**Bhutan**

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 Bhutan and other countries in Asia, as well as Africa, Southeast 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** | **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. | Partially | The national legislation does not establish any exclusive extra-territorial jurisdiction for all offences under the OPSC. Notwithstanding, Section 20 of the Civil and Criminal Procedure Code of Bhutan 2001, states that “the Supreme/High Court shall exercise jurisdiction outside Bhutan on the bases of the following principles: (a) territorial; (b) nationality; (c) passive personality; (d) protective; (e) universality; (f) flag jurisdiction; and (g) airspace.”Moreover, Section 4 of the Information, Communication and Media Act 2018 extends the application of the Act to any offence committed outside Bhutan if the offence involves a computer system or network located in Bhutan. This could cover offences relating to CSAM under the Act. However, there is no provision establishing extraterritorial jurisdiction in those cases where the offender is a habitual resident in Bhutan who has committed a crime outside of Bhutan.It is noteworthy that in accordance with Section 29 of the Civil and Criminal Procedure Code 2001, the Royal Courts of Justice of Bhutan are authorised to apply international conventions, covenants, treaties and protocols that are duly acceded by the Royal Government of Bhutan and ratified by the National Assembly of Bhutan  |
|  | 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 preliminary section I of the Extradition Act makes it clear that the Act applies to any treaty state (or non-treaty state where the Royal Government of Bhutan considers it expedient to surrender the fugitive offender to that state) may request the extradition of a fugitive offender who has absconded to Bhutan.Extraditable offences include those listed in the Schedule to the Extradition Act. These include, “immoral traffic in women and girls” and “kidnapping, abduction, slavery and forced labour”. Therefore, some offences relating to SECTT could be extraditable. |
|  | Do NOT require the principle of **double criminality** for proceeding with extraterritorial jurisdiction or extradition for sexual offences against children. | Yes | It appears that the principle of double criminality does not apply for sexual offences against children in the case of extraterritorial jurisdiction as well as extradition. |
|  | Abolish **statutory limitations** for the prosecution of ALL offences of sexual exploitation of children. | Yes | It appears that Bhutan does not have any statutory limitations for all crimes in general. |
|  | Set up **conditions for any travel** by persons convicted of sexual exploitation of children. | Partially | Under Section 62(b) of the Immigration Act 2007, foreigners guilty of engaging in organised crimes like trafficking are prohibited from being admitted into the Kingdom of Bhutan. In addition, under Section 61, foreigners guilty of committing offences which amount to felonies, whether committed inside or outside Bhutan are inadmissible into the Kingdom. Most of the SEC offences in Bhutan are felonies therefore, this could be applicable to foreigners convicted for these offences. Furthermore, Section 67 states that “any foreigner who has engaged, is engaging, or seeks to enter the Kingdom to engage in an offence or who aids, abets, assists, conspires, or colludes in the commitment of an offence shall be ineligible for admission in the Kingdom”.  |
|  | 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 16 of the Child Care and Protection Act of 2011 (CCPA) defines a ‘child’ as any person below the age of 18. A similar definition is contained under Section 464(12) of the Information, Communication and Media Act of Bhutan, 2018. |
|  | 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. |  Partially | The age of sexual consent in Bhutan is set at 18 by the Penal Code (article 183).Consensual sexual intercourse between children aged 16-18 is not considered rape. (Section 183 of the Penal Code Amendment Act 2011)  |
|  | Have a law or regulation establishing a **mechanism for centrally registering sex offenders** that has been implemented/setup. | No  | At present, there is no law that provides for the establishment of a sex offender registry in Bhutan. Read more [here](https://www.businessbhutan.bt/2019/12/09/sexual-harassment-among-least-reported-sexual-offences/). |
|  | Establish **bail conditions** that prohibit individual accused of sexual offences against children from traveling outside of the country. | Partially  | There are no laws in Bhutan that exclude SEC offences committed abroad from bail.Notwithstanding, the general conditions applicable to bailable/non-bailable offences could still be applicable. According to Civil and Criminal Procedure Code Amendment Act, 2011, non-bailable offences include offences against the security and sovereignty of the country; and offences of or above felony of the second degree. (Section 199.8A) Since most of the SEC offences are felonies of the third degree, they are bailable offences. For bailable offence, the Court may grant bail taking into consideration some factors such as the gravity of the offence, past criminal record, etc. (Section 199.2 of the Civil and Criminal Procedure Code, 2001). A person released on bail is required to “remain within the limits of any particular area as prescribed in the bail order”. [Section 199.4(b)] These provisions could apply to extraterritorial jurisdiction of the courts in Bhutan. |
|  | Provide in law that the **mere attempt** to commit a crime of sexual exploitation of children is criminalised. | Yes | Chapter 10 of the Penal Code criminalises attempt, aiding and abetting, solicitation, and criminal conspiracy in relation to crimes.  |
|  | 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 Section 24 of the Penal Code, “aggravating circumstances for sentencing shall include: (a) The crime is committed by a defendant, who has previously been convicted of a crime that was punishable by imprisonment or a crime of the same or similar nature;”. In case of a subsequent offence, felonies of the third degree enhanced to felonies of the second degree which carry a punishment of 9-15 years in prison. (Section 15(e), Penal Code) |
|  | Provide for **mandatory reporting** for particular professions that have likelihood to have contact with kids who might disclose. |  Partially | There are no mandatory reporting duties in relation to cases of sexual exploitation of children. However, Section 430 of the Penal Code penalizes failure to report a crime. Accordingly, a person shall be guilty of this offence, if he/she witnesses any person committing a crime, does not report it to the lawful authority.According to Section 161 of CCPC, “It shall be the duty of every police personnel to promptly detect and apprehend all persons, for whose apprehension sufficient ground exists and to bring offenders to justice”. Section 161 lays down the procedure to handle complaints and preliminary investigation in detail. It is appears that an anonymous complaint is not sufficient to open an investigation as Section 161.3 of CCPC requires the complaint to be reduced in writing, if not already done so and Section 161.4 requires the police or the person making the statement and the person providing any record or evidence to sign all statements and records emanating from the investigation.There are no protection mechanisms for those report crimes although there are some provisions for the protection of child victims and witnesses (discussed below).  |
|  | 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. | Yes  | Bhutanese government has passed the Tourism Rules and Regulations. According to 7.1.19(i) of the Tourism Rules and Regulations, “To increase social and economic benefits and decrease negative impact to the local communities, a Tour Operator shall ensure that: he/ she has implemented a policy against commercial exploitation, particularly of children and adolescents, including sexual exploitation”. Failure to do so amounts to an offence. (Rule 7.4)Tourism Council of Bhutan is the regulatory authority in-charge of issuing licenses to tour operators, guides, accommodation services, etc. (Rule 2.1.1). A license can be cancelled or suspended for, inter alia, committing felony, indulging in fraudulent activities, or (Rules 2.10 and 2.11), violating the present rules. |
|  | 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.
 | Partially | The national legislation does not explicitly regulate the private travel and tourism sector for SECTT although they could be held liable under the Tourism Rules and Regulations. According to Section 136 of the Immigration Act of 2007, “Hoteliers, tour operators, contractors, employers of foreign workers, and any other individual shall be bound by this law to consciously adhere to and apply the provisions of this Act”. .  |
|  | 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 | Although grooming is not explicitly criminalised, acts constituting grooming could still run afoul of the following laws. The Penal Code criminalises pedophilia under Section 225. Among other things, a person shall be guilty of this offence if he or she solicits directly or indirectly the services of a child for sex. Section 349 of the ICM Act makes it the duty of an ICT and Media facility or service provider and vendor to take “all reasonable steps to prevent offensive communications being delivered to children and to prevent the possibility of children being drawn into conducting business transactions of any kind”. |
|  | 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 only partially relevant provision found is Rule 53(d)of the Child Care and Protection Rules and Regulations 2015, according to which a person convicted of any offence under Chapter 14 (offences against children) of the Penal Code is prohibited from holding the post of a Child Welfare Officer. |
|  | 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. | No | * 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 2009
* 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 Not signed
* ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.182 Not signed
* 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

UNWTO Convention on Tourism Ethics Not signed |
|  | Establish **protection measures** for child victims at any stage of the legal process against the suspected offender. | Yes | The CCPA requires having WCPU (Women and Child Protection Units) or WCPDs (Women and Child Protection Desks) at every police station Section 65 of the CCPA requires the police to ensure care and safety of the child in difficult circumstances till the child is transferred to a child welfare officer. The police shall deal with the child with sympathy and understanding in a decent and polite manner.Further, Rule 39(f) of the CCPRR authorises the Judge presiding over a matter involving a child in difficult circumstances (including sexual exploitation victims) to issue an order to provide protection for as long as necessary if the safety of the child is at risk. Further, under Rule 49(a), it is the duty of the Judge to ensure that the child is provided with privacy and does not at any point of the trial face the defendant directly. Rule 212 of CCPRR states: “Where the child’s safety is at risk, appropriate measure shall be taken to provide the child with special protection during and on completion of the judicial proceedings”. According to Rule 213, the measures include: “a. restraining orders or any other order to protect the child; b. minimal or no contact with the perpetrator during proceedings; c. law enforcement and judicial officials trained in child protection; d. pre-trial detention for the perpetrator; e. provision of appropriate alternative care for the child if the child has been removed from the home environment; and f. any other measure that the Court may deem necessary for the protection of the child.” |
|  | Establish **child-friendly interviewing practices by professionally trained police.**  | Partially | Sections 38-39 of the CCPA require the establishment of a Child Justice Court to be presided over by a judge who has knowledge of child psychology and child welfare. Rules 34-35 of the CCPRR provides that all proceedings conducted by the Court in matters relating to children shall be in-camera with limited presence. Rule 41 exclusively deals with child friendly mechanism including providing the child victim with information in a child friendly manner. Chapter 11 of CCPRR exclusively deals with child victims and witnesses. All child victims and witnesses are treated as children in difficult circumstances They are to be treated with dignity throughout the proceedings. Their best interests must be taken into consideration, with regard to their special needs, right to privacy, right to information, provision of support services, etc. A Child Advocacy Centre does not exist in the country.  |
|  | Ensure that national legislation provides the **right for child victims to receive support in their recovery and rehabilitation**, including accessing re-integration services. | Yes | Pursuant to Rule 214 of CCPRR, a child victim or witness shall have a right to reparation for full redressal, recovery, and reintegration. special preventive measures must be put in place to protect the child from re-victimisation. (Rule 215) These measures shall take into consideration, the nature and place of occurrence including abuse at home or in an institution, sexual exploitation, and trafficking. (Rule 216) Rule 217 further elaborates on these measures. |
|  | 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 2018, Bhutan launched the “Child Helpline 1098” for children in need of care and protection. The Child Helpline aims at providing timely, efficient and effective protection services to children round the clock through counselling, legal information and instant facilitation and referrals to relevant authorities, agencies and organizations, and ensure quality care, support and appropriate services by trained and qualified personnel. Read more [here](https://campaigns.savethechildren.net/blogs/tseyringsyeldennamgyel/bhutan-child-helpline-launched). |
|  | 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. | Partially | The ICM Act provides for data retention however it does not specifically relate to handling of evidence in SEC cases. The ICM Act provides for data retention however it does not specifically relate to handling of evidence in SEC cases. Notwithstanding, with special reference to child victims and witnesses, Rule 202 of the CCPRR 2015 states, “the best interests of the child shall be given primary consideration, if a conflict arises between serving of the best interests of the child witness or victim and any other equally legitimate rights or interests”. Further, Section 350 prohibits an ICT and Media facility or service provider and vendor from collecting or disclosing children’s personal information without the express and verifiable consent of their parents or guardians. |
|  | 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 208(e) of the CCPC, a defendant may be ordered to pay compensation or damages and make restitution to the victim or his/her legal heir.Rule 41(o) of the CCPRR, allows the presiding Judge to order damages or reparation for the child and the child’s family as required.But there are no state-managed funds although Bhutan contributes to the UN Fund for Assistance to Victims of Sexual Exploitation and Abuse. |

**Legal Sources:**

[The Child Care and Protection Act, 2011](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_300620.pdf) (CCPA)

[The Child Care and Protection Rules and Regulations of Bhutan, 2015](https://www.ncwc.gov.bt/publications/Child%20Care%20and%20Protection%20%20Rules%20%20and%20Regulation%20of%20Bhutan%2020151559107053.pdf) (CCPRR)

[The Civil and Criminal Procedure Code of Bhutan, 2001](https://www.nationalcouncil.bt/assets/uploads/docs/acts/2014/Civil_and_criminal_Act_2001Eng.pdf) (CCPC)

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[The Immigration Act 2007](http://www.mohca.gov.bt/Publications/ImmigrationAct2007.pdf)

[The Labour and Employment Act 2007](https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/80218/86462/F1162145166/BTN80218%20English.pdf)

[The Penal Code of Bhutan, 2004.](https://www.wipo.int/edocs/lexdocs/laws/en/bt/bt019en.pdf)

[The Penal Code Amendment Act of Bhutan, 2011](https://www.nab.gov.bt/assets/uploads/docs/acts/2014/The_Penal_Code%28Amendment%29_Act_of_Bhutan_2011eng7th.pdf)

[The Tourism Rules and Regulations 2017](https://www.tourism.gov.bt/uploads/attachment_files/tcb_aGbeNS45_tcb_102517_tourism-rules-and-regulations_2017.pdf)