## **A picture containing graphical user interface Description automatically generatedNepal**

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 Nepal 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.

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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** | The national jurisdiction provides for limited extraterritorial jurisdiction in relation to offences under the OPSC.  Section 1(3) of Human Trafficking and Transportation (Control) Act, 2064(2008) (hereinafter called HTTCA) provides that the Act shall also extend to offences committed by anyone against Nepali citizen under this Act from foreign territory. This establishes extraterritorial jurisdiction on the basis of passive nationality principle, but only over trafficking related offences.  According to Section 2(2) of the National Penal Code Act of 2017, “Any person who commits an offence under this Act on board an aircraft or ship registered in Nepal while it is outside Nepal shall be punished under this Act as if he or she committed the offence in Nepal”. Furthermore, according to Section 2(3) “Any Nepali citizen who commits any of the following offences against a Nepali citizen outside Nepal shall be punished under this Act as if he or she committed the offence in Nepal:”. These offences include, *inter alia*, rape. However, child abuse under Section 225 is not covered. Therefore, the Penal Code does not cover OPSC offences.  There are no extraterritorial provisions under the Act relating to Children, 2018 (hereinafter called the Children Act, 2018). |
|  | 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. | **No** | According to Article 2(2) of the Extradition Act, extradition offences cover crimes included in the extradition treaties concluded between Nepal and foreign states and conventions to which Nepal is a party. But the Act does not provide any schedule or list giving a clear idea as to which crimes are covered.  The Extradition Act, however, does not ensure that in the absence of an extradition treaty with a requesting state, Nepal will consider the OPSC as a basis for extradition. |
|  | Do NOT require the principle of **double criminality** for proceeding with extraterritorial jurisdiction or extradition for sexual offences against children. | **Yes** | Although there are no exclusive provisions for SEC offences, it appears that the dual criminality principle is not applicable to the extraterritorial provisions in general in Nepal.  It is not clear whether this principle applies to extradition law. |
|  | Abolish **statutory limitations** for the prosecution of ALL offences of sexual exploitation of children. | **Partially** | The national legislation prescribes statutory limitations for the prosecution of SEC offences.  According to Section 74 of the Act relating to Children, 2075 (2018), “(1) In relation to any offence under Section 66, a case has to be filed within the statute of limitation, if any, specified in the prevailing law, and, if not so specified, within one year of the date of the commission of that offence. (2) In cases where no case has been filed pursuant to sub-section (1), notwithstanding anything contained in the prevailing law, the statute of limitation for filing the case with respect to the offence against the child shall continue to exist until one year after such a child has attained the age of eighteen years”. Therefore, the statute of limitation for violence against children and sexual abuse against children, as defined under Section 66 of the Act, is suspended until the victim reaches 18 years of age. After that, the statute of limitations runs for one year.  Similarly, pursuant to Section 229(2) of the National Penal Code, for the offence of rape under Section 219 and child sexual abuse under Section 225, no complaint shall lie after the expiry of one year from the date of commission of the offence.  Further, Section 74 for Electronic Transactions Act prescribes a 35- day limitation period for cases under the Act, including electronic publication of indecent material.  The Human Trafficking and Transportation (Control) Act (hereinafter called HTTCA) does not prescribe any statutory limitations for trafficking and related offences. |
|  | Set up **conditions for any travel** by persons convicted of sexual exploitation of children. | **No** |  |
|  | 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 2(j) of the Children Act, 2018, defines “children” as persons who have not completed the age of 18 years. Similarly, Section 2(d) of HTTCA defines a “child” as “a person who has not reached the age of eighteen years”. |
|  | 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** | According to Section 219 of the National Penal Code of 2017, the age of sexual consent is specifically set at 18 for girls. There is no age identified for males under the Penal Code. However, the Child Act 2018 is gender neutral. Indeed, Section 66 of the Act which criminalises sexual offences against children extend protection to both boys and girls under the age of 18.  There are no criteria to determine whether the consent for sexual activities between peers under the age of 18 is e.g. voluntary, well-informed and mutual or a close-in-age exception. |
|  | Have a law or regulation establishing a **mechanism for centrally registering sex offenders** that has been implemented/setup. | **No** | Nepal does not have a sex offender registry mandated by law. |
|  | 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. | **Yes** | The Penal Code criminalises attempt to commit offences under Section 34. Similarly, Section 15(1)(h) of HTTCA criminalises attempt. Likewise, Section 72(4) of the Children Act states that “a person who incites another person, attempts or abets to commit any of the acts set forth in sub-sections (1), (2) and (3) shall be liable to the punishment of fine and imprisonment imposable on the principal offender”. |
|  | 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** | Section 72(6) of the Children Act imposes more severe sentences for recidivism, “If a person who has been punished once under this Act repeats such act, he or she shall be liable to an additional punishment of twenty-five per cent of the punishment imposable pursuant to this Section”.  Likewise, according to Section 44(2) of the National Penal Code 2017, “a recidivist shall be liable to a punishment that is up to double the punishment imposable for the last offence committed by him or her”.  Similarly, according to Section 15(5) of HTTCA, “If anyone commits an offence under Section 3 repeatedly, for every offence he/she shall be liable for it additional one-fourth punishment in addition to the regular punishment”. |
|  | Provide for **mandatory reporting** for particular professions that have likelihood to have contact with kids who might disclose. | **Yes** | According to Section 68 of the Children Act: “(1) If the father, mother, guardian, one who directly provides services to the child such the caregiver, teacher, health-worker or any other person comes to know that any person has committed or is committing or going to commit act of violence or child sexual abuse against the child he or she shall give information thereof to the nearby police office immediately. (2) The police office concerned shall immediately give the information referred to in sub-section (1) to the child welfare authority and seek necessary support. (3) While giving information with the intent of protecting the child, no legal action shall be taken against the informant merely on the basis that he or she has given such information. (4) The identity of the informant who gives information pursuant to subsection (1) shall be kept confidential if he or she so desires”. |
|  | 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** | There are no laws that ensure liability of the private travel and tourism sector for SECTT offences.  Notwithstanding, HTTCA criminalises the transportation of human beings for buying or selling or for prostitution and exploitation. (Sections 3 and 4). These sections could be invoked to criminalise the organization of travel arrangements or transportations that are explicitly or implicitly meant to create or facilitate opportunities to engage children in sexual activities. However, these provisions do not apply explicitly to corporate entities. |
|  | 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 national legislation does not explicitly criminalise grooming.  Notwithstanding, grooming could be criminalised under the following clauses of Section 66(3) of the Children Act:  Clause (a) which criminalises showing a child an obscene picture, audiovisual recording or other material of similar kind or displaying, such expression or gesture that reflects obscene or sexual conduct or behaviour to him or her or display, or cause to display, child pornography.  Clause (c) which criminalises “proposing, luring, coercing or threatening a child for sexual activity. |
|  | 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** | Pursuant to Section 67(1) of the Children Act, “ If it is held that a person who is serving in any public or private organization commits any offence against the child, the person shall be dismissed in accordance with the prevailing law, and, based on the gravity and nature of the offence, such a person shall not be deemed eligible for up to ten years to be involved in the future in any act involving direct contact with the child or to be appointed, nominated or elected to such a private institution or organization”.  Unable to find legal provisions that mandate background checks. |
|  | 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 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 Acceded to in 2020. * ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.182 Ratified in 2002. * 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. | **Yes** | Section 25 of the Children Act deals exclusively with the rights of child victim.  It says, “A child victim shall have the right to child friendly justice as follows in every stage of investigation, prosecution and judicial process:  (a) To get information on the language he or she understands,  (b) To participate or be involved,  (c) To keep the details of personal identification confidential, (d) To get recovery of the reasonable compensation from the offender,  Provided that this clause shall not be considered as limiting the opportunity of the victim to receive compensation from the State.  (e) To get free legal aid and socio-psychological counselling service as required and to appoint a separate legal counsel if he or she so wishes,  (f) To get free service of the translator, sign language expert or interpreter if the victim does not understand the language used by the investigating authority or Juvenile Court,  (g) To get, free of cost, the copy of the documents including the decisions and orders made by the investigating authority or Juvenile Court,  (h) To get police protection for safety against the probable threat that may be caused from the offender or his or her party,  (i) To have his or her case heard in camera,  (j) To have the indirect presence of the defendant in the course of hearing of the case as required”.  Section 11(3) of the Children Act provides for the confidentiality of information pertaining to a child victim.  In addition, Section 26 of HTTCA deals with the provision of security to victims and witnesses. (refer to point 22 of the checklist).  Further, Section 25 of HTTCA deals with the prohibition against disseminating confidential information without the consent of the victim.  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. |
|  | Establish **child-friendly interviewing practices by professionally trained police.** | **Yes** | Section 25 of the Children Act and Section 27 of HTTCA provides for in camera court proceedings.  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. |
|  | Ensure that child victims fully enjoy their **right to recovery and rehabilitation**, including by providing tailored support and re-integration services. | **Yes** | Section 48 of the Children’s Act contains provisions relating to provision of rescue, rehabilitation, temporary protection, health treatment, psychological support, family reunion, social security, etc. to children in need of special protection which include “victims of offences against children or are at such risks”.  Section 50 specifically deals with provision of rescue and protection services to children. Section 52 provides for the establishment of children’s home. Section 55 makes it the liability of the children’s homes to assist the child welfare authority in respect of rehabilitation and social integration of children staying in these homes.  Part 3 of HTTCA also deal with provision of rescue, rehabilitation, and reconciliation to trafficking victims (including children). Section 13 provides for the establishment of rehabilitation centers and Section 14 provides for the creation of a rehabilitation fund. |
|  | Establish a **national reporting mechanism (e.g. hotline)** that coordinates access to services, and helps to overcome reluctance to report sexual exploitation of children. |  |  |
|  | 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** | The national legislation does not have any data retention and preservation laws that could be applicable to evidence collection in SEC offences. |
|  | 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** | Section 17 of the HTTCA also provides for compensation to victims of trafficking and related offences.  In addition, according to Section 228 of the National Penal Code, a child victim of the offence of child sexual abuse under Section 225 is entitled to receive compensation.  Further, Section 63(1) of the Children’s Act provides for the establishment of a Child Fund for, *inter alia*, rescue, relief and rehabilitation and providing compensation to children.  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:**

[Extradition Act, 2045(1988)](http://www.lawcommission.gov.np/en/archives/category/documents/prevailing-law/statutes-acts/extradition-act-2045-1988)

[The Act Relating to Children, 2075 (2018)](http://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Act-Relating-to-Children-2075-2018.pdf)

[The National Penal (Code) Act, 2017](http://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Penal-Code-English-Revised-1.pdf)

[Human Trafficking and Transportation (Control) Act, 2064(2008)](http://www.lawcommission.gov.np/en/archives/category/documents/prevailing-law/statutes-acts/human-trafficking-and-transportation-control-act-2064)

[The National Criminal Procedure (Code) Act, 2017 (revised)](http://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Criminal-procedure-code-Revised.pdf)