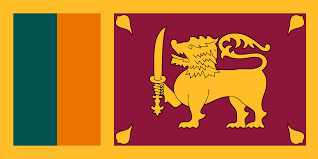
**Sri Lanka**

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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 Cambodia and other countries in Southeast Asia, as well as Africa, Asia and the Americas.

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

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

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|  | **Recommendations** | **Implementation** | **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. | **Partially** | Section 2(2) of the Sri Lanka Penal Code of 1883 (as amended in 2006) establishes exterritorial jurisdiction for all criminal offences, including OPSC offences. According to Section 2(2), “A national of Sri Lanka shall be liable to punishment under this Code and not otherwise, for every act or omission contrary to the provisions thereof, committed outside Sri Lanka of which he shall be guilty, whether or not such national enjoys diplomatic immunity in respect of such act or omission, which is granted by a foreign State by reason of his diplomatic status in such State”.  However, this provision does not cover acts committed by the habitual residents of Sri Lanka. Also, it does not establish passive extraterritorial jurisdiction.  Additionally, Section 3(2) of the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution Act (SAARC Convention Act) establishes extraterritorial jurisdiction over trafficking offences stating “where an act constituting an offence under this Act is committed outside Sri Lanka, the High Court referred to in subsection (1) shall have jurisdiction to try such offence as if it were committed within Sri Lanka, if- (a) the person who committed such act is present in Sri Lanka; (b) such act is committed by a citizen of Sri Lanka or by, a stateless person who has his habitual residence in Sri Lanka; or (c) the person in relation to whom the offence is alleged to have been committed is a citizen of Sri Lanka”.  Although the extraterritorial jurisdiction under the SAARC Convention Act is broader when compared to the Penal Code of 1883, the former does not cover all the SEC offences. It does not cover SEC offences criminalised under the Penal Code (for instance, obscene publications relating to children, the exploitation of children in prostitution, sexual exploitation of children, and soliciting a child for sexual abuse (under Sections 286A, 360A, 360B and 360E of the Penal Code respectively) but only trafficking of women children for prostitution and related offences (as covered by the SAARC Convention Act). Hence, it can be concluded that the national legislation does not fully establish extra-territorial jurisdiction within the parameters of Article 4 OPSC. |
|  | Include in extradition treaties the sexual exploitation of children as **extraditable offences** and apply when appropriate the rules of article 5 OPSC, regardless the nationality of the (alleged) offender. | **Partially** | The Extradition Law (No. 8 of 1977) establishes the general regime of extraditionand provides a list of extraditable offences. The Act requires a treaty for extradition, except in respect of Commonwealth countries. Extradition to the Commonwealth countries is furthermore subject to the inclusion of the offence in the schedule to the extradition law. (Sections 2-3)  Pursuant to Sections 6-7 of the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution Act, offences covered by the Act are extraditable under the Extradition Law (No. 8 of 1977) and, under treaties with the convention states. Moreover, as per Section 8, where there is no extradition agreement, the SAARC Convention could be used as the basis of extradition.  At present, not all SEC offences are extraditable (as referred to in Point 1) as they are not listed in the schedule of the Extradition Law nor covered by the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution Act. Therefore, SEC offences are only partially extraditable in Sri Lanka. |
|  | Do NOT require the principle of **double criminality** for proceeding with extraterritorial jurisdiction or extradition for sexual offences against children. | **Partially** | It appears that the principle of double criminality does not apply to extraterritorial jurisdiction over SEC offences. (refer to Section 2(2) of the Sri Lanka Penal Code and Section 3(2) of the SAARC Convention Act).  Section 6 of the Extradition Law (No. 8 of 1977) makes it clear that extradition is subject to the requirement of double criminality. This applies to SEC offences. |
|  | Abolish **statutory limitations** for the prosecution of ALL offences of sexual exploitation of children. | **No** | According to Section 456 of the Code of Criminal Procedure Act (No. 15 of 1979), “The right of prosecution for murder or treason shall not be barred by any length of time, but the right of prosecution for any other crime or offence (save and except those as to which special provision is or shall be made by law) shall be barred by the lapse of twenty years from the time when the crime or offence shall have been committed”. In the absence of any special law prescribing different statutory limitations for the prosecution of offences of sexual exploitation of children, it appears that the limitation of twenty years would apply. |
|  | Set up **conditions for any travel** by persons convicted of sexual exploitation of children. | **No** | There are no laws that regulate entry/leave of foreigners convicted of SEC offences. Notwithstanding, as per the 2019 [Sri Lankan government’s reply to the CRC Committee’s list of issue in the context of state party report on OPSC](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsrHPiif0%2F1kumQo%2BD50%2F9nYeKBGRuFnwc9M3kAJhPwndyG83S7vTjeX9uvbnYdXracfuYjHR6rghjmmrMXknFmesqqxyrRrpFzorCPotbr1bxQOBq8Ie9tuyR2rCkj6QmA%3D%3D):  *“In the context of immigration, visa applications of foreigners are screened closely by the Department of Immigration and Emigration of Sri Lanka. This intervention directly contributes to the prevention of offenders entering the country and it helps prevent incidents/offences under the Optional protocol, especially in relation to vulnerable children in travel and tourism: (a)Department of Immigration and Emigration is maintaining lists of visa applicants under three categories as Red, Amber and Green. The red list represents perpetrators warranted by a court for any kind of crime. The lists are updated according to inputs received from diplomatic sources and through State Intelligence Service. Applications lodged by tourists for visa are screened via SRS online system as well as the system established at the Department of Immigration and Emigration Sri Lanka. Apart from above, the worldwide INTERPPOL system is also in place at the International Airports*”. (para 10)  Although foreign nationals are screened on arrival for SEC offences, Sri Lankan offenders are not screened for SEC upon their departure from Sri Lanka unless there are court restrictions. |
|  | Ensure **consistency in the definition of a ‘child’** as anyone under the age of 18 for all crimes of sexual exploitation, regardless of the age of sexual consent. | **Yes** | Section 14 of the SAARC Convention Act defines a "child means a person who has not attained the age of eighteen years”.  For SEC offences under the Penal Code, a child is defined as anyone under the age of 18. [See sections 286A(4), 286B(4), 286C(3), 288A(2), 288B(2), 358A(3), 360B(2), 360C(3), 360D(2), 360E(a)] |
|  | 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** | Section 363(e) of the Penal Code establishes the age of sexual consent at 16 for girls. Boys under the age of 18 years can be prosecuted for consensual sexual intercourse with girls below the age of 16. |
|  | Have a law or regulation establishing a **mechanism for centrally registering sex offenders** that has been implemented/setup. | **Partially** | The Crime Division of Sri Lanka Police is mandated to maintain a general registry on cases related to Re-convicted Criminals (RC) and Island Re-convicted Criminals (IRC). In this registry, matters related to children are also recorded.[[1]](#footnote-1) |
|  | Establish **bail conditions** that prohibit individual accused of sexual offences against children from traveling outside of the country. | **Partially** | Certain SEC offences such as exploitation of children in prostitution, sexual exploitation of children, child trafficking for sexual exploitation and soliciting a child for sexual abuse under the Penal Code are non-bailable. (See 360A, 360B, 360C, 360E respectively) |
|  | Provide in law that the **mere attempt** to commit a crime of sexual exploitation of children is criminalised. | **Yes** | In relation to SEC specific offences, only Section 360A of the Penal Code criminalises the ‘attempt’ in relation to procurement offences, although it does not define it (Section 490). Nevertheless, the Penal Code provides punishment for attempting to commit offences punishable with imprisonment. This provision is applicable to offences where no express provision is made by this Code for the punishment of such an attempt. |
|  | Impose more severe sentences for **reoffending** in case of sexual exploitation against children, e.g. by defining reoffending as an aggravating circumstance, regardless of whether the crimes were perpetrated abroad or in-country. | **Partially** | According to Section 2(3)(c) of the Convention on Prevention and Combating of Trafficking in Women and Children for Prostitution Act, “in case the offence is committed on a subsequent occasion, the offender shall be punished with twice the punishment and fine as is specified in respect of the offence”. Further, Section 4(vi) of the Act treats it an aggravating circumstance while deciding the gravity of the offence if the offender is a previously convicted person particularly of similar offences.  Obscene Publications Amendment Act No. 22 of 1983 amended Section 2 of the Obscene Publications Ordinance 1927 to provide for increased imprisonment terms and fines for subsequent offences relating to CSAM.  However, there are no provisions relating to recidivism in the context of SEC offences under the Penal Code. |
|  | Provide for **mandatory reporting** for particular professions that have likelihood to have contact with kids who might disclose. | **No** | There are currently no mandatory reporting duties for professionals like teachers or healthcare workers. Notwithstanding, some institutions may have codes of conduct that require personnel working with children to report cases of abuse and exploitation, although this is not consistently applied nor legally mandated. |
|  | 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** | One of the functions of the National Child Protection Authority established under the National Child Protection Authority Act (No. 50 of 1998) is “to engage in dialogue with all sections connected with tourism with a view to minimizing the opportunities for child abuse” [Section 14(q)]. Although the NCPA conducts awareness campaigns to raise awareness among tourism industry stakeholders, there is no specific national code for child protection for the tourism industry. |
|  | 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** | Currently, the national legislation of Sri Lanka does not impose any explicit legal obligations on travel and tourism industries about child sexual exploitation offences. The provisions under the  Penal Code fail to explicitly state whether they would apply if the offences were committed by a legal entity other than an individual.  According to Section 14 of the SAARC Convention Act, "traffickers" means any person, agency or institution engaged in any form of trafficking. This definition could be used to criminalise private travel and tourism sector. But this is very narrow in scope. |
|  | 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** | The Penal Code does not explicitly cover cases of online grooming.  The Penal Code (as amended in 2006) criminalises soliciting a child under Section 360E. According to Section 360E:  “(1) Whoever, whether within Sri Lanka or from outside Sri Lanka solicits by whatever means— (a) a person under eighteen years of age; or (b) any person believing such person to be under eighteen years of age, for the purpose of sexual abuse of a child, commits the offence of soliciting a child and shall on conviction be liable to imprisonment of either description for a term not exceeding ten years or to a fine, or to both such imprisonment and fine.”  However, what would be considered solicitation is not defined. Hence the penalization does not occur unless the solicitation is explicit with witnesses, or in writing, or if actual in-contact sexual abuse occurs afterwards. |
|  | Establish legislation requiring for a **criminal background check** for every person (national or non-national) applying for work with or for children or who is currently working with or for children. Introduce legislation prohibiting convicted sex offenders to hold positions involving or facilitating contact with children. | **No** | The national legislation does not include such provisions. |
|  | 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 1991. * Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography Ratified in 2006. * Optional Protocol to the CRC on a Communications Procedure (OP3 CRC) Not signed. * Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Ratified in 2015. * ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.182 Ratified in 2001. * UNWTO Convention on Tourism Ethics Not signed. * 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 * SAARC Convention on Preventing and Combating Trafficking in Women and Children Ratified in 2002. * SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia Ratified in 2002. |
|  | Establish **protection measures** for child victims at any stage of the legal process against the suspected offender. | **No** | There is no duty to provide information related to legal proceedings in a child-friendly manner. Legislation does not mandate a child victims’ right to receive psychological assistance and support. Although they can make a request through their lawyer to the judge seeking psychological support, this places an unnecessary burden on the children affected by abuse and exploitation. Such support may also be ordered, if recommended by the probation officer. Similarly, children do not have access to free legal aid and representation and are required to find their own lawyer to protect their interests and represent them. The State prosecution only appears on behalf of the State.  Some legal services may be available by accessing free legal aid opportunities provided by the Bar Association, or NGOs etc., although in the absence of explicit legal provisions, there are likely to be inconsistencies in practice. A Child (Judicial Protection) Bill is being drafted, which contains several notable improvements to the framework governing the administration of justice for children. |
|  | Establish **child-friendly interviewing practices by professionally trained police.** | **Partially** | Under Section 3(b) of the Assistance and Protection to the Victims of Crimes and Witnesses Act 2015, a child victim should be treated in a manner that ensures his/her best interest. What would consist such a manner is not specified and the child-friendly interview methods are not properly established. However, the Section 25 of the Act also provides certain other rights to all victims of crimes, including victims like protection of their identities, privacy, conduct proceedings in camera, prohibition on media publications, etc.  There are Women and Child Desks (WCDs) in each police station to deal with child victims or child complainants.  Besides, Sri Lanka College of Pediatricians and Plan Sri Lanka have developed National Guideline for the Management of Child Abuse and Neglect (2014). These guidelines provide a multi-sectorial approach for handling cases pertaining to child victims.  It is noteworthy that in November 2017, this Act was amended to authorise Sri Lankan diplomatic missions to record evidence and take statements from a victim or witness outside Sri Lanka. Section 31(1A) of the Assistance to…Amendment Act, 2017)  The law does not make explicit difference between national and non-national child victims, but it does not even clearly state if relevant provisions would be applied to non-nationals.   There are no Child Advocacy Center currently present in Sri Lanka. |
|  | Ensure that child victims fully enjoy their **right to recovery and rehabilitation**, including by providing tailored support and re-integration services | **Yes** | Although there are no laws that exclusively talk about the right of child victims of SEC offences to recovery and rehabilitation, below mentioned provisions do cover this to an extent.  Section 11 of the Assistance and Protection to the Victims of Crimes and Witnesses Act provides for the establishment the National Authority for the Protection of Victims of Crime and witnesses. As per Section 13, one of the functions of the Authority is to “(e) provide necessary assistance to victims of crime and witnesses, including appropriate measures for their treatment, reparation, restitution and rehabilitation”.  In addition, Section 11(2) of the SAARC Convention Act, “The Minister shall, where necessary, issue such directions as may be necessary to provide the victims of trafficking with accommodation and shelter and other facilities where necessary in the institutions established under any written law for such purpose”. Further, the Minister is empowered under Section 12 of the Act to take such additional measures as necessary to combat trafficking. In particular, the Minister is empowered: "to take steps to repatriate the victims of cross border trafficking, and the provision of legal advice and health care where necessary; to establish on its own or with the assistance of nongovernmental organizations such places or institutions of shelter and rehabilitation for the victims of trafficking; and to make every endeavour to provide the victims with counseling and job training”.  Besides, the Sri Lanka College of Pediatricians and Plan Sri Lanka have developed National Guideline for the Management of Child Abuse and Neglect (2014) which deal with provide child victims with right to recovery and rehabilitation. There also exist places of safety for child victims. However, in its 2019 [concluding observations on the report submitted by Sri Lanka under OPSC](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fLKA%2fCO%2f1&Lang=en), the CRC Committee has expressed concerned that such institutions accommodate both child victims and child suspects and do not provide tailored services to child victims of offences under the Optional Protocol. (para 39) |
|  | 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** | In 2010, the National Child Protection Authority initiated the Childine Sri Lanka 1929, a toll free 24 – hour hotline dedicated to receiving and responding to complaints on child abuse and child rights violation. It is private and confidential. |
|  | 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. | **No** | Although Section 19 of the Computer Crime Act provides with preservation of data for investigation purposes, this does not specifically relate to digital evidence in cases related to sexual exploitation of children. |
|  | 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** | Pursuant to Section 2(3)(b) of the Convention on Prevention and Combating of Trafficking in Women and Children for Prostitution Act, the Courts are permitted to recover compensation to be paid to the victim by way of a fine imposed for the offence of trafficking, taking into consideration the nature of the offence.  A child victim can also seek financial assistance from the State and National Authority for the Protection of Victims of Crimes and Witnesses, in respect of expenses incurred to attend the proceedings, medical treatment, harm or injury, rehabilitation, and recovery, etc. (Section 4 of the Assistance and Protection to the Victims of Crimes and Witnesses Act 2015)  Section 29 of the Assistance and Protection to the Victims of Crimes and Witnesses Act establishes a Victims of Crime and Witnesses Assistance and Protection Fund from which compensation can be paid to the victims of crimes in accordance with Section 28.  The law does not make explicit difference between national and non-national child victims, but it does not even clearly state if relevant provisions would be applied to non-nationals. |

**Legal sources:**

[Assistance to Victims and Protection to Victims of Crimes and Witnesses Act (No. 4 of 2015](https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/100355/120360/F-1337181541/LKA100355%20Eng.pdf))

[Assistance to and Protection of Victims of Crime and Witnesses (Amendment) Act, No. 27 of 2017](https://www.srilankalaw.lk/YearWisePdf/2017/27-2017_E.pdf)

[Code of Criminal Procedure Act (No. 15 of 1979)](https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94267/110589/F-842968998/LKA94267%20Eng%202018.pdf)

[Computer Crimes Act (No. 24 of 2007)](https://www.cert.gov.lk/Downloads/Acts/Computer_Crimes_Act_No_24_of_2007(E).pdf)

[Convention on Preventing and Combating Trafficking in Women and Children for Prostitution Act (No. 30 of 2005)](https://www.moj.gov.lk/web/images/latest_document/2005/1480651251-a30-women-and-children-2005-en.pdf)

[Extradition Law (No. 8 of 1977)](https://www.refworld.org/docid/3ae6b5048.html)

[National Guideline on Child Abuse and Neglect (2014)](https://medicine.kln.ac.lk/depts/forensic/images/LearningMaterials/Guidelines/National_Guideline_on_Child_Abuse_and_Neglect.pdf)

[Obscene Publications Amendment Act (No. 22 of 1983)](https://www.srilankalaw.lk/YearWisePdf/1983/OBSCENE%20PUBLICTIONS%20(AMENDMENT)%20ACT,%20NO.%2022%20OF%201983.pdf)

[Obscene Publications Ordinance (No. 4 of 1927) (as amended in 1983 and 2005)](http://www.mediareform.lk/wp-content/uploads/2020/03/164-Obscene-Publications-Ordinance-No.04-of-1927.pdf)

[Penal Code (Amendment) Act, No. 16 of 2006](https://www.oecd.org/site/adboecdanti-corruptioninitiative/46817262.pdf)

[Penal Code (Cap. 19) (Ordinance No. 2 of 1883)](http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf)

[Penal Code (consolidated version)](https://www.refworld.org/docid/4c03e2af2.html)

1. Government of Sri Lanka.(2019). [Replies of Sri Lanka to the CRC Committee’s list of issue in the context of state party report on OPSC.](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsrHPiif0%2F1kumQo%2BD50%2F9nYeKBGRuFnwc9M3kAJhPwndyG83S7vTjeX9uvbnYdXracfuYjHR6rghjmmrMXknFmesqqxyrRrpFzorCPotbr1bxQOBq8Ie9tuyR2rCkj6QmA%3D%3D) Para 7. [↑](#footnote-ref-1)