeing with one or more other persons to commit a serious offence relating to a transnational criminal organisation;

(3) being involved in the commission of any act, whether directly or indirectly, relating to the activities or operations of a transnational criminal organisation, with knowledge of the objectives and operation of the activities or with knowledge of the intention to commit a serious crime of such transnational criminal organisation;

(4) organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime of a transnational criminal organization, with knowledge of the objectives and the operation of the activities or with knowledge of the intention to commit the serious crime of such transnational criminal organisation; such person commits an offence of involvement in an organized criminal group.

3(d). If the answer to question 3 (a) is “Yes in part” or “No”, please specify how participation in a criminal group is treated under your country’s framework.

4. If your domestic law requires an act in furtherance of the agreement, has your country so informed the Secretary-General of the United Nations, as required under article 5, paragraph 3?

No

Yes

5. Does your country’s legal framework establish as criminal offences the acts of organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group (art. 5, para. 1 (b))?

No

Yes

Yes, in part

5(a). Please explain, if needed.

Section 5 (4) as shown above.

Article 6 – Criminalization of the laundering of proceeds of crime.

6. Is the laundering of proceeds of crime criminalized under your country's legal framework, in accordance with article 6, paragraph 1 (a), of the Convention (art. 6, paras. 1 (a) (i)–(ii))?

No

Yes

Yes, in part

6(a). If the answer is "Yes, in part", please specify the manner in which the laundering of proceeds of crime is criminalized under your country's legal framework.

7. Are the acquisition, possession and use of property known at the time of receipt to be the proceeds of crime criminalized under your country's legal framework (art. 6, para. 1 (b) (i))?

No

Yes

Yes, in part

7(a). Please explain briefly

8. Are participation in, association with and conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of a money-laundering offence criminalized under your country's legal framework (art. 6, para. 1 (b) (ii))?

No

Yes

Yes, in part

8(a). Please explain briefly

THE ANTI-MONEY LAUNDERING ACT B.E. 2542 (1999)

Section 7. *In an offense of money laundering, any person who commits any of the following acts shall be liable to the same penalty as that to which the principal committing such offense shall be liable:*

(1) aiding and abetting the commission of the offense or assisting the offender before or at the time of the commission of the offense,

(2) providing or giving money or asset, a vehicle, place or any article or committing any act for the purpose of assisting the offender to escape or to evade punishment or for the purpose of obtaining any benefit from the commission of the offense.

In the case where any person provides or gives money or asset, a shelter or hiding place in order to enable his or her father, mother, child, husband or wife to escape from being arrested, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offense.

Section 8. *Any person who attempts to commit an offense of money laundering shall be liable to the same penalty as that provided for the offender who has accomplished such offense.*

Section 9. *Any person who enters into conspiracy to commit an offense of money laundering shall, when there are at least two persons in the conspiracy, be liable to one-half of the penalty provided for such offense.*

If the offense of money laundering has been committed in consequence of the conspiracy under paragraph one, the person so conspiring shall be liable to the penalty provided for such offense.

In the case where the offense has been committed up to the stage of its commencement but, on account of the obstruction by the conspiring person, has not been carried out through its completion or has been carried out through its completion without achieving its end, the conspiring person rendering such obstruction shall only be liable to the penalty provided in paragraph one.

If the offender under paragraph one changes his or her mind and reveals the truth in connection with the conspiracy to the competent official prior to the commission of the offense to which the conspiracy relates, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offense.

9. If the answer to question 6, 7 or 8 is “Yes”, are all serious crimes and the offences covered by the Convention and the Protocols to which your State is a party predicate offences under your domestic law to the offence of money-laundering (art. 6, para. 2 (a) and (b))?

No

Yes

9(a). If the answer is “No”, please specify which of the offences covered by the Convention and the Protocols to which your State is a party are not predicate offences under your domestic law to the offence of money-laundering (art. 6, para. 2 (b)).

Not all serious crimes are predicate offences. But participation in an organized criminal group article 5, corruption article 8, and trafficking in persons articles 3 and 5 (Trafficking Protocol) are predicate offences under our domestic law to the offence of money-laundering.

10. Please provide information on the scope of predicate offences set out in your domestic law, including any list of specific predicate offences that may be set out by your domestic law; indicate, for example, the relevant acts and article numbers (art. 6, para. 2 (b)).

Currently, there are a total of 28 predicate offences according to our domestic law, for example.

THE ANTI-MONEY LAUNDERING ACT B.E. 2542 (1999)

Section 3. *In this Act: “predicate offense” means any offense;*

[provides for 21 offences]

THE PREVENTION AND SUPPRESSION OF INVOLVEMENT IN TRANSNATIONAL CRIMINAL ORGANISATION ACT, B.E. 2556 (2013)

Section 22. *The commission of an offence of involvement in transnational criminal organisation under this Act shall be a predicate offence under the law on the prevention and suppression of money laundering.*

11. Does your country's legal framework include predicate offences committed outside your country's jurisdiction (art. 6, para. 2 (c))?

No

Yes

Yes, in part

11(a). If the answer is "Yes" or "Yes, in part", please describe the circumstances under which a predicate offence committed in a foreign jurisdiction may be recognized pursuant to your domestic law.

THE ANTI-MONEY LAUNDERING ACT B.E. 2542 (1999)

Section 6. *Any person who commits an offense of money laundering shall,*

even if the offense is committed outside the Kingdom, be punished under this Act in the Kingdom if it appears that:

(1) the offender or any of the co-offenders is a Thai national or has a residence in Thailand;

(2) the offender is an alien and commits the offense with the intent that the consequence thereof shall have occurred in the Kingdom, or the Thai Government is the injured person; or

(3) the offender is an alien and the act so committed is an offense under the law of the State in whose jurisdiction the act occurs, provided that such person remains his or her appearance in the Kingdom without being extradited in accordance with the law on extradition.

12. Has your country furnished copies of its laws that give effect to article 6 and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations (art. 6, para. 2 (d))?

12(a). If yes, please provide a link.

[https://www.amlo.go.th/amlo-intranet/en/files/AMLA%20No%201-4\(1\).pdf](https://www.amlo.go.th/amlo-intranet/en/files/AMLA%20No%201-4(1).pdf)

https://cds.customs.go.th/data_files/5d07387508d4d6cda5e1d0e10c8fe38c.pdf

12(b). If not, please provide this information

Article 8 – Criminalization of corruption.

13. Is the conduct described in article 8, paragraph 1 (a), criminalized in your country's legal framework?

No

Yes

Yes, in part

13(a). Please explain briefly

Not applicable to Thailand since Thailand is a party to UNCAC.

14. Is the conduct described in article 8, paragraph 1 (b), criminalized in your country's legal framework?

No

Yes

Yes, in part

14(a). Please explain briefly

Not applicable to Thailand since Thailand is a party to UNCAC.

15. Is the form of corruption described in article 8, paragraph 1, involving a foreign public official or international civil servant criminalized in your country's legal framework (art. 8, para. 2)?

No

Yes

Yes, in part

15(a). If appropriate, please explain briefly

Not applicable to Thailand since Thailand is a party to UNCAC.

16. Is any other form of corruption established as a criminal offence in your country's legal framework (art. 8, para. 2)?

No

Yes

Yes, in part

16(a). If appropriate, please explain briefly

Not applicable to Thailand since Thailand is a party to UNCAC.

17. Is participation as an accomplice in offences established in accordance with article 8 criminalized under your country's legal framework (art. 8, para. 3)?

No

Yes

Article 9 – Measures against corruption.

18. Has your country adopted measures to promote integrity and to prevent, detect and punish the corruption of public officials (art. 9, para. 1)?

No

Yes

18(a). If the answer is "Yes", please specify the measures implemented to promote integrity and to prevent, detect and punish the corruption of public officials.

Not applicable to Thailand since Thailand is a party to UNCAC.

19. Has your country taken measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including

providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions (art. 9, para. 2)?

No

Yes

19(a). If the answer is “Yes”, please specify the measures implemented to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Not applicable to Thailand since Thailand is a party to UNCAC.

Article 10 – Liability of legal persons.

20. Is the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences covered by the Convention and the Protocols to which your State is a party established under your country’s legal framework (art. 10)

No

Yes

Yes, in part

20(a). If the answer is “Yes, in part” or “No”, please explain

21. If the answer is “Yes”, is this liability:

21(a). Criminal:

No

Yes

21(b). Civil:

No

Yes

21(c). Administrative:

No

Yes

22. What kind of sanctions are provided for in your country’s legal framework to implement article 10, paragraph 4, bearing in mind article 11, paragraph 6, of the Convention?

The Prevention and Suppression of Involvement in Transnational Criminal Organization Act, B.E 2556 (2013), Section 32 prescribes the criminal fine from 200,000 – 1,000,000 Baht.

As for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Section 53 of the Anti-Trafficking in Persons Act, B.E. 2551 (2008) provides the criminal fine of 200,000 – 1,000,000 Baht.

Article 15 – Jurisdiction.

23. Are there any circumstances under which your country does not have jurisdiction over offences established in accordance with articles 5, 6, 8 and 23 of the Convention and the Protocols to which it is a party committed in its territory (art. 15, para. 1 (a))?

No

Yes

23(a). If the answer is “Yes”, please specify the circumstance(s) under which your country does not have jurisdiction over offences committed in its territory.

24. Does your country have jurisdiction to prosecute the offences established in accordance with articles 5, 6, 8 and 23 of the Convention and the Protocols to which it is a party when the offences are committed on board a vessel flying its flag or an aircraft registered under its laws (art. 15, para. 1 (b))?

No

Yes

Yes, in part

24(a). If the answer is “Yes” or “Yes, in part”, please specify the manner in which your country has jurisdiction to prosecute the offences covered by the Convention and the Protocols to which it is a party, in accordance with article 15, paragraph 1 (b).

Thailand has jurisdiction and Thai law enforcement officers have authorities to investigate and prosecute the offences covered by the Convention and the Protocols to which it is a party, in accordance with article 15, paragraph 1 (b). The provision of laws is in article 4 of Thai Penal Code, which is a general principle applied to the Convention and the Protocols thereto, as follows;

“Any person who commits an offence within the Kingdom shall be punished according to law.

The offence, committed on board a Thai vessel or aircraft irrespective of any place, shall be deemed as being committed within the Kingdom.”

25. Does your country’s legal framework allow for the following extraterritorial jurisdictional bases:

25(a). Jurisdiction to prosecute the offences established in accordance with articles 5, 6, 8 and 23 of the Convention and the Protocols to which your country is a party when committed outside its territory by its nationals (or stateless persons who have habitual residence in the country) (art. 15, para. 2 (b))?

No

Yes

25(b). Jurisdiction to prosecute the offences established in accordance with articles 5, 6, 8 and 23 of the Convention and the Protocols to which your country is a party when committed outside its territory against its nationals (art. 15, para. 2 (a))?

No

Yes

25(c). Jurisdiction to prosecute participation in an organized criminal group that occurred outside its territory with a view to the commission of a serious crime (art. 2, para. (b)) within its territory (art. 15, para. 2 (c) (i))?

No

Yes

25(d). Jurisdiction to prosecute ancillary offences related to money-laundering offences committed outside its territory with a view to the commission of the laundering of proceeds of crime in its territory (art. 15, para. 2 (c) (ii))?

No

Yes

Article 23 - Obstruction of Justice

26. Is obstruction of justice in relation to offences covered by the Convention and the Protocols to which your country is a party criminalized under your country's legal framework, in accordance with article 23 of the Convention?

No

Yes

Yes, in part

26(a). Please explain briefly

1. Section 26 of the Prevention and Suppression of Involvement in Transnational Criminal Organization Act, B.E 2556 (2013) stipulates that:

“Whoever obstructs an investigation, a prosecution or litigation of an offence of participating in transnational organized crime by committing any of the following, so that the case may not proceed peacefully, shall be liable to imprisonment for a term not exceeding ten years or a fine of not exceeding two hundred thousand Baht, or both:

(1) grant, offer to grant or promise to grant any property or benefit to the injured person or the witness to induce such person not to see an officer, an investigator, a public prosecutor, or not to be present before the court to give facts or testify, or to give false information or false testimony, or not to give facts or testify in litigation against an offender;

(2) use physical force, coerce, threaten, extort, deceive or commit other wrongful acts to prevent the injured person or the witness from seeing an officer, an investigator, a public prosecutor, or from being before the court to give facts or testify; or to make such person give false information or false testimony, or not give facts or testify in litigation against an offender;

(3) cause damage, destroy, lose or make the uselessness of, take away, change, alter, cover or conceal any document or evidence, or forge, fabricate or use any false document or evidence in litigation against an offender;

(4) grant, offer to grant, or promise to grant any property or benefit to an officer, an official in the position of a judge, a public prosecutor or an investigator, or demand, accept or agree to accept any property or benefit to induce such person to do or not to do or to delay any act, which is against his duty; or

(5) use physical force, coerce, threaten, extort, or commit other wrongful acts against an officer, an official in the position of a judge, a public prosecutor or an investigator, to induce such person to do or not to do or to delay any act, which is against his duty.

2. Section 54 Anti-Trafficking in Persons Act B.E 2551 (2008)

Whoever obstructs the process of investigation, inquiry, prosecution or criminal proceedings on the offence of trafficking in persons so that the process is unable to be conducted in a well-manner, by doing any of the following acts, shall be liable to the punishment of an imprisonment not exceeding ten years and a fine not exceeding two hundred thousand Baht:

1. *giving, offering or agreeing to give property or other benefit to a trafficked person or other witness for inducing such person not to visit the competent official, inquiry official, public prosecutor or not to attend the court for giving facts, statement or testimony, or inducing such person to give facts, statement or testimony that is false, or not to give facts, statement or testimony at all, in the criminal proceedings against the offender under this Act;*
2. *using of force, coercing, threatening, compelling, deceiving, or using any other means causing a trafficked person or other witness not to visit the competent official, inquiry official, public prosecutor or not to attend the court to give facts, statement or testimony, or inducing such person to give facts, statement or testimony that is false, or not to give facts, statement or testimony, that is false, or not to give facts, statement or testimony at all, in the criminal proceedings against the offender under this Act;*
3. *damaging, destroying, losing or rendering useless, taking away, altering, changing, concealing or hiding any document or evidence, or fabricating, making or using any document or evidence that is false in the criminal proceeding against the offender under this Act;*
4. *giving, offering or agreeing to give property or other benefit to the Committee member, the CMP Committee member, subcommittee member, any member of the working group or to the competent official under this Act, or to judiciary official, public prosecutor, or inquiry official or demanding, accepting, or agreeing to accept a property or any other benefit in order to induce such person to do or not to do any act, or to delay the doing of any act contrary to the duty of such person under this Act;*
5. *using of force, coercing, threatening, compelling or using any other wrongful means to the Committee member, the CMP Committee member, sub-committee member, any member of the working group or to the competent official under this Act, or to judiciary official, public prosecutor, or inquiry official to induce such person to do or not to do any act, or to delay the doing of any act contrary to the duty of such person under this Act.*

Criminalization: cases and judgements

27. States are invited to provide examples, relevant cases or judgments relating to successful implementation and enforcement for each of the criminal offences reviewed above.

Difficulties encountered

28. Has your country encountered any difficulties or challenges in implementing the Convention?

No

x Yes

28(a). If the answer is “Yes”, please specify:

Problems with the formulation of legislation

Need for further implementing legislation (laws, regulations, decrees, etc.)

x Reluctance of practitioners to use existing legislation

Insufficient dissemination of existing legislation

x Limited inter-agency coordination

Specificities of the legal system

Competing priorities for the national authorities
x Limited resources for the implementation of existing legislation
x Limited cooperation with other States
x Lack of awareness of the existing legislation
Other issues (please specify)

Need for technical assistance

29. Does your country require technical assistance to overcome difficulties in implementing the Convention?

No

x Yes

30. If the answer is “Yes”, please specify the type of technical assistance needed.

1. *Capacity building through training*
2. *Strengthening international and regional cooperation*
3. *International or regional seminar for supporting informal cooperation*
4. *Special technique for cybercrime and cryptocurrency investigation*
5. *Tracing technique for financial crime*
6. *Evidence collection and preservation*
7. *Asset recovery and asset sharing*
8. *Official guidelines for practitioners*
9. *The use of technology in international cooperation*

31. Which of the following forms of technical assistance, if available, would assist your country in fully implementing the provisions of the Convention? In identifying the forms of technical assistance as listed below, please also indicate for which provisions of the Convention such assistance would be needed.

Legal advice

Legislative drafting support

Model legislation or regulations

Model agreements

Standard operating procedures

Development of strategies, policies or action plans

Dissemination of good practices or lessons learned

Capacity-building through the training of practitioners or trainers

On-site assistance by a mentor or relevant expert

Institution-building or the strengthening of existing institutions

Prevention and awareness-raising

Technological assistance

Establishment or development of information technology infrastructure, such as databases or communication tools

Measures to enhance regional cooperation

Measures to enhance international cooperation

Other assistance (please specify)

32. Please provide any other information that you believe is important for the Conference of the Parties to the United Nations Convention against Transnational Organized Crime to consider regarding aspects of, or difficulties in, the implementation of the Convention other than those mentioned above.

TIP

Step A

Article 3 - Use of Terms - and Article 5 – Criminalization.

33. Is trafficking in persons, when committed intentionally, criminalized under your country's legal framework (art. 5, para. 1, in conjunction with art. 3)?

No

Yes

Yes, in part

33(a). If yes, please cite the applicable laws and/or other measures, including the applicable sanctions for this offence.

Trafficking in persons, when committed intentionally, criminalized under Section of The Anti-Trafficking in Persons Act B.E. 2551 (2008)

See the following laws and penalties established:

The Anti-Trafficking in Persons Act B.E.2551 (2008)

Section 6 *Whoever does any of the following acts:*

(1) Procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, illegal exertion of influence over others on account of their physical, psychological, educational or any kind of vulnerability, threat to take the abusive legal action against others, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or

(2) Procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving a child;

If such act is committed for the purpose of exploitation, the person who does so is guilty of trafficking in persons.

The exploitation under paragraph one shall mean the exploitation of the prostitution of others, the production or distribution of pornographic materials, the exploitation of other forms of sexual acts, slavery or practices similar to slavery, begging, removal of organ for commercial purpose, forced labour or services, or any other similar forcible extortion, regardless of such person's consent.

Section 52 *Whoever commits an offence of trafficking in persons shall be liable to the punishment of an imprisonment from four years to twelve years and a fine from four hundred thousand Baht to one million and two hundred thousand Baht. If the offence under paragraph one is committed against a child whose age exceeds fifteen years but not*

yet reaching eighteen years, the offender shall be liable to the punishment of an imprisonment from six years to fifteen years and a fine from six hundred thousand Baht to one million and five hundred thousand Baht.

If the offence under paragraph one is committed against a child not over fifteen years of age or a person with physical disability or mental infirmity, the offender shall be liable to the punishment of an imprisonment from eight years to twenty years and a fine from eight hundred thousand Baht to two million Baht.

34. If the answer to question 33 is “Yes, in part” or “No”, please specify how trafficking in persons is treated under your country’s legal framework.

35. If the answer to question 33 is “Yes”, is trafficking in persons treated as a criminal offence in your country, in accordance with article 3, paragraph (a), of the Protocol (combination of three elements: action, means and purpose of exploitation)?

No

x Yes

35(a). Please explain

***The Anti-Trafficking in Persons Act of 2008, Section 6** complies with the three elements outlined in article 3 paragraph (a) of the Protocol. The Thai Act prohibits all aspects of action, recognizes various means, and cover a wide range of exploitative purposes of trafficking. The elements can be broken down as follows.*

Action: procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person

Means: by means of the threat or use of force, abduction, fraud, deception, abuse of power, illegal exertion of influence over others on account of their physical, psychological, educational or any kind of vulnerability, threat to take the abusive legal action against others, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control.

Purpose of exploitation: the exploitation of the prostitution of others, the production or distribution of pornographic materials, the exploitation of other forms of sexual acts, slavery or practices similar to slavery, begging, removal of organ for commercial purpose, forced labour or services, or any other similar forcible extortion, regardless of such person’s consent.

36. If the answer to question 33 is “Yes”, are the following actions of trafficking in persons criminalized in your country (art. 3, para. (a))?

36(a). Recruitment

No

x Yes

36(b). Transportation

No

x Yes

36(c). Transfer

No

x Yes

36(d). Harboring

No

x Yes

36(e). Receipt of persons

No

x Yes

36(f). Other actions, please specify

36(g). Please provide further detail, if needed

37. If the answer to question 33 is “Yes”, do the means of trafficking in persons consist of any of the following (art. 3, para. (a))?

37(a). Threat or the use of force or other forms of coercion

No

x Yes

37(b). Abduction

No

x Yes

37(c). Fraud

No

x Yes

37(d). Deception

No

x Yes

37(e). Abuse of power

No

x Yes

37(f). Abuse of position of vulnerability

No

x Yes

37(g). The giving or receiving of payments or benefits to achieve the consent of a person having control over another person

No

x Yes

37(h). Other means, please specify.

37(i). Please provide further details, if needed.

38. If the answer to question 33 is “Yes”, does the purpose of exploitation include, at a minimum, any of the following (art. 3, para. (a))?

38(a). The exploitation of the prostitution of others or other forms of sexual exploitation

No

x Yes

38(b). Forced labour or services

No

x Yes

38(c). Slavery or practices similar to slavery

No

x Yes

38(d). Servitude

No

x Yes

38(e). The removal of organs

No

x Yes

38(f). Other purpose, please specify.

The production or distribution of pornographic materials

38(g). Please provide further details, if needed.

Apart from types of exploitation mentioned in 38. (a) - (f), the law also applies to any other similar forms of exploitation that have not been provided in the provision.

39. Does your country ensure that, when the means set forth in article 3, paragraph (a), of the Protocol have been established, the consent of the victim to the intended exploitation is irrelevant (art. 3, para. (b))?

No

x Yes

39(a). Please explain

40. Does your country's legal framework criminalize trafficking in children (recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation) even where it does not involve any of the means set forth in article 3, paragraph (a), of the Protocol (art. 3, para. (c))?

No

x Yes

40(a). If yes, please cite the applicable laws and/or other measures, including the applicable sanctions for this offence.

The Anti-Trafficking in Persons Act B.E.2551 (2008)

Section 6 (2) "Procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving a child.

The exploitation under paragraph one shall mean the exploitation of the prostitution of others, the production or distribution of pornographic materials, the exploitation of other forms of sexual acts, slavery or practices similar to slavery, begging, removal of organ for commercial purpose, forced labour or services, or any other similar forcible extortion, regardless of such person's consent."

Section 52 paragraph 2 "If the offence under paragraph one is committed against a child whose age exceeds fifteen years but not yet reaching eighteen years, the offender shall be liable to the punishment of an imprisonment from six years to fifteen years and a fine from six hundred thousand Baht to one million and five hundred thousand Baht."

Section 52 paragraph 3 "If the offence under paragraph one is committed against a child not over fifteen years of age or a person with physical disability or mental infirmity, the offender shall be liable to the punishment of an imprisonment from eight years to twenty years and a fine from eight hundred thousand Baht to two million Baht."

41. Who is considered to be a "child" under your country's legal framework (art. 3, para. (d)):

"Child" means any person under 18 years of age (art. 3, para. (d))?.

Other? Please specify.

“Child” means any person under 18 years of age (Section 4).

42. Subject to the basic concepts of your legal framework, does your country criminalize attempting to commit trafficking in persons (art. 5, para. 2 (a), in conjunction with art. 3)?

No

Yes

Yes, in part

42(a). Please explain. If the answer is “Yes” or “Yes, in part”, please cite the applicable laws and/or other measures, including the applicable sanctions for this offence.

Attempting to commit trafficking in constitutes a violation under Section 6 of The Anti-Trafficking in Persons Act B.E.2551 (2008) in conjunction with Section 80 of The Penal Code.

The Penal Code Section 80 “Any person who commences to commit an offence, but does not carry it out through its completion or carries it out through its completion but without achieving its effect, is said to attempt to commit an offence.

Any person who attempts to commit an offence shall be liable to two-thirds of the punishment provided by law for such offence.”

42(b). If your answer is “No”, do the basic concepts of your legal framework prevent the adoption of measures to criminalize attempting to commit trafficking in persons?

43. Does your country criminalize participating as an accomplice in trafficking in persons (art. 5, para. 2 (b), in conjunction with art. 3)?

No

Yes

Yes, in part

43(a). Please provide further details, if needed.

43(b). If the answer is “Yes” or “Yes, in part”, please cite the applicable laws and/or other measures, including the applicable sanctions for this offence.

The Anti-Trafficking in Persons Act B.E.2551 (2008)

Section 9 *Whoever, from two persons upwards, conspires to commit an offence as aforesaid by Section 6 shall be liable to no more than one-half of the punishment stipulated for such offence.*

If any one of the offenders in paragraph one has committed in furtherance of the conspiratorial objective, each member of the conspiracy shall be liable, as an additional count, for the punishment stipulated for the committed offence.

In case the commission of an offence is carried out up to the stage of commencement, but because of the intervention of any conspirator, the offence cannot be carried through, or the offence is carried through but does not achieve its end, the conspirator so intervening is liable to the punishment as stipulated in paragraph one.

If the offender, under paragraph one, reverses his position by providing a true statement in relation to the conspiracy to the competent official before the conspired offence is committed, the court may not inflict punishment or inflict less punishment upon such person to any extent than that prescribed by the law for such offence.

44. Does your country criminalize organizing or directing other persons to commit trafficking in persons (art. 5, para. 2 (c), in conjunction with art. 3)?

No

Yes

Yes, in part

44(a). If your answer is “Yes” or “Yes, in part”, please cite the applicable laws and/or other measures, including the applicable sanctions for this offence.

Organizing or directing other persons to commit trafficking in persons in constitutes a violation under Section 6 of The Anti-Trafficking in Persons Act B.E.2551 (2008) in conjunction with Section 84 of The Penal Code.

The Penal Code Section 84 “Any person who causes another to commit an offence whether by means of employment, compulsion, threat, hire, solicitation, encouragement or support or by any other means, is said to be the instigator of such offence.

If the offence is not committed whether because the instigated person refuses to do so, has not yet done so or other reasons, the instigator shall be liable to only one-third of the punishment provided for such offence.

If the instigated person has committed such offence, the instigator shall be liable to the punishment as a principal, and if the instigated person is not over eighteen years of age, handicapped, infirm or employed by or under the supervision of the instigator, destitute or dependent on the instigator due to illness or any other causes, the punishment to be imposed on the instigator shall be increased by one-half of the punishment determined by the court for him or her.”

Criminalization: cases and judgments

45. States are invited to provide examples, relevant cases or judgments relating to successful implementation and enforcement for each of the criminal offences reviewed above.

Summary of facts

4 victims tried to contact and get help from the Thai officials, claiming they had been tricked into working as scammers in Cambodia. Thai officials then coordinated with Cambodian police to rescue and bring them back to Thailand. When they returned, the multidisciplinary team carried out the screening and victim identification process and agreed that all of them were the victims of human trafficking.

From the investigation it was found that the victims were induced by the 1st defendant, who is a relative of some of the victims, to work as an online gambling web operator at a casino in Cambodia. He told the victims that they would receive a

salary of 20,000 baht per month with additional commission. Free accommodation and 3 meals will be provided. There will be no travel expenses. When the victims agreed to go, the 1st defendant prepared and arranged the travel by contacting the 2nd defendant to send a public vehicle to pick them up at their houses in Roi Et Province (located in the Northeast of Thailand) and take them to Sa Kaeo Province, located near the border with Cambodia. During the trip, the 1st defendant set up a Line application group and invited all 4 victims to join the group. Mrs. Julie, later being identified as one of the accomplices, also joined in this Line application group. The 1st defendant asked the victims to take photos of themselves and their ID cards and send them into the Line application group, claiming that Mrs. Julie wanted them to use for border crossing documents. The vehicle transported all 4 victims to a hotel in Sa Kaeo Province. After that, the 5th and 6th defendant drove a pickup truck to pick up the victims and take them to the 3rd defendant's house, but on the way before reaching the 3rd defendant's house the 5th defendant got out of the car. The victims stayed and waited at the 3rd defendant's house until the night time and at the approximately 2:00 a.m., the 6th defendant contacted motorcycles to pick up the 3rd defendant and all victims and take them to the border. The 3rd defendant took the victims to cross the border into Cambodia illegally on foot through a natural channel. During the journey, the 3rd defendant kept signaling the victims to squat down periodically to avoid detection by Cambodian officials. After traveling for about 3 hours, they stopped and waited until a pickup truck with a non-Thai driver came to pick the victims up and take them to a warehouse. Not long after, motorcycles came to pick up the victims from the warehouse and take them to a hotel in Poipet. The 3rd defendant did not travel with them. Later, Mrs. Julie met the victims at the hotel. This was the first time that the victims met Mrs. Julie in person. Mrs. Julie took the victims to a building, saying that it was a building where the victims would work inside. It is a 5-story building with a concrete fence having barbed wire on the top surrounding it on all sides. There is only one entrance and exit, which is guarded by two guards holding batons 24 hours a day. The victims met and learned that their boss was a Chinese who could not speak Thai. They met the 4th defendant who acted as an interpreter and a person who controlled and monitored the victims. In that building, besides the four victims, there were many Thai people already working there. The next day after arriving, the 4th defendant ordered the victims to start working by giving one mobile phone to each victim, after that, he ordered the victims to create a fake account in the Facebook application using someone else's picture in their profile. Instead of working as an online gambling web operator as induced, the victims were ordered to induce and invite others to become friends and convincing them to play online games through a program, specially designed for this purpose. After playing the game for a while, the victims had to encourage their friends to play at a higher level. The reason was for those who wanted to play at the higher level, they had to add more money to the system. The victims were ordered to find and invite at least 10 friends a day. The working hour started from 10:00 a.m. to 10:00 p.m. every day, no holidays. And some days the victims have to work until 11:00 p.m. if they can't find friends to the set target. The victims were strictly forbidden from walking outside the concrete wall. After working for a while, the victims found that it was very difficult to complete the target number and unwilling to work anymore. So they tried to contact the Thai official for help and contacted the 1st defendant for job changing. The 1st defendant agreed to talk with Mrs. Julie whether the victims could change their job. Mrs. Julie told the Chinese boss of the victims' demands. The Chinese boss rejected the requests and said that he already purchased the victims, so they had no choice but only worked for him. However, the victims could leave if they pay him 30,000 baht each. After that, there was a man took the victims to work with another Chinese boss who could speak Thai. But the victims worked

for only a few days, the Cambodian police came to inspect the workplace, took the victims to the police station and sent them back to Thailand.

When they returned, the multidisciplinary team carried out the screening and victim identification process and agreed that all of them were the victims of human trafficking. Victims did not want to receive assistance and services in the shelter and returned to his hometown. They are exempt from criminal prosecution.

This case occurred cross-border between Thailand and Cambodia. The Attorney General is the responsible investigator according to Section 20 of the Criminal Procedure Code. The Attorney General has assigned the police to investigate this case in cooperation with public prosecutor from the Department of Trafficking in Persons Litigation

Investigators gathered evidence by interviewing the four victims, the police officers who responded to their requests for help while the four victims were forced to work in Cambodia, examining images from CCTV cameras at various locations as provided by the victims, and the Line application chat messages between the accused and the victims. There was no request for international cooperation in criminal matters to the Cambodian authorities to interrogate the Cambodian police who helped the victims, or collecting evidence at the crime scene in Cambodia.

Application of relevant laws in this case

(a) The Prevention and Suppression of Involvement in Transnational Criminal Organization Act, B.E 2556 (2013)

Section 5 Whoever commits one of the following:

- (1) become a member or network of transnational organized crime;*
- (2) conspire among two or more persons to commit a serious crime concerning transnational organized crime;*
- (3) directly or indirectly involve with an activity or operation of transnational organized crime, being aware of the objectives and operation or the deliberation of committing such serious crime by transnational organized crime;*
- (4) manage, order, assist, instigate, facilitate or provide consultation in committing a serious crime of a transnational organized crime, being aware of the objectives and operation or the deliberation of committing such serious crime by transnational organized crime,*

shall be considered having committed an offence of participating in transnational organized crime.

Section 25. Whoever commits an offence of participating in transnational organized crime, shall be liable to imprisonment for a term of four years to fifteen years or a fine of eighty thousand Baht to three hundred thousand Baht, or both

(b) The Anti-Trafficking in Persons Act B.E.2551 (2008)

Section 6 Whoever does any of the following acts:

(1) Procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, illegal exertion of influence over others on account of their physical, psychological, educational or any kind of vulnerability, threat to take the abusive legal action against others, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or

(2) Procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving a child;

If such act is committed for the purpose of exploitation, the person who does so is guilty of trafficking in persons.

The exploitation under paragraph one shall mean the exploitation of the prostitution of others, the production or distribution of pornographic materials, the exploitation of other forms of sexual acts, slavery or practices similar to slavery, begging, removal of organ for commercial purpose, forced labour or services, or any other similar forcible extortion, regardless of such person's consent.

Section 9 Whoever, from two persons upwards, conspires to commit an offence as aforesaid by Section 6 shall be liable to no more than one-half of the punishment stipulated for such offence.

If any one of the offenders in paragraph one has committed in furtherance of the conspiratorial objective, each member of the conspiracy shall be liable, as an additional count, for the punishment stipulated for the committed offence.

In case the commission of an offence is carried out up to the stage of commencement, but because of the intervention of any conspirator, the offence cannot be carried through, or the offence is carried through but does not achieve its end, the conspirator so intervening is liable to the punishment as stipulated in paragraph one.

Section 52 Whoever commits an offence of trafficking in persons shall be liable to the punishment of an imprisonment from four years to twelve years and a fine from four hundred thousand Baht to one million and two hundred thousand Baht. If the offence under paragraph one is committed against a child whose age exceeds fifteen years but not yet reaching eighteen years, the offender shall be liable to the punishment of an imprisonment from six years to fifteen years and a fine from six hundred thousand Baht to one million and five hundred thousand Baht.

If the offence under paragraph one is committed against a child not over fifteen years of age or a person with physical disability or mental infirmity, the offender shall be liable to the punishment of an imprisonment from eight years to twenty years and a fine from eight hundred thousand Baht to two million Baht.

Judgment of the Court of First Instance

The 1st defendant and Mrs. Julie had constant contact and coordination during the victim's journey from their homes in Roi Et to Sa Kaeo. Moreover, when the victim wanted to change jobs, the 1st defendant acted as an intermediary in negotiating with Mrs. Julie. Therefore, it is seen that the 1st defendant was involved and complicit and joined in a plan with Mrs. Julie to induce the four victims to go to work by deception, i.e. concealing the facts about the true nature of their work.

The 3rd defendant took the victims on an, illegal trip at night, by walking through natural channels. It took up to 3 hours to travel, and along the way, victims have to avoid detection of the officials. It shows that they are very familiar with the route and have experience in avoiding being detected by the authorities. The court is convinced that the 3rd defendant do the same many times.

The 6th defendant picked up four victims from the hotel and took them to the 3rd defendant's house. After that, he went back to drink alcohol at the 3rd defendant's house again. He was also the person who contacted the motorcycle taxi to pick up the victims and the 3rd defendant to the border, the evidence is convinced that the 6th defendant was involved in planning and committing the crime.

When the victims were unable to complete their work as ordered, the 4th defendant threatened to physically harm them and lock them in a dark room. Moreover, when the victims wanted to change jobs and leave, the 4th defendant was the one who said that Mrs. Julie had sold the victims to a Chinese boss and if they wanted to change jobs or leave, they were required to pay the Chinese boss 30,000 baht each, showing that the 4th defendant conspired with the Chinese boss to exploit the victims by forcing the victims to work as scammers.

The court found that although there was no evidence to prove the connection between defendants 1, 3, 4, 6 and Ms. Julie, this type of action cannot be committed. If not done together as a process Those who participate in a movement like this must conceal their procedures and do so secretly, so it is difficult to find evidence, especially testimonies. But when considering the surrounding evidence together It all indicates that defendants 1, 3, 4, and 6 were involved in knowing and participating in wrongdoing with Mrs. Julie and her Chinese employer.

Defendant number 2 operates a business for hire. There is no evidence to prove that they knew the purpose of the first defendant and Mrs. Julie in hiring them to take the four victims to Sa Kaeo Province.

The 5th defendant is the owner of the car that the 6th defendant drove to pick up the victim at the hotel and take him to the 3rd defendant's house, but the 5th defendant got out of the car before traveling to the 3rd defendant's house. There is no evidence to show that The 5th defendant has become involved in this matter again.

The verdict was that defendants 1, 3, 4, and 6 were guilty of conspiring to commit traffic in persons for the labour exploitation offence and participation in criminal activities of transnational criminal organizations. The defendants 1, 4, and 6 were sentenced to a jail term of 16 years and for the 3rd defendant of 12 years. Charges against the 2nd and 5th defendant were dismissed.

Difficulties encountered

46. Does your country encounter difficulties or challenges in implementing any provisions of the Trafficking in Persons Protocol relevant to cluster I?

No

Yes

46(a). If the answer is “Yes”, please explain.

- *Gathering evidence and conducting investigations across different jurisdictions.*
- *The ASEAN-MLAT is not functioning properly.*
- *The crime scene is situated within a special economic zone or autonomous area where the state lacks the authority to facilitate cooperation across jurisdictions.*
- *Officers lack the investigatory skills necessary to connect each piece of evidence in order to substantiate the occurrence of transnational organized crime.*

Need for technical assistance

47. Does your country require technical assistance to implement the Protocol?

No

Yes

47(a). If the answer is “Yes”, please indicate the type of assistance required:

Assessment of criminal justice response to trafficking in persons

Legal advice or legislative drafting support

Model legislation, regulations or agreements

Development of strategies, policies or action plans

Good practices or lessons learned

Capacity-building through the training of criminal justice practitioners and/or the training of trainers

Capacity-building through awareness-raising among the judiciary

On-site assistance by a relevant expert

Institution-building or the strengthening of existing institutions

Prevention and awareness-raising

Technological assistance and equipment

47(b). Please be specific.

Question_47b_option_1

Development of data collection or databases

Workshops or platforms to enhance regional and international cooperation

Specialized tools, such as e-learning modules, manuals, guidelines and standard operating procedures

Other (please specify)

The nature of transnational organized crime, such as trafficking in persons, inherently involves the cooperation between states. Although countries in the Southeast Asia region have established the ASEAN Mutual Legal Assistance Treaty (ASEAN-MLAT), the mechanism in each member state does not allow the fast processing of MLA requests. The lack of smooth operation often delays the results of execution and is not beneficial for evidence gathering in the investigation. Therefore, the presence of alternative platforms or channels to facilitate speedy processes would significantly enhance the effectiveness of trafficking in persons prosecution.

48. Is your country already receiving technical assistance in those areas?

No

Yes

48(a). If the answer is “Yes”, please specify the area of assistance and who is providing it.

49. Please provide any other information that you believe is useful to understand your implementation of the Trafficking in Persons Protocol and information that is important for the Conference of the Parties to the United Nations Convention against Transnational Organized Crime to consider regarding aspects of, or difficulties in, the implementation of the Protocol.

A concerning trend of forced criminality is emerging in the region. The challenge lies in finding a delicate balance between prosecuting real offenders and providing assistance to the trafficked victims who are being forced to commit serious crimes. Front-line responders and legal enforcement officers in the region should receive the same training as well as acquire the same level of knowledge in the application of laws. Regarding this matter, regional trainings, regional directives and multilateral meeting between countries are the key of effective prosecution and protection.