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Descrizione generata automaticamente**Text

Description automatically generated with medium confidenceMyanmar**

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 Myanmar 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. | Yes | Section 4 of the Penal Code states that “the provisions of this Code apply also to any offence committed by any citizen of the Union wherever he may be.”  Myanmar Criminal Procedure Code, article 188: When a citizen of the Union commits an offence at any place without and beyond the limits of the Union of Myanmar, he may be dealt with in respect of such offence as if it had been committed at any place within the Republic of the Union of Myanmar, at Which he may be found. |
|  | 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 Myanmar Extradition Law lists the following extraditable offences within the penal code that could apply to cases of sexual exploitation of children (though they do not all explicitly mention children, nor exploitation but rather prostitution and/or kidnapping)  361, 366, 366A, 366B, 370 to 373.  According to Section 67 of Child Right Law 2019, offences under section 66 of this law, such as sexual exploitation on child; transfer the body part of child for benefit or forced labour; sale, offer, transfer and receipt in order for forced labour; prostituting; offering, obtaining, purchase or support for prostitution; making and distribution of child pornography or offering, sale, possession, import or export for the purpose of pornography, shall be assumed as extraditable offences in accordance with agreement of protocol members of international convention related with Child Right.  However, with reference to Section 6(a) of Myanmar Extradition Act 2017, Myanmar may deny to extradite its nationals. |
|  | Do NOT require the principle of **double criminality** for proceeding with extraterritorial jurisdiction or extradition for sexual offences against children. | Yes | There is no principle of double criminality for jurisdiction and/or extradition. |
|  | Abolish **statutory limitations** for the prosecution of ALL offences of sexual exploitation of children. | Yes | There are no statutory limitations applicable to criminal offences. |
|  | Set up **conditions for any travel** by persons convicted of sexual exploitation of children. | ? | Access to the country has been denied in the past based on intelligence of foreign law enforcement agencies. |
|  | 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. | Partially | While according to Section 3(b) of Child Right Law 2019, a child is a person who has not attained the age of 18 years old, Section 3(j) of the Anti-Trafficking in Persons Act 2005 defines a child as a person below the age of 16 years.  Section 372 of the Penal Code criminalises selling, letting to hire or otherwise disposing of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.  Section 373 of the Penal Code covers the buying, renting or otherwise obtaining possession of any person under the age of eighteen years for the same purposes as prescribed in section 372 of the Penal Code, including knowing it to be likely that such person will be used for such purposes.  Age of consent is 16 years old, this was recently raised from 14 after a revision in January 2016 to section 375 of the Penal Code.  According to Section 105 (a) any person who lets a child under his/her guardian to live with a prostitute, is negligent on child under his/her guardian to live on earning as a prostitute, forces or allows a child for the purpose of prostitution, distributes child sexual abuse material or offer, sell, possession, import or export for such purposes and force to marriage shall be punish with imprisonment for a term from minimum one year to maximum seven years and shall also be liable a fine from minimum 1,000,000 MMK to maximum 2,000,000 MMK.  Section 105 (b) of the Child Right Law 2019 mentions that any person who forces a child to be a prostitute, lives on the earning of child as prostitute, and exploitation child shall be punish with imprisonment for a term from minimum two-year to maximum ten years and shall also be liable a fine from minimum 12,00,000 MMK to maximum 1,500,000 MMK. |
|  | 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 |  |
|  | 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 | In the Myanmar Penal Code, sections 366A, 366B, 372 and 373 are not bailable under the Myanmar Criminal Procedure Code. |
|  | Provide in law that the **mere attempt** to commit a crime of sexual exploitation of children is criminalised. | Yes | According to Section 107 of the Child Opportunities Law, whoever attempting to commit a crime, conspiracy or convicted abatement to commit the crime, shall be punished for the offence provided in this law*.* |
|  | 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 | Art. 75 Penal Code.  Whoever, having been convicted--  (a) by a Court in the Union of Burma, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to twenty years, or to imprisonment of either description for a term which may extend to ten years. |
|  | Provide for **mandatory reporting** for particular professions that have likelihood to have contact with kids who might disclose. | Partially | Section 58(a) of the Child Right Law 2019 mentions that whoever thinks any child needs to be protected under section 57 of the law can inform the social welfare officer.  Section 57 of this law provides the criteria for children who require protection. |
|  | 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 372 and 373 of the Myanmar Penal Code may be applicable here.  Section 372 criminalises selling, letting to hire or otherwise disposing of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.  Section 373 covers the buying, renting or otherwise obtaining possession of any person under the age of eighteen years for the same purposes as prescribed in section 372, including knowing it to be likely that such person will be used for such purposes.  Corporate liability may arise in Myanmar when an employee of a company has committed an offense 359 – 374 Penal Code while working under the name of the company. |
|  | 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 |  |
|  | 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 1991 * 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 2004 * ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.182 Ratified in 2013 * United Nations World Tourism Organisation (UNWTO) Framework Convention on Tourism Ethics Not ratified |
|  | Establish **protection measures** for child victims at any stage of the legal process against the suspected offender. | Partially | According to Section 12 of the Anti-Trafficking in Persons Act 2005, “The Central Body shall, if the trafficked victims are women, children and youth, make necessary arrangements for the preservation of dignity, physical and mental security”. Central Body is the Central Body for Suppression of Trafficking in Persons established under Chapter III of the Act.  Further the Act provides under Section 14, “the Central Body shall arrange and carry out for the security of life of trafficked victims and to arrange according to their wishes for repatriation and resettlement as much as possible”.  Chapter VI (Sections 16-18) of the Act exclusively deals with the provision of special protection to the child victims of trafficking. |
|  | Establish **child-friendly interviewing practices by professionally trained police.** | Partially | Section 96(a) of the Child Right Law 2019 refers to appropriate procedure to collect testimonies from child victims or child witnesses. However, it does not mention specifically if this would apply to both national and non-national victims.  According to Section 11(a) of the Anti-Trafficking in Persons Act, “if the trafficked victims are women, children and youth, the relevant Court shall, in conducting the trial of offences of trafficking in persons, - 10 - do so not in open Court, but in camera for the preservation of their dignity, physical and mental security”. |
|  | Ensure that national legislation provides the **right for child victims to receive support in their recovery and rehabilitation**, including accessing re-integration services. | Partially | The Department of Social Welfare provides assistance to child victims of trafficking for sexual purposes through its shelter homes.  Section 97 of Child Right Law 2019 provides that the Ministry of Social Welfare, Relief and Resettlement must arrange for restoration and rehabilitation of physically and mentally injured child victims.  Chapter VII (Sections 19-21) of the Anti-Trafficking in Persons Act deals with repatriation, reintegration and rehabilitation. |
|  | Establish a **national reporting mechanism (e.g. hotline)** that coordinates access to services, and helps to overcome reluctance to report sexual exploitation of children. | No | There is no child helpline in Myanmar |
|  | 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. | ? | There do not appear to be any provisions on data retention and preservation around cases of 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 | Articles 545 and 546 of the Code of Criminal Procedure.  According to Section 109 of the Child Right Law 2019, the court may, for the purpose of justice, render the judgement to pay compensation to the child victims by the convicted person.  Section 33 of the Anti-Trafficking in Persons Law permits the courts to pass an order for damages to be paid to the trafficked victim from the money confiscated or from the proceeds of sale of property or from the fine.  The Anti-Trafficking in Persons Law also establishes a special fund “for the purpose of utilizing for the suppression of trafficking in persons, repatriation and rehabilitation of trafficked victims. (Section 22). |

**Legal Sources:**

[Anti-Trafficking in Persons Law](http://www.asianlii.org/mm/legis/laws/atiplpadcln52005637/), 2005

[Child Rights Law, 2019](http://myanmar-law-library.org/law-library/laws-and-regulations/laws/myanmar-laws-1988-until-now/national-league-for-democracy-2016/myanmar-laws-2019/pyidaungsu-hluttaw-law-no-22-2019-child-law-burmese.html)

[Code of Criminal Procedure](https://www.burmalibrary.org/docs14/Code_of_Criminal_Procedure+schedules.pdf)

[Extradition Act, 1904](https://www.unodc.org/res/cld/document/mmr/1904/the_myanmar_extradition_act_html/Myanmar_Extradition_Act_1904.pdf)

[Penal Code](https://www.warnathgroup.com/wp-content/uploads/2015/03/Burma-Penal-Code.pdf)