**Malaysia**

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 Malaysia 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** | **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. | No | Chapter I, Section 3 of the Malaysian Penal Code Act 574, stipulates that any person liable by law to be tried for an offence committed beyond the limits of Malaysia, shall be dealt with according to the provisions of this Code for any act committed beyond Malaysia, in the same manner as if such act had been committed within MalaysiaAny exercise of extra-territorial criminal jurisdiction must be based on enabling domestic law.Relevant enabling domestic law are:Sexual Offences against Children Act 2017 - it states that if the criminalised offences are committed by a Malaysian citizen against a child in any place outside Malaysia, the offender may be prosecuted as if the offence was committed anywhere within Malaysia (Section 3)Section 108A also extends extraterritoriality to the abetment of an offence beyond Malaysia, which would constitute an offence if committed in Malaysia.The Anti-Trafficking in Persons Act 2007 section 3 applies to offences committed within or beyond the borders of Malaysia and to all nationalities if Malaysia is the receiving country or transit country or the exploitation occurs in Malaysia; or (b) if the receiving country or transit country is a foreign country but the trafficking in persons or smuggling of migrants starts in Malaysia or transits Malaysia.Section 4 extends liability for offences under the Anti-Trafficking in Persons Act to offences committed— (a) on the high seas on board any ship or on any aircraft registered in Malaysia; (b) by any citizen or permanent resident of Malaysia on the high seas on board any ship or on any aircraft; or (c) by any citizen or any permanent resident in any place outside and beyond the limits of Malaysia.  |
|  | 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 Malaysian Extradition Act 1992 defines an extradition offence as an offence with a punishment of no less than one-year imprisonment/death under the laws of a state referred to in the Act as well as under Malaysian law (Section 3 & 6). As sexual exploitation of children offences have a punishment of no less than one year, in principle the offences are extraditable.An analysis of all bi-later extradition treaties Malaysia has concluded, has not been conducted for this research. |
|  | Do NOT require the principle of **double criminality** for proceeding with extraterritorial jurisdiction or extradition for sexual offences against children. | Partially | No double criminality principle when it comes to prosecution of offences committed abroad for which Malaysia has jurisdiction. However, the principle is applicable when it comes to extradition. |
|  | Abolish **statutory limitations** for the prosecution of ALL offences of sexual exploitation of children. | Yes | No statute of limitations for criminal offences in Malaysia |
|  | Set up **conditions for any travel** by persons convicted of sexual exploitation of children. |  Partially | The Immigration Act 1959/1963 provides that any person who “ha*s been convicted in any country or state of any offence and sentenced to imprisonment for any term, and has not received a free pardon”* is considered to be a prohibited immigrant. (Section 8(3)(d)(k)(l)).  |
|  | 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 | Although the age of sexual consent is 16 (for girls - Penal Code section 375- no specific mention is made to age of consent for boys), the Sexual Offences Against Children Act 2017 applies to all children under 18.  |
|  | 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 | Pursuant to Section 375 (g) of the Penal Code, the age of sexual consent is 16 years for girls. The age of sexual consent has not been defined for boys.Malaysian legislation does not provide for criteria to determine whether the consent for sexual activities between peers under the age of 18 is voluntary, well-informed and mutual, nor for a close-in-age exemption |
|  | Have a law or regulation establishing a **mechanism for centrally registering sex offenders** that has been implemented/setup. | Yes | Malaysia launched a **national** **child sex offender registry** that came into effect on April 2019.The new sex offenders’ registry, regulated in Sections 118 to 120 of the Child Act, allows people to verify if the individual has committed any sexual offense against children by filling in a form and stating their relationship to the individual at the department’s state office, or the department district office. |
|  | 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 | The **attempt** of committing crimes under the Penal Code is criminalised according to Section 511 that states that “*whoever attempts to commit an offence punishable by this Code or by any other written law with imprisonment or fine or with a combination of such punishments, or attempts to cause such an offence to be committed, and in such attempt does any act towards the commission of such offence, shall, where no express provision is made by this Code or by such other written law, as the case may be, for the punishment of such attempt, be punished with such punishment as is provided for the offence: Provided that any term of imprisonment imposed shall not exceed one-half of the longest term provided for the offence”*Section 43 of the Child Act criminalises an attempt to commit the crime of exploiting a child in prostitution.  |
|  | 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 | Regarding the criminalisation of **recidivism**, Section 75A of the Penal Code states that *“whoever, having been convicted at least two times of a serious offence and was punished with at least two years of imprisonment for each of those convictions, shall be punished with mandatory imprisonment for the third and subsequent offences and the term of imprisonment shall not be less than double the term of the longer term of imprisonment imposed for the previous convictions”* |
|  | Provide for **mandatory reporting** for particular professions that have likelihood to have contact with kids who might disclose. |  Yes |  |
|  | 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 | The Anti-Trafficking in Persons Act links trafficking in persons with exploitation (including sexual exploitation) by defining the act as all actions involved in acquiring or maintaining the labour or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this Act.Section 15 of the Anti-Trafficking in Persons Act could be applied to any persons who profits from the exploitation of a trafficked person, though it does not specifically criminalise the organisation of travel arrangements, nor extend liability to companies for aiding, abetting or procuring the exploitative sexual conduct of a child. Section 20 criminalises the act of providing facilities in support of trafficking in persons. Liability is extended to the owner, occupier, lessee or person in charge of any premises, room or place, knowingly permits a meeting to be held in that premises, room or place for the purpose of committing an offence under this Act (for instance section 14 and 15, trafficking in children for the purpose of sexual exploitation), shall, on conviction, be punished with imprisonment for a term not exceeding ten years, and shall also be liable to fine.Section 21 applies the same principles but to those who, directly or indirectly, provides or makes available financial services or facilities— (a) intending that the services or facilities will be used, or knowing or having reasonable grounds to believe that the services or facilities will be used, in whole or in part, for the purpose of committing or facilitating the commission of an act of trafficking in persons, or for the purpose of benefiting any person who is committing or facilitating the commission of an act of trafficking in persons; or knowing or having reasonable grounds to believe that, in whole or in any part, the services or facilities will be used by or will benefit any person involved in an act of trafficking in persons, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years, and shall also be liable to fine. (2) For the purpose of subsection (1), “*financial services or facilities*” include the services or facilities offered by lawyers or accountants acting as nominees or agents for their clients.There is no corporate criminal liability established for crimes related to sexual exploitation of children. |
|  | 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. |  Yes | Sections 12, 13, 14 and 15 of the Sexual Offences against Children Act 2017 all relate to child grooming.Section 13 explicitly criminalises grooming; any person who communicates by any means with a child with the intention to commit or to facilitate the commission of any offence under section 5, 6, 7, 8, 15 or 16 or any offence under the Schedule against the child commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding five years and shall also be liable to whipping. (2) In any proceedings under this section, the fact that any offence under section 5, 6, 7, 8, 15 or 16 or any offence under the Schedule has been committed need not be specified or proven. |
|  | 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) Accession in 1995
* Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography Accession in 2012
* 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 Accession in 2009
* ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.182 Ratified in 2000
* United Nations World Tourism Organisation (UNWTO) Framework Convention on Tourism Ethics Not ratified
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|  | Establish **protection measures** for child victims at any stage of the legal process against the suspected offender. | Yes | The Evidence of Child Witness Act 2007 Section 3 allows a child witness, defines as “a person under the age of sixteen years who is called or proposed to be called to give evidence in any proceedings but does not include an accused or a child charged with any offence”, to give evidence in any one combination of the following manner (a) by having a screen between him and the accused or a child charged with any offence, (b) by live link; or (c) by video recording.Section 14 adds further protection to the child by restricting media reporting and publication to prevent identification of the child.This act however, only defines children as being under the age of 16 and so does not provide protection to all children. |
|  | Establish **child-friendly interviewing practices by professionally trained police.**  | No |  |
|  | Ensure that national legislation provides the **right for child victims to receive support in their recovery and rehabilitation**, including accessing re-integration services. | Yes | The Malaysian Child Act establishes ‘places of safety’ to ensure the care and protection of children and ‘places of refuge’ to ensure thecare and rehabilitation of children (Section 54 and 55). These places, institutions or centres are established or appointed by the Minister of Women, Family and Community Development. Section 14 of the Anti-Child Pornography Act establishes that all child victims of online child sexual exploitation are provided appropriate care, custody and support for their recovery and reintegration.  |
|  | 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 | The Women, Family and Community Development Ministry hosts a 24-hours helpline called the "The Talian Kasih 15999 hotline", for the public to report, among other things, child abuse cases.Children can make reports to Childline Malaysia 15999 and some NGOs. Reports concerning online child sexual exploitation can be done to government mechanisms such as Cyber999 and the Malaysian Communication and Multimedia Commission. |
|  | 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 | There is legislation concerning data retention (e.g. Personal Data Protection Act), which requires for any personal to be kept no longer than necessary unless there are requirements by any other legal provisions. Determination of the retention period is based on the requirement of the governing legislation or policy. The personal data processed should be adequate but not excessive in relation to the purpose of processing.A retention period that exceeds the requirement by other legal provisions should be detailed out in the policy documents of the organization. Thus, data retention requirements for cases of sexual exploitation of children would be determined under the specific governing legislation that deals on the specific matter, which does not appear to be existent at the moment. |
|  | 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 175 Criminal Procedure Code.Section 66A of the Anti-Trafficking in Persons Act stipulates that The Court before which a person is convicted of an offence under this Act may make an order for the payment of a sum fixed by the Court by way of compensation by the convicted person to the trafficked person. |

**Legal Sources:**

[Laws of Malaysia – Act 479 - Extradition Act 1992](http://www.oecd.org/site/adboecdanti-corruptioninitiative/39364063.pdf)

[Laws of Malaysia - Act 574 - Penal Code](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%2018%20Dis%202018.pdf) (as amended in 2017)

[Laws of Malaysia – Act 593 - Criminal Procedure Code](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20593%20-%20Criminal%20Procedure%20Code.pdf)

[Laws of Malaysia - Act 611 - Child Act 2001](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20611%20-%2027%202%202018.pdf)

[Laws of Malaysia - Act 670 - Anti-Trafficking In Persons and Anti-Smuggling of Migrants Act 2007](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20670%20-%20diluluskan%20TPPUU%2023082016%20-Bersih.pdf)

[Laws of Malaysia - Act 676- Evidence of Children Witness Act 2007](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20676.pdf)

[Laws of Malaysia – Act 792 - Sexual Offences against Children Act 2017](http://www.federalgazette.agc.gov.my/outputaktap/aktaBI_20170707_WJW008739BI.pdf)