



OVERVIEW ON

EXTRATERRITORIALITY AND EXTRADITION LEGISLATION FOR OFFENCES OF SEXUAL EXPLOITATION OF CHILDREN

Down to Zero

Fighting sexual exploitation of children



The project "Stepping up the Fight Against Sexual Exploitation of Children – Empowering Children and Communities" is supported by the Dutch Ministry of Foreign Affairs under Dutch development/foreign policy with Defence for Children-ECPAT Netherlands.



Context

Extraterritorial jurisdiction and extradition mechanisms have become essential tools in the fight against the sexual exploitation of children. Indeed, legislation needs to enable cross-border responses to protect children everywhere and avoid impunity for offenders. Through extraterritorial jurisdiction courts may prosecute offences of sexual exploitation of children based on the nationality of the offender (active extraterritorial jurisdiction), the nationality of the victim (passive extraterritorial jurisdiction), or even regardless of the place of commission or the nationality of the offender/victim (universal

jurisdiction principle). Comprehensive extraterritorial and extradition legal provisions reduce impunity by creating grounds for prosecution of crimes that an offender may have avoided punishment for because of legal weaknesses or loopholes.

For more information on how extraterritoriality and extradition provisions apply to offences of sexual exploitation of children and what barriers to their application exist, please refer to [ECPAT's Issue Paper on Extraterritorial Jurisdiction and Extradition Legislation](#).

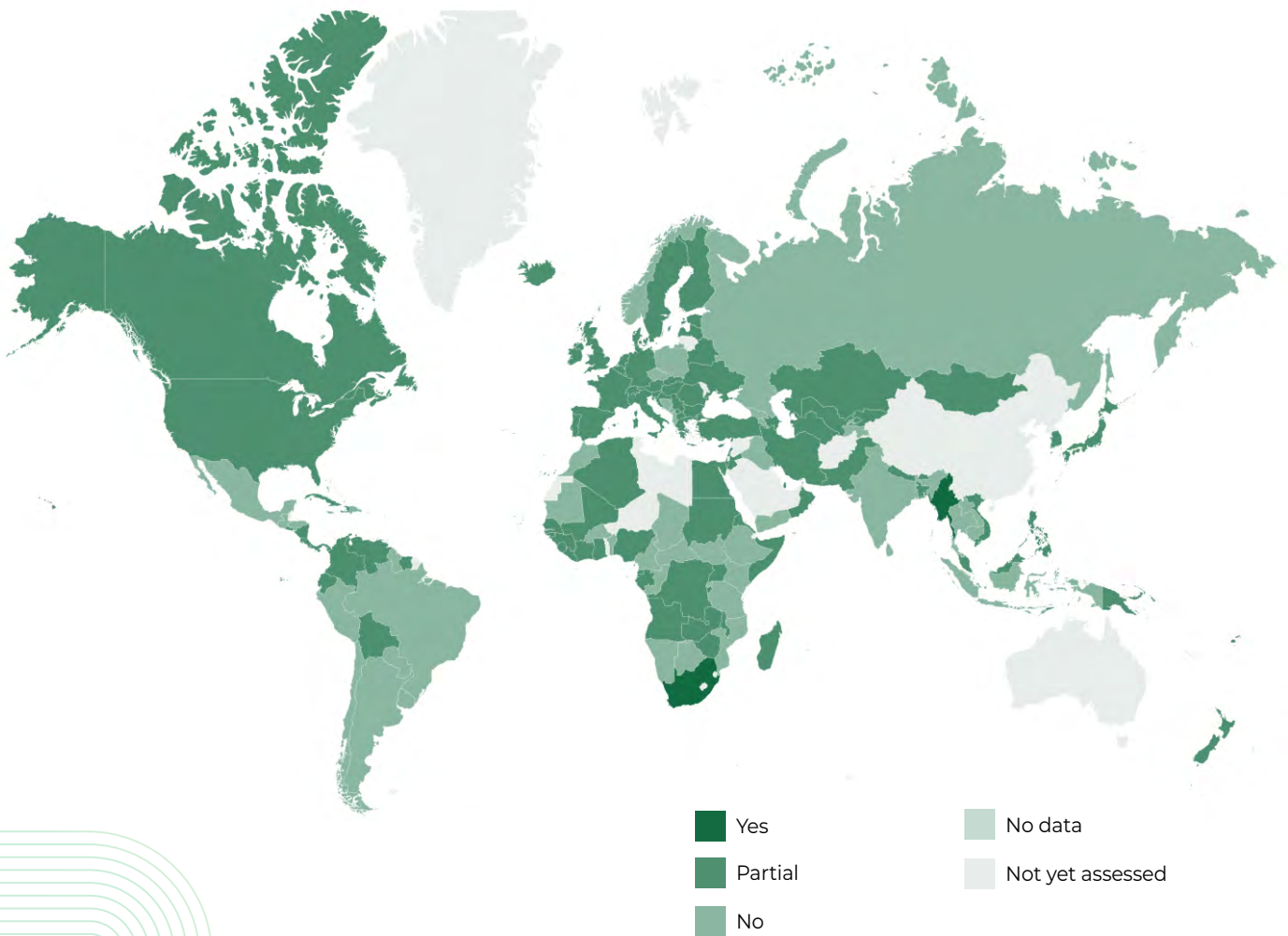
ECPAT's Assessment of National Provisions on Extraterritoriality and Extradition

Recognising the key role of extraterritorial legislation and extradition mechanisms to combat the sexual exploitation of children, through its [Global Progress Indicators' initiative](#) and its work on the [Legal Checklist on Key Legal Interventions to Protect Children from Sexual Exploitation in Travel and Tourism](#), ECPAT international has collected data on extraterritoriality (active, passive and universal) legislation, and extradition mechanisms for **162 countries**, with the aim of assessing whether national provisions allow for effective prosecution of sexual exploitation of children.

ECPAT considers legislation on such topics to **fully** allow for prosecution when the national legislation explicitly provides for both active and passive extraterritoriality for all offences of sexual exploitation of children covered by the State's legislation; extradition is possible for sexual exploitation of children offences; and double criminality does not apply for both extraterritoriality and extradition.

State's legislation is regarded by ECPAT as **partially** permitting prosecution if there are limits to the scope of the active and passive extraterritorial legislations; and double criminality does not apply to either or both extraterritoriality and extradition provisions.

Lastly, ECPAT considers legislation on sexual exploitation of children to **not** allow effective prosecution when extraterritoriality provisions do not apply to any offences related to sexual exploitation of children; double criminality applies to either extraterritoriality and extradition provisions; and extradition is not permitted for all offences related to the sexual exploitation of children.



From ECPAT's Global Progress Indicators' Map

Based on this assessment, ECPAT concluded that most countries' legislation (109 countries) partially allows for prosecution of sexual exploitation of children. Out of 162 countries analysed, only two countries appear to fully allow for prosecution of child sexual exploitation offences, while 51 countries do not have appropriate extraterritoriality and extradition provisions for sexual exploitation of children crimes.

It is worth noting that the data collected and presented in this document reflects the existence of relevant legal provisions in the 162 countries analysed at the time of ECPAT's research, in 2021-2022. Additionally, ECPAT's assessment does not extend to the analysis of the application and effectiveness of these provisions in practice.

Focus on Active Extraterritorial Jurisdiction

Active Extraterritorial Jurisdiction

The active personality principle enables States to assert their jurisdiction over crimes of sexual exploitation of children committed **by** their nationals/habitual residents. Based on this principle, State A could prosecute a crime committed by one of its nationals or habitual residents in the territory of State B, irrespective of the nationality of the victim. The principle of active personality is particularly important for crimes of sexual exploitation of children committed in travel and tourism or facilitated online. Indeed, offenders could travel to countries with lenient laws to commit crimes against children knowing that they will not be prosecuted after returning home.

Out of 158 countries analysed,¹ a vast majority, 132 countries, have legislation recognising active extraterritoriality for child sexual exploitation offences. Out of these 132 countries, 115 have active extraterritorial legislation which applies to all types of sexual exploitation of children offences. Seventeen countries have provisions limiting the application of extraterritoriality exclusively to offences of sexual exploitation of children considered "serious" within the national legislation or specific forms of sexual exploitation of children. For example, Zimbabwe recognises active extraterritorial jurisdiction only under specific laws for child sexual abuse material related offences and trafficking offences.²

Amongst the 26 countries that do not explicitly provide for active extraterritorial jurisdiction in their national legislation, 10 countries, namely Belgium, Democratic Republic of the Congo, Ghana, Iceland, Nepal, Nicaragua, Somalia, Honduras, Mauritius, and Paraguay can exercise universal jurisdiction for all or some sexual exploitation of children related offences.

Requirements for the application of active extraterritoriality may limit the scope of its effect, in particular the exclusion of habitual or permanent residents, the mandatory presence of the offender in the State, and finally the application of the double criminality principle. For more information on how legal hurdles can impact the application of extraterritorial jurisdiction, please refer to [ECPAT's Issue Paper on Extraterritorial Jurisdiction and Extradition Legislation](#).

Out of the 132 countries establishing active extraterritoriality for child sexual exploitation offences, 103 include not only citizens but also habitual or permanent residents of their country in related provisions.

Furthermore, out of these 132 countries, most of them, 112 countries, do not require the offender to be present in the country for the application of active extraterritorial jurisdiction.

1 ECPAT was unable to find information or only able to find unclear information on active extraterritoriality for four countries: Argentina, Brunei, Chile, Liberia.

2 Republic of Zimbabwe. (2019). [Cyber Security and Data Protection Bill, Section 166A \(1-c\)](#) ; Republic of Zimbabwe. (2014). [Trafficking in Persons Act](#), Section 7a; Section 7b.

One of the most impacting barriers to active extraterritorial jurisdiction is the double criminality principle. Out of 121 countries,³ 55 do not require double criminality for the application of active extraterritorial jurisdiction. Although in the remaining 66 countries active extraterritorial jurisdiction would not apply if the double criminality principle was not met, 17 countries' legislations contain exceptions to this rule with the criterion of double criminality being lifted, in most cases for serious offences, or for specific forms of sexual exploitation of children. For instance, Mali's law on trafficking in persons, which also criminalises the trafficking of children for sexual purposes, establishes the jurisdiction of Mali's courts for acts considered crimes or misdemeanors under the trafficking law committed abroad, even if the act is not punishable by foreign legislation, and if the offender is present in the country.⁴

Finally, when looking cumulatively at all aspects of active extraterritoriality, 31 countries, around half of which are European countries, have comprehensive legislations providing for active extraterritoriality for all forms of child sexual exploitation offences, including residents, and not requiring dual criminality or for the offender to be present in State. An example is South Africa, with the provision that "even if the act alleged to constitute a sexual offence or other offence under this Act occurred outside the Republic, a court of the Republic, whether or not the act constitutes an offence at the place of its commission, has, jurisdiction in respect of that offence if the person to be charged is a citizen of the Republic; is ordinarily resident in the Republic."⁵

Focus on Passive Extraterritorial Jurisdiction

Passive Extraterritorial Jurisdiction

The passive personality principle enables States to assert their jurisdiction over crimes of sexual exploitation of children committed **against** their nationals/habitual residents. Based on this principle, State A could prosecute a crime committed in the territory of State B against a child who is a national (and in rare cases a habitual resident) of State A, irrespective of the nationality of the offender. The principle of passive personality is particularly important in cases where children are trafficked across borders to be abused.

Out of 158 countries,⁶ 91 have legislation providing for passive extraterritoriality for child sexual exploitation offences. Of these 91 countries, 61 have passive extraterritorial provisions applying to all types of sexual exploitation of children offences. Thirty countries have provisions limiting the application of extraterritoriality exclusively to offences of sexual exploitation of children considered "serious" within the national legislation, or specific forms of sexual exploitation of children. For instance, while Mauritania's Penal Code does not contain general provisions on passive extraterritoriality, the country adopted a legislation regulating the prevention and repression of human trafficking, including child trafficking, which establishes passive extraterritorial jurisdiction for Mauritanian courts in these cases.⁷

3 ECPAT was unable to find information or only able to find unclear information on double criminality with regards to active extraterritoriality for eleven countries: Antigua and Barbuda, Bangladesh, Cyprus, Guatemala, Italy, Laos, Malaysia, Pakistan, Panama, Senegal, Türkiye.

4 Republic of Mali. (2012). [Law No. 2012-023 on the fight against trafficking in persons and related practices](#), Article 16.

5 Republic of South Africa. (2007). [Criminal Law \(Sexual Offences and Related Matters\) Amendment Act](#), Article 61.

6 ECPAT was unable to find information or only able to find unclear information on passive extraterritoriality for four countries: Argentina, Brunei, Chile, Tanzania.

7 Islamic Republic of Mauritania. (2020). [Law No. 2020-017 on the prevention and repression of trafficking in persons and the protection of victims](#), Article 23.

Amongst the 67 countries that do not explicitly provide for passive extraterritorial jurisdiction in their national legislation, 10 countries, namely Belgium, Democratic Republic of the Congo, Ghana, Iceland, Nicaragua, Sweden, Chad, Honduras, Mauritius, and Paraguay can exercise universal jurisdiction for all or some sexual exploitation of children related offences.

Out of 91 countries, 66 include not only citizens but also habitual or permanent residents of their country in their passive extraterritoriality provisions, meaning that the country can also exercise its jurisdiction if habitual/permanent residents of its country are victims of an offence. For example, the Penal Code of Eritrea establishes Eritrean courts' jurisdiction with respect to serious offences (all sexual exploitation of children offences are considered serious offences in the Penal Code) committed outside of Eritrea when directed against an Eritrean citizen, a permanent resident, an internationally protected person in the service of Eritrea, or a member of the protected person's family.⁸

Moreover, out of 91 countries, a majority of 68 do not require the offender to be present in the country for the application of passive extraterritorial jurisdiction. Only 23 countries exclusively make use of their active extraterritorial jurisdiction if the offender is present in the state's territory which can severely hinder the application of passive extraterritoriality.

As in the case of active extraterritoriality, one of the most impactful barriers to passive extraterritorial jurisdiction is the double criminality principle. Out of 83 countries,⁹ 44 do not require double criminality for the application of passive extraterritorial jurisdiction. In some cases, this exception specifically refers to sexual exploitation of children, for example, Liechtenstein's Penal Code provides that "Liechtenstein criminal laws shall apply irrespective of the criminal laws of the place of the offence for the following offences committed abroad: 1. sexual molestation of minors, serious sexual abuse of minors, sexual abuse of minors."¹⁰ While 39 countries do not recognise their passive extraterritorial

jurisdiction on a matter if the double criminality criterion is not satisfied, amongst them 10 countries' legislations contain exceptions for which the criterion of double criminality is lifted, in most cases for child sexual exploitation offences considered "serious" within the national legislation, or for specific forms of sexual exploitation of children. In Finland, the requirement of double criminality is specifically lifted with regards to passive extraterritoriality (and active extraterritoriality) for offences specifically listed in the Criminal Code, including most sexual exploitation of children related offences and child sexual abuse material offences.¹¹

Finally, when looking cumulatively at all aspects of passive extraterritoriality, only 12 countries, Andorra, Austria, Bulgaria, Eritrea, Estonia, Hungary, South Korea, Malta, Myanmar, South Africa, Spain, and Viet Nam have comprehensive national provisions providing for passive extraterritoriality for all forms of child sexual exploitation offences, including residents, and not requiring double criminality or for the offender to be present in State. For example, the Spanish Criminal Code states that Spanish courts will have jurisdiction over offences against the sexual freedom and sexual integrity of minors committed outside of Spain against victims who had Spanish nationality or habitual residence in Spain at the time of the commission of the acts.¹²

Focus on Universal Jurisdiction

Universal Jurisdiction

Universal jurisdiction enables States to assert their jurisdiction over certain crimes - usually considered particularly heinous - regardless of the place of commission or the nationality of the offender or the victim. The inclusion of sexual crimes against children under the category of heinous crimes, which would justify the application of this principle to assert jurisdiction, is very rare.

8 State of Eritrea. (2015). [Criminal Code](#), Article 44(2).

9 ECPAT was unable to find information or only able to find unclear information on double criminality with regards to passive extraterritoriality for eight countries; Bangladesh, Italy, Laos, Malaysia, Nepal, Panama, Singapore, Türkiye.

10 Principality of Liechtenstein. (1987). [Criminal Code](#), Article 64(1).

11 Republic of Finland. (1889). [Criminal Code](#), Section 11.

12 Kingdom of Spain. (1985). [Organic Law of the Judicial Power](#), Article 23.4(k).

Out of 162 countries analysed, 29 can exercise universal jurisdiction.

Belgium, Czech Republic, Democratic Republic of the Congo, Iceland, Monaco, Nicaragua, Somalia, Switzerland, and Honduras all have provisions establishing universal jurisdiction for all types of sexual exploitation of children offences. In particular, the Swiss Penal Code provides that “This Code shall apply to any person who is in Switzerland and has not been extradited, and who has committed one of the following acts abroad: a. trafficking in human beings, sexual coercion, rape, sexual acts committed on a person who is incapable of discernment or resistance, or incitement to prostitution if the victim was under 18 years of age; a.(bis).sexual acts with dependent persons and sexual acts with minors in return for payment; b. sexual acts with a child, if the victim was under 14 years of age; c. qualified pornography, if the content of the objects or representations was sexual acts with minors.”¹³

Germany, Ghana, Greece, Madagascar, Sweden, Türkiye, Chad, Ethiopia, Mauritius, and Paraguay can exercise universal jurisdiction for trafficking of children offences.

Chad and Rwanda can exercise universal jurisdiction for all cybercrimes including crimes of online child sexual exploitation and abuse, and Ethiopia, Sweden, Nepal, Kosovo, and Germany can exercise universal jurisdiction over child sexual exploitation material.

Denmark, Finland, France, Ghana, Kosovo, Latvia, Portugal, and Paraguay have universal jurisdiction for offences included in international agreements.

Andorra, Colombia, Denmark, Sweden can exercise universal jurisdiction according to the severity of punishment principle, and Nepal exercises universal jurisdiction for rape against girls only (in addition to child sexual exploitation material).

Finally, Kosovo and Türkiye’s legislations provide for universal jurisdiction over offences related to sexual exploitation of children in prostitution.

Twelve countries require the offender to be present in the country to exercise their universal jurisdiction.

Overall, 16 countries in Europe, 8 in Africa, 4 in South America and 1 in Asia provide for universal jurisdiction.

Focus on Extradition Mechanisms

Extradition Mechanisms

Extradition is the process in which a State willingly surrenders an offender to face prosecution and/or punishment in another country upon request from another State. Extradition mechanisms are particularly important for offences of sexual exploitation of children where the offender is likely to travel to another country as the exploitation may not be detected until the offender has departed the country where the offence took place.

Out of 139 countries,¹⁴ 107 have provisions in their national legislations on extradition for at least some sexual exploitation of children related offences.

For 31 countries, extradition exclusively depends on the existence and content of international treaties or agreements, meaning that it is uncertain whether extradition is possible for sexual exploitation of children offences. Lastly, extradition provisions of one country (Uruguay) analysed exclude sexual exploitation of children as extraditable offences (due to the requirement of a minimum gravity of 6 years of imprisonment for extraditable offences, excluding all sexual exploitation of children offences).

¹³ Swiss Confederation. (1937). [Criminal Code](#), Article 5.

¹⁴ ECPAT was unable to find information or only able to find unclear information on extradition for twenty-three countries: Benin, Brazil, Republic of the Congo, East Timor, El Salvador, Ecuador, Eritrea, Guatemala, Guinea-Bissau, India, Jordan, Laos, Maldives, Mali, Panama, Senegal, Somalia, Sudan, Türkiye, Turkmenistan, Ukraine, the United States, Viet Nam.

It should also be noted that 47 countries either completely refuse or only allow extradition of their nationals under very strict conditions.

In 90 countries, extradition is provided for sexual exploitation of children offences if the criterion of the severity of punishment is fulfilled. Most countries require 1 year (62 countries), others 2 years (20 countries), and Colombia 4 years.¹⁵ In 24 countries, extradition is provided for sexual exploitation of children offences according to conditions set up in treaties or agreements in force. In 11 countries, extradition is only provided for some forms of sexual exploitation of children offences. For instance, Barbados only proceeds with extradition for rape; procuring, or trafficking in, women or young persons for immoral purposes; and exposing a child.¹⁶ In only 14 countries, extradition is possible for all child sexual exploitation offences without the severity of punishment requirement.

Out of 135 countries,¹⁷ only 10 (Bhutan, Brunei, Iran, Myanmar, Oman, Paraguay, Tanzania, Uganda, Vatican City, and South Africa) do not impose the double criminality requirement to extradite an alleged offender. A large majority of countries, 115, require the fulfilment of the double criminality requirement. Ten countries have unclear extradition provisions, details about the double criminality principle will be found in extradition agreements.

Regarding countries part of the European Union, as well as Denmark, Finland, Iceland, Norway and Sweden (Nordic countries), sexual exploitation of children related offences are specifically referred to as extraditable offences under the European Arrest Warrant and the Nordic Arrest Warrant frameworks. Double criminality is not required for proceeding with extraditions of these offences between Nordic States and within the European Union if the act is punishable by a maximum period of at least three years of imprisonment in the requesting State.

With regards to recommendations for improving national legislation's provisions on extraterritoriality and extradition, please refer to [ECPAT's Issue Paper on Extraterritorial Jurisdiction and Extradition Legislation](#).

¹⁵ ECPAT was unable to find information or only able to find unclear information on the number of years required in the context of severity of punishment for 7 countries namely: Azerbaijan, Canada, Cape Verde, Chad, Cuba, Haiti, Latvia.

¹⁶ Barbados. (1979). [Extradition Act](#), Schedule.

¹⁷ ECPAT was unable to find information or only able to find unclear information on the double criminality requirement with regards to extradition for four countries: Belarus, Cameroon, Czech Republic, Ghana.



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