Logo

Description automatically generated with low confidence **Vietnam**

****

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

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

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

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

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Recommendations** | **Implemented** | **Legislation** |
|  | Establish by law **extra-territorial jurisdiction**, within the parameters of Article 4 OPSC, for all offences of sexual exploitation of children, including those occurring in the online environment. | Yes | Article 5 of the Criminal Code applies to all acts of criminal offences committed in Vietnamese territory (whether by nationals or non-nationals).  Article 6 of the Criminal Code enables the prosecution of Vietnamese and foreign nationals for crimes committed outside its territory. |
|  | Include in extradition treaties the sexual exploitation of children as **extraditable offences** and apply when appropriate the rules of article 5 OPSC, regardless the nationality of the (alleged) offender. | Partially | The *Law on Mutual Legal Assistance* defines extraditable offences as offences punishable under the criminal law of both Viet Nam and the requesting state by imprisonment for a period of at least one year (or life imprisonment or the death penalty), or offences for which the violator has been sentenced to imprisonment by a court of the requesting state, and the remaining imprisonment duration is at least six months. This low threshold means that most offences under the Criminal Code which relate to sexual exploitation of children in travel and tourism are most likely extraditable offences.  However, Vietnam can refuse extradition to foreign states in certain situations under Article 35 of the Law on Mutual Legal Assistance, including, *inter alia*, when the person requested for extradition is a Vietnamese citizen.  Extradition may also be provided through treaties (art. 36 and 37 Criminal Procedure Code), but the contents of the treaties that Vietnam has concluded have not been studied. |
|  | Do NOT require the principle of **double criminality** for proceeding with extraterritorial jurisdiction or extradition for sexual offences against children. | Partially | In Vietnam, the principle of double criminality applies to the extradition law. This is clear from the provision under the Law on Legal Assistance which states that extradition request of a person may be refused if the acts committed by that person are not crimes under Vietnam’s Criminal Code. In addition, the Criminal Procedure Code stipulates that one of the requirements for enforcing the criminal sentences and rulings of a foreign court against a Vietnamese citizen whose extradition is rejected, is “the criminal act committed by the Vietnamese citizen sentenced overseas constitute crimes according to the Criminal Code of the Socialist Republic of Vietnam.” (Article 500 (2)) This implies that the offence has to be punishable both in Vietnam and in the requesting country. |
|  | Abolish **statutory limitations** for the prosecution of ALL offences of sexual exploitation of children. | No | Para. 2 Article 27 of the Criminal Code stipulates that the time limit for criminal prosecution is 5 years for less serious offences, 10 years for serious offences, 20 years for very serious offences and extremely serious offences. Offences are classified according to their nature and danger to society (Article 9). Most SEC-related offences are considered either less serious offence or serious offences. |
|  | Set up **conditions for any travel** by persons convicted of sexual exploitation of children. | Partially | The entry into Vietnam of foreign persons convicted of sexual exploitation of children will be decided by immigration agencies in Vietnam on a case-by-case basis for reasons of national defence, national security, social order, and social safety, or for those that were deported from Vietnam within the last 3 years or were compelled to leave Vietnam within the last 6 months (Article 21.5, 21.6, 21.9 of the Law on Entry, Exit, Transit, and Residence of Foreigners in Vietnam)  The exit from Vietnam of persons convicted of sexual exploitation of children will be denied if such persons are obliged to serve criminal sentences (Article 21.1 of Decree 136/2007/ND-CP as amended by Decree No.94/2015/ND-CP). |
|  | Ensure **consistency in the definition of a ‘child’** as anyone under the age of 18 for all crimes of sexual exploitation, regardless of the age of sexual consent. | Partially | Article 1 of the Law on Children, which prohibits child sexual abuse and exploitation (Article 4 and 6), defines a child as any human being below the age of 16.  The Criminal Code criminalises a number of SEC-related offences including harbouring, procuring and engaging in prostitution with a person under 18 (Article 327,328 and 329).  The Criminal Code also criminalises employing a child for pornographic purposes (Article 147) and child trafficking (Article 151). However, in these latter cases, protection is only provided for children under the age of 16. |
|  | Ensure that the **age of sexual consent** for both males and females is 18 and a close in age exemption (up to 3 years) is provided for consensual sexual relationships between adolescents in order to allow voluntary, well-informed and mutual sexual contact between close in age peers and to prevent criminalization of young people in willing sexual relationships. | No | Under the Criminal Code (Article 142), engaging in sexual intercourse or other sexual activities with a person under the age of 13 is deemed rape (statutory rape). Therefore, the age of sexual consent in Vietnam is 13. Furthermore, the Criminal Code criminalises using violence or threatening to use violence or taking advantage of a victim's defencelessness or other tricks ‘to engage in non-consensual sexual intercourse or other sexual activities’ with persons between 13-16 years of age. Persons between 14-16 years of age bear criminal responsibility for rape and rape of a person under 16 years of age. Article 145 of the Criminal Code, it is a criminal act for a person over the age of 18 to engage in (otherwise consensual) sexual intercourse or other sexual activities with a person aged from 13 to under 16. (Any sexual activity with a person under the age of 13 is criminal.)  Therefore, if people aged 16 to under 18 mutually consent to sexual activities, such sexual activities are not criminalised. |
|  | Have a law or regulation establishing a **mechanism for centrally registering sex offenders** that has been implemented/setup. | No |  |
|  | Establish **bail conditions** that prohibit individual accused of sexual offences against children from traveling outside of the country. | No |  |
|  | Provide in law that the **mere attempt** to commit a crime of sexual exploitation of children is criminalised. | Partially | Attempted crimes and asset forfeiture provisions will be applied in some specific cases such as human trafficking (Article 145 and Article 151 of the Criminal Code) |
|  | Impose more severe sentences for **reoffending** in case of sexual exploitation against children, e.g. by defining reoffending as an aggravating circumstance, regardless of whether the crimes were perpetrated abroad or in-country. | Yes | According to the Criminal Code more severe sentences are imposed in case of dangerous recidivism in relation to the acts mentioned under point 6. |
|  | Provide for **mandatory reporting** for particular professions that have likelihood to have contact with kids who might disclose. | No | The national legislation does not impose on any specific mandatory reporting duties on professionals or institutions working with children. |
|  | Establish obligatory government-regulated child protection standards for the tourism industry for example, attach responsibility to an appropriate regulatory authority and/or implement industry specific **national codes for child protection** as a legal requirement for the travel and tourism industry to operate. | No |  |
|  | Ensure the **liability of travel and tourism businesses** (in operations and supply chains) for criminal conduct including:   * Organising travel arrangements or transportation that are explicitly or implicitly meant to create or facilitate opportunities to engage (involve) children in sexual activities; * Procuring, aiding or abetting the exploitative sexual conduct with a child; * Advertising or promoting sexual exploitation of children; * Benefitting, by any means, from any form of sexual exploitation of a child (or children) in the context of their travel and tourism business. | No | According to Article 76 of the Criminal Code, the liability of corporate legal entity is limited to crimes explicitly listed in the provision, which does not include crimes related to sexual exploitation of children in travel and tourism. |
|  | Criminalise the **grooming of children for sexual purposes** (often called ‘solicitation’ in law) including through Internet and other communication technologies to facilitate either online or offline sexual exploitation. | No |  |
|  | Establish legislation requiring for a **criminal background check** for every person (national or non-national) applying for work with or for children or who is currently working with or for children. Introduce legislation prohibiting convicted sex offenders to hold positions involving or facilitating contact with children. |  | Article 56(3) of the Children Law prohibits persons who face any criminal prosecution or administrative penalties for acts of child abuse from providing child protective services. |
|  | Regulate and monitor the use of volunteers (including in **‘voluntourism’**) in settings and activities that involve direct contact with children, particularly prohibiting visits to orphanages/residential care settings in favour of redirecting the industry towards solutions that support community-based care. | No |  |
|  | Ratify and implement relevant **regional and international instruments** related to child’s rights and sexual exploitation of children. | Partially | * Convention on the Rights of the Child (CRC) Ratified in 1990 * Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography Ratified in 2001 * Optional Protocol to the CRC on a Communications Procedure (OP3 CRC) Not signed * ILO Convention on the Worst Forms of Child Labour (No. 182) - Ratified in 2000 * UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – Acceded to in 2012 * The United Nations’ World Tourism Organisation’s (UNWTO) Framework Convention on Tourism Ethics - Not ratified * Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) - Not Ratified * Council of Europe Convention on Cybercrime (Budapest Convention) – Not Ratified * ASEAN Convention Against Trafficking in Person, Especially Women and Children – Ratified in 2017 |
|  | Establish **protection measures** for child victims at any stage of the legal process against the suspected offender. | Partially | The Children Law prescribes protective measures ranging from assisting children and their families to access social support policies, to providing a safe temporary residence for child victims (if their environment was the source of harm) (Articles 49, 50 and 71).  Protection measures are found in the Law on human trafficking prevention and combat, which contains provisions on the confidentiality of information of victims and on camera hearings (Art 31).    A major limitation of the Vietnamese’s judicial system is that victims above the age of 16 are treated as adult victims, owing to the national definition of a child, which means that the evolving needs of child victims aged 16 and above are disregarded by the judicial system. |
|  | Establish **child-friendly interviewing practices by professionally trained police.** | Partially | A joint circular was issued in 2011 by the Government with guidelines on criminal procedures designed to address the needs of child victims and witnesses.  A Child Advocacy Centre does not exist in the country.  The circular prescribes the use of in-camera hearings, confidentiality and the training of legal and justice professionals in charge of criminal proceedings involving children. |
|  | Ensure that national legislation provides the **right for child victims to receive support in their recovery and rehabilitation**, including accessing re-integration services. | Yes | Provisions on recovery and rehabilitation are included on the Law on Children in the context of child protection (Chapter IV). |
|  | Establish a **national reporting mechanism (e.g. hotline)** that coordinates access to services, and helps to overcome reluctance to report sexual exploitation of children. | Yes | Childhelpline Viet Nam is operative in the country and also promoted as a hotline for members of the public to report cases of child sexual abuse and exploitation. |
|  | Create **data retention and** preservation laws, regulations and procedures, to ensure the retention and preservation of digital evidence and enable cooperation with law enforcement which applies to ISPs, mobile phone companies, digital social media and communication companies, cloud storage companies, based in/operating in national jurisdiction. | Yes | The Law on Cybersecurity obligates “any domestic or foreign enterprise which provides services on telecom networks and on the Internet and other value added services in cyberspace in Vietnam” to collect and store data for a period stipulated by the Government (Article 26).The retention of s data is also regulated in Article 21.2 of the Information Technology Law, which provides that organizations and individuals collecting, processing and using personal information of another person in the network environment may only store the collected information for a certain period as stipulated by law or as agreed upon by the two parties. |
|  | Ensure that national legislation provides the **right for all child victims of sexual exploitation to seek compensation** in national courts from convicted perpetrators who harmed them and/or through state-managed funds. | Yes | Victims, including children, are eligible to receive compensation in case of moral and material damage caused by the offence (1999 Criminal Code, Art 42(2)).    If the offence results in psychological trauma of the victim, the court shall require the offender to provide compensation in kind and offer a public apology (2015 Criminal Code, Art 48(2)).  Victims are entitled to suggest compensation levels and measures to secure compensation (Criminal Procedural Code, Art 62(2)).  No information is provided regarding the nationality of the victims. |

**Legal sources:**

[Criminal Code Law No. 100/2015/QH13](https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf) (as amended by [Amendment Law No. 12/2017/QH14](https://vanbanphapluat.co/law-12-2017-qh14-amendments-100-2015-qh13) of 2017)

[Criminal Procedure Code Law No. 101/2015/QH13](https://vanbanphapluat.co/law-no-101-2015-qh13-criminal-procedure-code)

[Cyber ​​Security Law No. 24/2018 / QH14](https://luatvietnam.vn/an-ninh-quoc-gia/luat-an-ninh-mang-2018-luat-an-ninh-mang-so-24-2018-qh14-164904-d1.html#tomtat)

[Law on Children No. 102/2016/QH13](http://ilo.org/dyn/natlex/docs/ELECTRONIC/103522/125795/F1865205325/VNM103522%20Vnm.pdf)

[Law on Human Trafficking Prevention and Combat No. 66/201](http://un-act.org/publication/view/viet-nams-law-on-human-trafficking-prevention-and-combat-2011/)1/QH12

[Law on Legal Assistance No. 08/2007/QH12](https://www.unodc.org/res/cld/document/law-on-legal-assistance_html/Viet_Nam_Law_on_Legal_Assistance_2007.pdf)