**Brunei**

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 the Brunei 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.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **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 | Section 7 of the Criminal Procedure Code (Chapter 7) states that “*the jurisdiction of the High Court and the Court of a Magistrate shall extend to any offence committed -* *(a) wholly or partly within Brunei Darussalam; or**[...]* *(f) by a subject of His Majesty whether the offence was committed within or outside Brunei Darussalam.*”Section 377E of the Penal Code (chapter 22) states that “*Whoever, being a citizen of Brunei Darussalam or a permanent resident, does, outside Brunei Darussalam, any act that would, if done in Brunei Darussalam, constitute an offence under section 377D (prohibition of commercial sex with persons under 18), shall be guilty of an offence.*” It is not specified if these provisions apply to crimes occurring in the online environment. Section 5 of the Anti-Trafficking in Persons Order, 2019, withregards to human trafficking, considered it an offence where “anyperson who recruits, transports, transfers, harbours or receives anyperson(s) for the purpose of exploitation under this Order”. The term“exploitation” is defined under Section 2 to cover all forms of sexualexploitation. Section 5 of the Prevention of People Smuggling Order, 2019 recognises exploitation as one of the aggravated circumstances of the commission of an offence under this section. Similar to the Anti-Trafficking in Persons Order, 2019, exploitation also covers all formsof sexual exploitation (as per section 2).  |
|  | 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 | Section 3 of the Extradition Order 2006 states that *“[1] An offence is an extradition offence if -* 1. *it is an offence deemed by any written law or any treaty to which Brunei Darussalam is a party to be an extradition offence [...].*
2. *it is an offence against a law of the requesting country for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than one year and the conduct that constitutes the offence, if committed in Brunei Darussalam, would constitute an offence in Brunei Darussalam for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than one year.”*

Contents of extradition treaties have not been reviewed. |
|  | Do NOT require the principle of **double criminality** for proceeding with extraterritorial jurisdiction or extradition for sexual offences against children. | Partially | Jurisdiction: Section 7 of the Criminal Procedure Code (Chapter 7) does not include a double criminality requirement when it comes to extraterritorial jurisdiction.Extradition: Section 3b of the 2006 Extradition Order (quoted under point 2) still applies the principle of double criminality. |
|  | Abolish **statutory limitations** for the prosecution of ALL offences of sexual exploitation of children. | Yes | There are no statutory limitations in Brunei’s criminal law system. |
|  | Set up **conditions for any travel** by persons convicted of sexual exploitation of children. |  Partially | In accordance with Section 48 of the Anti-Trafficking in Persons Order, 2019, “a person, not being a citizen of Brunei Darussalam, convicted for any offence against this Order or any regulations made thereunder is deemed to be a prohibited immigrant under section 8 of the Immigration Act (Chapter 17)”.A similar provision exists under Section 34 of the Prevention of People Smuggling Order, 2019. |
|  | 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 | [Anti-Trafficking in Persons Order, 2019](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2019/EN/S017.pdf) (Article 2) and [Prevention of People Smuggling Order, 2019](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2019/EN/S016.pdf) (Article 2) define the term "child" as “*a person who is under 18 years of age*”. Section 377D of the Penal Code states that “*Whoever obtains for consideration the sexual services of a person, who is under 18 years of age, shall be punished with imprisonment for a term which shall not be less than 2 years and not more than 7 years and with whipping*”.  |
|  | 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 | The age of sexual consent in Brunei is set at 16. No close in age exemption exists in the legislation.  |
|  | 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. | Partially  | Rape and ‘unnatural offences’ (covers same-sex sexual offences) are excluded from bail by the Criminal Procedure Code (First Schedule to Chapter 7, Chapter XVI - Offences affecting the human body, p. 251). The Penal Code (Amendment) Order 2012 adds commercial sex with persons under 18, whether committed abroad or in Brunei Darussalam, to the list of non-bailable offences. According to Section 27 of the Anti-Trafficking in Persons Order, 2019, “*Every offence against this Order or any regulations made thereunder is non-bailable and seizable for the purposes of the law relating to criminal procedure*”. A similar provision exists under Prevention of People Smuggling Order, 2019 (Section 26).  |
|  | Provide in law that the **mere attempt** to commit a crime of sexual exploitation of children is criminalised. | No | Attempted crimes are not criminalised by the law, however paragraph 2 of Section 377D establishes that: “*Any person who communicates with another person for the purpose of obtaining for consideration, the sexual services of a person who is under 18 years of age, shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both*”*.* |
|  | 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 75 of the Penal Code imposes more severe sentences for recidivists of offences punishable for a term of 3 years minimum.Section 376 (4) of the Penal Code (Amendment Order) 2017Provides, in relation to rape, that “any person who is previously convicted under thissection shall, in the case of a second or subsequent conviction, bepunished with imprisonment for term not less than 20 years and notmore than 50 years and whipping not less than 20 strokes |
|  | Provide for **mandatory reporting** for particular professions that have likelihood to have contact with kids who might disclose. | Partially | Reporting is mandatory only for medical officers according to Section 23 of the Children and Young Persons Act (Chapter 219), which provides that: “*(1) If a medical officer is of the opinion that a child or young person who he has examined or treated has been physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, he shall immediately notify a protector or a police officer. (2) Any medical officer who fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding $10,000.*” |
|  | 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.
 | Partially | Section 377F of the Penal Code punishes whoever makes or organises travel arrangements of or on behalf of any other person with the intention of facilitating the commission by this other person of an offence under section 377D with prison sentences up to 10 years.Section 377F of the Penal Code punishes whoever prints, publishes or distributes any information that is intended to promote conduct that would constitute an offence under section 377D with prison sentences up to 10 years.Section 9(1) of Prevention of People Smuggling Order, 2019 punishes any person who provides material support or resources to another person and the support and resources aid the receiver or any other person to engage in conduct constituting the offence of people smuggling. Such a person is liable to be punished with a fine not exceeding $50,000, imprisonment for a term not exceeding 10 years or both. |
|  | 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. | Partially | Section 377G of the Penal Code criminalises sexual grooming of persons under 16 if the perpetrator is of or above the age of 21. |
|  | 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 |  |
|  | 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 1995
* 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 Not signed
* ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.182 Ratified in 2008
* United Nations World Tourism Organisation (UNWTO) Framework Convention on Tourism Ethics Not signed
 |
|  | Establish **protection measures** for child victims at any stage of the legal process against the suspected offender. | Partially | In addition to SEC-related offences not being bailable, section 236E (cross-examination of alleged child victims) of the Criminal Procedure Code states that “*no person who is charged with an offence [...] shall in person cross-examine any witness who - (a) is alleged - (i) to be the person against whom the offence was committed [...] (b) (i) is under 14 years of age*”. |
|  | Establish **child-friendly interviewing practices by professionally trained police.**  | Partially | Section 236C of the Criminal Procedure Code allows video-recording of evidence from child-witnesses that are under 14 years of age. Section 30 of Anti-Trafficking in Persons Order, 2019 provides that“*the inquiry into and trial where the trafficked person is a child shall**be conducted in camera*”.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. | Partially | There seems to be no provision relate to the child victims’ right to recovery and rehabilitation. However, Part V of the Anti-Trafficking in Persons Order, 2019 exclusively deals with the “care and protection of the trafficked persons”. Trafficked persons are eligible to receive assistance relating to: shelter, temporary accommodation, counselling services, medical and psychological support; and employment, education and training opportunities [Section 43(1)].  |
|  | 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 | A helpline to report suspected cases of child abuse is operative in the country (Child Helpline 141) and reports can also be made to the Royal Brunei Force 24-hour emergency line 993. |
|  | 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 | Unable to find information that would suggest the existence of data retention and preservation laws and procedures related 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 | The Criminal Procedure Code offers a standard procedure regarding compensation, but it is not specifically tailored to child victims:*“382. (1) When a person is convicted of any crime or offence the Court may, in its discretion, make either or both of the following orders against him in addition to any other punishment, namely —* *(a) an order for the payment by him of the costs of his prosecution or such part thereof as the Court directs;* *(b) an order for the payment by him of a sum to be fixed by the Court by way of compensation to any person, or the representatives of any person, injured in respect of his person, character or property by the crime or offence for which the sentence is passed.* *(2) The Court shall specify the person to whom any sum in respect of costs or compensation as aforesaid is to be paid, and payment thereof may be enforced in the same manner as if the amount thereof were a fine, or in such other manner as the law for the time being directs.* *(3) The Court may direct that an order for payment of costs, or an order for payment of compensation, shall have priority, and, if no direction be given, an order for payment of costs shall have priority over an order for payment of compensation.* *(4) An order for payment under this section shall not prejudice any right to a civil remedy for the recovery of any property or for the recovery of damages but the Court shall take into account the amount of compensation paid under the order.”*Additionally, the Anti-Trafficking in Persons Order, 2019 provides for the establishment of an Anti-Trafficking in Persons Fund (Section 44). Victims of trafficking are eligible to seek compensation through this fund. [Article 46(1)(a)]  |

**Legal Sources:**

[Anti-Trafficking in Persons Order, 2019](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2019/EN/S017.pdf)

[Children and Young Persons Act (Chapter 219)](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap219.pdf)

[Criminal Procedure Code (Cap. 7 of 1951)](http://www.agc.gov.bn/AGC%20Images/LOB/PDF%20%28EN%29/Cap7.pdf).

[Extradition Order, 2006](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2006/EN/s010.pdf).

[Penal Code (Cap. 22 of 1951)](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/Cap.22a.pdf)

[Penal Code (Amendment) Order, 2017](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2017/EN/S061.pdf)

[Prevention of People Smuggling Order, 2019](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2019/EN/S016.pdf)