

# EXPLANATORY NOTE ON SECTT LEGAL CHECKLIST

This explanatory note is meant to provide guidance to relevant stakeholders in the analysis of the SECTT legal checklist, which is based on the recommendations of [the Global Study on SECTT](#) and has been composed for governments with suggestions for legal interventions they may consider to adopt in order to improve their national legal frameworks to address SECTT more effectively.

This document provides brief explanations<sup>1</sup> on concepts and legal terms included in the checklist, with a specific focus on their relevance with regards to SECTT, and more broadly SEC.

## SEXUAL EXPLOITATION IN TRAVEL AND TOURISM (SECTT)

The sexual exploitation of children in travel and tourism (SECTT) is defined as any “acts of sexual exploitation embedded in a context of travel, tourism or both”. The UNWTO Framework Convention on Tourism Ethics recognizes that the exploitation of children conflicts with the fundamental aims of tourism and should be strongly combated with the cooperation of all States concerned. SECTT encompasses a broad spectrum of exploitation of children in prostitution, sale and trafficking of children for sexual purposes, online child sexual exploitation and some forms of child, early and forced marriages. Various travel products put children at risk of exploitation, such as voluntourism, orphanage tourism or mega sport events.

## CHILD SEXUAL ABUSE MATERIAL (CSAM) AND CHILD SEXUAL EXPLOITATION MATERIAL (CSEM)

CSAM, as the preferred term of choice to ‘child pornography’, refers to materials depicting acts of sexual abuse and/or focusing on the genitalia of the child. The term CSEM can be used in a broader sense to encompass other sexualized material depicting children. These materials include children of all ages, boys and girls, and differ in level of severity of the abuse and acts ranging from children posing sexually to gross assault. As result of the interconnectedness of SEC manifestations, according to some experts CSAM- related conducts are often linked to other crimes such as hands-on sexual misconducts, which can include travelling to the country where the child/children exploited in the materials are physically located.

<sup>1</sup> These brief explanations are heavily derived from and based on previous research and reports such as the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, the Global Study on Sexual Exploitation of Children in Travel and Tourism and the Access to Justice and Remedies for Child Victims of Sexual Exploitation reports (Access to Justice, Access to Compensation, Access to Recovery and Reintegration).

## GROOMING (ONLINE/OFFLINE) FOR SEXUAL PURPOSES

In the context of child sexual exploitation and sexual abuse, 'grooming' is the short name for the solicitation of children for sexual purposes. 'Grooming/online grooming' refers to the process of establishing/building a relationship with a child either in person or through the use of the Internet or other digital technologies to facilitate either online or offline sexual contact with that person. The act should be criminalized where this solicitation has been followed by material acts leading to a meeting. It is not necessary that the meeting takes place.

N.B. Grooming is criminalized in the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as *the Lanzarote Convention* (article 22).

## EXTRATERRITORIAL JURISDICTION

Extraterritorial jurisdiction refers to a national court's ability to exercise authority beyond its territorial limits. Extraterritorial jurisdiction is an important instrument in tackling SECTT. This principle allows to prosecute and convict child sex offenders who sexually exploit children in any country in their country of origin.

## EXTRADITION

Under extradition, the State where the offender is found may be required to send him/her back to the country where the offence was committed.

Generally speaking, there are two kinds of extradition agreements: (i) "list treaty" under which extradition is only possible for an offence that is listed in the treaty and (ii) "dual criminality treaty" which requires the offence be regulated in both countries associated with, at least, one-year imprisonment. Both could pose problems, if the crime is not regulated in the treaty, if the crime is regulated in a different way or requires diverse elements to be met between the countries or if there is no extradition treaty.

## DOUBLE CRIMINALITY

According to the double criminality requirement, the offence must be prohibited both in the perpetrator's country of origin and in the country where the offence was committed. Double criminality is often required for certain sexual offences against children. This means that extradition can only take place if the offence for which the person is sought by the requesting State is also punishable under the law of the requested State. It is recommended that countries adopt legislation that enables them to establish and exercise extraterritorial jurisdiction without the criterion of double criminality.

## SEX OFFENDER REGISTRY

A database that tracks details of sex offenders. The registers log the personal details and location of convicted child sex offenders. Depending on the country, the registries are public or closed, available to law enforcement. It imposes obligations/restrictions (such as travel bans, travel notifications and/or passport confiscation or notes) in order to monitor and supervise offenders in a way which minimizes the risk to children worldwide.

## VOLUNTOURISM AND ORPHANAGE TOURISM

voluntourism is a new form of tourism which has become growingly popular among visitors from wealthy countries and has reportedly led to child sexual exploitation and abuse. The individuals who visit orphanages fuel demand for children to be removed from their families. That creates demand for 'orphanage trafficking' where children are sought to fill facilities and parents are encouraged to give their children over to "orphanages" that then make profit by charging visitors for their volunteering. It is recommended to ban visits to and volunteering with orphanages; other forms of volunteering can be proposed that are regulated and safe for children.

## RIGHT TO REMEDIES (RECOVERY, REINTEGRATION AND COMPENSATION)

International law recognizes that all human beings have a right to a legal remedy whenever their rights are violated. Accordingly, children who are victims of sexual exploitation should be entitled to such remedy, which can take many different forms including recovery, reintegration and compensation.

In international policy and practice the term ‘**recovery and reintegration**’ is widely used to describe the process following a child’s exit from the exploitative situation. This can include physical health services, psychosocial support and assistance with reintegration where children have been removed from their families or communities. The definition of **compensation** may vary from one jurisdiction to another, generally speaking it is used in reference to a financial compensation awarded to the victim through a victim’s assistance or State fund and/or monetary compensation for damages awarded in the context of criminal proceedings and/or a civil action.

## STATUTORY LIMITATIONS

Statutory limitations are legal provisions which set the maximum period which one can wait before filing a lawsuit or start prosecution, depending on the type of case or claim.

When sexually exploited children do report their abuse, it is often delayed. In these cases, their access to justice can be thwarted by short statutes of limitations for SEC crimes. States should eliminate statutes of limitations for SEC-related offenses or ensure they are of reasonable length and only begin after the victim reaches the age of 18.

## BAIL

Bail is an order of a court in a criminal case allowing an accused defendant to be freed pending trial if he/she pays a certain amount of money. Setting bail is intended to guarantee the appearance of the defendant in court when required. If the defendant appears as scheduled, the bail bond money is refunded. If the defendant fails to appear, the bail bond money is often forfeited.

SEC-related offences should be considered as a non-bailable offences especially in SECTT-related crimes, because of the risk of offenders leaving the country after release on bail, in which case prosecution would be solely dependent on extraterritorial jurisdiction and extradition.

## AGE OF SEXUAL CONSENT

The age of sexual consent (also known as age of consent) is the legally defined age at which a person can agree to sexual activity. The age of sexual consent varies across jurisdictions around the world and there is no international legal instrument setting it, however States are encouraged to establish minimum age under which engaging in sexual contacts with a child is considered a criminal offence and ensure that the age of consent cannot be used as a defence against charges of sexual exploitation of a child.

Often national provisions related to the age of sexual consent include an exception, known as **close-in-age exemption**, making consensual sexual activities lawful if the partners are of similar ages or the age difference is not higher than a certain number of years.

## INTERNATIONAL CHILD RIGHTS AND SECTT INSTRUMENTS

The following instruments shall be ratified and implemented:

- Convention on the Rights of the Child (CRC)
- Optional Protocol to the CRC on the sale of children, child prostitution and child pornography
- Optional Protocol to the CRC on a Communications Procedure (OP3 CRC)

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
- ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.182
- The United Nations' World Tourism Organisation's (UNWTO) Framework Convention on Tourism Ethics (once it will enter in force)

Additional instruments:

- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)
- Council of Europe Convention on Cybercrime (Budapest Convention)

The Lanzarote Convention and the Budapest Convention constitute comprehensive legal tools for protecting children from sexual abuse and exploitation. The Lanzarote Convention addresses SECTT from different perspectives, as part of an overall strategy to prevent and respond to sexual abuse and exploitation of children. The Budapest Convention is the first international treaty seeking to address Internet crimes by harmonizing laws and increasing cooperation. Although they were specifically designed in the framework of a regional organization, both Conventions are open for ratification also by non-member countries and are a good example for setting standards.

For more information about the sexual exploitation of children in travel and tourism consult the website [www.protectingchildrenintourism.org](http://www.protectingchildrenintourism.org)  
For more detailed information about building an effective national response to put an end to the sexual exploitation of children perpetrated through the use of information and communication technologies including the Internet please consult the [Global Database on national legal framework protecting children from sexual exploitation online](http://www.globaldatabase.ecpat.org)

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