REPORT ON LAWS AND LEGAL PROCEDURES CONCERNING THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN INDONESIA

DECEMBER 2004

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in collaboration with

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A Joint Initiative by ECPAT International and Plan International to Combat the Commercial Sexual Exploitation of Children
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CHAPTER ONE: EXECUTIVE SUMMARY

In December 2003, ECPAT International (ECPAT) and Plan International (Plan) launched a joint initiative to combat the commercial sexual exploitation of children in four countries in South and South-East Asia: Bangladesh, India, Indonesia and Nepal. The objectives of this project were to: research the domestic legislation and legal procedures in the four project countries, as they relate to the commercial sexual exploitation of children; analyse these laws and procedures in light of the relevant regional and international standards; and recommend legislative and procedural reforms to better protect children from commercial sexual exploitation. The project’s findings and recommendations also reflect inputs received from children and key actors working on child protection and welfare issues, such as members of the judiciary, law enforcement and social service agencies. This report contains the findings and recommendations for Indonesia.

This study finds that in Indonesia, general awareness and understanding of the grave nature of sexual crimes against children is low. Accordingly, Indonesian laws and legal procedures fail to protect children sufficiently from commercial sexual exploitation and are not in compliance with international standards, such as the United Nations Convention on the Rights of the Child (CRC) and other international instruments. For example, the Indonesian Criminal Code contains no provisions addressing commercial sexual transactions with a child, and the more recent Child Protection Act does not explicitly prohibit purchasing sexual services from a child. Although the Criminal Code generally prohibits trafficking in persons and the Child Protection Act prohibits trafficking in children, these provisions fail to meet international standards because they criminalise only the act of trading in persons or children, and do not define what acts constitute “trading”. Without precedent, these provisions appear to be limited to criminalising principals (i.e., the sellers and the buyers of children). As a result, most criminal acts, such as recruiting, transporting and receiving a child for the purpose of sexual exploitation, fall outside of the scope of these provisions.

In light of this, the report recommends, among other things, that the Criminal Code be revised to prohibit the commercial sexual exploitation of children, in accordance with the Optional Protocol to the CRC on the sale of Children, Child Prostitution and Child Pornography and the UN Trafficking Protocol. It is also recommended that the definition of trafficking contained Indonesia’s Bill on Trafficking in Persons be revised to adhere fully to the definition contained in the UN Trafficking Protocol regarding trafficking of children, and then that the Bill be enacted.

The report notes with concern that there is presently no law, either in the Criminal Code or the Child Protection Act, that directly targets child pornography and thus no legal definition of child pornography exists in Indonesian law. The report recommends that the draft Bill on pornography be revised to prohibit child pornography explicitly, as required by the Optional Protocol.
With respect to legal procedures, the Indonesian Criminal Procedure Code does not contain procedures specifically for dealing with child victims, and the concept of a victim of crime does not exist except in the rule that such witnesses testify first. There are no rules or guidelines mandating that child victims receive information about legal proceedings in which they may be involved, although the Child Protection Act requires child victims of a crime to have access to information regarding the development of the criminal case. Further, the police force has not established formal procedures to ensure that child victims of commercial sexual exploitation are treated appropriately. The police force’s RPK-units are a step forward. But they do not meet international standards because they do not focus on the needs of child victims, they do not have a formal work procedure, unit staff are inadequately trained on issues related to the commercial sexual exploitation of children, and the units lack authority and resources.

Based on these findings, this report recommends that the Bill on Witness Protection be revised and enacted to protect child victims during the judicial process as required under Article 8 of the Optional Protocol. The report also recommends that formal internal procedures concerning treatment of children by the national police, public prosecutors and court personnel be developed and implemented; that RPK staff, police investigators, public prosecutors and judges be trained on issues related to the commercial sexual exploitation of children, including child-friendly procedures for child victims of commercial sexual exploitation; and that a Children’s Desk be established in the national police force at all levels with authority to deal with all matters involving child victims and juvenile offenders.

Finally, research conducted for this project suggests that services for child victims of sexual crimes are lacking. The role of the Ministry of Social Welfare is limited to facilitating the provision of services for victims from other actors. As such, non-government organisations provide services to child victims in areas where they work, provided they have the capacity and resources to do so. There are an insufficient number of safe houses and shelters, and this creates an obstacle for police investigations in trafficking cases. After the police file a preliminary report, there is no safe place to shelter children during the ensuing investigation and court proceedings. The child may be too scared to testify so s/he deliberately stays away, provides an incorrect address, or returns home for personal reasons or after being persuaded to do so by the trafficker. Later, when the police are unable to locate the child for further investigation or testimony at trial, the case effectively ends. This is a common problem for investigations conducted by the anti-trafficking unit.

To address these issues, the report recommends that a standard format for a Memorandum of Understanding be developed for cooperation between NGOs and the police, based on existing cooperation in various districts. This needs to be disseminated and promoted for use in other districts. In addition, coordination between the National Police and the Office of the Attorney-General needs to be improved in order to investigate more effectively and indict pilot cases under the provisions relating to commercial sexual exploitation of children in the Child Protection Act. A National Committee on Child Protection must be established, as outlined under the National
Action Plan on Commercial Sexual Exploitation of Children, and provided with appropriate budget and resources to monitor, supervise and coordinate its implementation.
CHAPTER TWO: INTRODUCTION

I. Background

This report is the result of the first year of the South and South East Asia Legal Reform Project, a joint initiative of ECPAT International (ECPAT) and Plan. The project was designed to: (1) Conduct research on domestic legislation related to the commercial sexual exploitation of children in four countries – India, Nepal, Bangladesh and Indonesia; (2) Analyze this research in light of international legal standards for child protection; (3) Provide, where necessary, recommendations for reform; and (4) Involve key stakeholders, including children, to ensure follow-up of the project’s activities.

The project was launched in December 2003 through a series of ‘Validation and Orientation Seminars’ that ECPAT and Plan jointly conducted in each of the four project countries. The purpose of the seminars was to bring together key stakeholders, such as child rights activists, lawyers, law enforcement personnel, judges, and government officials working against the commercial sexual exploitation of children to discuss issues they faced in their work, and to affirm the need for the proposed research. The seminars also allowed the project managers to present the project’s methodology while soliciting feedback from the audience on its overall objectives.

This report presents the project’s findings and recommendations for Indonesia. This chapter provides a description of the project’s methodology and an overview of the commercial sexual exploitation of children in Indonesia. Chapter Three outlines international, regional and Indonesian laws related to the commercial sexual exploitation of children, and identifies gaps between Indonesian laws and the relevant international and regional standards. Chapter Four outlines legal procedures for cases involving the commercial sexual exploitation of children, the treatment of children as victims and offenders under the law, and the current monitoring systems in place for cases involving the commercial sexual exploitation of children. Chapter Four also identifies any divergence between the procedures outlined and international norms. Chapter Five presents recommendations to strengthen existing Indonesian laws and legal procedures to better protect children against commercial sexual exploitation.

II. Methodology

This project involved three separate components: (1) Review of current domestic legislation; (2) Interviews with key stakeholders; and (3) Consultations with children. ECPAT was primarily responsible for the first two components, while Plan managed and conducted the children’s consultations.

ECPAT recruited and hired two legal consultants with experience in human and child rights law domestically and expertise on child protection matters internationally: Antarini Arna and Mattias Bryneson. The Legal Consultants worked closely with ECPAT
to collect, review and analyze current jurisprudence, legislation and legal procedures related to the commercial sexual exploitation of children in Indonesia. Indonesian laws relevant to child rights and commercial sexual exploitation of children in particular were collected, translated and reviewed, with a focus on criminal legislation and procedure, in addition to civil law and administrative regulations where relevant. The legislation was analyzed to determine how it conforms to the international standards on the rights of the child to be protected from commercial sexual exploitation.

Implementation interviews were held with a range of stakeholders in order to supplement the legal research obtained on national legislation, and to collect information on the application of the laws within the judicial system of Indonesia. The Legal Consultants interviewed members of the police force, judges of the general courts, and officials in the Office of the Public Prosecutor; officials in relevant government agencies and ministries; staff of both international and local non-governmental organisations active in the field of child rights and commercial sexual exploitation of children; and staff from United Nations (UN) and other inter-governmental agencies and foreign embassies in Jakarta. The result of these interviews was information collected from those working on the “front lines” on how laws and legal procedures related to the commercial sexual exploitation of children are actually being implemented in Indonesia.

Plan hired a facilitator to conduct consultations with children in Indonesia. With support from Plan staff, ECPAT’s Youth Coordinator, and the Legal Consultants, the facilitator held consultations with three different groups of children: (1) Children at risk of commercial sexual exploitation; (2) Children currently engaged in commercial sexual exploitation; and (3) Children formerly engaged in commercial sexual exploitation. These consultations were designed to elicit children’s experiences regarding law enforcement and the sensitivity of the legal system towards children and survivors, and to identify gaps in the legal process based on their experience.

III. Manifestations of commercial sexual exploitation of children in Indonesia

The situation of commercial sexual exploitation of children in Indonesia guides the focus and scope for the review and discussion of international instruments and national legislation in this report, as it provides the context in which Indonesian laws and legal procedures related to the commercial sexual exploitation of children have been enacted and implemented. For purposes of this report, the term commercial sexual exploitation of children refers to:

criminal practices that demean, degrade and threaten the physical and psychosocial integrity of children, in particular, sexual abuse by an adult and remuneration in cash or kind to a child or third person(s). There are three primary and interrelated forms of commercial sexual exploitation of children:

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prostitution, pornography, and trafficking for sexual purposes. Other forms of commercial sexual exploitation of children include, but are not limited to, child sex tourism, and child marriages.

There are three main manifestations of commercial sexual exploitation of children: child prostitution; child trafficking for sexual purposes; and child pornography. These are, however, not the only manifestations of commercial sexual exploitation of children; varying cultural, economic, social and political contexts have spawned additional manifestations, such as child marriages and child sex tourism.

A. Children exploited in prostitution

Accurate, current data on the number of children exploited in prostitution in Indonesia is lacking, but several recent studies provide estimates of the number of children in prostitution based on research, official statistics of the number of registered sex workers, and sample data.

Based on the estimated number of registered and unregistered people in prostitution in Indonesia, there are between 40,000 to 150,000 children exploited in prostitution, according to a 1998 UNICEF report. Children forced into prostitution were identified in two-thirds of Indonesian provinces, including Java, Sumatra, Batam and Riau, Kalimantan, Bali, Sulewesi, Lombok, Maluku and Irian Jaya, with cases of child sex tourism reported in Bali and Batam. The UNICEF report further found that child prostitution exists both in regulated establishments for adult prostitution (i.e., brothel complexes or lokalisasi) through the falsification of ages, and on the streets, commonly referred to as perembuan eksperimen (i.e., experimental women, massage parlours, karaoke bars, and shopping malls). The age range of children forced into prostitution varies from 10 years and older.

According to this report, several external factors must be considered when studying the numbers of Indonesian children exploited in prostitution, such as lack of birth registration, which facilitates the manipulation of a child’s age; the fact that married or divorced children under 18 years of age are considered adults and may legally enter into prostitution; the occurrence of informal child prostitution outside of regulated brothels; and, the social stigma attached to prostitution as an immoral activity resulting in children keeping their involvement a secret from their family.

Two reports published by the International Labour Organization (ILO) in 2004 examine child prostitution and trafficking in Yogjakarta and East Java, and Jakarta and West Java, respectively. The first report estimates that there are 7452 children in prostitution in Surabaya, Semarang and Yogjakarta; the number is achieved by extrapolating data from field observations at establishments for prostitution. The report cites three main forms of

\[\text{Anak Baru Gede (ABG) are teenagers that can be found in shopping malls and may accompany “clients” to karaoke bars and this may include providing sexual services.}\]

\[\text{Farid et al, 1998, Situational Analysis of Children in Need of Special Protection in Indonesia, p. 96 (UNICEF Indonesia).}\]
child prostitution: street prostitution; prostitution in regulated brothels; and prostitution disguised as other businesses, such as beauty salons, discotheques, hotels, billiard halls, massage parlours, karaoke lounges and steam baths. The report further found that the age of entry into prostitution varied from 13 years to 18 years, and that the prostitution of boys also occurs, although it is primarily girls who are being prostituted.

The second ILO report estimates that there are 14,000 children in prostitution in Jakarta and West Java; the number is based on field samples and extrapolating official data. By observing a sample number of establishments for prostitution in Jakarta (including discotheques, cafes, karaoke bars, massage parlours, hotels, streets, parks, and brothels), the report counted 1080 children involved in prostitution. Extrapolating this number to the total number of similar establishments, the report estimates that there are at least 5000 children in prostitution in Jakarta.

B. Trafficking of children for sexual purposes

Trafficking in persons for exploitation, particularly trafficking in women and children, is reported to occur in large numbers in Indonesia. Specific comprehensive numbers on the trafficking of children for sexual purposes is lacking, but cases of trafficking of young women and underage girls are reported from many parts of Indonesia and the main trafficking routes can be determined. Several provinces reportedly serve as sending, receiving and transit areas for trafficking for prostitution both domestically and internationally.

In 2003, the International Catholic Migration Commission (ICMC) published a report on the trafficking of women and children in Indonesia that provides a comprehensive overview of the situation in each province. Trafficking in children is intertwined with legal migration and trafficking of women and many locations serve as destination, source and transit areas for both domestic and international trafficking. The preferred modus operandi of traffickers and recruiting agents is to lure girls to migrate with the promise of domestic work or work in bars and service establishments. Once the girls reach their destination, they are either sold into prostitution or placed in circumstances where they are forced into prostitution. Frequently, these young girls’ ages are manipulated by falsifying identity cards and travel documents. The ICMC’s assessment of the trafficking situation for selected provinces and islands is summarised as follows:

The island of Java includes sending, transit and destination areas for trafficking. All provinces of the island are sending areas to the main cities on Java, as well as to other provinces and international destinations. There are documented cases of girl children being trafficked for prostitution from Java to Batam and Medan in

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North Sumatra. West Java is a large sending area for migrant workers and consequently for trafficking of women and children. East Java is a sending, receiving and transit point for trafficking; it is a large sending area for migrant workers and the trafficking of children occurs through falsification of age and identity documents. Domestic trafficking is mainly for the purpose of prostitution, and the larger cities on the island, such as Jakarta and Surabaya, are destination and transit areas for trafficking. Child prostitution is documented in Jakarta, and girls coming to Jakarta to work as domestic helpers or at food stalls may be tricked or forced into prostitution. There are also documented cases where parents knowingly send their daughters to Jakarta to work in the sex industry. Surabaya, the provincial capital in East Java, has a large sex industry, which serves as a destination for trafficking in the region. Main international trafficking destinations from or transiting through Java include Saudi Arabia, Singapore, Malaysia, Japan, Hong Kong and Taiwan.

C. Child pornography

Information on child pornography in Indonesia is scarce; according to a 1998 UNICEF report, child pornography seems to occur on a lesser scale than prostitution or trafficking for prostitution. At the time the UNICEF report was written only one case on child pornography had been reported in the media, but there were reports that people involved in prostitution, including children, were used in the production of pornography in Surabaya and Ujang Pandang, South Sulawesi.

There are reported cases of child sex tourists and foreigners coming to Indonesia to sexually exploit children and produce child pornography. According to one report, two men were arrested in May 2000 after meeting boys at a local swimming pool and bringing them back to their house where they abused the children and photographed the acts.

There are reports that state internet servers in Indonesia were used to host child pornographic material. In 2001, United States police launched Operation Avalanche, an investigation of Landslide Productions, an American company that provided access to child pornography material. Reports from the investigation allege that some of the computer servers hosting the child pornographic material were located in Indonesia.

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CHAPTER THREE: LEGISLATION

I. International and Regional Instruments related to Children

A. International Instruments

The Convention on the Rights of the Child (CRC)\textsuperscript{11} was ratified in November 1989 and came into force in September 1990. Currently, there are 191 States that are party to the CRC. Every UN member state has signed and ratified the document with the exception of Somalia and the United States. The CRC is the first binding international instrument setting out the civil, political, economic, social and cultural rights of children.

The Convention defines a child as any persons up to 18 years of age and recognizes that children have an inherent right to life and survival, to an identity, to a nationality, to be heard, to freedom of thought, conscience and religion, to health, and to an education. In the context of commercial sexual exploitation, Articles 34 through 35 of the CRC directly obligates States to protect children from all forms of sexual exploitation including child prostitution, child pornography and trafficking.

The Committee on the Rights of the Child, established under Article 43(1), examines the progress made by States parties in achieving the Conventions’ obligations, thereby determining which rights fall under the language of the Convention. Pursuant to Article 44, the Committee considers reports submitted by States and publishes concluding observations with general recommendations as to how they can improve the condition of children in their countries.

The Government of Indonesia ratified the CRC on 5 September\textsuperscript{12} 1990. The instrument of ratification was not an Act by the DPR, but a Presidential Decree (\textit{Keputusan Presiden}), which may be issued by the President to execute the function and duty of the state and government administration\textsuperscript{13}. As this is a lesser instrument, ranked below an Act as well as other instruments in the national hierarchy of laws, this method of ratification has been a source of criticism and concern nationally. Nevertheless, in practice the CRC has been used as the framework for introducing new national laws, such as the Child Protection Act of 2002, and it remains to be seen if the ratification instrument will be changed.

Indonesia did not make any formal reservations to provisions of the CRC upon ratification, but issued a declaration that is in essence a reservation, and generally viewed as such. The declaration includes a general comment against any obligations outside the limits of Indonesia’s Constitution or to introduce any rights beyond those guaranteed under the Constitution. Additionally, the declaration specifically states that Articles 1, 14, 16, 19, 21, 22 and 29 of the CRC are applicable only to the extent that they conform to

\textsuperscript{12} Presidential Decree No. 36 of 1990.
\textsuperscript{13} See hierarchy of laws discussed in section II(A) below.
the Constitution. Indonesia’s second periodic report to the Committee on the Rights of the Child has been submitted but is not yet scheduled for consideration. The government’s third periodic report was due in October 2002.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (Optional Protocol) is the first of two Optional Protocols to the CRC to enter into force. It has been ratified by 43 countries, signed by 105 countries, and entered into force in January 2002. The protocol expressly prohibits the sale of children, child prostitution and child pornography and it is the first international instrument to define these terms. Accordingly, the protocol requires these offences to be treated as criminal acts. The protocol requires States parties to: Establish grounds for criminalizing these prohibited acts; ensure jurisdiction over the offences; provide for the extradition of offenders; encourage international cooperation between States to pursue offenders; and provide support to child survivors of commercial sexual exploitation.

The Government of Indonesia signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography on 24 September 2001. At the time of writing this report, there was no information available on the status of the ratification process.

The Optional Protocol on the Involvement of Children in Armed Conflict was ratified by 45 countries and signed by 111 countries. It entered into force in February 2002. This protocol prohibits conscripting or compulsory recruiting children below 18 years of age for military service, and prevents children from directly participating in a military conflict. The protocol also requires States to set a minimum age for voluntary recruitment, and if the recruitment age is below 18 years, requires States to ensure that such recruitment is truly voluntary. The protocol is silent on the issue of protecting children from sexual exploitation during war or other distress. It focuses solely on the issue of children as soldiers.

The Government of Indonesia signed the Optional Protocol on the Involvement of Children in Armed Conflict on 24 September 2001. At the time of writing this report, there was no information available on the status of the ratification process, or what agency is charged with implementing this Optional Protocol. Indonesia sets the minimum age for recruitment or enlistment into the armed forces at 18 years.

14 Art. 1 is the definition of the child; Art. 14 discusses freedom of thought, conscience and religion; Art. 16 relates to privacy; Art. 19 concerns the protection from all forms of violence; Art. 21 is about adoption; Art. 22 addresses the protection for refugee children; and Art. 29 highlights education.
16 Ibid. Article 2.
17 Ibid. Article 3.
19 Ibid. Articles 1 & 2.
20 Ibid. Article 3(1).
21 Ibid. Article 3(3).
22 Act No. 2 of 1988.
The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)\(^\text{23}\) is a supplementary protocol added in 2001 to the UN Convention against Transnational Organized Crime. The protocol was opened for signature in December 2000. This protocol grew out of the urgent need to combat transnational crime as tabled by the UN Centre for International Crime Prevention, the UN agency responsible for crime prevention, criminal justice and criminal law reform. The Trafficking Protocol provides the first international definition for trafficking and outlines a comprehensive law enforcement regime\(^\text{24}\). The protocol establishes a system to criminalise traffickers and protect and assist trafficked persons, thereby strengthening preventive trafficking measures for all persons, particularly the most targeted victims – children and women.


The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)\(^\text{25}\), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. CEDAW defines discrimination against women as “... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”\(^\text{26}\) and establishes an agenda for national action to end such discrimination.

The Convention is the only human rights treaty that affirms the reproductive rights of women, and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women’s rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of trafficking in women and exploitation of women. Its application to the commercial sexual exploitation of children is not straightforward. Some academics argue that since ‘women’ is not defined in the Convention, its articles are equally applicable to girl children. In this respect, the sections on trafficking and exploitation are relevant to the commercial sexual exploitation of children. Indonesia ratified the CEDAW on 13 September 1984.

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration for Marriages\(^\text{27}\) was opened for signature and ratification by General Assembly Resolution 1763 A (XVII) in November 1962 and entered into force in

\(^{24}\) Ibid. Articles 3 and Part III.
\(^{26}\) Ibid. Article I.
December 1964. The Convention contains some articles that have implications for the commercial sexual exploitation of children. Article 1 states, “No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law,” and Article 2 explains, “States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

The Declaration on the Elimination of Violence against Women brings to light the role of women in society by attempting to establish a global consensus on raising the status of women. In addition, it calls on States to take steps to promote social policies aimed at eliminating gender-based violence, to which girl children are particularly vulnerable. The declaration identifies violence typically experienced both within the family and within the general community as sexual abuse and assault, as well as trafficking in women and forced prostitution.

The International Labour Organization Convention No. 182 (ILO Convention 182) became the first ILO convention to be unanimously adopted by the 174 member states of the ILO in June 1999. The Convention defines the worst forms of child labour as including all forms of slavery, trafficking, child prostitution, child pornography, use of children for illicit activities (such as for the production and trafficking of drugs), and use of children for any work that by its nature or the circumstances in which it is carried out is likely to harm the health, safety and morals of children. The Convention represents the international community’s effort to legally define those types of labour in which children below 18 years of age should not be involved.

The Government of Indonesia ratified the Worst Forms of Child Labour Convention No. 182 in early 2000 by adopting the Manpower Act.

The International Convention Concerning Minimum Age for Admission to Employment (1973) provides that signatories to the Convention pursue a national policy raising the minimum age of employment “consistent with the fullest physical and mental development of young persons”, thereby abolishing “child labour”. The two guiding principles of the Convention are that the minimum age not be less than 15 years for completing compulsory schooling, and the highest minimum age set for hazardous work not be lower than 18 years. The Convention is a flexible and dynamic instrument setting various minimum ages depending on the type of work. For example, in some cases of countries with an insufficiently developed economy and education facilities, the

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30 Ibid. Article 3.
31 Law No. 1 of 2000 on the Ratification of the ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
minimum age for work can be less than 15 years. The Convention is relevant to a
discussion on commercial sexual exploitation of children as it complements ILO
Convention No. 182 by placing the onus on States parties to ensure that persons below 18
years of age are never involved in hazardous “work” for remuneration. The Government
of Indonesia ratified ILO Convention 138 in 1999.\footnote{Act No. 20 of 1999 on the Ratification of ILO Convention No. 138 concerning Minimum Age for Admission to Employment.}

In 1996, the ECPAT movement in collaboration with UNICEF and the NGO Group for
the Convention on the Rights of the Child organized the First World Congress against
Commercial Sexual Exploitation of Children in Stockholm, Sweden. At the Congress,
122 countries adopted the Stockholm Agenda for Action, which calls for States, all
sectors of society, and national, regional, and international organizations to take action
against the commercial sexual exploitation of children. In particular, it calls on countries
to develop National Plans of Action against Commercial Sexual Exploitation of Children
and to implement the Agenda for Action in six areas: coordination, cooperation,
prevention, protection, recovery and reintegration, and child participation. The National
Plans of Action provide governmental and child-care agencies an opportunity to
cooperate in devising strategies through national policy to eliminate the sexual
exploitation of children and promote child rights in their country.

In December 2001, the Government of Japan hosted the Second World Congress against
Commercial Sexual Exploitation of Children in Yokohama. One hundred and fifty-nine
countries reaffirmed their commitment to the Agenda for Action by adopting the outcome
document, the Yokohama Global Commitment. Further, the Second World Congress
participants recognized and welcomed the positive developments that had occurred since
the First World Congress in 1996, including better implementation of the CRC and
increased mobilization of national governments and the international community to adopt
laws, regulations and programs to protect children from commercial sexual exploitation.

The Government of Indonesia participated in the First World Conference against
Commercial Sexual Exploitation of Children and is committed to the Stockholm
Declaration and Agenda for Action. A delegation from Indonesia also attended the
follow-up Second World Congress in Yokohama in 2001 and committed itself to the
Yokohama Global Commitment, including the regional commitment agreed in Bangkok
in the Second World Congresses’ preparatory meeting.

B. Regional Instruments

1) Introduction and general framework

The region of South-East Asia has not developed a regional framework for the
advancement of human rights or other related rights, so there are no binding regional
instruments related to the protection of children from commercial sexual exploitation
such as those that exist in other regions. The main forum for regional cooperation and
collaboration is the Association of South-East Asian Nations (ASEAN). The organisation covers a broad range of issues on trade, security and finance, but not human rights.

2) Yokohama Regional Commitment and Action Plan of the East Asia and Pacific Region

In 2001, in advance of the Yokohama Second World Congress Against the Commercial Sexual Exploitation of Children, a series of preparatory regional meetings were held. The meeting for the East Asia and Pacific region was held in Bangkok in October 2001, and resulted in the Regional Commitment and Action Plan of the East Asia and Pacific Region against Commercial Sexual Exploitation of Children. All government delegations, including Indonesia, committed to taking steps and implementing a regional action plan.

Among other things, the region committed to: ensuring effective implementation of the CRC and the Stockholm Agenda for Action; encouraging early ratification of international instruments for child protection; improving laws and related procedures, policies and programs against commercial sexual exploitation of children; enhancing cooperation and coordination against commercial sexual exploitation of children among key stakeholders at all levels; improving research, data collection and monitoring mechanisms on commercial sexual exploitation of children; and strengthening young people’s participation against commercial sexual exploitation of children.

II. National legal framework

A. General framework in Indonesia

The Indonesian legal system originates from three sources that the State inherited from the colonial period preceding the independent state of Indonesia. The first, customary (\textit{adat}) law, was the traditional basis for resolving interpersonal disputes in the village environment. \textit{Adat} courts were abolished in 1951, although customary means of dispute resolution were still used in villages at that time. Today customary law is not recognized by the State as an official source of law. The second, Islamic law (\textit{Syariah}), applied to disputes between Muslims and is still used in family and inheritance law today. The third, Dutch colonial law, forms the basis of the Indonesian civil and criminal legal system. As a result, the legal system is primarily based on and similar to the continental legal system, as opposed to the common law system. Within this system there are several different types of laws, regulations and specialised courts with separate jurisdictions.

The legal basis of the Indonesian State is the 1945 Constitution, developed at the time of independence in August 1945. The Constitution consists of a preamble, which invokes

\footnote{34 “Regional Commitment and Action Plan of the East Asia and Pacific Region against Commercial Sexual Exploitation of Children”}
the principles of Pancasila\textsuperscript{35}, the basic ideology of the State, along with 37 articles outlining the structure of the State and its main institutions. The 1945 Constitution left open basic questions about the rights and responsibilities of citizens and the State, and lacked specific provisions on relations between the two, but proved long-lived and remained unchanged until efforts to amend it began after Indonesia’s move towards democracy in 1999. In 1999, the People’s Consultative Assembly (MPR), the highest constitutional body in Indonesia, held sessions to amend and modernise the Constitution. This resulted in four major constitutional amendments from 1999 until 2002.

The amended 1945 Constitution forms the foundation for Indonesian laws. Below the Constitution there are several different types of laws and regulations passed by legislative bodies and the executive. Due to the principle of regional autonomy, legislative power rests not only with the national parliament and the President, but also with corresponding institutions at the provincial and district level. The hierarchy of laws is outlined in an MPR resolution as follows\textsuperscript{36}.

\textit{At the national level:}

1945 Constitution/Undang-Undang Dasar 1945. The Constitution is the basic or foundational law of the Republic of Indonesia.

People’s Consultative Assembly (MPR) Resolution/Ketetapan MPR. Resolutions adopted by MPR represent the self-determination of the people of Indonesia. For example, amendments to the Constitution are adopted through MPR resolutions. MPR resolutions may also contain non-binding policy directives to the President\textsuperscript{37}.

Acts/Undang-Undang. Acts are the main types of national law in Indonesia. For example, the Criminal Code of Indonesia and the Child Protection Act are Acts. Acts are adopted by the House of People’s Representatives (DPR) and signed into law by the President.

Government regulation in lieu of an Act/Perpu. This type of regulation has the same status as Acts and may be issued by the President in emergency situations. For example, the anti-terrorism law of 2002 is in this category. The regulation must be submitted to parliament (DPR), which may adopt or reject the regulation as is. If it is rejected, it is void.

\textsuperscript{35} The principles of Pancasila are: belief in the one and only God; just and civilized humanity; the unity of Indonesia; democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives; social justice for the whole of the people of Indonesia.

\textsuperscript{36} MPR Resolution No. 3 of 2000.

\textsuperscript{37} The MPR is a special session of the DPR that includes provincial governors and other state representatives.

\textsuperscript{38} The use of the term “Act” is used in this report solely to refer to this type of law. The terms “law” and “legislation” are used generally to describe legislative documents.
Government regulation/Peraturan Pemerintah. Administrative regulation issued by the President for implementation of Acts. One example in this category is regulations for the welfare of children that need special protection.

Presidential decree. Decree issued by the President to execute the function and duty of the administration of the State. The National Plan of Action against commercial sexual exploitation of children was issued through a Presidential decree.

At the provincial, regency and village level:

Provincial regulation/Perda Propinsi. Provincial administrative regulations may serve two purposes: (1) to implement Acts, Government regulations, or Presidential decrees at the provincial level; or (2) to address local issues and execute the function and duty of the provincial administration through regulations that the provincial parliament (DPRD Propinsi) independently enacts. For example, the Province of North Sulawesi enacted an anti-trafficking regulation. The Governor of the Province signs provincial administrative regulations into law.

Regency/Municipality regulation/Perda Kabupaten/Kota. Administrative regulations at the regency and municipal levels serve the same purposes as provincial regulations, to implement Acts, Government regulations, Presidential decrees or provincial regulations at the district level. The regency or municipal parliament (DPRD Kabupaten/Kota) also has the authority to independently enact administrative regulations to address local issues and to execute the function and duty of the local administration. The City Mayor or Regent signs local administrative regulations into law. One example is the local regulations that regulate public order. They may include provisions on immoral conduct in public, vagrancy, and disturbances of the peace.

Village regulation. The Village Representative Assembly has authority to issue administrative regulations concerning local issues.

Laws in civil and criminal matters are adopted by the DPR, the central legislative body. As the central legislative tool in Indonesia, they are the focus of this study. However, administrative regulations at all levels, except perhaps the village level, are important because a law may not be efficiently implemented due to conflicting or non-existing provisions. While administrative regulations cannot provide for criminal penalties, they can include administrative punishment and fines relevant to the issue of commercial sexual exploitation of children, among other issues. As a result, this report will refer to other forms of Indonesian law as appropriate.

B. General national child rights framework

The Constitution, Human Rights Act and Child Protection Act create a framework for enacting or amending other laws and regulations. They are also directly applicable as any other laws.
Constitution: The inclusion of specific rights for children is a recent introduction into Indonesia’s legal framework. As mentioned above, it was not until amendments in 2000 that rights of children were provided for in the Constitution. Every child’s right to life, development and protection from violence and discrimination is now constitutionally guaranteed in Article 28B:

Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination39.

The provision covers some, but not all, of the fundamental rights set forth in the CRC: the right to life and development (CRC, Article 6); the right against discrimination (CRC, Article 3); and the right to be protected from violence (CRC, Article 19). Other provisions in the Constitution’s Bill of Rights cover rights set forth in the CRC and are applicable to all persons, including children, but Article 28B is the only provision specific to children.

The Human Rights Act: The 1999 Human Rights Act expands the concept of child rights in Indonesian law40; the Act includes 15 articles for the protection of child rights. It establishes the principle that child rights are fundamental human rights under the law, and that all children have the right to be protected by their parents, the community and the State41. Further, it expresses every child’s right to live, grow, develop, and to have a name and citizenship42. Other articles express basic rights, such as the rights to education and health services, to receive information, to express one’s self, to play and recreate, and to exercise one’s religion43.

Several articles in the Human Rights Act address parental responsibilities, and express a child’s right to know their parents and to not be separated from them, unless it is in a child’s best interests. In addition, parents’ or guardians’ custody of a child shall be removed in cases of child abuse, mistreatment and violence44. With regard to protection from violence and exploitation, separate articles address the rights to not be involved in armed conflict; to receive protection from economic exploitation endangering a child’s health; to receive protection from sexual exploitation, including trafficking, harassment and drug addiction; and to receive protection from torture and inhuman treatment. Capital punishment cannot be imposed on a child convicted of a crime45.

The Indonesian Human Rights Commission has the authority to conduct initial investigations of reported violations under the Human Rights Act. Findings of violations are provided to the public prosecutor for further criminal investigation. The Act does not specify sanctions for violations, so criminal responsibility is based on the relevant criminal laws.

39 1945 Constitution Ch. XA Art. 28B p. 2. (Unofficial translation).
41 Act No. 39 of 1999 on Human Rights Art. 52.
The Child Protection Act: The 2002 Child Protection Act is a step forward for child rights in Indonesia. It consists of four main sections: (1) Bill of Rights for children; (2) chapters concerning the status of children and the obligations of the State, the community and parents in protecting children; (3) establishment of a commission for the protection of Indonesian children; and (4) a section with criminal provisions for offences against children. The Bill of Rights introduces many of the CRC’s principles into domestic law, which, as discussed above, is required because ratification alone does not create enforceable rights under Indonesian law. The Bill of Rights in this Act considerably expands the number of recognised rights and principles for children. Most importantly, the Act defines a child as any person below the age of 18 years, in line with the CRC. As a basis for protecting children, the Act recognises the principles of non-discrimination, the best interests of the child, the right to life, continuity of life, and development, and respect for the opinions of children, along with the Pancasila, the national ideology. Other provisions recognize a child’s right to express his or her views, the right to a name and identity, the right to know one’s parents, the right to education, and the right to be protected from violence and abuse. Separate chapters provide more detailed provisions on identity and birth registration, parental rights, guardianship, adoption, religion, health, education, social development and special protection. The section on special protection includes children that are victims of sexual exploitation and trafficking and mandates certain measures, such as dissemination of relevant laws, monitoring, sanctions, prevention, care and rehabilitation.

1) Definition of the child and age of majority

Under the Indonesian Civil and Private Code, a minor is a person who has not yet reached the age of 21 years and has not yet married, setting adulthood at the age of 21 years for unmarried persons. If a person marries before 21 years of age, they are no longer a minor, and enter adulthood at the time of marriage, regardless of age. If the marriage is dissolved in a divorce before either of the partners reaches 21 years of age, divorced persons do not become minors again.

In effect, marital status determines whether a person is a child or an adult. The legal age of marriage in Indonesia is 16 years for girls and 19 years for boys. Thus, if married, a girl may enter adulthood as early as 16 years of age. It is also possible to get dispensation from a civil court to marry before the legal age of marriage has been reached, although this is rarely used.

Under the Child Protection Act, a child is defined, as in the CRC, as a person under 18 years of age; this applies equally to boys and girls, regardless of their marital status or
former marital status. Under Article 91, all other laws and regulations that do not conflict with this Act remain in effect, implying that all conflicting provisions in other laws and regulations are rendered void by this Act.

There is no independent definition of minor or child in the Criminal Code of Indonesia. The Code uses specific age limits but occasionally uses the term “minor” in provisions where the age of a victim of a criminal act is one of the elements of the offence. The use of the term “minor” referring to the Civil and Private Code means that these provisions are not applicable to children that are married or have been married, regardless of their age.

The Act on Juvenile Courts defines a “juvenile” as a minor over 8 years of age but below 18 years of age who has never been married.52

The Act on Manpower from 2003 is in line with the CRC and defines a child as any person less than 18 years of age53.

C. General features of Indonesian Criminal Law

1) Criminal jurisdiction and age of criminal responsibility

The Criminal Code of Indonesia claims jurisdiction within the territory of Indonesia. Article 2 of the Criminal Code states that the criminal statutes are applicable to anyone found guilty of a punishable act within Indonesia. Furthermore, the Criminal Code also applies to any punishable act on an Indonesian vessel or aircraft54.

Indonesia claims extraterritorial jurisdiction for all offences in the Criminal Code, with several limitations. The law applies to Indonesian nationals, so permanent or temporary residents in Indonesia, as well as foreigners, are excluded. In addition, extraterritorial jurisdiction is limited by the principle of double criminality55, so the offence punishable under Indonesian law must also be unlawful and carry a penalty in the country where it was committed56. Thus, all offences relevant to commercial sexual exploitation of children in the Criminal Code may be applied to offences committed abroad by Indonesian nationals, as long as these acts are unlawful and carry a penalty in the country where the crime is committed.

Under the 1997 Act on Juvenile Courts, the age of criminal responsibility is 8 years of age57. Children found guilty of an offence before reaching the age of 12 years, however, may not be sentenced to imprisonment58.

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54 Criminal Code of Indonesia Art. 3.
55 The principle of double criminality does not apply to certain offences against the security of the State and the dignity of the President. Criminal Code of Indonesia Art. 5 section 1.
56 Criminal Code of Indonesia Art. 5.
57 Act on Juvenile Courts Art. 1.
Criminal responsibility for corporations is a new concept in Indonesian criminal law, introduced by the Child Protection Act; the Criminal Code has no provisions for corporate criminal responsibility. If a criminal offence under the Child Protection Act is committed by a corporate body, sanctions are imposed on the management of the corporation and fines may be imposed directly on the corporation.59

2) Attempt, conspiracy and accessory

Attempts to commit a criminal offence are punishable for all offences in the Criminal Code, unless expressly excluded. Attempts to commit a misdemeanour, however, are not punishable. Criminal liability arises at the commencement of the performance of the act.60

The main principals of a criminal act include the principal actor, persons taking direct part in the commitment of the criminal act, and persons who cause or deliberately provoke the execution of the act by gift, promise, abuse of power, threat, force or deception.61

Complicity to a criminal act is punishable for all offences in the Criminal Code. This includes anyone who deliberately aids in the commission of a crime or provides opportunity, means or information for the commission of the offence.62 Attempts to commit a misdemeanour, however, are not punishable.63

These general provisions on criminal liability for attempts, conspiracy and accessory apply only to offences in the Criminal Code. Unless criminal offences included in other laws expressly include attempts and accessory, they are not punishable. There is no provision in the Child Protection Act that punishes attempts or complicity.

3) Statutory limitations

Rules on statutory limitation are in Chapter 8 of the Indonesian Criminal Code. The time limits are counted from the day after the crime was committed. For all misdemeanours the right to prosecute expires after one year. For offences where the punishment is a fine or maximum imprisonment of no more than 3 years, the right to prosecute expires after 6 years. If the maximum penalty for an offence is more than 3 years imprisonment, the right to prosecute expires after 12 years, and for offences that carry capital punishment, this period is extended to 18 years. For offences committed by juvenile offenders – defined as offenders of the age group covered under the juvenile justice system, including children64 – time limits are reduced by one third in all the cases above. The Indonesian

59 Act No. 23 of 2002 on Child Protection Ch. 12, Art. 90.
61 Criminal Code of Indonesia Art. 55.
62 Criminal Code of Indonesia Art. 56.
63 Criminal Code of Indonesia Art. 60.
64 Criminal Code of Indonesia Ch. 8, Arts. 77-79.
Criminal Code does not have specific statutory limitations for crimes committed against children.  

4) Towards a new Criminal Code

The current Criminal Code is from 1946, and while it has been amended over the years, there have been no major revisions to it. Over the past decade, a process to completely rewrite and introduce a new Criminal Code has been gaining support. A commission with representatives from the government, academia, and legal experts produced a final draft of a new criminal code that was submitted to parliament in 2003, but it has yet to be enacted.

III. Legislation related to the commercial sexual exploitation of children

A. Child Prostitution

1) International standards

The Optional Protocol to the CRC defines child prostitution as “the use of a child in sexual activities for remuneration or any other form of consideration”\(^ {66}\). Consistent with the CRC, a child is defined as a person below 18 years of age. This definition includes any sexual activity with a child, including sexual intercourse, oral or anal penetration, and other forms of sexual touching. The exchange of benefits may be in cash or kind and can be given to the child or to another person or persons on behalf of the child.

The Optional Protocol obliges State Parties to include in criminal law all acts of obtaining, procuring or providing a child for child prostitution\(^ {67}\). This includes full protection from exploitation in child prostitution for all boy and girl children up to 18 years of age. The consent of the child to the sexual activity is irrelevant for the determination of criminal liability.

2) National legislation related to child prostitution

i) Legislation against child prostitution and prostitution in general

Child Protection Act

The 2002 Child Protection Act includes a short chapter with criminal provisions concerning the rights of the child\(^ {68}\). These provisions address, among other things: Discrimination and neglect; violence and torture; economic and sexual exploitation;  

\(^{65}\) Criminal Code of Indonesia Ch. 8, Arts. 77-79.


\(^{68}\) Act No. 23 of 2002 on Child Protection Ch. 12, Arts. 77-90.
indecent behaviour; trade in children; sale of organs, and the involvement of children in armed conflicts and drug trafficking. Several provisions apply to cases of child prostitution and introduce new offences into the Indonesian criminal law.

With respect to criminalising the sex exploiter of a child (i.e., the person purchasing sexual services from a child) the central provision is Article 88:

Every person who economically or sexually exploits a child for his own gain or the gain of some third party shall be subject to a term of imprisonment of not more than ten (10) years and/or a maximum fine of two hundred million rupiah (Rp 200,000,000).

Therefore, the three central elements that must be fulfilled for criminal liability under the offence of child prostitution are “sexually exploits”, “a child”, and “his own gain”. The term “a child” refers to the definition in the law and fully covers girl and boy children up to 18 years of age, with reservation for the existing uncertainty regarding married or divorced children. The expression in Bahasa Indonesia that is translated to ‘his own gain’ may be interpreted to include not only economic gain or financial benefit but also personal satisfaction or sexual gratification.

The term “sexually exploits” is broad and includes various acts, but at minimum includes sexual activity such as intercourse and other sexual touching with a child. The central question that remains is whether the act of purchasing sexual services from a child is considered exploitative. At present there are no elucidations for this article or any relevant case law interpreting it.

Article 78 of the Child Protection Act states:

Every person who knowingly and deliberately exposes children to an emergency situation as referred to in Article 60 hereof, or knowingly and deliberately allows children to find themselves in dealings with the law, children from minority and isolated groups to be mistreated, children to be exploited economically or sexually, children to be traded, children to become the victims of the misuse of narcotics, alcohol, psychotropic substances and other addictive substances, children to become the victims of kidnapping, sale and trading, children to become the victims of violence as referred to in Article 59 hereof, knowing that such children need help and must be assisted, shall be subject to a term of imprisonment of not more than five (5) years and/or a maximum fine of one hundred million rupiah (Rp 100,000,000).

Article 78 of the Child Protection Act also criminalises, to some degree, the failure to act in cases of child sexual exploitation. Any person who knowingly and deliberately allows children to be exploited sexually, recognizing that such children need help and must be assisted, is liable to a maximum of five years imprisonment and/or a maximum fine of 100 million rupiah. The provision is restricted to intentional acts and negligence is not criminalised.

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69 Act No. 23 of 2002 on Child Protection Ch. 12, Art. 88.
70 See discussion in section II(B) above on the definition of the child in Indonesian law.
71 Act No. 23 of 2002 on Child Protection Ch. 12, Art. 78.
Article 88 of the law, referenced above, criminalises anyone who sexually exploits a child for his own gain or the gain of a third party. Again, there is no definition of “sexual exploitation” in the law, but promotion and facilitation of child prostitution and directly profiting from the prostitution of a child may constitute sexual exploitation under the provision.

Article 81 of the Child Protection Act states:

(1) Every person who through the deliberate use or threat of violence forces a child to engage in sexual intercourse with him/her or with other people shall be subject to a maximum term of imprisonment of fifteen (15) years and a minimum term of three (3) years, and a maximum fine of three hundred million rupiah (Rp 300,000,000) and a minimum fine of sixty million rupiah (Rp 60,000,000).  
(2) The punishments set out in section (1) above shall also be applicable to any person who employs tricks, lies or ruses to persuade, or who encourages, a child to engage in sexual intercourse with him or with some other person.72

Article 81 of the Child Protection Act prohibits, among other serious acts, persuading – by specified means – a child to have sexual intercourse with another person. Anyone who employs tricks, lies or ruses to persuade or encourage a child to engage in sexual intercourse with him/her or another person is liable to a maximum of 15 years and a minimum of three years imprisonment and a fine between 60 million and 300 million rupiah.

Article 82 of the Child Protection Act states:

Every person who uses violence or the threat of violence to force, or who employs tricks, lies or ruses to persuade, or who encourages, a child to engage in indecent behaviour, or who allows such indecent behaviour to occur, shall be subject to a maximum term of imprisonment of fifteen (15) years and a minimum term of three (3) years, and a maximum fine of three hundred million rupiah (Rp 300,000,000) and a minimum fine of sixty million rupiah (Rp 60,000,000).73

Article 82 provides the same penalties for persuading a child to engage in indecent behaviour using the methods stated above. Sexual intercourse means heterosexual intercourse only.

There is no definition of ‘indecent behaviour’ in the law and no elucidations for the term are provided. The use of the term ‘encourages’74 prohibits the use of deceptive tactics beyond acts such as tricking or lying. Any act that can be determined to entice a child to engage in sexual intercourse or indecent behaviour with another person is considered a violation of the article. Thus, it could also be applied in cases where a child eventually consents to the sexual activity after persuasion.

72 Act No. 23 of 2002 on Child Protection Ch. 12, Arts. 81-82.
73 The Indonesian term is persetubuhan, which is used in the Criminal Code to refer to heterosexual intercourse.
74 “Encourage” is used in the English translation but a more proper translation is “entices”. The term in Bahasa Indonesia is membujuk, which has a negative connotation.
The Child Protection Act also targets forced prostitution of children by punishing the use of violence or threat of violence to force a child to engage in sexual intercourse or indecent behaviour with another person\(^{75}\), and provides very high penalties for violations\(^{76}\).

**Criminal Code of Indonesia**

The articles relevant to prostitution in the Criminal Code of Indonesia are articles 295 and 296; article 295 concerns facilitating obscene acts with children, and article 296 prohibits facilitating prostitution in general\(^{77}\).

Article 295 punishes any person who deliberately causes or facilitates the commission of an obscene act by a minor with another person. The first section of the article provides a higher maximum penalty (five years imprisonment) when the minor is the perpetrator’s own child, step-child or foster-child, a student under his authority, a minor entrusted to his care, education or vigilance or his under-age servant or subordinate. The second section provides a maximum penalty of four years imprisonment and applies when the perpetrator knows or must reasonably suspect that the other party was a minor. If the offender commits the offence professionally or habitually, the penalty may be raised by one-third. The provision offers protection equally to boys and girls up to 21 years of age, the age of majority under the Civil and Private Code.

The provision against facilitating prostitution in general is weaker because it only prohibits facilitating obscene acts when conducted professionally or habitually\(^{78}\). The proscribed penalty is a maximum of one year and four months imprisonment, or a fine. The Criminal Code also criminalises living off the earnings of a woman engaged in prostitution as a misdemeanour\(^{79}\). The maximum penalty is one year light imprisonment.

**ii) Legislation against sexual violence**

Offences against sexual violence are found both in the Criminal Code of Indonesia and the Child Protection Act. While they do not specifically target commercial sexual exploitation, the statutory rape offence provides children with some protection against commercial sexual exploitation by criminalising demand and the acts of sex exploiters.

**Criminal Code of Indonesia**

The age of consent to sexual intercourse for girls is 15 years in Indonesia. Article 287 states that anyone who out of marriage has sexual intercourse with someone he knows or reasonably should presume has not yet reached the age of 15 years is liable for a maximum of nine years imprisonment\(^{80}\). When the girl is over 12 years, however, a

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\(^{75}\) Act No. 23 of 2002 on Child Protection Ch. 12, Arts. 81-82.

\(^{76}\) This is one of the few examples of specific minimum penalties in Indonesian criminal law.

\(^{77}\) Criminal Code of Indonesia Ch. XIV, Arts. 295-296.

\(^{78}\) Criminal Code of Indonesia Ch. XIV, Art. 296.

\(^{79}\) Criminal Code of Indonesia Ch. XIV, Art. 506.

\(^{80}\) Criminal Code of Indonesia Ch. XIV, Art. 287. If the act results in serious physical injury or death the maximum penalty is 12 years and 15 years respectively, Art 291, Sec. 1.
prosecution may only be instigated upon a formal complaint. In effect, due to procedural constraints, the age of consent for girls is 12 years of age in Indonesia. The provision does not apply to sexual relations within marriage. As the age of marriage for girls is 16 years, the exemption is of no relevance except for cases where a girl marries at an earlier age upon dispensation from the court. The exemption does not apply to child marriages under religious custom, as such marriages are not legally recognised. A separate article criminalises statutory rape within marriage only if the act results in physical injury, and applies only to heterosexual intercourse. Anal or oral penetration or the use of objects is excluded.

The corresponding offence for male statutory rape sets the age limit at 21 years of age. Article 292 states that anyone who commits an obscene act with a minor of the same sex whose minority he knows or reasonably should presume is liable to five years imprisonment. Another provision that may be used to protect both younger boys and girls from obscene acts that are not covered under any other provision is Article 290 of the Criminal Code that criminalises anyone who commits an obscene act with a minor who has not reached 15 years of age; this offence provides for a maximum penalty of seven years imprisonment.

Apart from the above statutory provisions, the Criminal Code includes offences of rape and incest, offences of adultery and abuse of authority or position to gain sexual favours. The rape offence applies to women only. Article 294 punishes anyone who commits an obscene act with his child, step-child or foster-child, a student under his authority, a minor entrusted to his care, education or vigilance, or his under-age servant or subordinate, and provides a maximum penalty of seven years imprisonment.

iii) Local regulations concerning prostitution and public order

Under the Indonesian Criminal Code, it is not an offence to offer sexual services, but local administrative regulations concerning public order may apply to this conduct when it occurs in open spaces. Soliciting sexual services on streets, in parks or other public places can be prohibited and offenders are liable to a fine or a custodial sentence. For example, the public order regulation in Jakarta prohibits “immoral conduct in the street, in parks and green areas and other public places” and provides for a penalty of up to three months in custody or a maximum fine of 50,000 rupiah. These regulations apply

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81 Complaints can only be filed by the legal guardian of the child, not the child him/herself. A complaint must be filed within six months after the guardian received knowledge of the act. It may be withdrawn within 3 months. Criminal Code of Indonesia Ch. XIV Art. 287, Sec. 2 and Ch. II, Art. 72.
82 The government states that 12 years of age is the age of consent in its latest report to the CRC Committee on the Rights of the Child.
83 Criminal Code of Indonesia Ch. XIV, Art. 287.
84 See discussion below in section D(1) on Indonesian marriage laws.
85 The maximum penalty is 12 years imprisonment if the victim dies as a result of the act, Criminal Code of Indonesia Ch. XIV, Art. 287.
86 Criminal Code of Indonesia Ch. XIV, Art. 290, Sec. 2. If the act results in serious physical injury or death the maximum penalty is 12 years and 15 years respectively, Art 291, Sec. 1.
87 Criminal Code of Indonesia Ch. XIV Art. 285, 286, 293, and 294.
equally to adults and children and exist with minor variations in most if not all city districts in Indonesia\textsuperscript{89}.

Vagrancy regulations also indirectly criminalise children forced into prostitution. For example, the public order regulation in Jakarta prohibits a person from squatting, lying down, or standing along streets, green areas, parks and other public places. The penalty is the same as that for immoral conduct under Jakarta’s public order regulation (three months in custody or a maximum fine of 50,000 rupiah). In addition, any person that stands in public places without documents proving their identity may be arrested for vagrancy\textsuperscript{90}. Children living in the street or children forced into street prostitution are especially vulnerable to being arrested for vagrancy, as they often do not have or cannot obtain proper identity cards\textsuperscript{91}.

3) Gaps and Discussion

The following comparative review examines Indonesia’s legal mechanisms in light of its obligations under international law to protect its child citizens from commercial sexual exploitation in prostitution.

Adherence to the Convention on the Rights of the Child
Article 34 of the CRC obliges States to protect children from all forms of sexual exploitation and sexual abuse. Indonesian criminal law contains several provisions and features that fail to sufficiently protect children in this regard. For example, children forced into street prostitution are subject to criminal punishment under local administrative regulations on public order (i.e., the offence of immoral conduct in a public place\textsuperscript{92}). These regulations punish, rather than protect, child victims of commercial sexual exploitation.

Adherence to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography
Article 3 of the protocol obliges States to prohibit the procurement of children for prostitution. Article 81 of the Child Protection Act meets this requirement by criminalizing the sexual exploitation of a child for financial gain as well as the enticement of a child – whether or not through illicit means – to engage in sexual intercourse or indecent behaviour, regardless of the child’s consent. The text of these provisions appears to meet the standard set by the Optional Protocol. There is no information, however, on how these provisions will be applied, so there is a risk that some behaviour prohibited by the protocol may fall outside the scope of the legislation, since it does not explicitly prohibit procuring. Article 295 of the Indonesian Criminal

\textsuperscript{89} Interviews conducted by Antarini Arna, Jakarta, 2004.
\textsuperscript{90} Vagrancy is also a misdeameour in the Criminal Code. Art. 505 states that “Any person who roams about without means of subsistence shall, being guilty of vagrancy, be punished by a maximum light imprisonment of three months”.
\textsuperscript{91} See discussion below in section D(4) concerning identity cards for further details.
\textsuperscript{92} Perda No 11/1989 concerning Public Order Arts. 24 and 27, p 1.
Code, which prohibits facilitating obscene acts with minors and other persons, also meets the Optional Protocol’s standard.

Article 3 of the Optional Protocol further requires States to establish liability for corporations and legal persons for acts prohibited by the Optional Protocol. Article 90 of the Child Protection Act provides for this, including criminal sanctions for management and fines for corporations involved in the commercial sexual exploitation of a child.

Article 78 of the Child Protection Act includes an offence that sanctions anyone who deliberately fails to take action knowing that a child is being sexually exploited, thereby allowing the abuse to occur. How this provision will be applied is uncertain, but the Optional Protocol and international law do not criminalise the failure to act to protect children from sexual exploitation. As a result, Indonesian law sets a higher standard than required by international law.

The Indonesian Criminal Code’s existing provisions on sexual violence against children are weak. First, these provisions set a low age for statutory rape of girls – 12 years. Second, they do not fully recognise rape within marriage because the offence requires proof of injury. Third, the definition of rape excludes anything other than heterosexual intercourse, and it does not apply to boys.

Article 3 of the Optional Protocol requires States to make it criminal to obtain sexual services from a child for remuneration or any other form of consideration. The Indonesian Criminal Code does not include any provisions addressing commercial sexual transactions with a child, and the Child Protection Act does not include any provisions that explicitly prohibit purchasing sexual services from a child. Even though Article 88 of the Child Protection Act prohibits sexually exploiting a child for financial gain or sexual satisfaction, its application to purchasing sexual services from a consenting child, or married or divorced children, is sufficiently uncertain, due to a lack of precedent or elucidation.

Article 3 of the Optional Protocol further requires States to criminalise attempts and complicity to the acts prohibited under the Optional Protocol. While the Criminal Code includes such provisions, the Child Protection Act does not contain corresponding language.

Finally, Article 4 of the Optional Protocol requires States to use extraterritorial jurisdiction to prosecute offences against a country’s citizens and permanent residents. The Indonesian Criminal Code generally extends extraterritorial jurisdiction to offences committed by Indonesian nationals abroad, but not to permanent residents, as required by Article 4. Further, the Child Protection Act does not mention extraterritorial jurisdiction and does not refer to the Criminal Code, suggesting that its offences can only be prosecuted within the territory of Indonesia. Thus, Indonesian law fails to meet the Optional Protocol’s standard in this regard.

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93 Criminal Code of Indonesia Ch. XIV, Arts. 287, 290-291, 294.
94 Criminal Code of Indonesia Art. 5.
B. Trafficking in children for sexual purposes

1) International standards

The Trafficking Protocol to the Convention on Transnational Organised Crime is the primary international instrument on trafficking. The Protocol defines trafficking in human beings and contains other provisions on protecting trafficking victims. The protocol explains trafficking in children as:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

“Child” shall mean any person less than eighteen years of age.95

This Protocol obliges State Parties to establish criminal responsibility under national law for the acts included in the definition96. As noted above, Indonesia has signed the protocol but has not yet ratified it.

The Protocol definition differentiates between adults and children in one important aspect; the requirement that illicit means, such as coercion or deception, used for an act to constitute “trafficking in persons” does not apply to trafficking in children. Under the protocol, if a child is recruited, transported, transferred, harboured or received for the purpose of exploitation, this constitutes trafficking even where no illicit means are used to obtain the child’s consent. Thus, for children, the only element required for criminal liability is that a child is recruited, transported, transferred, harboured or received for the purpose of exploitation. This definition reflects the fundamental principle that a child’s consent to exploitation is irrelevant. The Protocol also specifically states that prostitution is sexual exploitation, and uses the CRC definition of a child.

2) National legislation

Until the Child Protection Act, there were no specific criminal provisions on trafficking in children in Indonesian law; offences against children were addressed within the general framework of trafficking in human beings. Now, Article 83 of the Child

Protection Act specifically targets trafficking in children and punishes “[a]ny person who trades in, sells or kidnaps a child either for his own purposes or for sale”. Penalties for conviction range from three to 15 years imprisonment in combination with a fine from 60 million to 300 million rupiah. These provisions have not been interpreted or applied, so what specific behaviour is prohibited remains uncertain.

i) Legislation against trafficking in human beings

Article 297 of the Indonesian Criminal Code has long criminalized trafficking in human beings: “Trade in women and minors of the male sex shall be punished by a maximum imprisonment of six years.” The provision protects women, regardless of age, and males up to 21 years of age. A person convicted under this law may have his or her parental rights revoked. In addition, he or she may also be deprived of the right to exercise his or her profession if the offence was committed as part of the person’s profession.

Like the corresponding provision in the Child Protection Act, the specific acts prohibited under Article 297 remain uncertain. The Criminal Code provisions punishing complicity to a crime may be used to establish criminal liability for associated actors covering all the acts prohibited by the UN Trafficking Protocol – anyone who recruits, transports, transfers, harbours or receives a person, knowing that the person will be or was “traded”. This provision is weak, however, as the prohibited acts are not specifically expressed. As a result, many means of trafficking used today, such as fraud, abuse of power and undue influence to trick victims to go ‘willingly’, may fall outside the scope of the provision. In fact, many common trafficking methods do not fit into the format of a buy-sell commercial transaction that this provision targets.

It was hoped that a new law against the trafficking of persons would be enacted by the sitting parliament before the national elections in 2004, but the draft was not finalised in time. As of the writing of this report, a new law has not yet been submitted to parliament. Even though the Trafficking Bill has yet to be enacted, it is useful to outline its main provisions as it makes important changes to the provisions currently in effect and is likely to be adopted with only minor revisions to the current draft.

The title of the proposed law is “The Act concerning Combating Trafficking in Persons” and it is essentially an implementation of the UN Trafficking Protocol at the national level. The Ministry of Women’s Empowerment is the focal point for drafting and producing the bill. The stated implementation objective of the proposed law is threefold: (1) to prevent trafficking in persons; (2) to take action against perpetrators of the offence

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97 Act No. 23 of 2002 on Child Protection, Ch. 12, Art. 81.
98 This provision is similar to Art. 297 of the Criminal Code that has been widely criticised as difficult to apply due to its vagueness.
99 Criminal Code of Indonesia Ch. XIV, Art. 297. The term in Bahasa Indonesia for trade is memperdagangkan, literally “making an object of trade”.
100 Criminal Code of Indonesia Ch. XIV, Art. 298.
101 See discussion above in section C(2) on provisions for complicity to a crime.
of trafficking in persons; and (3) to protect victims of trafficking. It includes chapters on protection of victims and witnesses, compensation and rehabilitation for victims, investigation and collection of evidence, criminal offences, cooperation, and the role of civil society.

The main criminal provision in the proposed law is Article 30, which reads as follows:

Any person who recruits, delivers, or transfers a person by means of force or threat of force, fraud, kidnapping, abuse of power or of a position of vulnerability, or debt-bondage, with the purpose to exploit that person or cause that person to be exploited, shall be punished for committing trafficking in persons, by a minimum of imprisonment for 4 (four) years and a maximum imprisonment for 15 (fifteen) years and/or minimum fine of 60,000,000 (sixty million) rupiah and a maximum fine of 300,000,000 (three hundred million) rupiah.

The elements of the provision are defined in Article 1 of the Bill. The definition of exploitation includes, but is not limited to, prostitution, forced labour or service, practices similar to slavery, transplantation of organs, or any other act by means of coercion, extortion, or abuse of power or position of vulnerability to gain material or other benefit from someone. Importantly, the Bill states that the victim’s consent is irrelevant in determining whether an act constitutes exploitation, and that exploitation expressly includes prostitution. These are significant improvements compared to the current legislation. In addition, the definitions for recruitment, delivery, and transfer cover a broad range of acts, including: inviting, receiving, harbouring or accompanying a person; transporting, delivering or dispatching someone; and receiving, accepting, or delivering someone. The Bill protects victims regardless of age or gender and applies equally to adults and children. There are no specific provisions offering special protection for child victims in the law except for a reference in the foreword. The penalties are the same for trafficking of adults and children, but higher penalties apply if the victim sustains injuries or dies.

In addition to the main offence of trafficking, the law introduces new offences closely associated with trafficking in persons. Cross-border trafficking is specifically prohibited with the same penalties as for domestic trafficking. Several provisions target associated acts that facilitate trafficking with high penalties. For example, forgery of official documents to facilitate trafficking carries a 10 year prison sentence, and financing or profiting from trafficking in persons is punished with a maximum of 5 years imprisonment; and State officials who abuse the authority of office to facilitate the commission of trafficking in persons are liable for the same penalty as the main principals, a minimum of four years and a maximum of 15 years imprisonment. The

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102 Bill on enactment of the Act concerning Combating Trafficking in Persons, Art. 3.
103 Trafficking Bill Art. 30 (unofficial translation).
104 Trafficking Bill Art. 1, p. 6.
106 Trafficking Bill Art. 33.
107 Trafficking Bill Art. 31 and 32.
108 Trafficking Bill Art. 34, 36 and 40.
109 Trafficking Bill Art. 35.
Bill also criminalises facilitation, conspiracy, attempts and complicity to trafficking in persons with the same penalty\[^{110}\].

Noteworthy is that a specific provision of the Bill is targeted at the demand side of trafficking and punishes individuals who intentionally take advantage of a victim of trafficking by having sexual intercourse with such a person, or in any other way takes advantages of a victim of trafficking. It is likely that a separate conviction, or at least proof of trafficking, will be required for a conviction under this provision, making it difficult to apply\[^{111}\].

The proposed law provides for corporate responsibility and higher penalties for offences when committed by organised groups as well as seizure of proceeds from trafficking offences\[^{112}\]. Separate provisions aimed at facilitating investigation of trafficking cases specifically criminalise false testimony, obstruction of justice and improper persuasion or coercion of witnesses in trafficking cases. Maximum penalties range between seven to 15 years imprisonment\[^{113}\].

### 3) Gaps and Discussion

The following comparative review examines Indonesia’s legal mechanisms in light of its obligations under international law to protect its child citizens from commercial sexual exploitation in trafficking for sexual purposes.

**Adherence to provisions in the UN Trafficking Protocol**

Article 3 of the UN Trafficking Protocol contains a detailed definition of child trafficking for prostitution, while Article 5 of the Protocol obliges States to criminalise all acts included in the definition\[^{114}\].

Under Article 297 of the Criminal Code, trafficking in persons is generally prohibited while Article 83 of the Child Protection Act prohibits trafficking in children. Both of these provisions fail to meet the Protocol’s standards because they only criminalise the act of trading in persons or children, and do not define what acts constitute “trading”. Furthermore, without precedent, these provisions appear to be limited to criminalising principals (i.e., the sellers and the buyers of children). As a result, the majority of acts defined as criminal by the Protocol, such as recruiting, transporting and receiving a child for the purpose of sexual exploitation, fall outside of the scope of these provisions.

The definition of trafficking in Article 40 of the draft Trafficking Bill adheres closely to the international standard and prohibits all acts and actors that are defined in the UN Trafficking Protocol. With regard to trafficking of children, there is one major exception; the new bill does not recognise the vulnerability of children and that children cannot

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\[^{110}\] Trafficking Bill Art. 36, 37 and 39.

\[^{111}\] Trafficking Bill Art. 33.

\[^{112}\] Trafficking Bill Art. 41-43.

\[^{113}\] Trafficking Bill Art. 44-45.

\[^{114}\] See discussion on international legal instruments in section I(A) above.
consent to being exploited; it does not criminalise trafficking of children regardless of the means used by the trafficker. If a child is trafficked for the purpose of exploitation without the use of illicit means, the act falls outside the scope of the provision. The law may better protect children from trafficking if it is enacted, but it still fails to meet the minimum requirements in international law.

Under Article 5 of the Protocol, States must criminalise the attempt, complicity and instigation of offences of trafficking in human beings. The draft bill against trafficking in persons includes several provisions meeting this requirement. The bill criminalises facilitation, conspiracy, attempts and complicity to trafficking in persons with the same penalty as the main principals and thus meets the Protocol requirement.

Article 40 of the draft Trafficking Bill criminalises anyone that takes advantage of a victim of trafficking by having sexual intercourse with the victim or in any other way. The provision thus targets the base demand that leads to trafficking in a creative way. There is no such requirement in the Trafficking Protocol or elsewhere in international law, so the proposed Indonesian law may provide greater protection for children than what is required under international law.

Adherence to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography

Article 4 of the Optional Protocol requires States to use extraterritorial jurisdiction to prosecute Indonesian citizens and permanent residents for offences related to the commercial sexual exploitation of children, including trafficking in children. The Indonesian Criminal Code generally extends extraterritorial jurisdiction to offences committed by Indonesian nationals abroad, but not to permanent residents, as required by Article 4. Further, the Child Protection Act does not mention extraterritorial jurisdiction nor does it refer to the Criminal Code, suggesting that its offences can only be prosecuted within the territory of Indonesia. Thus, Indonesian law fails to meet this Optional Protocol standard.

C. Child pornography

1) International standards

Based on the limited research available, exploitation of children in child pornography is the least common manifestation of commercial sexual exploitation of children in Indonesia today. Child sex tourism, coupled with an increase in Internet access points and Internet users, means that producing, distributing and possessing child pornography may increase in the near future if effective criminal sanctions are lacking. As with child sex exploiters, child pornography producers may seek out countries with weak legislation against child pornography. For these reasons, it is important for countries to deter any increase in these activities by introducing strong criminal sanctions against all acts

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115 See discussion on child pornography above in chapter two, section III(C).
associated with child pornography. The Optional Protocol to the Convention on the Rights of the Child defines child pornography as:

Any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

The protocol obliges States to make criminal all acts of “producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography,” as defined above. The Stockholm Agenda for Action further recommends that States criminalise the mere possession of child pornography, not just possession for the purposes of distribution.

Under these international standards, producing, distributing, and possessing child pornography should be prohibited by criminal laws and carry strong penalties. The definition of child pornography is broad and covers material showing explicit sexual activities involving children, whether real or simulated, and material displaying the sexual parts of a child intended for primarily sexual purposes. The international standard includes printed material, videotape, audiotape, or digital material stored on a computer.

2) National legislation

i) Legislation directly targeting child pornography

The Criminal Code does not specifically address child pornography. The Child Protection Act also lacks criminal offences on child pornography. Thus, there is no legal definition of child pornography in Indonesia, but other provisions in the Child Protection Act may be used to prosecute a person for producing child pornography. For example, article 88 criminalises sexual exploitation of a child for gain, and Articles 82 and 83 punish sexual intercourse and indecent behaviour with a child. These provisions potentially may be used to prosecute a person who sexually exploits a child to produce child pornography, but they provide limited protection to children from exploitation in the production of child pornography. On the positive side, these laws offer more severe penalties than criminal provisions on indecent material, and provide for corporate criminal responsibility.

The Manpower Act of 2003 provides criminal sanctions for using children in the production of pornography or in pornographic performances.

The Child Protection Act contains no provisions related to distributing and possessing child pornography. A draft bill concerning pornography is currently being deliberated in parliament, but does not include any specific provisions on child pornography.

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116 The Stockholm Declaration and Agenda for Action, Ch. 4 Protection (a)-(d).
117 See discussion in section III(A)(2) above.
118 See discussion in section III(A)(2) above.
119 Bill on the Act concerning Anti-pornography.
ii) Legislation against indecent material

The Criminal Code of Indonesia includes offences on dealing in indecent material. While it does not define what constitutes ‘indecent’, any material with child pornographic images would likely be within the scope of the provisions when such material contains nudity. The general prohibition covers indecent material in the form of writings, portraits or objects. As the provision was enacted long before the advent of modern forms of communications, there are no provisions concerning videotapes, audiotapes, or digital media, and it is uncertain whether this law applies to indecent material distributed or contained in such media. The law prohibits producing, disseminating, distributing, storing, importing or exporting indecent material; displaying indecent material in public; or offering such material for sale. Where there is reason to suspect that material is indecent, the law also criminalizes negligent acts. The penalty for the basic offence is a maximum of one year and four months imprisonment or a fine, which is lowered to a maximum of nine months for negligent acts. If the offence is committed habitually or professionally the maximum prison sentence is raised to two years and eight months. A separate provision specifically prohibits disseminating indecent material to children below 17 years of age. The maximum penalty is nine months imprisonment or a fine.

The law does not prohibit possessing indecent material, except for storing such material with the intent to distribute. Consequently, it is not a criminal offence to possess single items of child pornographic material for personal use in Indonesia.

As discussed above, a draft bill against pornography is currently being debated in parliament. The draft bill does not include any specific provisions against child pornography, but it will create an updated and strengthened regime against pornographic material if enacted. The proposed law defines pornographic material in light of modern forms of communication, and it specifically prohibits printing, circulating, broadcasting and advertising pornographic material. The proposed law provides for severe penalties with up to 20 years imprisonment for offenders and fines up to one billion rupiahs.

3) Gaps and Discussion

The following comparative review examines Indonesia’s legal mechanisms in light of its obligations under international law to protect its child citizens from commercial sexual exploitation in pornography.

Adherence to provisions in ILO Convention 182 on the Worst Forms of Child Labour

ILO Convention 182, Articles 1 and 3 require States to prohibit the use of children in the production of child pornography and pornographic performances. The Manpower Act

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120 Criminal Code of Indonesia Ch. XIV, Art. 282.
121 Criminal Code of Indonesia Ch. XIV, Art. 283.
122 Criminal Code of Indonesia Ch. XIV, Art. 282.
123 Bill on the Act concerning Anti-pornography.
124 Bill on the Act concerning Anti-pornography Art. 27.
includes criminal sanctions against anyone who employs a child for such purposes and thus adheres to the convention.

Adherence to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography

Article 3 of the Optional Protocol requires States to prohibit producing, distributing and disseminating child pornography. There is no law directly targeting child pornography either in the Criminal Code or the Child Protection Act, and thus there is no legal definition of child pornography. Article 88 of the Child Protection Act, which prohibits sexual exploitation of children for financial gain, could potentially be used prosecute production cases but this fails to meet the Optional Protocol’s requirements.

D. Other domestic legislation relevant to commercial sexual exploitation of children

1) Marriage law

The institution of marriage in Indonesia is regulated by the Act on Marriage that was enacted in 1974. The law applies to all persons regardless of religious faith. Before the enactment of the uniform law on marriage, separate regulations applied based on faith and in some respect, this is still reflected in the regulation of family law in Indonesia today.

The Act sets specific conditions for entering into marriage. The first condition is that both the bride and bridegroom must consent to be married. The minimum age limit distinguishes between males and females. For girls the minimum age to enter into marriage is set at 16 years of age and for boys at 19 years of age. Persons under 21 years of age must have permission from their parents to be married, but the age limit is not strict. A general or religious court or a civil officer at the district level may give dispensation to marry before the legal age is attained upon application by the parents. As far as can be ascertained, applications for dispensation from the court are unusual and according to one civil office they had never seen a court dispensation for underage marriage even if underage marriages are common in Indonesia. It is also unclear under what circumstances dispensation may be awarded or if any formal tests or examination of the facts are conducted. According to one NGO, civil officers will routinely authorise underage marriages based on the parent’s application alone. Another stated reason for dispensation is teenage pregnancy.

In practice, people usually marry according to religious tradition and do not bother to register their marriage at the civil office. It costs money to register and receive a marriage certificate and the administrative procedure is burdensome. Civil regulations also differ based on faith. Due to the high incidence of unregistered marriages, religious marriages

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125 Act No. 1 of 1974 on Marriage.  
126 Act No. 1 of 1974 on Marriage Arts. 6-7.  
127 Interview with Titing Martini, anti-trafficking specialist, Save the Children, Jakarta, 2004.  
128 Interview with district level civil officer, Jakarta, 2004.
are generally accepted among the population of Indonesia even if, formally, only registered marriages that are in accordance with the provisions in the Marriage Act are recognised by the State.

Even if underage marriages according to religious custom are not formally recognised by the State, there are no further provisions to discourage early marriages or criminal sanctions for marriage to an underage child or allowing one’s underage child to marry. The Child Protection Act includes a provision stating that the family and parents shall be responsible and accountable for preventing underage marriages, but there are no criminal sanctions attached 129.

2) Adoption law

The process for adoptions in Indonesia is regulated partly by law and partly by administrative regulations and government decrees. Traditionally, adoptions of children were conducted in an informal manner according to tradition without any legal paperwork or recognition. The basic provisions concerning adoptions are found in the Marriage Act of 1974 130, but the recently enacted Child Protection Act also includes new provisions concerning adoptions.

The Supreme Court has issued an opinion stating that inter-country adoptions shall only be permitted as a last recourse after all efforts to find Indonesian adoptive parents have been exhausted 131. This principle was made statutory in the new provision on adoption in the Child Protection Act. The law sets several criteria for adoptions, for example, adoptions may only be carried out in the best interest of the child; the adoption does not sever the blood relationship between the adopted child and his or her natural parents, adoptive parents must be of the same religion as the child, and inter-country adoptions of Indonesian children may only be permitted as a last resort 132. The procedures for adoption and government oversight of adoption will be issued through a Government Administrative Regulation but a regulation has yet to be issued. Until that time, the older provisions and procedures are likely to remain in effect.

There is no strict prohibition of commercial adoptions in Indonesia where the natural parents give up their child in exchange for financial compensation. The Child Protection Act, however, contains a criminal offence for adoptions against certain provisions expressed in the law. Anyone who adopts a child against existing laws or regulations is liable to five years imprisonment and/or a maximum fine of 100 million rupiah 133. The provision only criminalises the actual adoptive parent, not intermediaries in the adoption or the natural parent.

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130 Act No. 1 of 1974 on Marriage Art. 12.
131 Circular No. 6 of 1993.
132 Act No. 23 of 2002 on Child Protection Ch. 8, Art. 39.
133 Act No. 23 of 2002 on Child Protection Ch. 12 Art. 79.
The Ministry of Social Affairs is the government agency that handles matters relating to adoptions, and it issued regulations on procedures for adoptions through a ministerial decree\(^{134}\). The decree establishes a three-stage process for adoptions. First, prospective parents must file an application for the adoption with Social Welfare Office at the provincial level. The Provincial Social Welfare Office must conduct an examination of the adoptive parents and approve or deny the adoption application within three months. After approval, a court judgment is needed for legal recognition of the adoption.

3) Legislation concerning civil and birth registration

Indonesian legislation concerning civil registration and birth registration dates is from the Dutch colonial period. The Dutch colonial administration issued the first ordinance in 1849, which divided the population according to race into three classes\(^ {135}\). This ordinance, together with subsequent amendments, still forms the basis for civil registration in Indonesia today. In 1967, the Ministry of Justice and the Ministry of Home Affairs issued a circular that all Indonesians were to receive citizenship upon registration of birth. This was followed by two decrees in 1986 and 1989 from the Ministry of Home Affairs; the first allowing for birth registration of anyone born before 1986 that had not registered and the second providing for a special birth registration procedure for late registration for newborns that had not been registered within two months of their birth date\(^ {136}\).

The Child Protection Act includes three articles concerning birth registration and introduces several important principles. First, the Act provides that every child must be given an identity from birth and that it shall be stated in a birth certificate\(^ {137}\). Second, the Act states that birth registration and issuance of a birth certificate is the responsibility of the government and not the parents. Third, the Act provides for free birth registration by stating the issuance of a birth certificate shall be free of charge\(^ {138}\).

Implementation of the principles in the Child Protection Act with regard to birth registration is effected by creating procedures at the local level to issue birth certificates\(^ {139}\). Until now, since enactment of the law in late 2002, only the district of Makassar in South Sulawesi Province has issued a local regulation (Perda) providing for free birth registration. The district of Solo in Central Java is in the process of enacting a local regulation that will provide for free registration of births within the prescribed two-month period, but late applicants will be subject to an administrative fee. At the federal level a draft of a national administrative regulation providing for free birth registration has been submitted to the government but has yet to be formally processed\(^ {140}\).

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\(^{134}\) Ministerial Decree No. 44 of 1986.

\(^{135}\) Government Gazette (Staatsblad) 1849 No. 25.

\(^{136}\) Second periodical report by Indonesia to the Committee on the Rights of the Child, page 19, para 79.

\(^{137}\) Act on Child Protection No. 23 of 2002 Art. 27, p 1-2.

\(^{138}\) Act on Child Protection No. 23 of 2002 Art. 28, p 1 and 3.

\(^{139}\) Act on Child Protection No. 23 of 2002 Art. 28, p 4.

\(^{140}\) Interview with Julie Lebegue, UNICEF, April 2004
4) Legislation concerning documents for proof of identity

Identity cards and other documents to prove identity and age is of vital importance when dealing with sexual crimes committed against children, as the age of the child is one of central elements of the offence. The standard Indonesian identity card is the Kartu Tanda Penduduk (KTP). The KTP includes information on name, gender, place and date of birth, marital status, religion, occupation and place of residence, along with a picture. The requirement for KTP is that the applicant be an adult or a minor above 17 years of age. Children younger than 17 years that are or have been married may also be issued a KTP as they are considered as adults according to civil registration law141.

Children attending school are issued student cards that function as identity cards. A student card is issued for each three-year-level of schooling. Children under school-age or older children who do not attend school cannot obtain an identity card. Consequently, these children cannot acquire documents to prove their ages and identities, except for their birth certificates, where possible142.

5) Gaps and Discussion

Adherence to the principles and provisions of the CRC

As noted above, the CRC defines a child as a person below 18 years of age143. Even though Indonesia has signed and ratified the CRC, Indonesian law defines a child inconsistently, with conflicting provisions in separate statutes.

According to the Civil and Private Code, a child gains majority upon marriage. The legal age of marriage is set at 16 years for girl and 19 years for boys, but children may marry earlier after application and dispensation from the civil registry office or the court. As the laws with these conflicting definitions are of equal status – both are Acts – there is uncertainty regarding the definition of the child in Indonesian law. This is further complicated by the fact that the laws use the different terms “child” and “minor” to refer to the same legal status of a person (i.e., a person that has not yet reached adulthood).

Under the Child Protection Act, all other laws and regulations which do not conflict with it shall remain in effect, implying that the conflicting provisions in other laws and regulations are rendered void by the Act144. Thus, if applied to its natural conclusion, this line of reasoning means that the age of majority according to Article 330 of the Civil and Private Code is void. As the Child Protection Act does not regulate civil law, this creates a legal gap, leaving no definition of a child under the Civil and Private Code. If Article 330 is not deemed void, then there exist two conflicting provisions of equal stature that define a child. This creates a risk that courts will use the definition in Civil and Private Code when hearing criminal cases involving child victims. Thus, female children between the ages of 16 and 18 who are or have been married will not be subject to the

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141 See section B(1) above on the definition of child and age of majority.
142 Interview with Antarini Arna, Jakarta.
143 CRC, Art. 1.
144 Child Protection Act Article 19.
Child Protection Act’s provisions for children under 18 years of age. Conversely, judges may choose to apply the Child Protection Act instead of the Civil and Private Code in such cases.

Article 2 of the CRC obliges States to take all measures to prevent discrimination of children on the basis of status and other reasons. The current regulation with regard to the issuance of identity documentation in Indonesia discriminates against children who do not attend school. An unmarried child cannot obtain an Indonesian identity card – KTP – before reaching 17 years of age. Children attending school are issued student cards that function as identity cards but there is no equivalent document for children who do not attend school. As a result, these children cannot obtain an identity card and are discriminated against, with serious consequences; during public order sweeps, the police reportedly determine whether a child should be arrested for vagrancy or immoral conduct based on whether the child has a valid identity card.

Under article 7 of the CRC, a child has the right to be registered at birth. While the law allows for this, current regulations concerning birth registration in Indonesia do not provide for free birth registration and place the responsibility for birth registration on the parents, not the State.

The Child Protection Act states that adoptions may only be carried out in the best interests of the child, but this is subject to the issuance of an administrative regulation, which has yet to be enacted. Until such time, Indonesian law fails to meet the standard set in the CRC.
CHAPTER FOUR: PROCEDURES

I. The Indonesian Criminal Justice System

A. The general courts of Indonesia

1) The court structure

Article 24 of the 1946 Constitution is the basis for administering justice in Indonesia. Under this article, judicial power is executed by one Supreme Court, and other judiciary bodies as established by law. The Supreme Court is independent and free from government influence, and is separate and equal to the legislative and executive branches. The Basic Judiciary Act of 1970 regulates the structure and function of the courts. The general court system consists of three levels: the first, and highest, level is the Supreme Court, based in Jakarta; the second level consists of the High Courts, based in each provincial capital; and the third level consists of the Lower Courts (or District Courts), based in each municipality or regency. These courts have general jurisdiction and hear cases under both criminal and civil law.

The Supreme Court

The Supreme Court is the highest court in the nation and serves as the court of final instance in civil and criminal cases. It is led by a Chief Justice and six Deputy Chief Justices, each in charge of a specific field of law. Cases may be appealed from the High Courts to the Supreme Court only on issues of law since the Supreme Court does not consider the facts of a case. Its main function is to ensure the uniform application of the law. At least three Justices are present at Supreme Court hearings. The Supreme Court is also the court of final instance in jurisdictional disputes between lower courts, and it has the power of judicial review over certain laws and regulations and over some lower court verdicts.

The Supreme Court also has several non-judicial functions. Under its rule-making power, the Supreme Court may establish regulations and procedures related to attorneys, the internal discipline of the courts, and the administration of judicial affairs. Under its supervisory functions, the Court supervises the legal process and the activities of judges and attorneys in the country. Under its advisory function, the Court may provide information and advice on legal matters to other branches of the State.

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145 1945 Constitution Art. 24 and elucidations for the article.
146 Law No. 14 of 1970 concerning the Basic Law on Judiciary.
147 Criminal Code of Indonesia Ch. XIII, Art. 89.
148 1993, The Judicial System in Indonesia (General view), The Supreme Court of the Republic of Indonesia, Jakarta.
149 Law No. 14 of 1970 concerning the Basic Law on Judiciary Art. 10 p 2
150 Law No. 35 of 1999 concerning the Revision of the Basic Law on Judiciary
151 1993, The Judicial System in Indonesia (General view), The Supreme Court of the Republic of Indonesia, Jakarta.
Until recently, the court system was administered by both the Supreme Court and the Ministry of Justice and Human Rights. To further the independence of the judicial branch, authority was transferred entirely to the Supreme Court in May 2004. The Supreme Court now independently controls and administers all aspects of the court system, including financial, organizational and personnel matters, including the appointment and promotion of judges.

The High Courts
The High Courts are general appellate courts in civil and criminal cases. There are 26 High Courts, one in each provincial capital, and they have territorial jurisdiction in the province. A Chief Judge leads each High Court with the assistance of several High Court Judges. Three judge panels conduct trials, and the High Courts may hear appeals on points of law and facts from the lower courts in the province. In addition, the High Courts decide jurisdictional disputes between Districts Courts in the province. The High Courts also have non-judicial functions at the provincial level corresponding to the Supreme Court’s non-judicial functions.

The District Courts
The District Courts are located in each district. There are approximately 300 District Courts in the country, which serve as the courts of first instance in civil and criminal matters originating from the district. They have jurisdiction over cases that take place in the district and where the accused resides in that district. A Chief Judge leads each court and cases are heard either by a single judge or a panel of three judges.

Courts with limited jurisdiction
In addition to the general courts, there are courts with limited jurisdiction in certain areas. The military courts have jurisdiction over the personnel of the armed forces; the religious courts have jurisdiction over Indonesians of Muslim faith in matters of marriage, divorce, inheritance and testaments; and the administrative courts have jurisdiction over all disputes between persons or private entities and State bodies. Each of these courts has a separate structure with lower courts and appeal courts, similar to the general court structure, and the Supreme Court also serves as the courts of final instance for these courts.

Until 2002, the police were considered part of the armed forces, so military courts handled crimes committed by police officers. Pursuant to a recent amendment, this is no longer the case and police personnel are tried as civilians in general courts.

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152 1993, The Judicial System in Indonesia (General view), The Supreme Court of the Republic of Indonesia, Jakarta.
153 Criminal Procedure Code of Indonesia Art. 84.
154 1993, The Judicial System in Indonesia (General view), The Supreme Court of the Republic of Indonesia, Jakarta.
155 The formal names of the courts are the Military Courts of Justice, the Islamic Courts of Justice and the Administrative Courts of Justice.
The jurisdiction of the religious courts is stipulated by law and the courts apply Islamic (Syaria’h) law in its rulings. They are staffed by judges with expertise in Islamic law. The Ministry of Religious Affairs administers the religious courts and the Supreme Court provides judicial supervision.\footnote{1993, The Judicial System in Indonesia (General view), The Supreme Court of the Republic of Indonesia, Jakarta.}

The jurisdiction of administrative courts is limited to disputes between a person or a private body and the public administration. A person may sue the State over a written act or decision by an administrative body at any level that has caused him or her legal consequences. If the administrative body fails to take action based upon a petition by a person, this also may constitute grounds for a lawsuit. Administrative decisions that are of a general nature, based on private law, or not yet final, may not be grounds for a lawsuit. The administrative court may retract a decree or decision and/or issue a new decree if it finds that the original decree is contrary to a valid administrative regulation, constitutes an abuse of power, or is based on arbitrary grounds. The court may also award the plaintiff damages.\footnote{1993, The Judicial System in Indonesia (General view), The Supreme Court of the Republic of Indonesia, Jakarta.}

\textit{The Constitutional Court}

Indonesia’s amended Constitution mandated the creation of a Constitutional Court. The Constitutional Court’s main function is to exercise judicial review over the constitutionality of national laws and regulations passed by parliament or enacted by government. It also has jurisdiction to hear disputes over results of general elections and actions to impeach the president.\footnote{1946 Constitution of Indonesia, as amended, Art. 24.}

\textit{The Human Rights Court}

In 2000, as a direct result of the conflict and violence during East Timor’s move to independence, Indonesia established the Human Rights Court. This court has jurisdiction over cases that constitute gross violations of human rights committed within the territory of Indonesia, and extraterritorial jurisdiction over Indonesian nationals for acts committed outside of Indonesia.\footnote{Act No. 26 of 2000 concerning the Human Rights Court.} Since being established, the Court has tried several cases concerning the violence in East Timor.

\textbf{2) Specialized units or personnel dealing with children}

There are no special units or courts within the general court system for cases involving children. Cases involving juvenile offenders are heard by judges with experience and a special interest and understanding of juveniles. The Chief Judge of each court appoints Juvenile Court judges,\footnote{Act No. 3 of 1997 concerning the Juvenile Court, Art. 10.} who may also be assigned on an informal basis to cases involving children as victims.\footnote{Interview with Judge Pudjoharsoyo, Court of Southern Jakarta, 22 April 2004.}
B. Public Prosecutor’s Office

1) The structure of the Public Prosecutor’s Office

Under Indonesian law, the Office of the Public Prosecutor (OPP) has the authority to carry out prosecutions. The OPP has a hierarchy of three levels corresponding to the general courts. The Office of the General Attorney is based in the capital, has national jurisdiction, and appears on behalf of the government in cases before the Supreme Court. The Office of the High Prosecutor is located in each provincial capital, has jurisdiction within the boundaries of the province, and appears on behalf of the government in cases before the High Courts. The Office of the General Prosecutor is located in each capital city of a regency or municipality, has jurisdiction over the regency or municipality, and appears on behalf of the government in cases before the District Courts.163

In criminal cases, the public prosecutor has general authority to issue criminal indictments, try cases, execute verdicts upon convictions and monitor probation.164

As required by law, the OPP is also responsible for raising public awareness on laws, directing policy with regard to law enforcement, conducting legal research, and collecting statistics on crime. The OPP also represents the State in civil and administrative cases, and may advise state bodies in other legal matters.165

The decentralization process and the principle of regional autonomy do not include the OPP, whose full authority is kept at the national level. The General Attorney heads the office and is in charge of policy direction and administration, and reports directly to the President.166

There are no special units within the Office of the Prosecutor for cases involving children.167 However, certain public prosecutors with experience in prosecuting sexual abuse and violence cases are regularly selected to prosecute such cases.168

C. The Police

1) The structure of the Police

The Police Force of Indonesia is the main law enforcement agency in the country. By law, it must maintain security and public order, enforce the law, and give protection and services to the public.169 The police force has a four-tier structure corresponding to the

163 Act No. 5 of 1991 concerning the Public Prosecution Services of the Republic of Indonesia Arts. 2-4.
164 Act No. 5 of 1991 concerning the Public Prosecution Services of the Republic of Indonesia Arts. 27, p 1.
165 Act No. 5 of 1991 concerning the Public Prosecution Services of the Republic of Indonesia Art. 27, p 2-3 and Art. 28.
166 Interview with Antarini Arna, March 2004.
167 Interview with Ichsan Dewanto, SH, Director of Prosecuting at the Office of General Prosecutor of Southern Jakarta, 26 April 2004.
168 Interview with Anis Hamin, ICMC, March 2004.
local government units in Indonesia. The top tier is the National Police (POLRI) in Jakarta. The National Police is headed by a Chief of National Police, who has the operative and administrative command responsibility for the police force. The Chief of National Police reports directly to the President. The next level is the Provincial Police (POLDA) with jurisdiction covering each province. At the district level, the City Police (POLWILTABES) have jurisdiction in city districts and the Regency Police (POLRES) have jurisdiction in regencies. The last tier is police units at the sub-district or village district (POLSEK).\(^{170}\)

The Criminal Investigations Division (CID) is the unit that conducts criminal investigations and is staffed by police officers trained as criminal investigators. Within the CID, there is a special unit that deals with transnational organised crime, including trafficking in human beings. Based on the research undertaken for this report, there is no special unit within the Indonesian police that deals specifically with prostitution.\(^{171}\)

As with the prosecutor, the police are not part of the decentralization process and the transfer of authority to the regions. The full authority is maintained at the national level.\(^{172}\)

In addition to the police, there are other agencies at various levels of government that have authority to enforce administrative regulations concerning public order and security. These agencies or units do not have authority to conduct arrests, but they are staffed by uniformed personnel and have authority to take anyone into custody who violates certain regulations. They can be described as a type of civilian police or civilian public order officers.\(^{173}\)

TRAMTIB is a civilian police unit that is part of the provincial administration and is responsible for maintaining public order and security. TRAMTIB personnel are authorized to take children into custody and transfer them to the Department of Social Welfare for rehabilitation.\(^{174}\) A similar unit, SATPOL, exists at the district level in city districts, but not in regencies. SATPOL forms part of the city administration, under the authority of the mayor, and is charged with enforcing local administrative regulations on public order (Perda Gangu Ketertipan).\(^{175}\) SATPOL staff may fine and bring into custody anyone who violates public order. TRAMTIB and SATPOL cooperate and coordinate with police and the Department of Social Welfare at each respective level of government in conducting raids and sweeps targeting street children and the brothel complexes.\(^{176}\) While these two units are not part of the law enforcement structure, they

\(^{170}\) Interviews with Tri Priyo, POLRI 8 April 2004; Antarini Arna, March 2004; Naning Pujiyulaningsih, PLAN Indonesia, March 2004.

\(^{171}\) Interviews with Tri Priyo, 8 April 2004; Antarini Arna, March 2004.

\(^{172}\) Interview with Antarini Arna, March 2004.

\(^{173}\) Interview with Antarini Arna and others, March 2004.

\(^{174}\) Interviews with Antarini Arna; Naning Pujiyulaningsih, PLAN Indonesia, March 2004.

\(^{175}\) See chapter three, section III(A)(2)(iii) above for discussion of local administrative regulations.

\(^{176}\) Interview with Laurel MacLaren, Save the Children, 21 April 2004, and others.
are authorised to enforce administrative regulations, including custodial penalties and fines, and to arrest suspects and transfer them to police custody.

2) Specialized units or personnel dealing with children

The anti-trafficking unit
As part of the CID, there is a special unit against trafficking in persons within the section against transnational organised crime. This anti-trafficking unit is established at the national, provincial, and district levels in each respective CID, but it is not established in all districts and provinces. It focuses on those regions where trafficking is identified as a "problem," such as Batam, Medan, West Nusa Tenggara, West and East Kalimantan, and Lampung. The unit in the police headquarters supervises, supports and monitors the work of the lower level units, and may also send investigators to support larger investigations. The unit is a functional unit that is not part of the organisational structure of the police and has no separate budget and staff.

Currently, there are several ongoing efforts to train the unit’s staff to investigate and enforce trafficking offences. In April 2004, the CID’s internal criminal investigation center conducted training under the US Embassy-funded and supported Combating Trafficking in Persons Project. The project developed a police training manual on trafficking and the training is conducted by police trainers from the US. The training is conducted in Jakarta and police investigators from selected provinces throughout Indonesia may participate.

A separate but coordinated project run by International Office of Migration (IOM) conducts training and awareness on trafficking for police investigators in the CID trafficking unit. The training focuses on creating an anti-trafficking unit within the national police, and the main trainer is an expert from IOM. As part of the training, IOM is providing the police 40 computers installed with an IOM-developed database for monitoring trafficking cases. Thirty of the computers will be installed in the field, to allow the police to systematically collect data on offenders, victims and offences. The project is still in the initial phase and plans exist to seek funding for follow-up activities.

The anti-trafficking unit has good cooperation with local NGOs in combating trafficking, and it strives to increase cooperation with civil society as it realises that NGOs have an important role in providing shelters and other services for child victims of trafficking. Further, the unit cooperates closely with the RPK units (discussed below) and the ‘one-stop-crisis centres’ at police hospitals. The unit aims to establish a network between the anti-trafficking unit, RPK-units, ‘one-stop-crisis centres,’ and NGOs to provide services.

177 Interviews with Laurel MacLaren, Save the Children, 21 April 2004; Antarini Ama, April 2004.
179 Interview with James King, ICTTAP, 21 June 2004.
for victims. The main obstacle is that information on existing shelters run by NGOs in the provinces is not easily available\textsuperscript{181}.

Currently, there is no formal procedure for working with trafficking victims, except for referring them to the RPK and to the hospital for medical examination and treatment. A manual of procedures is being developed. The unit distributes copies of the Child Protection Act to investigators in provinces and districts and assists them in following the law when investigating trafficking cases involving children\textsuperscript{182}.

With regard to cross-border cooperation, there are no formal agreements with police forces in neighbouring countries, but there are informal contacts between the anti-trafficking unit and the police in Malaysia and Singapore. The unit has a liaison officer in the Indonesian Embassy in Kuala Lumpur and the unit’s personnel share information and cooperate with Malaysian police in trafficking cases. The situation with Singapore is more problematic as the police in that country reportedly do not recognise any problems with trafficking\textsuperscript{183}.

**RPK-units**\textsuperscript{184}

‘RPK’ means ‘room for special services’, and RPK-units are a recent development in victim protection, created through a police circular under an agreement with the Ministry of Women’s Empowerment. An RPK-unit is a designated room in provincial and district level police offices that is used to receive and interview crime victims. The RPK-unit is for women and children who are victims of violence, including sexual violence, and it is a functional unit under the CID. The standard of the facilities varies between different districts\textsuperscript{185}.

The units are staffed almost exclusively by female police officers with basic training on gender-based violence as well as techniques for treating and interviewing victims of violence in a sensitive and non-threatening manner and environment. A Jakarta-based NGO run by a retired police officer conducts training for these units. According to official data, 208 RPK-units have been established at the provincial level and in districts in 26 provinces in Indonesia. Training is on-going and there are plans for up to 700 police officers to staff RPK-units in the future\textsuperscript{186}.

IOM is conducting a project to train 50 RPK-staff from all over Indonesia on trafficking. The training includes basic awareness on national legislation on trafficking, interviewing techniques, and victim identification. The project was a result of an IOM study that found

\textsuperscript{181} Interview with Tri Priyo, POLRI, 8 April 2004.
\textsuperscript{182} Interview with Tri Priyo, POLRI, 8 April 2004.
\textsuperscript{183} Interview with Tri Priyo, POLRI, 8 April 2004.
\textsuperscript{184} Ruang Pelejangan Khusus means Room for Special Services.
\textsuperscript{185} Interviews with Tri Priyo, POLRI, 8 April 2004; Antarini Arna; Julie Lebegue, UNICEF; Kristin Dadey, IOM, 24 May 2004; Laurel MacLaren, Save the Children, 21 April 2004; Hadi Utomo, Yayasan Bahtera, 7 June 2004; Andi Akbar, Lembaga Advokasi Hak Anak, 7 June 2004.
\textsuperscript{186} Interviews with Tri Priyo, POLRI, 8 April 2004; Antarini Arna; Julie Lebegue, UNICEF; Kristin Dadey, IOM, 24 May 2004; Laurel MacLaren, Save the Children, 21 April 2004 and others; Hadi Utomo, Yayasan Bahtera, 7 June 2004; Andi Akbar, Lembaga Advokasi Hak Anak, 7 June 2004.
that awareness of trafficking among RPK-staff varied greatly and was poor in certain areas\textsuperscript{187}.

RPK-units do not have shelters, but they cooperate closely with children’s and women’s NGOs actively working to combat the commercial sexual exploitation of children and trafficking in women in several districts, such as Yogjakarta, Surabaya, West Java, Jakarta, Medan, and Batam, among others. In addition, the RPK-units cooperate with the ‘one-stop-crisis centres’ for medical treatment and forensic medical examination, where such facilities exist\textsuperscript{188}. According to the Ministry of Social Welfare, the Ministry coordinates closely with the RPK-units and NGOs to facilitate the provision of services for victims\textsuperscript{189}.

According to one NGO, the development of RPK-units is an important improvement in police capacity to provide services for victims in legal proceedings\textsuperscript{190}. In Medan and Manado the RPK units are reportedly very active in trafficking cases and a local NGO believes that now, most cases of trafficking in these areas are handled by the RPK\textsuperscript{191}. One weakness of the RPK-units is that they focus on providing services for women who are victims of domestic violence, and do not focus on children’s specific needs\textsuperscript{192}. Another weakness is that they are not formally integrated into the structure of the police and do not have their own budget\textsuperscript{193}. Therefore, there is a significant lack of resources and authority to investigate cases. Also, the level of awareness of trafficking and commercial sexual exploitation of children among RPK-staff varies significantly between different areas, but generally is low\textsuperscript{194}. According to one legal aid NGO, in some cases RPK staff is not familiar with the Child Protection Act\textsuperscript{195}.

\textit{One-stop-crisis centres}

‘One-stop-crisis-centres’ are units established at provincial level police hospitals in several provinces. Currently, they exist only in 6 or 7 provinces\textsuperscript{196}. The central function of the ‘one-stop-crisis centre’ is to provide medical treatment and to conduct comprehensive forensic medical examinations for victims of violence\textsuperscript{197}. Reportedly, some centers can also provide psychosocial counselling and have a few rooms where victims can stay if necessary\textsuperscript{198}. As discussed above, the centers work closely with RPK-units, NGOs, and the Ministry of Social Welfare.

\begin{footnotesize}
\begin{enumerate}
\item Interview with Kristin Dadey, IOM, 24 May 2004.
\item Interview with Tri Priyo, POLRI, 8 April 2004.
\item Interview with Makmur Sinosi, Director of the Child Directorate of the Ministry of the Social welfare, April 2004.
\item Interview with Siti Lestari, Legal services Staff, LBH APIK, 10 May 2004.
\item Interview with Antarini Arna, Jakarta.
\item Interview with Anis Hamin, ICMC, March 2004.
\item Interview with Antarini Arna, Jakarta.
\item Interview with Anis Hamin, ICMC, March 2004
\item Interview with Kristin Dadey, IOM, 24 May 2004.
\item Interview with Siti Lestari, Legal services Staff, LBH APIK, 10 May 2004.
\item Interview with Anis Hamin, ICMC, March 2004.
\item Interview with Laurel MacLaren, Save the Children, 21 April 2004 and other Save the Children staff.
\item Interview with Antarini Arna, Jakarta.
\end{enumerate}
\end{footnotesize}
II. Criminal process

The criminal justice system is regulated by the Criminal Procedure Code of Indonesia, enacted in 1981. The criminal justice system is an adversarial trial system with a Public Prosecutor, but it is strongly influenced by the continental inquisitorial system with the active role of judges during trial. This section briefly summarizes the general criminal procedures that define the powers of the police, prosecutors and judges during the investigation and trial phase, and highlights the main features of arrests, detention, witness testimony, and evidence.

A. The investigation phase

1) Investigation by the police

All police officers and investigators must take appropriate action and start an investigation upon directly observing a crime, or after receiving a report or other information of an incident that may constitute a crime. The informer must sign reports submitted in writing and oral reports must be transcribed by the police officer and signed by the informer. The investigating police officer must notify the police officer in charge concerning actions taken in the course of the investigation. The police officer in charge then coordinates and guides the investigation and must report to the Public Prosecutor as soon as strong evidence points to the commission of a crime.

The police officer in charge may suspend an investigation due to reasons of law, lack of evidence, or if the act under investigation is not a criminal offence. The officer then must notify the Public Prosecutor and the suspect of the decision.

Transferring a case from the police to the Public Prosecutor is regulated by strict deadlines. When the investigation is completed, the police officer in charge submits the case file to the Public Prosecutor, who must inform the police within seven days if the case file is complete. If the Public Prosecutor believes that further investigation is required, s/he must return the case file to the police for further investigation along with instructions on the additional work needed. The police have two additional weeks to resubmit the case file to the Public Prosecutor.

2) Arrest, detention, bail

The police officer in charge can arrest a suspect where there is ‘strong preliminary evidence’ that the suspect committed a crime. A person can be held in detention for a maximum of 24 hours. After this, the officer in charge can keep the suspect in custody.
only if there is reason to believe that the suspect will escape justice, destroy or damage evidence, or commit further crimes, and the maximum penalty for the offence for which the suspect is being investigated is five years imprisonment or more\textsuperscript{205}. The officer in charge can detain the suspect for a maximum period of 60 days, which can be extended by 50 days and 90 days by decisions of the Public Prosecutor and the Court, respectively. For offences that carry a maximum penalty of more than nine years the detention can be extended for a further 60 days by the Court\textsuperscript{206}. Detention can be deferred in exchange for a money guarantee, such as bail, by the decision of the officer in charge, the Public Prosecutor or a judge\textsuperscript{207}. There are no provisions for mandatory detention.

3) \textit{Collection of evidence, hearing witnesses and suspects}

Police officers and Public Prosecutors are generally authorised to collect and seize evidence, call witnesses and suspects for interviews, and conduct searches of premises or persons to collect evidence\textsuperscript{208}. Where a suspect or witness resides outside the jurisdiction of the officer in charge, the officer can request the police in that jurisdiction to interview the suspect or witness\textsuperscript{209}. In addition, the investigating police officer may solicit experts’ opinions on matters needed for the investigation, including medical forensic evidence\textsuperscript{210}. The officer in charge records all actions taken in this regard in the case file. Suspects must be informed of their right to legal counsel during interviews.

4) \textit{Indictment}

The Public Prosecutor has the authority to indicted the suspect and submit the case to the court, and to close the case for reasons of law, lack of evidence, or if the act under investigation is not a crime. The Public Prosecutor must communicate these decisions to the suspect, the police and the court\textsuperscript{211}.

There are two ways to submit a case to the court, the standard procedure or the summary procedure. The standard procedure is through a written indictment to the court stating the facts of the case. In the summary procedure, the public prosecutor presents the accused and the evidence directly in court. Summary procedure is used in misdemeanour cases where the maximum sentence is three months imprisonment and where the evidence of guilt is clear\textsuperscript{212}.

\textsuperscript{205} Criminal Procedure Code of Indonesia Arts. 19-20. The provision stipulates that for certain listed offences the five year limit is not applied. No offences relevant to the commercial sexual exploitation are included in the list.
\textsuperscript{206} Criminal Procedure Code of Indonesia Art. 29.
\textsuperscript{207} Criminal Procedure Code of Indonesia Art. 31.
\textsuperscript{208} Criminal Procedure Code of Indonesia Ch. IX.
\textsuperscript{209} Criminal Procedure Code of Indonesia Art. 119.
\textsuperscript{210} Criminal Procedure Code of Indonesia Arts. 120, 133.
\textsuperscript{211} Criminal Procedure Code of Indonesia Arts. 137-140.
\textsuperscript{212} Criminal Procedure Code of Indonesia Arts. 143, 203, 205.
B. The trial phase in the first instance

The criminal trial is presided over by a single judge or a panel of three judges, and is attended by the Public Prosecutor, the accused and his/her lawyer, and any called witnesses. The trial follows the following steps:

- The Public Prosecutor reads the indictment;
- Pre-trial motions are made by each party and decided upon by the judge;
- The court ensures that called witnesses are present;
- After consulting the parties, the judge determines the order of witnesses and they begin to provide testimony. The first witness is the victim of the crime;
- The judge questions the accused about each witness’s testimony. The public prosecutor and defender may direct questions to the witness through the judge, and the judge also may direct questions independently to the witness;
- The judge presents the physical evidence, and if necessary, reads written evidence and directs questions to the accused concerning the evidence;
- The Public Prosecutor makes a closing argument and recommends a verdict;
- The accused enters a plea and the defender makes a closing argument. The defender’s recommendation for a verdict and the plea are immediately submitted in writing to the court;
- Closed deliberations take place if needed; and
- The verdict is publicly announced, either immediately or at a later time.

Trial hearings are conducted in public sessions, except in cases concerning offences against decency or when the accused is a child.

The Criminal Code lacks specific references to victims or plaintiffs, except for the rule that victims give testimony first. A victim of a crime is not a party to the trial except as a witness. There are no provisions for a victim to claim damages in a criminal proceeding.

Rules with regard to testimony

The Criminal Procedure Code contains several provisions regarding witnesses and testimony:

- Before testifying, witnesses must take an oath according to their religion. Children below 15 years of age that have not been married and mentally ill persons are exempt from taking an oath, and may testify without an oath;
- Any person related to the accused by blood or marriage within three levels up and down may not testify unless the prosecutor and the accused allow it; this includes divorced spouses and partners that are not married. If witnesses so related to the accused testify, they may do so with or without taking an oath;

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214 Criminal Procedure Code of Indonesia Art. 154. See discussion at section B(1) below on the Juvenile Court.
• If a witness has died, has a valid legal reason not to be present in court, or lives far away, their testimony can be substituted by reading his or her recorded written testimony from the case file. If recorded under oath, written testimony carries equal weight to oral testimony;
• Any differences between written testimony in the case file and oral testimony must be identified and recorded in report of the session;
• If there is reason, the judge may reject questions posed to the witness by the public prosecutor or the accused. Deceptive questions are not allowed;
• The judge may order the accused to leave the courtroom while a witness testifies. Once the accused returns to the courtroom, the testimony must be read to the accused before the trial can continue;
• Witnesses that do not understand Indonesian have the right to an interpreter; and
• The judge independently may call other witnesses or solicit expert opinions if necessary.

Rules of evidence
Indonesian courts follow formal evidentiary rules. The Criminal Procedure Code recognises five categories of evidence: oral testimony from witnesses; expert opinions; written evidence; circumstantial evidence; and testimony from the accused. Other evidence has no legal relevance. Judges are subject to formal rules when deliberating whether evidence sufficiently proves the guilt of the accused. At least two separate and relevant legal facts must be proved for a conviction, and a conviction cannot be based on the testimony of only one witness unless supported by other facts. In determining the credibility of a witness, the judge must consider whether the testimony supports other testimonies and evidence, the witness’s motivation to give incorrect testimony, the witness’s lifestyle and character and any other circumstances that can influence the credibility of the information. Testimony given without an oath can be taken into account only where it supports other testimony given under oath.\(^{216}\)

Verdict and execution of verdict
The court’s decision must be announced in writing in a public session. Among other items, the verdict must contain information about the indictment, the facts and circumstances that led to the conviction, the article of the law that forms the legal basis for the verdict, and the penalty. The accused must be informed of his or her right to immediately accept or reject the verdict or to appeal the verdict to the High Court.\(^{217}\) The Office of the Prosecutor is responsible for executing the court’s verdict.

Summary procedure
The summary procedure is a simplified version of the standard procedure. The Public Prosecutor presents the indictment against the accused, along with witnesses and other evidence, directly to the judge, who sets a time for trial within seven days. The judge may suspend the hearing for 14 days if he or she deems that further investigation is needed.

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\(^{216}\) Criminal Procedure Code of Indonesia Arts. 183-185. The draft Trafficking Bill proposes additional types of evidence for trafficking cases, including electronic records.

\(^{217}\) Criminal Procedure Code of Indonesia Arts. 13, 196-197.
Witnesses are not required to testify under oath. The proceedings and the court’s decision are recorded in the court registry instead of an official session report\textsuperscript{218}.

**C. The Child Protection Act and the Witness Protection Bill**

At the time this report was written, the Criminal Procedure Code was the main law governing general criminal procedures and the treatment and rights of witnesses and victims; however, legislation and legal bills introducing new rules are currently being considered.

The Child Protection Act includes provisions for the special protection of child victims and offenders in the judicial system. To prevent stigmatisation, every child who is a victim of sexual abuse is entitled to have his or her identity kept confidential and to ensure that their identity is not released through the media. Also, child victims of a criminal offence are entitled to legal and other assistance, and shall be provided with physical, mental, and social safety guarantees. Finally, children should have access to information regarding the development of the criminal case\textsuperscript{219}.

The focus of the draft Trafficking Bill is to improve the protection of victims and witnesses of trafficking. To this end, it provides for testifying via modern telecommunications; the right to receive information about investigations and trial proceedings; the right to be accompanied by legal counsel or other support persons during trial; the right to request that the accused exits the courtroom during a victim’s testimony; and the Bill includes criminal sanctions for revealing the identity of a witness. Further, the Bill establishes special interview rooms in police stations for trafficking victims, and requires the State to protect victims before, during and after an investigation if the victim is subject to threats. The bill also introduces the right to compensation from the State, and the right of the victim to claim damages from the accused directly in the criminal process\textsuperscript{220}.

The Witness Protection Bill introduces similar measures for offences other than trafficking. Both of these bills apply equally to adult and child victims and witnesses, and do not include procedures or provisions specifically for children\textsuperscript{221}.

**III. Children in the judicial criminal process**

The following section examines existing laws and legal procedures related to the treatment of children in the judicial system. It also identifies existing informal practices that are used by judicial actors in cases involving children. This section reviews children’s experiences as offenders and as victims in general, with a specific focus on children that are victims of commercial sexual exploitation and sexual violence. Official

\textsuperscript{218} Criminal Procedure Code of Indonesia Arts. 203-209.
\textsuperscript{219} Act No. 23 of 2002 on Child Protection Arts. 17-18, 64.
\textsuperscript{220} Draft Bill on combating trafficking in human beings.
\textsuperscript{221} Interview with Antarini Arna, Jakarta, 2004.
data on treatment of children in the judicial system is severely lacking in Indonesia, so information was collected from existing studies and through interviews with relevant stakeholders and children.222

A. Children as victims

1) Formal/informal practices police/prosecutor/courts

There is little reliable and comprehensive information on the treatment of child victims of commercial sexual exploitation during the judicial process in Indonesia. Existing legislation contains few specific rules on child sensitive procedures for child victims, with the exception of the provisions in the Child Protection Act discussed above. Based on anecdotal information though interviews with key stakeholders, it is possible to provide a fragmented picture of the current situation and roles played by the judicial actors and NGOs in protecting child victims during the judicial process.

According to the police and Public Prosecutor interviewed for this report, these actors are limited in their ability to protect victims by the lack of laws and regulations on victim protection. Under current regulations, the Public Prosecutor’s office has no formal responsibility to protect victims; their mandate is solely to prosecute cases. According to the police, it is partly a matter of resource allocation. If the police were required by law to protect victims they would need to be allocated funding for such activities223.

The establishment of RPK-units appears to have improved the situation with regard to interviewing victims in an appropriate manner224, at least in certain areas. Similarly, the existence of ‘one-stop-crisis centres’ at police hospitals is a positive development.

According to the Ministry of Social Welfare, it facilitates the process to provide services for victims of trafficking, but it is unclear whether the Ministry itself provides direct services to victims225.

During the investigation phase, NGOs play an important role in providing necessary services and support to children, such as226:

- Accompanying children to the police station to file a report and to and from the police station for interviews;

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222 First hand accounts by children of their experiences in the judicial criminal process can be found in the Children’s Consultation Indonesia Report.
223 Interviews with Tri Priyo, POLRI, 8 April 2004; Ichsan Dewanto, SH, Director of Prosecuting at the Office of General Prosecutor of Southern Jakarta, 26 April 2004.
224 See discussion above in section C(2) on RPK-units.
225 Interview with Makmur Sinosi, Director of the Child Directorate of the Ministry of the Social Welfare, April 2004.
226 Interviews with Antarini Arna; Julie Lebegue, UNICEF; Laurel MacLaren, Save the Children, 21 April 2004, and others; Hadi Utomo, Yayasan Bahtera, 7 June 2004; Andi Akbar, Lembaga Advokasi Hak Anak, 7 June 2004; Siti Lestari, Legal services Staff, LBH APIK, 10 May 10 2004; Anis Hamin, ICMC, March 2004; Mohammad Farid, National Human Rights Commission, March 2004.
• Accompanying children to and from the hospital for medical examinations;
• Accompanying children to court for trials;
• Providing short-term stay in a secure environment for victims in a shelter if it exists but also in offices or private homes of staff;
• Monitoring police interviews with children to ensure that the police treat children appropriately;
• Providing legal advice;
• Providing or referring children to medical services and counselling;
• Repatriating trafficked children; and
• Monitoring cases and informing child victims and their families of developments in legal proceedings.

Information from those interviewed point to the use of some informal practices by individual judges during trials to protect child victims. The entire court session is usually held in camera when the victim is a child to protect the child from the media. The accused leaves the courtroom when a child victim gives testimony. The judge also may use simple language and speak in a soft voice when directing questions to children. If the child is so traumatised that s/he cannot testify, the judge may coordinate with the parents and NGOs to assist the child.

As mentioned earlier, this is anecdotal information. The services available and the treatment of child victims by judicial actors depends entirely on the individuals involved in each case and the existence of NGOs able to provide services.

2) Awareness and training among police/prosecutors/judge

Awareness among the personnel inside the judicial system of children’s rights, special protections for children, and commercial sexual exploitation of children is important to ensure that child victims are treated in a sensitive manner, according to their special needs and vulnerabilities. In addition to awareness, personnel that work with children should receive training to be familiar with applicable laws and procedures and be able to treat child victims appropriately. The following section examines the levels of awareness of children’s rights and national child protection legislation among police, judges and prosecutors. Further, it explores existing training and awareness-raising efforts targeting judicial institutions as well as functional or organisational units targeting issues related to the commercial sexual exploitation of children. This information is derived from interviews with stakeholders from relevant government ministries, the police, the Public Prosecutor’s office, judges, local NGOs, INGOs, and UN agencies.

i) Judges

General awareness and training
There is low awareness among judges of children’s rights, the Child Protection Act, and the commercial sexual exploitation of children, and varies greatly among districts due to

227 The Criminal Procedure Code allows this in cases concerning offences against decency.
228 Interview with Judge Pudjoharsoyo, Court of Southern Jakarta, 22 April 2004.
two factors. First, in districts where strong NGOs advocate and work on children’s rights, judges have greater awareness of issues related to the commercial sexual exploitation of children, and appropriately apply child protection laws and procedures in legal proceedings. Second, there is a similar result where NGOs, INGOs, or UN agencies are involved in education efforts or child rights projects, but this seems to occur in isolated instances. All stakeholders interviewed agree that judges need further training, especially at the national level.

Judges lack training on the Child Protection Act and how to apply it. Even if most judges are aware of the law, they do not know how to implement it and so prefer to use the familiar provisions in the Criminal Code. Several interviewees noted that there seems to be a misconception among judges that the government must issue implementation guidelines before the law can be applied. This confusion also exists among lawyers and activists lobbying for reform. Other judges are reportedly waiting for a precedent to be set for how to apply the law. Even if Indonesia does not have a formal system of case law, cases from other districts assist judges to interpret and apply new laws. A judge is more confident to apply a new provision if it has been used in a similar case in another district. Over time, the Child Protection Act and draft Trafficking Bill, in and of themselves, may assist in raising awareness of the commercial sexual exploitation of children.

According to one district judge, judges receive training once each year on a variety of subjects, and one of the sessions is often on child rights. Based on the information available, however, it appears that judges have not received any specific training on the Child Protection Act.

ii) Public Prosecutors

General awareness and training
According to the Director of a General Prosecutor’s office in the district of Southern Jakarta, child rights is a relatively new subject for Public Prosecutors; they have received occasional training from the Ministry of Women’s Empowerment and attended conferences and seminars on child rights, but the Office of the Public Prosecutor does not have a specific program on child rights. This corroborates the view of local NGOs that Public Prosecutors generally have low awareness of children’s rights and child protection. All stakeholders agree that more training and education efforts are necessary.

232 Interview with Judge Pudjoharsoyo, Court of Southern Jakarta, 22 April 2004.
233 Interview with Ichsan Dewanto, SH, Director of Prosecuting at the Office of General Prosecutor of Southern Jakarta, 26 April 2004.
As with judges, Public Prosecutors – even those aware of the Child Protection Act – still rely upon Criminal Code provisions in their indictments. A legal aid NGO in Jakarta reports that lawyers from the NGO must be present and apply pressure in order to have prosecutors use the Child Protection Act.

iii) The police

General awareness and training
Police personnel in certain areas have received more training and are more aware of children’s rights and child protection issues as a result of several training activities, as well as cooperation between NGOs and UN agencies. Awareness of child protection, however, is still low in most police stations, and training activities reach a relatively small number of police officers of the total number in Indonesia.

All the stakeholders interviewed, including police officers themselves, find that awareness and knowledge on child protection is poor, and that more training efforts are necessary. Still, NGOs and UN agencies believe that it is easier to cooperate with the police on child protection and that there is a will for reform in the police force, perhaps more so than within the court and prosecutorial structures. This may be explained by a general desire to change the image of the police force to one that serves and protects citizens rather than repressing citizens, as occurred during the New Order regime before 1998.

Police investigators are more likely to be aware of child protection issues, while uniformed police at the sub-district or village level are less likely to have such knowledge. As with judges and prosecutors, awareness levels vary greatly between districts. The police in districts with strong child rights NGOs, and where cooperation between the police and NGOs is strong are more likely to be aware of child protection issues and enforce laws against the commercial sexual exploitation of children.

General police awareness of the Child Protection Act and commercial sexual exploitation of children is inadequate. NGOs believe that many police investigators are unaware of the provisions of the Child Protection Act on sexual exploitation of children. According to the Ministry of Women’s Empowerment, there is also a lack of knowledge about trafficking in children, which results in children not being protected to the full extent of the law.

234 Interview with Siti Lestari, Legal services Staff, LBH APIK, 10 May 2004.
235 See discussion above in section C on police special units.
236 Interview with Dr. Supalarto Sudibyo, Senior Staff Office of Deputy IV, Ministry of Women’s Empowerment, 27 April 2004.
238 Information compiled from several sources interviewed and the fact that only investigators have received any training.
239 Interview with Dr. Supalarto Sudibyo, Senior Staff Office of Deputy IV, Ministry of Women’s Empowerment, 27 April 2004.
According to the police, there are no internal training programmes specific to child protection or child rights in the mandatory curriculum at police academies or in the workplace. According to the Ministry of Women’s Empowerment, the department conducted child rights training for the general public and senior level law enforcement officials. The Ministry also has developed a training module on child rights which was piloted in Yogyakarta and East Java.

3) Gaps and Discussion

The following comparative review measures national criminal procedures and practices against international standards on the rights of children who interface with the judicial system.

**Adherence to the principles and provisions of the CRC**

As per Article 12 of the CRC, a child has the right to express his or her views freely, and those views shall be given due weight in accordance with the child’s age and maturity. This right suggests that children may testify in any judicial procedure affecting them, based on a child’s age and maturity. Under the Criminal Procedure Code, children below 15 years of age may give testimony without taking an oath. This would normally be viewed as a procedural rule that is sensitive to child victims’ special needs. Considering that mentally ill persons are included in the same exemption, it is clear that the underlying reason for the provision is that children are viewed as unreliable and untrustworthy as witnesses. In combination with a supplementary evidentiary rule that testimony given without an oath can only be taken into account if supported by other testimony given under oath, this appears to violate the spirit of the CRC that children have the right to freely express their views in the course of legal proceedings.

**Adherence to the provisions in the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography**

Article 8 of the protocol requires States to adopt appropriate measures to protect the rights and interests of child victims of commercial sexual exploitation of children at all stages of the criminal justice process. This requires the State to recognize the vulnerability of child victims and adopt procedures for their special needs, including their special needs as witnesses. The Criminal Procedure Code of Indonesia contains few procedures in this regard that are consistent with the protocol. There are only two procedural rules that recognise the special needs of child victims of commercial sexual exploitation; trials concerning offences against decency, including cases involving sexual crimes against children, can be heard in closed session, and the judge may order a defendant to leave the courtroom during the testimony of a witness.

Article 8 also requires States to protect the privacy and identity of child victims, and to take measures in accordance with national law to avoid the inappropriate dissemination

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240 Interview with Tri Priyo, POLRI, 8 April 2004.
241 Interview with Dr. Supalarto Sudibyo, Senior Staff Office of Deputy IV, Ministry of Women’s Empowerment, 27 April 2004.
of information that could lead to the identification of child victims.\textsuperscript{242} The possibility of closed sessions mentioned above protects the privacy of child victims. In addition, the provision in the Child Protection Act that child victims of sexual abuse are entitled to have their identity kept confidential also aligns to the Optional Protocol\textsuperscript{243}.

Article 8 of the Optional Protocol further requires States to provide appropriate support services to child victims throughout the legal process. The provision in the Child Protection Act that child victims of criminal offences are entitled to legal and other assistance serves this purpose and meets the standard set by the Optional Protocol\textsuperscript{244}.

Article 8 of the Optional Protocol requires States to adopt appropriate measures to protect the rights and interests of child victims of commercial sexual exploitation at all stages of the criminal justice process, and seven specific areas where special measures are needed. The following section lists the gaps in Indonesian criminal procedural rules with regard to these areas outlined in the Optional Protocol:

\begin{itemize}
\item[i)] Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses.
\item[ii)] Informing child victims of their rights, their role, and the scope, timing and progress of the proceedings and the disposition of their cases.
\end{itemize}

The police force of Indonesia has not established formal procedures to ensure that child victims of commercial sexual exploitation are treated appropriately. The RPK-units are a step forward, but they do not meet the Optional Protocol standard as the units do not focus on the needs of child victims, they do not have a formal work procedure, they are inadequately trained on commercial sexual exploitation of children, and they lack authority and resources.

The Criminal Procedure Code does not contain procedures for child victims, and the concept of a victim of crime does not exist except in the rule that such witnesses testify first.

\begin{itemize}
\item[ii)] Informing child victims of their rights, their role, and the scope, timing and progress of the proceedings and the disposition of their cases.
\end{itemize}

The Criminal Procedure Code fails to contain rules mandating that child victims receive information about legal proceedings in which they may be involved. The Child Protection Act, however, requires child victims of a crime to have access to information regarding the development of the criminal case, but does not require that the court or prosecutor provide this information to the child.

\textsuperscript{242} According to the Children’s Consultation Report, Indonesian journalists are not working with law enforcement or civil society to prevent the dissemination of the identity of children involved in cases related to their commercial sexual exploitation. Accordingly, it is not uncommon for photos of children during a police round-up to be broadcast on television or published in a newspaper. A discussion on this issue can be found in Section V of the Report.

\textsuperscript{243} It is uncertain to what extent this provision is applied in the courts.

\textsuperscript{244} It is uncertain to what extent this provision is applied in the courts.
iii) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law.

The Criminal Procedure Code does not contain any rules or provisions to this effect.245

iv) Providing appropriate support services to child victims throughout the legal process.

Research conducted for this project suggests that services for child victims of commercial sexual exploitation in Indonesia are inadequate. The police and the Public Prosecutor have no formal responsibilities in this regard, and, according to the Ministry of Social Welfare, its role is limited to facilitating the provision of services for victims from other actors. NGOs provide services to child victims of commercial sexual exploitation in the areas where they work, provided they have the capacity and resources to do so.246

v) Providing, in appropriate cases, for the safety of child victims, as well as of their families and witnesses on their behalf, from intimidation and retaliation.

The Criminal Procedure Code contains no rules on this topic. The police force is responsible for protecting the general public, but there are no specific procedures or rules mandating special protection for child victims. Article 64 of the Child Protection Act states that child victims of a criminal offence are entitled to legal and other assistance, as well as physical, mental, and social safety guarantees. Research and interviews conducted for this project reveal that this provision is not applied comprehensively. NGOs offer these services to child victims of commercial sexual exploitation and their families in the areas where they work, provided they have the capacity and resources to do so.247

vi) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

Child victims may claim damages or compensation in a criminal trial, but the Criminal Procedure Code does not contain any rules to ‘fast track’ cases involving child victims of commercial sexual exploitation.

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245 According to the Children’s Consultation Report, Indonesia, when arrested, children are routinely denied an opportunity to speak, prevented from inquiring as to the reason for their arrest, and in some cases, threatened and assaulted if they persistently express their concerns. A full discussion on the treatment of child victims by law enforcers can be found in Section V of the Report.

246 Among the services provided by NGOs are free health and medical treatment, skills training, and a means for children to store their savings. Overall, children consulted agreed that NGO shelters provide a positive environment where they can expect proper care. The children’s experiences with NGOs can be found in Section V of the Children’s Consultation Report, Indonesia.

247 Children interviewed for the Children’s Consultation, Indonesia claimed that they were never provided legal assistance or otherwise helped by lawyers throughout legal proceedings. In one particular case cited a counsellor was prevented by the Court to assist the child. A discussion on victims’ treatment within the criminal justice system can be found in Section V of the Children’s Consultation Report, Indonesia.
vii) Ensuring that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

Uncertainty of a child’s age is an obstacle in enforcing laws against commercial sexual exploitation in Indonesia, but the government has not adopted any measures to repair this.

viii) Ensuring that the criminal justice system considers the best interests of the child in its treatment of child victims of commercial sexual exploitation.

The principle that child protection shall be based on the best interests of the child is expressed in Article 2 of the Child Protection Act, but the Criminal Procedure Code does not contain any rules or provisions reflecting this principle.

ix) Taking measures to ensure appropriate training, particularly legal and psychological training, for persons who work with child victims of commercial sexual exploitation.

There is little training for personnel in the justice system, and the existing institutional training programmes do not comprehensively address issues related to the commercial sexual exploitation of children. There are currently several training programmes administered by NGOs and UN agencies that address issues related to commercial sexual exploitation of children, but they reach a very limited number of persons.

B. Offenders / juvenile justice system

The following section reviews the system for administering juvenile justice in Indonesia. In the context of commercial sexual exploitation of children, it is important to review juvenile justice laws because children found in child prostitution, child pornography and child trafficking may be prosecuted as offenders, rather than treated as victims in need of assistance and support.

1) National procedures for administration of juvenile justice

The 1997 Juvenile Court Act elaborated rules and procedures for child offenders in the Indonesian criminal justice system. The law applies to children between the ages of eight and 18 years of age who are involved in criminal cases. These cases are investigated under specific procedures and heard in Juvenile Court.

Investigation of children

Juvenile Offences Investigators – police officers with experience, interest in, and understanding of children – are the only officers who may investigate offences committed by children. These investigators must interview child suspects in a familiar setting, maintain the confidentiality of the case, and refer to children by initials only. The investigators are advised by a Rehabilitation Counsellor from the Rehabilitation Office of the Ministry of Justice and Human Rights, who examines and produces a report on the

248 Act No. 3 of 1997 concerning the Juvenile Court Art. 1.
child’s personal circumstances, and who provides recommendations on action to be taken on a case by case basis. The child has the right to legal advice during investigation and trial249.

**Arrest and detention of children**
Specific rules apply to the arrest and detention of children. First, a child shall only be detained on clearly stated grounds after due consideration of both the child’s and society’s interests. Children must be detained in special Juvenile Detention Centers that are separate from adults, and children have the right to receive education and training during their detention. The time limits for detention are somewhat shorter than for adult suspects. A child may be arrested for 24 hours and detained by the police for a maximum of 30 days before his or her case is given to the prosecutor. A Public Prosecutor can detain a child for a maximum of 25 days, which can be extended by a judge for a further 45 days250.

**The Juvenile Court hearing**
A Juvenile Court is a general court session that is closed to the public and presided over by a single judge who has experience, a special interest in, and understanding of children. Similarly, Public Prosecutors appearing in Juvenile Courts are required to have experience and interest in handling cases involving child offenders. The accused, the parents or guardians, the Juvenile Offences Investigator, and the Rehabilitation Counsellor must all be present at trial. The judge, prosecutor and defender must refrain from wearing official robes during a session of the Juvenile Court. Aside from these requirements, Juvenile Courts do not follow special procedures in trials, except that the Rehabilitation Counsellor must submit a report to the court and the parents or guardians of the child may make a submission on behalf of the child offender before the judge announces his or her decision. The decision must be announced in an open session and the judge must consider the Rehabilitation Counsellor’s report251.

**Sentencing**
The Juvenile Court Act includes both mandatory and optional sentencing provisions for child offenders. The mandatory provisions state that a child may not be subject to capital punishment, and sets the maximum penalty at half of the maximum prescribed by the offence. Further, a child under 12 years of age may not be sentenced to imprisonment. A child offender convicted of a misdemeanour may be returned only to his parents, guardians or to the Department of Social Welfare for education and training.

In other cases, judges have the following options for disposition:
- Imprisonment;
- Confinement;
- Imposition of a fine;
- Placing the child under supervision;
- Returning the child to the custody of the parents or guardians;

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249 Act No. 3 of 1997 concerning the Juvenile Court Arts. 8, 41-42, 51, 56.
250 Act No. 3 of 1997 concerning the Juvenile Court Arts. 44-47, 60.
251 Act No. 3 of 1997 concerning the Juvenile Court Arts. 6-10, 53, 56, 59-60.
• Transferring the child to a state authority for education and vocational training; or
• Transferring the child to the Department of Social Welfare for education and training.

If the sentence is less than two years it can be conditional, and the Rehabilitation Office is charged with ensuring that the child complies with the conditions. Children sentenced to imprisonment or confinement must be placed in juvenile detention centers used exclusively for children and separate from facilities for adult offenders. Children also have a right to receive training and education while serving their sentences.  

The Child Protection Act
The Child Protection Act contains several principles consistent with international standards for the special protection of children in conflict with the law. Most importantly, the Child Protection Act requires that children receive humane treatment in accordance with their dignity and rights, and that any sanction imposed must be in their best interests. Arrest, detention or criminal prosecution of a child shall only be used as a last recourse.

Further, under the Child Protection Act, the identity of a child shall not be released to the media, and children involved in criminal judicial proceedings are entitled to legal and other assistance, including counselling. Authorities must provide special infrastructure and facilities for children, and children deprived of their liberty must be separated from adults; also, authorities must continuously monitor and record the development of all children who are in conflict with the law.

The Juvenile Court Act has not been subsequently amended to reflect the principles and provisions outlined in the Child Protection Act.

2) Formal and informal practices in the judicial system

Indonesian law on children in conflict with the law – the Juvenile Justice Court Act and the Child Protection Act – reflect several important principles in international law, such as the principles that detention should only be used as a last recourse, and that any action taken shall consider the best interests of the child. Nevertheless, the status of Indonesian child offenders is unsatisfactory.

According to a recent situational analysis on the juvenile justice system by UNICEF, prison sentences for minor offences are commonplace in Indonesia. The study found that Indonesian judges routinely sentence child offenders to custody in 80-90% of cases, and that the length of these sentences is increasing. Data from 2001 demonstrates that 58.2% of the sentences were longer than one year, up from 50.9% in 1999. The detention

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252 Act No. 3 of 1997 concerning the Juvenile Court Arts. 23-26, 29, 60.
253 Act No. 23 of 2002 on Child Protection Arts. 17, 64.
254 Act No. 23 of 2002 on Child Protection Arts. 64.
of children in prisons and correction institutions for adults is commonplace, notwithstanding the Juvenile Justice Court Act’s requirement that children be detained in facilities separate from adults. Of the 4325 children detained between January and May 2002, 84% were placed in correctional institutions for adults. In the same period, of the 9465 children who were transferred to state guardianship – a lesser form of custodial sentence – 53.3% of them were placed in institutions with adults256.

The majority of children sentenced to custody are boys; 1755 boys compared to 69 girls257. Similarly, girls enter the formal juvenile justice system in relatively small numbers compared to boys. As noted elsewhere in this report, soliciting for prostitution is not a crime under Indonesian law, but it is considered an offence under local administrative regulations on public order258. As a result, research conducted for this report reveals that girls arrested for immoral conduct in public places are often transferred to the Ministry of Social Welfare for placement in a rehabilitation center or ‘state house’ for education and training259. Technically this is not considered a punitive custodial sentence, but an education program to reform a girl’s ‘immoral’ ways260. These girls are referred to as Wanita bukan sankila, or women without morals.

It is unclear what institution has the authority to decide on a girl’s placement and whether a girl is charged with an offence. According to NGOs, the police directly give these girls to the Department of Social Welfare, without court proceedings, but there are also cases where a judge decides upon such placement. One NGO noted that the practice is not transparent, and it is not clear to the girls themselves whether they are being charged with an offence. The Department of Social Welfare, with assistance from the police and other public order staff, conduct raids in which these girls are detained in order to enforce social mores, not necessarily to rescue girls from commercial sexual exploitation.

258 See discussion above in chapter three, section III(A)(2)(iii) on local regulations.
259 Under Act No. 3 of 1997 concerning the Juvenile Court Art. 24.
260 The Children’s Consultation Report, Indonesia suggests that State Houses are poorly funded, understaffed and overcrowded. Accordingly, the most commonly cited negative experience of children in care of a State House is abuse by staff and security, spoiled food, and in specific cases, being placed with adults and “lunatics”. However, the children remarked that certain benefits exist, including training programmes and apprenticeships. This issue can be found in Section V of the report.
IV. Law enforcement and data collection

A. Arrests, convictions, cases

1) Child Prostitution

In Indonesia, there is little information available on arrests, prosecutions or convictions for facilitating the forced prostitution of children. No official criminal statistics for this category of offences are documented.\(^{261}\)

Research and interviews conducted for this report suggest that weak legislation in Indonesia makes it difficult, if not impossible, to arrest and bring charges against sex exploiters who pay to have sex with children. For example, the Criminal Code does not criminalise sex abusers unless they rape a child,\(^{262}\) so children who are sexually exploited in brothels or on the street do not benefit from this law as it is viewed as consensual sex and may not involve force or violence which is required for the rape offence.\(^{263}\) Even the new Child Protection Act does not expressly make it a crime to purchase sexual services from a child if the child consents to the transaction.\(^{264}\) In addition, under the current laws where a child is considered to be an adult upon marriage, it is not illegal to purchase sexual services from a married child who is less than 18 years of age.\(^{265}\) There is also a general attitude among law enforcement personnel, and even society in general, that if a child is forced into soliciting for sex, then the sex abuser who pays for sex with that child is not to blame.\(^{266}\) Further, the lack of proper age identification means that many children forced to sell sexual services have false identity documents.\(^{267}\)

In contrast, there are signs that the Child Protection Act is influencing law enforcement. Reports suggest that the Act has been and is being used to prosecute sex offenders in individual cases around the country.\(^{268}\) Indeed, in May 2004 in Bali the Child Protection Act was used in a highly publicized case to prosecute a former Australian diplomat who was sentenced to 13 years imprisonment and a fine of USD 17,000 for sexually abusing and sodomising two boys aged 12 and 14 years of age. In announcing the verdict the presiding judge stated that the diplomat was “legally and convincingly proven guilty of committing a continuous obscenity against children”. This was the first time that the Child Protection Act was used in that court.\(^{269}\)


\(^{262}\) See discussion above in chapter three, section III(A)(2) on provisions against child prostitution.

\(^{263}\) See discussion above in chapter three, section III(A)(2) on provisions against child prostitution.

\(^{264}\) See discussion above in chapter three, section III(A)(2) on provisions against child prostitution.

\(^{265}\) See discussion above in chapter three, section II(B)(1) on discussion of the definition of child.


\(^{267}\) Interview with Tri Priyo, POLRI, 8 April 2004.


There is a similar lack of enforcement against sexual exploiters who facilitate the forced prostitution of children. There is little evidence that these ‘middlemen’ are targeted by law enforcement, due to weak legislation and limited application of the Child Protection Act\textsuperscript{270}. Although technically illegal under the Criminal Code, brothels and the facilitation of prostitution are tolerated and regulated within designated areas, which allows the forced prostitution of children to be openly facilitated, using falsified identity cards. The police acknowledge that this situation is difficult to combat\textsuperscript{271}. The lack of reported cases and prosecutions of sexual exploiters who facilitate hidden or street prostitution outside of brothels further indicates the weakness of existing law enforcement efforts against sex exploiters.

2) \textit{Trafficking in children for sexual purposes}

Law enforcement against trafficking in children has been more successful than law enforcement efforts against the forced prostitution of children. Most law enforcement activities focus on trafficking in Indonesia, and the available data is not disaggregated by age or gender, or purpose of trafficking, thereby providing only a general view of the problem. Data from the anti-trafficking unit demonstrates the number of trafficking cases investigated and completed by the police between 1999 and 2003. It is impossible to draw any conclusions on how effective law enforcement is, but the chart below shows that police are investigating cases of and enforcing laws against trafficking. There is no information on whether these cases have resulted in court convictions.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
\hline
Investigated & 175 & 24 & 178 & 148 & 125 \\
Completed & 134 & 16 & 128 & 90 & 67 \\
\hline
\end{tabular}
\caption{Cases of trafficking of women and children in Indonesia\textsuperscript{272}}
\end{table}

PKPA, a child rights NGO in Medan, North Sumatra, collected data by monitoring police and court cases and this information indicates that the laws against trafficking are being enforced; however, in 147 recorded cases, only 13 cases were verified to have resulted in convictions, with the highest sentence imposed being 18 months imprisonment.

\textsuperscript{270} Info compiled from several sources interviewed. Interviews with Antarini Arna; Julie Lebegue, UNICEF, April 2004; Mohammad Farid, National Human Rights Commission, March 2004.

\textsuperscript{271} Interview with Tri Priyo, POLRI April 8\textsuperscript{th} 2004.

\textsuperscript{272} Presentation by Pak Priyo CID POLRI, Trafficking Conference in Batam, February 2004.
Cases of trafficking of women and children in North Sumatra

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of cases</th>
<th>Processed in the Police</th>
<th>Processed in the Court</th>
<th>Convictions</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>14</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>Cases cannot be identified</td>
</tr>
<tr>
<td>2000</td>
<td>23</td>
<td>-</td>
<td>-</td>
<td>5</td>
<td>Imprisonment for one to five years in one case. Other cases cannot be identified</td>
</tr>
<tr>
<td>2001</td>
<td>39</td>
<td>36</td>
<td>-</td>
<td>3</td>
<td>Imprisonment for 1.5 years in one case. Other cases are not known. Some may have been discarded for not having sufficient evidence</td>
</tr>
<tr>
<td>2002</td>
<td>26</td>
<td>24</td>
<td>-</td>
<td>2</td>
<td>Imprisonment for nine months, and ten months. Other cases are not known</td>
</tr>
<tr>
<td>2003</td>
<td>45</td>
<td>38</td>
<td>4</td>
<td>3</td>
<td>Imprisonment for 1.5 years in one case</td>
</tr>
<tr>
<td>Total</td>
<td>147</td>
<td>98</td>
<td>4</td>
<td>13</td>
<td></td>
</tr>
</tbody>
</table>

3) Child Pornography

To date, there is virtually no information about prosecutions in Indonesia for producing or distributing child pornography. If these cases exist, they are not being reported. Since Indonesia lacks legislation specifically targeting child pornography, these cases may be recorded as sexual abuse offences, rather than as child pornography offences. From the available information, it appears that child pornography is not a priority for Indonesian law enforcement agencies.

B. Data collection and registries

Collecting data on and monitoring cases of commercial sexual exploitation of children is identified in the Stockholm Agenda for Action as a key measure for effective action against commercial sexual exploitation of children274. National crime statistics must be disaggregated by type of offence as well as by victim and offender profiles to comprehensively analyze and monitor actions to combat commercial sexual exploitation of children275.

In Indonesia, there is little relevant data on cases of commercial sexual exploitation of children. There are no official statistics on the number of cases of commercial sexual

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274 Stockholm Declaration and Agenda for Action, 2. Coordination and Cooperation (b).
275 Stockholm Declaration and Agenda for Action, 2. Coordination and Cooperation (b).
exploitation of children, or on the victims and offenders involved in such cases that have been processed by the justice system.\textsuperscript{276}

Statistics on child victims of commercial sexual exploitation are similarly lacking. There is no government agency systematically collecting information about these child victims. Each NGO that works with child victims of commercial sexual exploitation may have individual data on the number of children they assist, but again, this data is not collected and organised among different NGOs.\textsuperscript{277}

A recent development related to data collection and monitoring may improve the situation. As mentioned above, IOM is starting a project that involves providing computers and database software to the Criminal Investigations Division to monitor trafficking cases, including victim profiles. If successful, this project may produce relevant data on child trafficking for sexual purposes.\textsuperscript{278}

### C. Gaps and Discussion

According to the police, a main obstacle to combating child prostitution is the prevalence of falsified identity cards. If a child’s age cannot be established with certainty, the police do not have probable cause to start a criminal investigation. Identity cards with false information – cards that are issued using ‘real’ paper and stamps, but with incorrect information – seem to permeate Indonesian society. Instead of following the correct administrative procedure to obtain an identity card upon relocation, for example, it is common to use a broker’s services to obtain an identity card with the desired information, because the official procedure is too complicated, time-consuming, and applicants are subject to ‘illegal’ fees even when following the correct procedure.\textsuperscript{279}

Another method used to obtain falsified identity cards is to falsify the required supporting documents. For example, parents who want their daughters to migrate in order to obtain work as domestic helpers may ask village officials to sign a document stating that the girls are 18 years of age, and this ‘proof’ is then used to obtain identity cards. The village officials may sign the letters with good intentions of helping the family, but this creates complications if the girls are later trafficked and forced into prostitution. With identity cards showing the girls to be 18 years of age, the police cannot take action. Criminals are able to take advantage of this system to force underage girls into prostitution, and false identity cards further complicate the police and civil administration’s ability to effectively address this problem.


\textsuperscript{278} Interview with Kristin Dadey, IOM, 24 May 2004.

The lack of safe houses and shelters presents another obstacle for police investigations into trafficking cases. As a result, after the police file a preliminary report, there is no safe place to shelter child victims during the ensuing investigation and court proceedings. The child may be too scared to testify so s/he deliberately stays away, provides an incorrect address, or returns home for personal reasons or after being persuaded to do so by the trafficker. Later, when the police are unable to locate the child for further investigation or testimony at trial, the case effectively ends. This is a common problem for investigations conducted by the anti-trafficking unit.

Interviews reveal that relevant data on cases of commercial sexual exploitation of children does not exist. Police reports may not be recorded and filed consistently, resulting in incomplete and inconsistent data on criminal cases filed; case files may be recorded in writing or using computers but not systematised in an appropriate manner; and data is not systematically collected and reported to the district, provincial and national levels of the police. According to one NGO, the only way to obtain data on cases of commercial sexual exploitation of children is to visit each individual sub-district and district police station and read through the case files, if permitted to do so. The work of the police is generally opaque, and reports suggest that it may be difficult to obtain information on specific individual cases, let alone statistics. Existing police figures are generic, and focus on recording fluctuations in crimes committed on an annual basis, rather than information about the victim or circumstances of crimes.

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280 Interview with Tri Priyo, POLRI, 8 April 2004.
281 Interview with Hadi Utomo, Yayasan Bahtera, June 7 2004.
CHAPTER FIVE: RECOMMENDATIONS

The following chapter outlines a series of recommendations based on the gaps identified under each section of the report with regard to legislation and legal procedures against the commercial sexual exploitation of children.

RECOMMENDATIONS CONCERNING NATIONAL LEGISLATION AGAINST THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

• Withdraw reservations to the U.N. Convention on the Rights of the Child, and upgrade the ratification instrument to an Act

• Ratify the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography and the UN Trafficking Protocol

• Enact the Bill against Trafficking in Persons and revise the definition of trafficking in the Bill to fully adhere to the definition contained in the UN Trafficking Protocol regarding trafficking of children

• Enact the Bill on Witness Protection and revise it to protect child victims during the judicial process as required under Article 8 of the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography

• Revise the draft Bill on pornography to prohibit child pornography as required by the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography

• Draft and enact a law that defines and prohibits the prostitution of a child by any person, in accordance with international law

• Revise the draft new criminal code to prohibit the commercial sexual exploitation of children in accordance with the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the UN Trafficking Protocol

• Draft and enact a new Criminal Procedure Code that reflects principles of the CRC and its Optional Protocols, the UN Trafficking Protocol, international standards on juvenile justice, and other relevant international instruments
**RECOMMENDATIONS RELATED TO REPORTING, INVESTIGATING, AND PROSECUTING SEXUAL CRIMES AGAINST CHILDREN**

- Revise local regulations and procedures related to public order offences to ensure that children are not subject to criminal punishment for lacking an identity card

- Formalise the Anti-trafficking Unit in the organisational structure of the national police at all levels and provide it with a separate budget and appropriate human resources, and ensure special training to address the trafficking of children

- Formalise the RPK-units in the organisational structure of the national police at all levels with a separate budget and appropriate human resources

- Provide RPK-staff authority to conduct investigations and handle cases of violence against children, including offences related to the commercial sexual exploitation of children

- Establish a Children’s Desk in the national police at all levels with authority to deal with all matters involving child victims and child offenders.
• In collaboration with child rights NGOs, develop protocols and train RPK-staff, police investigators, lawyers, and judges on issues related to the commercial sexual exploitation of children, including legislation related to the commercial sexual exploitation of children and child-friendly procedures for child victims of sexual crimes

• Develop guidelines for reporting and investigating sexual crimes against children to ensure that law enforcement is sensitive to children’s special needs, and train law enforcement officials, lawyers, members of the judiciary, and social service providers on how to implement these guidelines

• Develop a training module on child rights and child protection, including commercial sexual exploitation of children, for inclusion in the mandatory curriculum at police academies and law schools

• Develop a referral system or harmonise existing ones so that they can be uniformly applied by law enforcement, lawyers, judges, and social service providers to provide legal assistance and relevant social services to all child victims of sexual crimes, and train these professionals to identify and refer child victims to appropriate services

• Raise awareness among the general public, law enforcement, lawyers and the judiciary on the commercial sexual exploitation of children through various means, for example, through publicising successful convictions of sex exploiters, sex tourists, procurers and traffickers of children, including those under the Child Protection Act

**RECOMMENDATIONS TO IMPROVE COORDINATION AMONG THE VARIOUS ACTORS THAT INTERACT WITH CHILDREN WHO INTERFACE WITH THE LAW**

• Improve coordination between the National Police and the Office of the Attorney General in investigating and indicting cases related to the commercial sexual exploitation of children to more effectively investigate and prosecute cases

• Improve coordination at all levels between the anti-trafficking unit, the RPK-unit, and the Children’s Desk in the national police to better protect child victims of sexual crimes
• Facilitate cooperation and information sharing between police districts and provinces in cases involving sexual crimes against children by establishing a position for a dedicated expert within the appropriate department in the national police at provincial and national levels.

• Develop a standard format for a Memorandum of Understanding for cooperation between NGOs and the police based on the existing cooperation in various districts and disseminate and promote it for use in other districts.

• Develop standards of care for the operation of care institutions for child victims of sexual crimes and guidelines to train social service providers to assist child victims of sexual crimes. The standard of care includes, but is not limited to, the quality of facilities and services, such as psychosocial counselling; provision of shelter; rehabilitation and recovery programmes; assistance for children wishing to contact their families, where appropriate; guarantees that children are referred to and represented by competent legal counsel; assurance that children are accompanied by a family member, guardian or other adult throughout legal proceedings.

• Conduct a mapping of available short-term and long-term shelters for child victims of commercial sexual exploitation in Indonesia to be available to the national police and other relevant actors at all levels.

• Establish the National Committee on Child Protection as outlined under the National Action Plan on Commercial Sexual Exploitation of Children and provide the committee with appropriate budget and resources to monitor, supervise and coordinate the implementation of the National Plan.

• Commission a study to lead to development of a uniform system of monitoring information at all levels on cases involving sexual crimes against children.

• Ensure that child offenders are not detained in correctional institutions with adults.
BIBLIOGRAPHY


UNICEF. *Situational Analysis of Juvenile Justice System in Indonesia*. Jakarta. 2004. (Published in Bahasa Indonesia, summary in English).