

# Explanatory Report to the

Guidelines regarding the  
implementation of the Optional  
Protocol to the Convention on the  
Rights of the Child on the sale  
of children, child prostitution  
and child pornography

Interagency  
Working Group  
September 2019



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# Preface

On 30 May 2019, during its 81st session, the UN Committee on the Rights of the Child (the Committee) adopted its first ever Guidelines for the implementation of one of the legal instruments included under its monitoring mandate. The *Guidelines regarding the implementation of the Optional Protocol to the CRC on the Sale of children, child prostitution and child pornography* (OPSC Guidelines or Guidelines) are aimed to make it easier for States parties to understand the provisions contained in the OPSC as well as what is expected of them in terms of implementation and compliance.

In 2017, the Committee invited ECPAT International to submit a draft of the OPSC Guidelines which would be discussed with a dedicated working group of the Committee. Such a working group was established in 2018 and composed of members of the Committee. In early 2018, ECPAT International also established an Interagency Working Group (IWG) to provide expert advice from a broad range of stakeholders working on children's rights and child protection. ECPAT International served as the Secretariat to the IWG and supported the research and drafting process. The IWG met for the first time in Geneva in May 2018, and convened twice more before the adoption of the Guidelines a year later.

The IWG was composed of representatives from 19 organisations and chaired by Professor Jaap Doek whilst the project coordination and drafting were expertly led by Dr Susanna Greijer, both Senior Legal Advisors to ECPAT International.

## An Explanatory Report

During the drafting process of the OPSC Guidelines, the Committee was challenged with the official word limit on any document adopted by the UN monitoring bodies. This meant that source references or extracts from relevant sources could not be included in the text, and neither could concrete examples of good practice, which would provide guidance to States not only on what is expected of them to implement and comply with the OPSC, but also how to do so.

In an effort to fill the gap and provide details that could not be included in the OPSC Guidelines, the Committee, in consultation with ECPAT International and others, decided on the preparation of the present Explanatory Report. The Report aims to serve as a tool for States and other stakeholders working against the sale and sexual exploitation of children and is published as a complement to the OPSC Guidelines.

In order to facilitate a joint reading of the two, the Explanatory Report follows the structure and includes the integral text of the OPSC Guidelines. For each paragraph of the Guidelines, additional information is added regarding the different issues raised, and references are included to international and regional standards linked to the issues covered under the OPSC, the Committee’s relevant General Comments, and recommendations by other similar bodies, such as the Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, also known as the “Lanzarote Committee”. Lastly, concrete examples of good practice from national legislation and policy as well as resources of child protection organisations are included. To the extent possible, good practice provided by States during the open call for submissions held by the Committee during the drafting process of the OPSC Guidelines have been included into this Explanatory Report.

We believe that both the OPSC Guidelines and this Explanatory Report will be effective instruments for States and others working against the sale and sexual exploitation of children worldwide, and provide the guidance needed to improve implementation of the Committee’s recommendations on the ground in Member states.

Our sincere thanks go out to the Committee, the IWG and all those who contributed to the finalisation of the OPSC Guidelines and the Explanatory Report



Robbert van den Berg  
ECPAT International  
26 September 2019





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## Interagency Working Group

### Joined in 2018

- Child Rights Connect
- Council of Europe, Children's Rights Division – Secretariat of the Lanzarote Committee
- Office of the High Commissioner for Human Rights – CRC Committee Secretariat
- ECPAT International
- Global Child
- International Centre for Missing and Exploited Children (ICMEC)
- Internet Watch Foundation
- International Labour Office
- International Telecommunications Union
- PLAN International
- Save the Children
- Terre des Hommes
- UNICEF
- UN Special Rapporteur on the sale and sexual exploitation of children
- UN Special Representative of the Secretary-General on Violence against Children
- World Council of Churches
- World Vision

### Joined in 2019

- Centre for sports and human rights
- Lumos



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# I. Introduction

## A. Recent developments related to the sale and sexual exploitation of children

### 1

*The Convention on the Rights of the Child, adopted in 1989, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted in 2000, are the most comprehensive international legal instruments that promote and safeguard the rights of the child and protect children from sale, sexual exploitation and sexual abuse. However, these treaties were adopted at a time when information and communications technology (ICT)<sup>1</sup> and social media were much less developed and less widespread, and when sexual offences against children did not have the close linkage to the digital environment that is often present today. While the Convention and the Optional Protocol are fully relevant and applicable also in the digital environment, their provisions require an interpretation adapted to today's realities.*

<sup>1</sup> The term "ICT" encompasses any communication device or application, including radio, television, cellular telephones and computer and network hardware and software.

It is important to clarify that neither the CRC nor the OPSC should be seen, in any way, as outdated legal instruments which have no relevance. Quite the contrary, the CRC remains, to this day, the most comprehensive and universal international legal instrument for the rights of the child, and the OPSC, with its 176 States parties, sets forth fundamental legal obligations to protect children from sale and sexual exploitation.

Nevertheless, the considerable developments of the past two decades, in particular, but not only, in the digital environment, do raise challenges for States and other stakeholders working to prevent the sale and sexual exploitation, and to protect children from these scourges.

An interpretation that takes into account the digital and other developments that have occurred over the past two decades implies that States parties consider concrete and specific measures to implement the OPSC, which can be easily adapted and/or regularly reviewed and updated in line with current and evolving practices.<sup>1</sup> The Committee, through its Guidelines regarding the implementation of the OPSC,<sup>2</sup> seeks to provide advice and recommendations to assist States parties in their efforts to implement the substantive provisions of this Protocol.

In addition, to ensure a coherent implementation of all legal obligations to protect children from sale and sexual exploitation, it is important for States to build upon the work they have undertaken within the context of regional human rights treaties and entities, as this contributes to the effective implementation of their global commitments. For instance, an increasing number of States parties to the OPSC are also a party to the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, known as the "Lanzarote Convention". The latter is the only regional treaty to address in detail how States should prevent sexual offences against children, prosecute perpetrators and protect child victims. Its standards have inspired changes in legislation and policies in countries around the world.<sup>3</sup> The Inter-American Court of Human Rights

<sup>1</sup> See for instance: Committee on the Rights of the Child, Report of the 2014 Day of General Discussion "Digital media and children's rights", paragraphs 46 and 75.

<sup>2</sup> Committee on the Rights of the Child, Guidelines regarding the implementation of the Optional Protocol to the CRC on the Sale of children, child prostitution and child pornography, UN Doc. CRC/C/156, Adopted during the Committee's 81st session (13-31 May 2019) and distributed on 10 September 2019.

<sup>3</sup> It is noteworthy that any country worldwide may potentially become a party to the Lanzarote Convention and the accession process consists of three simple steps that are outlined at: <https://www.coe.int/en/web/children/convention#%7B%2212441481%22:%5B1%5D%7D> The text of the Convention, the number of ratifications and other details are available at: <https://www.coe.int/en/web/children/convention>

has, in its case law, established some important standards for child protection which can be useful for all States parties to the OPSC to be aware of. In the African region, the African Committee of Experts on the Rights of the Child has developed experience and expertise to tackle important issues relating to the OPSC, such as sale of children and child marriage.

## INFORMATION AND COMMUNICATIONS TECHNOLOGIES (ICT)

ICT encompass any communication device or application, including radio, television, cellular telephones, and computer and network hardware and software.

### 2

*The rapid development and spread of ICT are providing great opportunities to accelerate human progress and reduce inequalities. At the same time, this development has exposed more children to the risk of sale and sexual exploitation. It has opened up new ways for sexual offenders to connect with and solicit children for sexual purposes (“grooming”), to view and participate in online child sexual abuse via live video streaming, to distribute child sexual abuse material, including self-generated content produced out of “sexting”, and to commit the sexual extortion of children. In addition, such technology provides new opportunities for offenders to connect and share encrypted information with one another, and the use of the darknet for committing or facilitating offences covered by the Optional Protocol is presenting new challenges for law enforcement. In a world where Internet access is expanding at unprecedented levels, the risk of children being sexually exploited or bought and sold as a commodity is becoming ever greater.*

The development and spread of ICT are exposing more and more children to the risk of sexual exploitation and sexual abuse. Today, one in three Internet users world wide is a child, and youth (ages 15–24) is the most connected age group, with 71 per cent online world-wide in 2017.<sup>4</sup>

Real-time online child sexual exploitation and abuse have become an increasingly frequent way for sexual offenders to carry out the offences covered by the OPSC. Offenders also take advantage of the current “era of the image” and existing social norms and pressure to produce and distribute self-generated content, including sexual content such as “sexting”. Such material, once obtained, can be used by offenders to sexually coerce or extort children into further sexual acts.<sup>5</sup> In addition, smartphones have fuelled a “bedroom culture”, in which online access for many children has become more personal, more private and less supervised.<sup>6</sup>

Encrypted networks on the dark net also provide a new sense of anonymity for sexual offenders, as it is challenging for law enforcement to track such online activity in an efficient manner. Hence, broad networks of likeminded offenders exchanging information, contacts and child sexual abuse material, have proliferated.<sup>7</sup>

Recent reports show alarming trends with regard to sexual exploitation and sexual abuse of children through the use of digital media, including the increased use of live video streaming of child sexual abuse, the increasing number of users connecting to encrypted networks on the dark web to share child sexual abuse material,<sup>8</sup> and the increased offending by individuals who do not have a past history of child sexual abuse or any sexual interest in children, but who use the opportunity to exploit the vulnerabilities of children for their own profit.<sup>9</sup>

<sup>4</sup> UNICEF, The state of the world’s children 2017 “Children in a Digital World”, 2017. Available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/SOWC\\_2017\\_ENG\\_WEB.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/SOWC_2017_ENG_WEB.pdf)

<sup>5</sup> See for instance: UN Human Rights Council Resolution 31/7 on the rights of the child: information and communications technologies and child sexual exploitation, UN Doc. A/HRC/RES/31/7, p. 10-11. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/083/35/PDF/G1608335.pdf?OpenElement>

<sup>6</sup> UNICEF, The state of the world’s children 2017 “Children in a Digital World”, 2017.

<sup>7</sup> WeProtect Global Alliance, Global Threat Assessment 2018, Working together to end the sexual exploitation of children online (2018). Available at: [https://www.weprotect.org/s/64159\\_WeProtect-GA-report-1.pdf](https://www.weprotect.org/s/64159_WeProtect-GA-report-1.pdf)

<sup>8</sup> The Internet Watch Foundation has found an increasing number of disguised websites, meaning that illegal content is only revealed if the user follows a pre-set digital pathway, while any other person would only see legal content. See: Internet Watch Foundation, Annual Report 2017. Available at: <https://annualreport.iwf.org.uk/>

<sup>9</sup> See for instance: Child Exploitation and Online Protection Centre (CEOP), Threat Assessment of Child Sexual Exploitation and Abuse (2013). Available at: [http://ceop.police.uk/Documents/ceopdocs/CEOP\\_TACSEA2013\\_240613%20FINAL.pdf](http://ceop.police.uk/Documents/ceopdocs/CEOP_TACSEA2013_240613%20FINAL.pdf); Human Rights Council, Annual full day meeting on the rights of the child “Information and communications technology and child sexual exploitation” (ADRC 2016).

**RESOURCE TIPS**

WeProtect *Global Alliance, Global Threat Assessment 2018, Working together to end the sexual exploitation of children online* (2018). Available [here](#)

UNICEF, *The state of the world's children 2017 "Children in a Digital World"* (2017). Available [here](#)

**3**

*In a globalized and increasingly mobile world, the sale and sexual exploitation of children in the context of travel and tourism represents a growing threat. Travelling child sex offenders, whether they travel across borders or within their own countries, find easier access to children in vulnerable situations, often through the use of networks of anonymous contacts on the darknet.*

**RESOURCE TIP**

*Offenders on the move: Global Study on the Sexual Exploitation of Children in Travel and Tourism* (2016). Available [here](#)

**4**

*The gender dimension of sexual offences against children is another important aspect with respect to the implementation of the Optional Protocol. While the majority of victims are girls, recent research has shown that a significant proportion of children depicted in online child sexual abuse material are boys. There are still very few support structures for boys who are victims of sexual exploitation and sexual abuse.*

The increased use of ICT to facilitate or commit sexual crimes against children has also brought an important and oft forgotten aspect of these crimes to the surface: the gender dimension. Recent research has shown that, contrary to the often-held belief that almost all victims are girls, a significant proportion of boys are depicted in online child sexual abuse material. In addition, the research shows that when boys are depicted in the abuse, it is more likely to involve paraphilic themes.<sup>10</sup> This needs to be considered in the development of response mechanisms.

In relation to sexual abuse in sports, studies undertaken on children in sports confirms that both girls and boys are victims of sexual abuse. Young children, including those who are elite athletes, are particularly vulnerable. While research on prevalence tend to indicate that more girls than boys are affected, some recent studies show no significant gender difference. It is also suspected that boys are less inclined to report.<sup>11</sup>

The recent increase in migrant and refugee children who are vulnerable to sexual exploitation, and which includes a proportionally large share of unaccompanied male children, also requires targeted responses that take gender aspects into account.

<sup>10</sup> ECPAT International and INTERPOL, *Towards a Global Indicator on Unidentified Victims in Child Sexual Exploitation Material* (2018). Available at: <http://www.ecpat.org/wp-content/uploads/2018/02/Technical-Report-TOWARDS-A-GLOBAL-INDICATOR-ON-UNIDENTIFIED-VICTIMS-IN-CHILD-SEXUAL-EXPLOITATION-MATERIAL.pdf>

<sup>11</sup> See for instance: S. Parent and K. Fortier, "Prevalence of interpersonal violence against athletes in the sport context" in: *Current Opinion in Psychology*, Vol.16(16), 2017, pp. 165–169. Available at: <https://www.sciencedirect.com/science/Article/pii/S2352250X16301531?via%3Dihub>, and: T. Vertommen et al., "Interpersonal violence against children in sport in the Netherlands and Belgium", in: *Child Abuse and Neglect*, Vol.51, 2016, pp. 223–236. Available at: <https://www.sciencedirect.com/science/Article/abs/pii/S0145213415003646?via%3Dihub>

Children are more vulnerable to sexual exploitation when they are removed from their communities and traditional support networks. This vulnerability is increased if migrant and refugee children find themselves living in street situations once they are on the move. A targeted approach is needed, which takes into account the unique situation and needs of these children, who may find themselves in a situation where a variety of factors such as forced displacement, unclear migration status, family separation, street life and economic hardship further increases their vulnerability to exploitation.<sup>12</sup>

In addition, it is crucial to bear in mind that migrant, refugee and displaced children often face risks and vulnerabilities in their countries of origin, of transit and of destination, as they may be exposed to criminal groups, smugglers and traffickers at different stages of their migratory routes.

Children who are unaccompanied or separated from their families are at an even greater risk of being caught by trafficking networks or individuals for sexual or labour exploitation, as well as sale for the purposes of organ theft, criminal exploitation, marriage, or false adoptions. The risks are present both along the migratory routes and in shelters, and it is crucial that States work to guarantee safe migration channels, as well as safe and adequate transit and reception conditions for children, with a priority for family-based care.<sup>13</sup>

### RESOURCE TIP

ECPAT International and INTERPOL, *Towards a Global Indicator on Unidentified Victims in Child Sexual Exploitation Material* (2018). Available here

## 5

*The Committee, under its mandate to monitor implementation of the Optional Protocol, recognizes that some of the terms used in international and regional instruments on the rights of the child, such as “child pornography” or “child prostitution”, are gradually being replaced. Among the reasons behind this change is the fact that these terms can be misleading and insinuate that a child could consent to such practices, undermining the gravity of the crimes or switching the blame onto the child. In light of this, the Committee encourages States parties and other relevant stakeholders to pay attention to the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse for guidance regarding the terminology to be used in the development of legislation and policies addressing the prevention of and protection from the sexual exploitation and sexual abuse of children.<sup>2</sup>*

<sup>2</sup> See <http://luxembourgguidelines.org/english-version>

Technological developments in the past two decades have impacted the way many sexual offences are committed against children and have given rise to new manifestations of sexual exploitation and abuse. To reflect and describe these manifestations, terms such as “grooming”<sup>14</sup>, “sexting”, “sextortion” and “virtual child pornography”, have been coined.<sup>15</sup>

<sup>12</sup> CRC Article 22. See also: Ray, Patricia, Corinne Davey, and Paul Nolan, “Still on the Street- Still Short of Rights. Analysis of Policy and Programmes Related to Street Involved Children”, Plan and Consortium for Street Children, 2011; Joint Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material and the Special Rapporteur on trafficking in persons, especially women and children, UN Doc. A/72/164, 18 July 2017, paragraphs 23, 37, 58, 76.

<sup>13</sup> Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, UN Doc. CRC/GC/2005/6, September 2005.

<sup>14</sup> The term “grooming” is referred to explicitly for the first time in a legal instrument in the Explanatory Report to the Lanzarote Convention (paragraphs 155-159) in relation to the criminal offence of “Solicitation of children for sexual purposes” provided for by Article 23 of the Convention.

<sup>15</sup> For more information, see the Terminology Guidelines for the protection of children from sexual exploitation and sexual abuse (also known as the “Luxembourg Guidelines”), Interagency Working Group (2016). Available at: [www.luxembourgguidelines.org](http://www.luxembourgguidelines.org)

In addition, some of the terms used have come under increasing criticism from the child protection community and are gradually being replaced. For instance, the term “child pornography” is increasingly replaced by the term “child sexual abuse material”, to reflect what it really is, namely the recorded material (images, videos, audio recordings etc.) of children being sexually abused.<sup>16</sup>

Among the reasons behind this change is the fact that these terms can be misleading and insinuate that a child could consent to such practices, undermining the gravity of the crimes or switching the blame onto the child. Many stakeholders, including the UN Special Rapporteur on the sale and sexual exploitation of children, support this change to avoid trivialising the abuse suffered by children given that the term “pornography” in many countries covers largely consensual sexual activities among adults.<sup>17</sup>

## RESOURCE TIP

*Terminology Guidelines for the protection of children from sexual exploitation and sexual abuse* (also known as the “Luxembourg Guidelines”), Interagency Working Group (2016). Available [here](#)

## B. An increasing body of recommendations from various international stakeholders

### 6

*The Committee has considered the significant impact that digital media and ICT are having on children’s lives, including in its concluding observations, in its general comments Nos. 13 (2011) on the right of the child to freedom from all forms of violence, 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, 16 (2013) on State obligations regarding the impact of the business sector on children’s rights and 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, and in the context of its day of general discussion in 2014 on the rights of the child in the digital media. Furthermore, the Human Rights Council devoted its 2016 annual full-day meeting on the rights of the child to the theme of information and communications technology and child sexual exploitation.*

In paragraph 6, the Committee reminds States parties that it has granted attention to ICT and the Internet on a number of occasions, including in concluding observations and that it has made several recommendations to guide States parties on how to address such issues. Indeed, it has considered the significant impact that digital media and ICT are having on children’s lives, including in its General Comments No. 13<sup>18</sup>, No. 14<sup>19</sup>, No. 16<sup>20</sup> and No. 17<sup>21</sup>.

The Committee also devoted its twenty-first Day of General Discussion in 2014 to “Digital media and Children’s Rights” to analyse the effects of children’s engagement with social media and ICT, in order to better understand the impact on and role of children’s rights in this area, and develop rights-based strategies to maximise the online opportunities and avoid restricting benefits for children while protecting them from risks and possible harm.<sup>22</sup>

<sup>16</sup> See inter alia: Carissa Byrne Hessick (ed), *Refining Child Pornography Law. Crime, Language, and Social Consequences*. Ann Arbor: University of Michigan Press, 2016.

<sup>17</sup> See Report of the Special Rapporteur on the sale and sexual exploitation of children, UN Doc. A/HRC/28/56 (2014), paragraph 29. For further explanations as to why the term « child pornography » should not be used, see the Luxembourg Guidelines (2016).

<sup>18</sup> UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011) on the right of the child to freedom from all forms of violence, 18 April 2011, UN Doc. CRC/C/GC/13. Available at: <http://www.refworld.org/docid/4e6da4922.html>

<sup>19</sup> UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, paragraph 1), 29 May 2013, UN Doc. CRC/C/GC/14. Available at: <http://www.refworld.org/docid/51a84b5e4.html>

<sup>20</sup> UN Committee on the Rights of the Child (CRC), General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, 17 April 2013, UN Doc. CRC/C/GC/16. Available at: <http://www.refworld.org/docid/51ef9cd24.html>

<sup>21</sup> UN Committee on the Rights of the Child (CRC), General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), 17 April 2013, UN Doc. CRC/C/GC/17. Available at: <http://www.refworld.org/docid/51ef9bcc4.html>

<sup>22</sup> See the Committee on the Rights of the Child’s report of the 2014 Day of General Discussion “Digital media and children’s rights”, paragraph 2. Available at: [https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2014/DGD\\_report.pdf](https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2014/DGD_report.pdf)

Other recommendations have come for instance through the UN Human Rights Council, which held its 2016 annual day on the rights of the child on “information and communications technology and child sexual exploitation”, informed by a report from the Office of the High Commissioner for Human Rights, and the Special Representative of the Secretary-General on violence against children and the Special Rapporteur on the sale and sexual exploitation of children, who have recently looked specifically into these issues.<sup>23</sup>

At the regional level, the Interpretative Opinion on the applicability of the Lanzarote Convention to sexual offences against children facilitated through the use of information and communication technologies (ICT),<sup>24</sup> adopted by the Lanzarote Committee in May 2017, sets forth how this treaty can be an effective tool to tackle online facilitated offences.

In light of Resolution 73/15 adopted by the United Nations General Assembly on 26 November 2018 on cooperation between the United Nations and the Council of Europe,<sup>25</sup> it should be recalled that efforts undertaken by States to protect children against sexual exploitation and sexual abuse in the context of regional instruments also contribute to the effective implementation of corresponding OPSC obligations.

## RESOURCE TIPS

UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011) on the right of the child to freedom from all forms of violence. [Available here](#)

UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. [Available here](#)

UN Committee on the Rights of the Child (CRC), General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights. [Available here](#)

UN Committee on the Rights of the Child (CRC), General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts. [Available here](#)

Lanzarote Committee recommendations and opinions to effectively protect children against sexual exploitation and sexual abuse. [Available here](#)

Council of Europe, Recommendation CM/Rec(2018)7 of the Committee of Ministers, “Guidelines to respect, protect and fulfil the rights of the child in the digital environment. [Available here](#)

## 7

*Through the Sustainable Development Goals, States manifested their intention to invest in children and ensure a world where children could be free from violence. Some of their goals are to eliminate all forms of violence against all women and girls (target 5.2), to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms (target 8.7) and to end abuse, exploitation, trafficking and all forms of violence against and torture of children (target 16.2). Effective implementation of the Optional Protocol, which covers the above-mentioned targets, can also contribute to achieving the Sustainable Development Goals.*

<sup>23</sup> See UN Human Rights Council Resolution 31/7 on the rights of the child: information and communications technologies and child sexual exploitation, UN Doc. A/HRC/RES/31/7; Report of the Office of the United Nations High Commissioner for Human Rights on “Information and communications technology and child sexual exploitation”, A/HRC/31/34, Annual Report of the Special Representative of the Secretary-General on Violence against Children, 30 December 2014, A/HRC/28/55; Report of the Special Rapporteur on the sale and sexual exploitation of children, UN Doc. A/HRC/28/56 (2014).

<sup>24</sup> Lanzarote Committee, The Interpretative Opinion on the applicability of the Lanzarote Convention to sexual offences against children facilitated through the use of information and communication technologies (ICT). Available at: <https://rm.coe.int/t-es-2017-03-en-final-interpretative-opinion/168071cb4f>

<sup>25</sup> UN General Assembly Resolution 73/15 on Cooperation between the United Nations and the Council of Europe (2018). Available at: <https://undocs.org/en/A/RES/73/15>

In 2015, the Sustainable Development Goals (SDGs) were adopted through General Assembly Resolution 70/1.<sup>26</sup> Each goal has a number of targets.

Target 5.2 sets forth the aim to “eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation”.

Through Target 8.7, States commit to taking “immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms”.<sup>27</sup>

And in Target 16.2, the commitment is made to “end abuse, exploitation, trafficking and all forms of violence against and torture of children”.

Monitoring of progress made in the implementation of the SDGs is established through a system of Voluntary National Reviews. The reports of such reviews are sent to the High-Level Political Forum. The Special Rapporteur on the sale and sexual exploitation of children presented, in her report of 2018, a thematic study on combating and preventing the sale and sexual exploitation of children through the implementation of the Sustainable Development Goals from a children’s rights-based perspective. She recommended States, inter alia, to ensure that reviews always include reports on children’s rights, including commitments, progress and challenges in relation to the targets 5.2, 8.7 and 16.2 irrespective of the thematic focus of the High-Level Political Forum at any particular session. Furthermore, the information in the review should include, as a minimum, an index of the existing legal frameworks dealing with the prohibition, prosecution, protection, care, assistance and prevention in relation to all forms of physical, mental and sexual violence against, exploitation and neglect of, and harmful practices in relation to children.

### RESOURCE TIPS

UNGA, Resolution A/RES/70/1 “Transforming our world, the 2030 Agenda for Sustainable Development” (2015). [Available here](#)

Report of the Special rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material. Thematic study on combating and preventing the sale and sexual exploitation of children through the implementation of the Sustainable Development Goals from a children’s rights-based perspective. UN Doc. A/73/174 (2018). [Available here](#)

Council of Europe contribution to the UN 2030 Agenda for Sustainable Development. [Available here](#)

## 8

*The present guidelines on the implementation of the Optional Protocol are the result of a process of consultations with relevant stakeholders, including States, specialized national and international non-governmental and intergovernmental organizations, and United Nations specialized agencies and bodies.*

<sup>26</sup> UNGA, Resolution A/RES/70/1 “Transforming our world, the 2030 Agenda for Sustainable Development” (2015). Available at: <https://undocs.org/A/RES/70/1>

<sup>27</sup> Regarding “Alliance 8.7” see: <https://www.alliance87.org/> and also <https://www.ilo.org/global/topics/sdg-2030/goal-8/target-8-7/lang--en/index.htm>

The OPSC Guidelines are the result of a drafting process which included discussions within the Committee on the Rights of the Child and consultations with relevant external stakeholders, lasting for over a year. During this process, an Interagency Working Group (IWG) composed of representatives of child protection actors provided continued research and input to the Committee and assisted in the preparation of the draft text. ECPAT International served as the Secretariat to the IWG. The following organisations participated in the IWG: the Center for Sports and Human Rights, Child Rights Connect, the Council of Europe – Lanzarote Committee Secretariat, the Office of the High Commissioner for Human Rights – CRC Committee Secretariat, ECPAT International, Global Child, the International Centre for Missing and Exploited Children (ICMEC), the Internet Watch Foundation, the International Labour Office, the International Telecommunications Union, PLAN International, Save the Children, Terre des Hommes, UNICEF, the UN Special Rapporteur on the sale and sexual exploitation of children, the UN Special Representative of the Secretary-General on Violence against Children, the World Council of Churches, World Vision.

Furthermore, once the Committee had adopted a draft version of the Guidelines during its 80th session in January 2019, the draft text was made publicly available and a call for comments was circulated broadly to invite States parties and other relevant stakeholders, including single individuals, to express their views on the text.

The Committee received more than 400 comments on the draft Guidelines and, with the assistance of ECPAT International, each one of those comments was analysed and taken into consideration in the drafting of the final version.

## II. Objectives of the Guidelines

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*The main objectives of the present Guidelines are:*

- (a) To foster a deeper understanding of the Optional Protocol's substantive provisions and of the various modern forms of sale and sexual exploitation of children in light of developments in the digital environment and given the increase in knowledge and experience with regard to the sale and sexual exploitation of children since its adoption;*
- (b) Enable more effective implementation of the Optional Protocol by States parties;*
- (c) Ensure that the Optional Protocol remains an instrument that enhances the protection of children from sale and sexual exploitation, whether such offences are facilitated by ICT or not.*

It is useful to look at the OPSC as a “living instrument”<sup>28</sup> which should be interpreted in light of today’s reality and in accordance with how sexual offences against children are committed. In that sense, an up-to-date interpretation of the OPSC provisions, aimed to enable their effective implementation and to ensure that the OPSC remains an instrument that enhances the protection of children from sale and sexual exploitation, whether facilitated by ICT or not, appears necessary.

All sections and subsections of the Guidelines refer to substantive provisions of the OPSC. Recommendations are based upon the Committee’s understanding of these provisions, and can be found in General Comments and Concluding Observations of the Committee, or in other UN bodies’ findings with which the Committee’s interpretation is aligned.

Through the OPSC Guidelines, such recommendations have been joined into one consolidated document, to assist the States parties in their implementation of the substantive provisions of the OPSC. In this Explanatory Report, references to relevant provisions of international and regional treaties and findings of regional human rights bodies addressing the same topics are added to provide supplementary guidance for State on how to effectively implement the OPSC provisions.

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*These guidelines also have the objective of supporting and strengthening initiatives and efforts undertaken by States parties to better fulfil their obligations under the Optional Protocol, including in respect of reporting to the Committee as defined in the revised guidelines regarding initial reports to be submitted under the Optional Protocol (CRC/C/OPSC/2), adopted in 2006, and the treaty-specific guidelines regarding the form and content of periodic reports (CRC/C/58/Rev.3), adopted in 2014.*

<sup>28</sup> In line with this idea, which has prevailed for instance in the case law of the European Court of Human Rights with regard to the European Convention on Human Rights (ECHR), a legal instrument on human rights must be interpreted according to present-day conditions in order to maintain its legitimacy and relevance, and fulfil its purpose to protect the individuals within its scope. For the OPSC to fulfil its purpose to protect children from sale and sexual exploitation, which is the reason why States adopted it in the first place, its States parties should consider the Committee’s guidance as a way to ensure its continued applicability and relevance in a developing societal context.

All States parties to the CRC and/or its Optional Protocols are obliged to submit regular reports to the Committee on how the rights of the child enshrined in these instruments are being implemented. The first report must be submitted within two years after the CRC or any of its Optional Protocols has entered into force for the State concerned and, thereafter, a periodic report is due every 5 years.<sup>29</sup> Periodic reports on the implementation of the OPSC are not separate documents but form part of the regular periodic reports on the CRC. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “Concluding Observations”. After its first report on the OPSC, the State party receives a separate set of Concluding Observations specific to the implementation of that instrument. Concerns and recommendations related to the subsequent periodic reports include the implementation of both the CRC and the Optional Protocols in one joint set of Concluding Observations.<sup>30</sup>

In addition, the Committee has established a simplified reporting procedure available for States parties whose periodic reports are due from 1 September 2019 and onwards (through quarterly invitations by the Committee). Under the simplified procedure, the Committee sends the State party a request for specific information, known as the the List of Issues prior to Reporting (LOIPR), containing up to 30 questions. The State party’s replies constitute its report to the Committee and it is no longer required to submit both a State party report and written replies to a list of issues.<sup>31</sup>

Lastly, the UN has set strict limitations on the length of documents produced in the context of monitoring human rights treaties, including the CRC. Under these limitations, a maximum number of words is set for State party reports and Concluding Observations of treaty bodies.<sup>32</sup> This means, de facto, that States parties to the OPSC are, after their first separate report, very limited in providing information on the implementation of the OPSC in periodic reports that are part of the reporting on the CRC. It also means that the Committee cannot express all its concerns in full detail or provide adequate and sufficiently concrete recommendations in a comprehensive way.

Since the OPSC Guidelines are likely to be directly referred to by the Committee in its future Concluding Observations regarding the OPSC, it appears useful for States parties to take them into consideration already at the reporting stage.

## RESOURCE TIP

UN Committee on the Rights of the Child, Simplified Reporting Procedure. [Available here](#)

<sup>29</sup> “Revised guidelines regarding initial reports to be submitted by States parties under Article 12, paragraph 1, of the OPSC”, UN Doc. CRC/C/OPSC/2, adopted by the Committee at its 43rd session, on 29 September 2006, and the “Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under Article 44, paragraph 1 (b), of the Convention on the Rights of the Child”, UN Doc. CRC/C/58/Rev.3, adopted by the Committee during its 65<sup>th</sup> session, January 2014.

<sup>30</sup> States that are parties to both the OPSC and the Lanzarote Convention may also refer to information submitted to the Lanzarote Committee with regard to overlapping obligations. All such information is available online at: <https://www.coe.int/en/web/children/monitoring1> under the relevant monitoring round sections in the State replies subsections.

<sup>31</sup> UN Committee on the Rights of the Child, Simplified Reporting Procedure, <https://www.ohchr.org/EN/HRBodies/CRC/Pages/ReportingProcedure.aspx>

<sup>32</sup> UN General Assembly, Resolution 68/268 “Strengthening and enhancing the effective functioning of the human rights treaty body system (2014), paragraph 15. A word limit of 10,700 words per document, applying to all human rights treaty bodies of the UN, has been set

### III. General measures of implementation

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*The Committee emphasizes that any measure to implement the provisions of the Optional Protocol should fully comply with the Convention, in particular with the general principles contained in articles 2, 3, 6 and 12, as well as respecting the child's right to privacy. The Convention also requires that children are informed of their rights in an age-appropriate manner, that children have the right to express their views freely in all matters affecting them, and that such views are given due weight in accordance with the age and maturity of the child.*

The general principles contained in Articles 2, 3, 6 and 12 of the CRC regard: the right to enjoy all rights set forth by the CRC without discrimination of any kind (Article 2); the need to take into account, as a primary consideration, the best interest of the child in all actions concerning children (Article 3.1); the inherent right to life of the child (Article 6); and the right of the child to express her/his views freely in all matters concerning the child (Article 12).

This requires that, in the implementation of the OPSC, States parties must see to that measures to protect children from sale and sexual exploitation are non-discriminatory. For any measure aimed to implement the OPSC, which will by definition affect children, the best interests of the child must be a primary consideration, and any such measure should protect the right of the child to life, survival and development. It also requires that the child is informed of his or her rights in an age-appropriate manner, that the child is enabled to express her/his views freely. The views of the child should be given due weight in accordance with the age and maturity of the child, meaning that they should be thoroughly taken into consideration upon making a decision that will affect the child.

In addition, Article 4 CRC can be considered a core provision on the implementation of the CRC and is also relevant for the implementation of the OPSC. It states: "States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States parties shall undertake such measures to the maximum extent of their available resources and, where needed, in the framework of international co-operation." The Committee has provided guidance and recommendations related to the implementation of this article in its General Comment No. 5 (2003)<sup>33</sup> which can be helpful also for the implementation of the OPSC.

<sup>33</sup> "General Comment No. 5 (2003) on General Measures of implementation of the Convention on the Rights of the Child (Articles 4, 42 and 44, para. 6), UN Doc. CRC/GC/2003/5.

The latter is, as a Protocol to the CRC, meant to achieve the purposes of the CRC and the implementation of its provisions. This is particularly the case with CRC Articles 1, 11, 21 and 32 – 36, which deal with the same or a similar subject-matter as the OPSC. These provisions require, inter alia, that legislation, policies and programmes to address sexual exploitation of children should define the child as any person below the age of 18 (Article 1), that illicit transfer and the non-return of a child victim of sexual exploitation should be prevented (Article 11), that the child should be protected from economic exploitation and from any harmful work (Article 32)<sup>34</sup>, and that the child victim of sexual exploitation, given her/his very vulnerable situation, is protected from the illicit use of narcotic drugs and from being used in the illicit production and trafficking of such substances (Article 33). Adoptions of children should be carried out in the child's best interest and ensure that the placement of a child in adoption does not result in improper financial gain for those involved (CRC Article 21).

The OPSC also provides more detail on the meaning of CRC Articles 34 and 35, which relate to sexual exploitation, sexual abuse, sale and trafficking of children. For instance, the obligation to take all appropriate bilateral and multilateral measures in Articles 34 and 35 CRC is addressed in Article 10 OPSC.

However, it must be noted that not all elements of Articles 34 and 35 are covered by the OPSC: "Abduction of {...} or traffic in children" (Article 35 CRC) are mentioned only in the preamble of the OPSC, but are not addressed in any of the provisions. In order to achieve a full implementation of both instruments, specific measures should be included in national legislation, policies and programmes also for the prevention of and protection against abduction and trafficking of children who are victims, or at risk, of sexual exploitation.<sup>35</sup>

## 12

*States parties should make efforts to include child participation in the drafting process and in the implementation of legislative and policy measures, ensuring that the views of children are considered without discrimination, and that adults consulting with them have the necessary training and resources to carry out the consultations in an age-appropriate and gender-sensitive manner.*

The best way to ensure a solid and comprehensive legal, policy, prevention and protection system is to include children's own voices in the drafting process of legislative and policy measures, ensuring that the views of children from all circumstances and situations are considered.<sup>36</sup>

In her 2012 report, the Special Rapporteur on sale and sexual exploitation of children expressed her view that child participation must be considered a core and cross-cutting component of comprehensive and rights-based child protection systems, so as to guarantee the effective protection of every child from sale and sexual exploitation.<sup>37</sup> This will require more strategic initiatives on child participation with long-term goals rather than ad hoc short-term projects involving children, and a continuous child participation process, including informing, hearing/listening, consulting, taking into consideration views and opinions, empowering child-led and peer initiatives, and involving children in policy- and decision-making processes, all in compliance with and showing commitment to international standards and guidelines. Such a system, based on a truly child-centred approach, has better chances to cover the real issues at stake.

<sup>34</sup> See also: ILO Worst Forms of Child Labour Convention, 1999 (No.182), Article 3, and: ILO Worst Forms of Child Labour Recommendation, 1999 (No.190). For the list of ratifications of C182, see: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312327:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO).

<sup>35</sup> For international legal obligations related to trafficking, see also: Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000, and: Council of Europe Convention on Action Against Trafficking in Human Beings, CETS No. 197, adopted on 16 May 2005.

<sup>36</sup> At the European level, the participation of children- according to their evolving capacity- in the development and implementation of policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children, is based on Article 9.1 of the Lanzarote Convention as well as on the priorities of the Council of Europe Strategy for the Rights of the Child (2016-2021) and Recommendation CM/Rec(2012)2 of the Committee of Ministers to member States on the participation of children and young people under the age of 18.

<sup>37</sup> Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, "Child participation as a key element in preventing and combating the sale and sexual exploitation of children", Doc. A/67/291, 10 August 2012.

Survivors of sale and sexual exploitation may include persons who were placed as children in care institutions – including orphanages – or in foster families or small group homes, persons who were placed in detention facilities, and persons who were placed in psychiatric care. Efforts should be made to include survivors from such contexts in participation measures.

Adults consulting with children should be trained to speak with and interview children in a manner that adequately respects the individual situation and needs of each child.

Besides involving children as directly as possible in law- and policy making processes aimed to protect them from sale and sexual exploitation, measures to implement the OPSC provisions should include a gender perspective.<sup>38</sup> This implies that children from all gender identities are involved in the participation process, and that specific needs of girls, boys, and children with other gender identities are taken into account and accommodated.<sup>39</sup>

## RESOURCE TIPS

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on “Child participation as a key element in preventing and combating the sale and sexual exploitation of children”. Annex to General Assembly Resolution A/67/291 (2012).

UNICEF and Save the Children, *Every Child’s right to be heard: a resource guide on the UN Committee on the Rights of the Child General Comment No. 12*. London (2011). [Available here](#)

A. Parkes, *Children and International Human Rights Law: The Right of the Child to be Heard*, Routledge (2011).

T. Gal & B. Duramy (Eds.), *International Perspectives and Empirical Findings on Child Participation: From social exclusion to child-inclusive policies*, Oxford University Press (2015).

Council of Europe, Children’s Rights Division, “Empowering children to stop sexual violence - Facilitators toolkit” (2019) [Available here](#)

Council of Europe, Guidelines for Implementation of Child Participation in the 2nd thematic monitoring round of the Lanzarote Convention on “The protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs)”. [Available here](#)

## 13

*In any measure to implement the Optional Protocol, the Committee encourages States parties to give specific consideration to children who, because of their characteristics, circumstances and/or living situations, may be more vulnerable to sale and sexual exploitation, including girls, boys, children of other gender or sex identities and orientations, children with disabilities, children in institutions, migrant children, children in street situations, and children in other vulnerable or marginalized situations.*

<sup>38</sup> See for instance UN General Assembly Resolution 69/194 (2014), adopting the “United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice”, Annex 1, paragraph 7(e).

<sup>39</sup> Ibid.

In this paragraph, the Committee mentions explicitly, in a non-exhaustive manner, a number of groups of children that it considers in need of specific attention, due to situations of potentially heightened vulnerability that they may be facing.

As set forth by the CRC, every child is entitled to the rights and protection set forth by the treaty, without discrimination. Yet with regard to the sale and sexual exploitation of children, it must be recognised that some children may, due to their specific circumstances or situation, become more vulnerable to these offences. With this paragraph of the Guidelines, the Committee is asking States parties to the OPSC to bear in mind that different realities may contribute to further exposing children to certain types of risks, and to work towards a system that guarantees a full protection for all children.

This paragraph can be seen as a general clause which should be referred back to all through the reading of the OPSC Guidelines. In many paragraphs throughout the document, the Committee limits itself to referring to “all children” or to “children in vulnerable situations”. Paragraph 13 sets forth more specifically who those children might be.

The Committee explicitly mentions girls and boys, but also asks States parties to have special consideration for:

- Children of other gender/sex identities and orientations, who often suffer discrimination, intimidation, harassment and violence. When real or perceived sexual orientation or gender identity does not conform to social norms, vulnerabilities tend to increase. Positive social norms that recognise and welcome diversity in cultures around the world should be reinforced to include the recognition, protection and promotion of the human rights of all children, regardless of real or perceived sexual orientation or gender identity.<sup>40</sup>
- Children with disabilities, especially girls, are far more vulnerable to violence than their peers without disabilities. Children with disabilities are almost four times more likely to become victims of violence than children without disabilities, and nearly three times more likely to be subjected to sexual violence, with girls at the greatest risk.<sup>41</sup>
- Children in institutions are significantly more vulnerable to violence. Various studies have recorded a wide range of abuses against children in institutions, including systematic rape and other forms of sexual abuse; exploitation and trafficking; physical harm such as beatings and torture; and psychological harm including isolation, the denial of affection and humiliating discipline.<sup>42</sup>
- Migrant children, including in particular unaccompanied children and children separated from their families. Such children should never be presumed orphans before every effort has been made to identify their families and, where appropriate, enable the child to rejoin her/his family members. The Committee has provided specific recommendations for measures that should be taken for the protection of refugee children from sexual and other forms of exploitation (General Comment No. 6) and for the protection of migrant children from<sup>43</sup> all forms of violence including sale and sexual exploitation of children (General Comment No. 23, paragraphs 39-44).
- Children in street situations. The Committee has provided specific recommendations for measures that should be taken for the protection of children living in street situations (General Comment No 21, paragraphs 57-61).

<sup>40</sup> UNICEF, Current issues No. 9, Eliminating discrimination against children and parents based on sexual orientation and/or gender identity, November 2014.

<sup>41</sup> Committee on the Rights of the Child, General Comment No. 9 on the Rights of Children with Disabilities, UN Doc. CRC/C/GC/9, September 2006, paragraph 77. See also: UNFPA, Young persons with disabilities: Global study on ending gender-based violence, and realising sexual and reproductive health and rights, July 2018. Available at: [https://www.unfpa.org/sites/default/files/pub-pdf/Final\\_Global\\_Study\\_English\\_3\\_Oct.pdf](https://www.unfpa.org/sites/default/files/pub-pdf/Final_Global_Study_English_3_Oct.pdf) and: Milovanovic' et al., The hidden and forgotten: Segregation and neglect of children and adults with disabilities in Serbia. Mental Disability Rights International, Belgrade, 2013. Available at: <http://www.mdri-s.org/wp-content/uploads/2013/10/the-hidden-and-forgotten-2013-12-17.pdf>

<sup>42</sup> Save the Children, Keeping Children Out of Harmful Institutions: Why we should be investing in family-based care, 2009. Available at: <https://resourcecentre.savethechildren.net/library/keeping-children-out-harmful-institutions-why-we-should-be-investing-family-based-care>. See also: United Nations World Report on violence against children, 2006. Chapter 5 “Violence against Children in Care and Justice Institutions”, p 175. Available at: <https://www.unicef.org/violencestudy/5.%20World%20Report%20on%20Violence%20against%20Children.pdf>

<sup>43</sup> Committee on the Rights of the Child, General Comment No.6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, UN Doc. CRC/C/GC/9, paragraphs 50-53.

It should be noted that children in situations of natural disasters and emergency are also very vulnerable to sexual violence and specific measures are needed to prevent and provide adequate protection to children in such situations.

### THE IWG'S ADVICE

To use paragraph 13 of the OPSC Guidelines for guidance at all times when children in vulnerable situations need to be considered.

### RESOURCE TIPS

General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin, UN Doc. CRC/GC/2005/6. [Available here](#)

General Comment No. 21 (2017) on Children in street situations, UN Doc. CRC/C/GC/21.

Joint general comment No. 4 (2017) of the Committee on the Protection of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, UN Doc. CMW/C/GC/4 – CRC/C/GC/23.

UNFPA, Young persons with disabilities: Global study on ending gender-based violence, and realising sexual and reproductive health and rights (2018).

ECPAT International, Protecting Children from Sexual Exploitation & Sexual Violence in Disaster & Emergency Situations. A guide for local & community based organisations (2006). [Available here](#)

## A. Legislation

### 14

*The Committee underscores the pressing need to fight impunity for the offences covered by the Optional Protocol. Legislative measures to implement the Optional Protocol should explicitly cover all acts mentioned in its article 3, including attempts to commit such acts. Attention should be given to the prohibition of the sale of children not only for the purpose of sexual exploitation, but also for the purposes of transfer of organs, engagement in forced labour, and situations in which adoption constitutes the sale of children.*

In accordance with Article 4 CRC, States parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention and its Optional Protocols. Concretely speaking, with regard to the OPSC, this means that States are under the obligation to criminalise the acts of sale of children, of child prostitution, and of child pornography.

An important distinction is needed here between the act, its constitutive elements, and the term used to define it. Clearly, States parties to the OPSC are under the legal obligation to criminalise all acts and ensure that the constitutive elements of the acts are covered by their laws. On the other hand, this does not imply a legal obligation to use the exact terminology of the OPSC in national legislation, the latter being a merely formal issue.

Hence, States that agree with the prevailing view that certain terms used in the OPSC, such as “child prostitution” or “child pornography” may have undesired effects on the child victims of sexual exploitation, may very well legislate to criminalise these acts under another term, such as “sexual exploitation of children” and “child sexual abuse material”. Importantly, such offences under the national law would need to contain the same constitutive elements (as a minimum) as set forth by the OPSC under “child prostitution” and “child pornography”.

With regard to the term “sale of children”, it has been noted that many States parties consider this offence covered under their anti-trafficking laws. While this may indeed be the case, it is again important that the State parties ensure that all constitutive elements of “sale of children” are included under their national legislation. The Committee has noted in several instances that this is not the case in all States parties.

## 15

*The Committee reminds States parties that the international legal definition of “sale of children” is not identical to that of “trafficking”. The sale of children always involves some form of commercial transaction, which trafficking in children does not require (for example, trafficking of a child by means of deceit, force or abduction). Moreover, while trafficking always has the intended purpose of exploiting the child, this purpose is not a required constitutive element for the sale of children, although the effect of the sale can still be exploitative. This distinction can be important for the assessment of the offence, the prosecution of perpetrators and the responses put in place for the child victim.*

Regarding the above-mentioned offence of sale of children, the Committee has noted a tendency for States parties to refer to their anti-trafficking laws when reporting on how sale of children is prohibited.<sup>44</sup> The Committee therefore points out that, under international law, the legal definitions of these two offences are not identical, and that States parties might be non-compliant with the obligation under the OPSC to criminalise the sale of children.

In particular, there is a risk that anti-trafficking laws are used in situations of sale of children, and that such laws foresee the intent (*mens rea*) to exploit the child as a constitutive element of the offence. This could potentially weaken the protection of children, since the OPSC does not foresee any such element. Sale of children is a criminal offence independent of the intent behind the sale. The Committee therefore asks the States parties to ensure that their laws protecting children clearly set forth that no exploitative intent is necessary for the act to constitute an offence, whether they choose to call it sale or trafficking, or use another term to define the offence at the national level.

### CASE LAW

In *Ramírez brothers vs. Guatemala*, the Inter-American Court of Human Rights became the first international tribunal to say unequivocally that illegal adoption is among the “purposes of exploitation” covered by the Palermo Protocol’s definition of trafficking.

The Court also clarified (in paragraph 313) that the notions of sale and trafficking are intimately related and sometimes overlapping, but they are not identical.

Reference: I/A Court H.R., *Case of Ramírez Escobar et al. v. Guatemala*. Merits, Reparations and Costs. Judgment of March 9, 2018. Series C No. 351.

## 16

*Legislative measures should include the liability of both natural and legal persons (art. 3), establish extraterritorial jurisdiction over all offences covered by the Optional Protocol (art. 4) and establish precise conditions and rules for extradition (art. 5) and for the seizure and confiscation of goods (art. 7).*

<sup>44</sup> For further details on this issue, see paragraph 48.

The legal responsibility of all actors involved in committing, attempting to commit, to participate in or to be complicit in committing any of the offences under the OPSC is a crucial part of implementing the OPSC. All relevant areas of national law (criminal, civil, and administrative) should comply with the international legal standards set forth by the CRC and the OPSC, and be part of a holistic and comprehensive approach towards the protection of children from sale and sexual exploitation.

While criminal responsibility of individuals, i.e. natural persons, is mostly covered by States parties, the liability of legal persons such as companies is not always included in a satisfactory manner in national law.<sup>45</sup> Moreover, even where it exists in the legal framework, it is rarely applied, and the cases of companies held responsible for their role in facilitating the offences covered by the OPSC are relatively scarce.<sup>46</sup>

With the increased mobility of persons and the expansion of the travel and tourism industry, as well as the extremely rapid technological developments, OPSC offences are increasingly carried out with the help of Internet Service Providers, of social platforms and networks, or of different types of actors operating in the travel and tourism sector.<sup>47</sup> While this is, most of the time, completely involuntary on the part of these stakeholders, the fact is that their services are being used by sexual offenders to reach the victims and to carry out the offences.

This may not, per se, make these stakeholders (co-)responsible for the offences committed. However, where these stakeholders become aware of the fact that their services are being or may be used by offenders to sexually exploit and abuse children, they must have a legal responsibility to prevent it from happening, or to report it and help establish the proof once an offence has been committed. Refusing to do so should not be an option.

States should introduce legislative or other measures, such as information and awareness raising campaigns, to encourage any person who knows about or suspects in good faith that a child is a victim of sexual exploitation or sexual abuse to report to the competent services.

### CONCRETE EXAMPLES OF GOOD PRACTICE

In Panama, legislation against the sexual exploitation of children (SEC) includes general provisions for all SEC-related crimes regarding substitution and suspension of penalties, a general obligation to report and the criminalisation of owners and/or administrators of any premise/venue/location used for the commission of SEC-related crimes.

- Since 2018, the law forbids substitution or suspension of penalties for any crime related to sexual liberty and integrity, including SEC-related crimes provided for in Chapter II of Title III of the Criminal Code (SEC-related crimes), when the victim is under 14 years of age (*Criminal Code (2007)*, arts. 99 and 102.)
- The Criminal Code punishes the omission to report any of the crimes in Chapter II (SEC-related crimes) by those who have knowledge of children being victims (*Criminal Code (2007)* art. 189).
- The Criminal Code strictly punishes the owner or administrator of any establishment or place used for committing any of the crimes under Chapter II (SEC-related crimes), with fifteen to twenty years of imprisonment (*Criminal Code (2007)* art. 191).

<sup>45</sup> Committee on the Rights of the Child, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, UN Doc. CRC/C/GC/16, sets forth guidance also on responsibility for legal persons. In the framework of the Lanzarote Convention, corporate liability obligations are set out in Article 26.

<sup>46</sup> See for instance: Lanzarote Committee report on "Protection of children against sexual abuse in the circle of trust – The Framework", Chapter IV "Corporate liability", Recommendations R62-64. Available at: <https://rm.coe.int/1st-implementation-report-protection-of-children-against-sexual-abuse-/16808ae53f>

<sup>47</sup> Offenders on the move: Global Study on sexual exploitation of children in travel and tourism, 2016. Available at: <https://www.protectingchildrenintourism.org/resource/the-global-study-on-sexual-exploitation-of-children-in-travel-and-tourism-2016/>

*It is crucial, through legislation, to ensure access to redress and secure the availability of child- and gender-sensitive, confidential and safe counselling, reporting and complaint mechanisms to address incidents of sexual exploitation and sexual abuse and protect victims.*

With this paragraph, the Committee is pointing out the importance of making sure that redress mechanisms and assistance to child victims are not only made accessible de facto, but that access to such services is guaranteed by law.

Having redress, counselling, reporting and complaints mechanisms anchored in the law provides an additional certainty for victims of the offences covered by the OPSC, making it a legal obligation to provide adequate services to children while taking into account their special needs as children and protecting their privacy.

Accessibility can be considered as a guiding principle throughout the Guidelines and, more in general, in States parties' work to protect children from sale and sexual exploitation, Accessibility spans across the entire spectrum, from prevention – ensuring access to information, education and training – to protection – ensuring access to child-friendly, safe and protected environments (ideally family based) for children to grow up in – to remedies – ensuring access to adequate recovery and reintegration services for child victims. Ensuring access means putting in place a framework of services that is affordable to each and every child, independent of her/his origins, socio-economic status or other characteristic.

Regarding the establishment of child-friendly reporting and complaint mechanisms, States parties should consider the role the office of a Children's Ombudsperson or Commissioner can have as a place where children can report and make complaints, and include the capacity to receive complaints and conduct investigations in their mandate.<sup>48</sup> The Ombudsman's or Commissioner's office may have a lower threshold for reports and complaints than, for instance, the police or a child protection agency.

States that have not done so yet should also consider ratifying and implementing the third optional protocol to the CRC on a Communications Procedure,<sup>49</sup> allowing for communications to be submitted to the Committee on the Rights of the Child by or on behalf of an individual or group of individuals claiming to be victims of a violation by that State party of any of the rights set forth in the CRC or its Optional Protocols (provided that the State is a party to these instruments).

### CONCRETE EXAMPLES OF GOOD PRACTICE

The Netherlands has created a specific body for advice and reporting in situations of child abuse, neglect and domestic violence, called "Safe at Home organisation". This regional body, that is accessible 24/7, advises the reporting person on possible actions, adopts urgent measures if needed to protect the child, and reports to the law enforcement institutions.<sup>50</sup>

The Polish Penal Code establishes a legal obligation of everyone who has reliable information concerning the preparation, attempt, or commission of a prohibited act against, inter alia, sexual liberty and decency, to promptly inform an agency responsible for prosecuting such offences.<sup>51</sup>

<sup>48</sup> For more information about the role and possible activities of a children's ombudsperson/commissioner, see the Committee on the Rights of the Child, General Comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, UN Doc. CRC/GC/2002/2, as well as the Report from the 2014 Day of General Discussion "Digital Media and Children's Rights", paragraph 92.

<sup>49</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, adopted and opened for signature, ratification and accession by General Assembly Resolution A/RES/66/138 of 19 December 2011, entered into force on 14 April 2014. The protocol entered into force on 14 April 2014 in accordance with article 19. Currently the OPCP is ratified by 47 States.

<sup>50</sup> Found in: Lanzarote Committee report on "Protection of children against sexual abuse in the circle of trust – The Strategies", Chapter IV "Reporting suspicion of sexual abuse of children", p. 36. Available at: <https://rm.coe.int/2nd-implementation-report-protection-of-children-against-sexual-abuse-/16808d9c85>

<sup>51</sup> Polish Penal Code, Article 240.

## 18

*The Committee urges States parties to ensure that national legislation does not criminalize children exploited in acts that would constitute an offence under the Optional Protocol, but treats them as victims.*

Here the Committee is pointing to the risk that children who are victims of sexual exploitation could themselves be seen as guilty of, and held accountable for, acts deemed illegal under national law.<sup>52</sup>

A clear example of such a situation would be that of the sexual exploitation of a child in prostitution, where the child could, unless a clear legal framework is in place, risk being accused and punished for prostitution (or “underage prostitution”). Indeed, in some countries, children in street situations are criminalised for survival behaviour, such as the involvement in prostitution. The risk of such behaviour being criminalised it that it becomes more hidden and invisible, further increasing the children’s vulnerability.<sup>53</sup>

But there could also be indirect situations in which children are coerced into committing other illegal acts, such as consuming, cultivating, buying and/or selling illegal drugs, illegal working or stealing food or other basic survival needs in order to get by, or even to try to escape an exploitative situation.

This type of situation can get exacerbated when a child has been sold or trafficked across borders, and hence find her/himself in a country different from that of origin. In such cases, it is crucial that States do not treat the child as an “illegal immigrant” or as a juvenile offender, but assesses the situation and grants the child right to assistance.

States should treat children in such situations as victims of exploitation and ensure that they receive adequate protection and services to recover and reintegrate society in a healthy way. One way to do so would be to decriminalise any offences, when committed by children, which make children more vulnerable and push exploitation further into hidden domains.

### CONCRETE EXAMPLE OF GOOD REGIONAL PRACTICE

The Council of Europe Convention on Action against Trafficking in Human Beings, in its Article 26 – “Non-punishment provision”, sets forth that “Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”

## 19

*The Committee recommends that States parties, in establishing their legal frameworks, take into account technological advancements to ensure that their applicability is not eroded by future developments and to avoid loopholes associated with emerging concerns, including new forms of online sale and sexual exploitation. In light of the evolving nature of the issue, States parties should regularly assess and, when necessary, revise legislation and policies to guarantee that their legal and policy frameworks are adapted to rapidly changing realities.*

<sup>52</sup> See inter alia the Committee’s Concluding Observations regarding the first report of Latvia on the OPSC: UN Doc. CRC/C/OPSC/LVA/CO/1, 7 March 2016, paragraph 22 (b).

<sup>53</sup> UN Committee on the Rights of the Child, General Comment No. 21 (2017) on Children in Street Situations, UN Doc. CRC/C/GC/17, paragraphs 14 and 60. See also: StreetInvest, “Response to the Consortium for Street Children’s Call for Input into the UN Global Study on Children Deprived of Liberty”, September 2018. In Submission to the UN Global Study on Children Deprived of Liberty, by Consortium for Street children, 2018. <https://www.streetchildren.org/wp-content/uploads/2018/10/Joint-submission-for-the-UN-Global-Study.pdf>.

The Committee’s recommendation in this paragraph refers to the need for States parties to establish legal frameworks which are as “technology neutral” as possible. Concretely, this means that mentioning, in the law, specific technological programmes or tools may be counterproductive, and it would be useful to define the legal provision in a manner to make it as broad and inclusive as possible. In particular, it should be made clear that any type of technological means that can be used, in any way, to commit or to facilitate the commission of offences covered by the OPSC are encompassed by the national law.<sup>54</sup>

The Committee also refers in this paragraph to the need to assess existing legislation on a regular basis, to make sure that it remains up to date and apt to provide effective protection for children. Regular assessments of laws and policies are always important, but here they take on a particular importance because of the rapidly evolving nature of the issue at stake.

In this regard, it would also be useful for States to reflect on how legislation adopted in relation to new technologies could encompass a preventive approach toward the sale and sexual exploitation of children, enabling tools and operations that may make it difficult for offenders to commit the offences in the first place.

### THE IWG’S ADVICE

Legal frameworks should be as “technology neutral” as possible, and include any type of technological means used to commit, attempt to commit, or facilitate one of the offences covered by the OPSC.

## B. Data collection

### 20

*The Committee urges States parties to develop and implement a comprehensive and systematic mechanism for the collection, analysis, monitoring and impact assessment of data, as well as for its dissemination, on all issues covered by the Optional Protocol. Importantly, data collection should be coordinated between all relevant stakeholders, including the national statistical bureau and child protection entities, and data should be centralized to avoid incoherent or contradictory data between different State agencies. The Committee recommends, in particular, that States parties:*

- (a) Implement a disaggregated approach to data, addressing how these offences affect different groups of children. At a minimum, data should be disaggregated by sex, age and form of exploitation;*
- (b) Collect data on how children access and use digital and social media and their impact on children’s lives and safety, and on factors that affect children’s resilience as they access and use ICT;*
- (c) Collect data on the number of cases reported, prosecutions, convictions and sanctions, preferably including redress provided to victims, disaggregated by the nature of the offence including with regard to online and offline activity, the category of perpetrator and the relationship between the perpetrator and the victim, and the sex and age of the child victim;*
- (d) Develop common indicators and a standardized data collection system if data are collected at the regional or local levels (for example, municipalities).*

<sup>54</sup> The Lanzarote Committee provided similar guidance in its Interpretative Opinion on the applicability of the Lanzarote Convention to sexual offences against children facilitated through the use of information and communication technologies (ICT). Available at: <https://rm.coe.int/t-es-2017-03-en-final-interpretative-opinion/168071cb4f>

Reliable and accurately disaggregated data are of critical importance for an effective implementation of the OPSC and for the prevention and eradication of sale and sexual exploitation of children.<sup>55</sup> Ensuring a solid and systematic data collection system represents one of the most challenging measures for States to put in place, as it has proven difficult to collect data in a coherent and timely manner, avoiding both overlaps (same data recorded more than once) and gaps (no data collected). The complexities related to data collection may be increased in States with large territories and/or big populations, where a sub-national network of local and regional data collection mechanisms become indispensable. In such cases, it is crucial that clear guidelines exist for which agency or authority is in charge for the collection of what kind of data, and to put in place a system by which all data is coherently collected and categorised in the same way. Establishing a clear set of indicators can be of significant help in this case.

In line with what is set forth in the SDGs, and in particular in SDG indicator 16.2.2, national data should be disaggregated at least by sex, age, and form of exploitation:

SDG Target 16.2 Indicator 2:

*“Number of victims of human trafficking per 100,000 population, by sex, age and form of exploitation”<sup>56</sup>*

Moreover, SDG Target 8.7 Indicator 1 states:

*“Proportion and number of children aged 5-17 years engaged in child labour, by sex and age”<sup>57</sup>*

Most official data collection exercises take place through household surveys, or use sampling methods which may not be suitable for adequately identifying and including children outside traditional households. Due to how these exercises are shaped, children outside traditional households are likely to be left out. As such, children in institutions, in street situations, or migrant children, among others, are often excluded from data collection exercises, which only serves to perpetuate their marginalisation.<sup>58</sup>

In order to tackle this issue, States need to make specific efforts to collect data on children living outside of traditional households, taking into account the guidance on data collection in UN CRC General Comment no. 21, in which the CRC Committee observed: “Collecting data on children in street situations should be integrated into national data on children, ensuring that national data do not rely solely on household surveys, but also cover children living outside household settings”.<sup>59</sup>

If possible, the fact of disaggregating data in accordance with children’s living situations, whether this is in a traditional household, on the streets, in informal settlements, care institutions or detention facilities, would help provide much needed data on where sale and sexual exploitation of children tend to be prevalent and inform prevention strategies.

Given the often-present transnational character of offences involving the sale and/or sexual exploitation of children, State parties need to develop safe and secure data sharing mechanisms to ensure the sharing of information and cross-referencing of data across borders.

<sup>55</sup> OHCHR, “A Human Rights-Based Approach to Data: Leaving no one behind in the 2030 Agenda for Sustainable Development, 2018, available at: <https://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf>

<sup>56</sup> Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, (E/CN.3/2016/2/Rev.1), Annex IV.

<sup>57</sup> Regarding child labour and forced labour, efforts to cooperate and support States in data collection started even before the SDGs. Technical guidance may be found in a Resolution and Guidelines adopted by the International Conference of Labour Statisticians: *Resolution concerning statistics of child labour*. Available at: [https://www.ilo.org/global/statistics-and-databases/standards-and-guidelines/resolutions-adopted-by-international-conferences-of-labour-statisticians/WCMS\\_112458/lang-en/index.htm](https://www.ilo.org/global/statistics-and-databases/standards-and-guidelines/resolutions-adopted-by-international-conferences-of-labour-statisticians/WCMS_112458/lang-en/index.htm), see paragraph 48 in particular. *Guidelines concerning the measurement of forced labour*. Available at: [https://www.ilo.org/global/statistics-and-databases/meetings-and-events/international-conference-of-labour-statisticians/20/WCMS\\_648619/lang-en/index.htm](https://www.ilo.org/global/statistics-and-databases/meetings-and-events/international-conference-of-labour-statisticians/20/WCMS_648619/lang-en/index.htm). There have also been ILO’s Global Estimates (see the most recently released in 2017 on child labour at: [https://www.ilo.org/global/publications/books/WCMS\\_575499/lang-en/index.htm](https://www.ilo.org/global/publications/books/WCMS_575499/lang-en/index.htm) and on forced labour at: [https://www.ilo.org/global/publications/books/WCMS\\_575479/lang-en/index.htm](https://www.ilo.org/global/publications/books/WCMS_575479/lang-en/index.htm)

<sup>58</sup> UN Committee on the Rights of the Child, General Comment No. 21 (2017) on Children in Street Situations, UN Doc. CRC/C/GC/21, paragraph 23. See also: Stark, Lindsay, Beth L. Rubenstein, Kimchoeun Pak, Rosemary Taing, Gary Yu, Sok Kosal, and Leslie Roberts, “Estimating the Size of the Homeless Adolescent Population across Seven Cities in Cambodia”, *BMC Medical Research Methodology* 17, no. 1 (December 2017), pp. 13–20. Available at: <https://doi.org/10.1186/s12874-017-0293-9>;

<sup>59</sup> UN Committee on the Rights of the Child, General Comment No. 21 (2017) on Children in Street Situations, UN Doc. CRC/C/GC/21, paragraph 23.

In (a), the Committee also refers to the need to address how offences covered by the OPSC affect different groups of children, and here reference should be made to paragraph 13 of the Guidelines, which outlined the different groups of children that the Committee encourages States parties to pay attention to (“*children who, because of their characteristics, circumstances and/or living situations, may be more vulnerable to sale and sexual exploitation, including girls, boys, children of other gender or sex identities and orientations, children with disabilities, children in institutions, migrant children, children in street situations, and children in other vulnerable or marginalized situations*”)

In (c), the recommendation to disaggregate by category of perpetrator can help getting a better overview of different types of offenders and potentially contribute to improving mechanisms to assist offenders and avoiding recidivism.

Nationality and/or ethnic origin may sometimes represent useful information to collect, as it can provide more precise data for instance related to sale and sexual exploitation of migrant children or children belonging to ethnic minorities. Such information should be treated with the utmost care to make sure that it is not disseminated or used for the wrong purposes.

Reliable and accurately disaggregated data are of critical importance for the implementation, monitoring and evaluation of national policies and strategies (e.g. National Action Plans (NAP)) for the prevention and eradication of sale and sexual exploitation of children. Collected data can represent an invaluable tool to analyse the national situation and designate appropriate response mechanisms. Data should also be used to assess the effectiveness of policies and strategies to implement the OPSC.

#### RESOURCE TIP

OHCHR, “A Human Rights-Based Approach to Data: Leaving no one behind in the 2030 Agenda for Sustainable Development” (2018). [Available here](#)

## 21

*All data should be collected with due respect for children’s right to privacy.*

As all human beings, children have a fundamental right to privacy.<sup>60</sup> It is of the utmost importance that data collection mechanisms respect the right to protection of personal data and the privacy of children and adolescents, to avoid putting them at risk due to the negligent handling of their data or subject them to secondary victimisation through inadequate methods of gathering information. In 2014, the Committee recommended States “to develop and strengthen programmes aimed at preventing harm and tackling risks posed by digital media and ICT, including by involving children, former victims, relevant NGOs and ICT and other relevant industries”.<sup>61</sup>

<sup>60</sup> Already recognised in Article 12 of the Universal Declaration of Human Rights (1948), Article 17 of the International Covenant on Civil and Political Rights (1966), and confirmed in Articles 16 and 40 CRC as well as in Article 8 OPSC.

<sup>61</sup> Recommendations from the 2014 day of general discussion on children’s rights and the digital media, in: Report of the CRC Committee on the Day of General Discussion 2014 on Children’s rights and the digital media, para.105(a). Available at: [https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2014/DGD\\_report.pdf](https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2014/DGD_report.pdf)

Children should be made aware of how to exercise their right to privacy and data protection, taking into account their age and maturity. Children’s personal data should be collected and processed fairly, lawfully, accurately and securely, with the free, explicit, informed and unambiguous consent of the children and/or their parents, carer or legal representative, or in accordance with another legitimate basis laid down by law. The principle of data minimisation should be respected, meaning that the personal data processing should be adequate, relevant and not excessive in relation to the purposes for which they are processed.<sup>62</sup>

Protecting the right of the child to privacy may be of pivotal importance in situations related to offences covered by the OPSC. Indeed, children who are victims of sale or sexual exploitation are often exposed tremendously, in particular where recorded imagery of the child is published online and shared beyond those involved in the initial offence. Re-establishing the privacy of that child and returning to her/him a sense of safety and security is vital as part of the recovery process.

Moreover, the evidence material gathered in cases relating to the sexual exploitation of children often involves illegal material depicting the child’s abuse, and would represent considerable harm to the victim if they were shared.

The child’s identity in any case relating to offences covered by the OPSC should be protected at all times, and any report made public (including media reporting) must in no way expose or identify the child victim.

#### RESOURCE TIPS

Report of the CRC Committee on the Day of General Discussion 2014 on Children’s rights and the digital media. [Available here](#)

Council of Europe, Recommendation CM/Rec(2018)7 of the Committee of Ministers, “Guidelines to respect, protect and fulfil the rights of the child in the digital environment”, Section 3.4 – Privacy and data protection and 3.6 – The Right to protection and safety. [Available here](#)

### C. Comprehensive policy and strategy

22

*States parties should develop a national comprehensive policy and strategy that explicitly includes all the issues covered by the Optional Protocol in a holistic and multidisciplinary manner. Such a policy and strategy could be a component of a broader national action plan for the implementation of the rights of the child or for the protection of children from violence, or a separate specific document.*

As the Committee points out in this paragraph, any policy aimed at protecting children from sale and sexual exploitation should be addressed in a holistic and multi-disciplinary manner, involving all relevant stakeholders and clearly establishing the responsibilities of each one.

In line with paragraph 12 of the OPSC Guidelines, in any measure aimed at implementing the OPSC, the importance of including child participation should be considered. This appears particularly important, and also feasible, with regard to the design and implementation of policies and strategies. For instance, children can be enabled to express themselves on what they consider to be the most important issues concerning their lives and well-being, what they are worried about, and what the government can do to make them feel safe and protected.

<sup>62</sup> Council of Europe, Recommendation CM/Rec(2018)7 of the Committee of Ministers, “Guidelines to respect, protect and fulfil the rights of the child in the digital environment. Available at: <https://rm.coe.int/guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a>.

The policy should encompass adequate legislation, prevention and protection measures (including awareness raising and education), access to justice, physical and psychological recovery and social reintegration of child victims with the involvement and empowerment of children, as well as detection and reporting, prosecution of offenders (including their treatment to avoid recidivism) and effective international cooperation, engagement of the private sector and a children’s digital agenda.<sup>63</sup>

Where such a policy represents a component of a broader National Action Plan (NAP) for the implementation of the rights of the child or on the prevention of and response to all forms of violence against children,<sup>64</sup> care should be taken to ensure that issues relating to the OPSC are not “drowned” in the broader approach. It is recommended to dedicate a specific chapter or section to the sale and sexual exploitation of children in order to set forth clear actions and targets to protect children from such acts.<sup>65</sup>

In addition, even when they are part of a broader NAP, policies and strategies against the sale and sexual exploitation of children should always include a disaggregated approach to data, addressing how these offences affect different groups of children, depending on age, gender, and other factors as discussed in the previous paragraphs on data collection.

Alternatively, States may opt for a policy document dedicated specifically and exclusively to the protection of children from sale and sexual exploitation. For instance, the CRC Committee welcomed the NAP on sexual exploitation of children in New Zealand but recommended to ensure that the NAP covers all issues under the OPSC.<sup>66</sup> If such an approach is chosen, care must be taken to avoid fragmentation of the overall child rights policy. The Committee’s General Comment No. 13 on the right of the child to freedom from all forms of violence sets forth important guidance on how to ensure a holistic child protection system.<sup>67</sup>

In drafting the policy and strategy, it may be useful for States parties to take into account the outcomes of the World Congresses on (Commercial) sexual exploitation of children held in Stockholm (1996), Yokohama (2001) and Rio de Janeiro (2008). In particular, in the outcome document of the Rio de Janeiro World Congress (2008) it was recommended to ensure that NAPs on sexual exploitation of children are based on a cross-sectoral approach which brings all stakeholders together in a coherent and comprehensive framework for action. The NAP should incorporate gender-sensitive strategies, social protection measures and operational plans, with adequate monitoring and evaluation, targeted resources and designated responsible actors, including civil society organisations for implementation of initiatives to prevent and stop sexual exploitation of children and adolescents and provide support for child victims of sexual exploitation.<sup>68</sup>

<sup>63</sup> See Report of the Special Rapporteur on the sale and sexual exploitation of children, UN Doc. A/HRC/28/56 (2014), paragraph 44 and: A/HRC/28/55 paragraph 109. Article 6 of ILO C182 also sets forth the State obligation to design and implement programmes of action to eliminate as a priority the worst forms of child labour (i.e. including sale and sexual exploitation of children) either specifically or as a comprehensive programme, see: Practical guide to child labour reporting available at: [http://www.ilo.org/ipecc/Informationresources/WCMS\\_IPEC\\_PUB\\_1839/lang-en/index.htm](http://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_1839/lang-en/index.htm)

<sup>64</sup> As is suggested by the UN Study on Violence against Children (2006). Available at: [https://www.unicef.org/violencestudy/reports/SG\\_violencestudy\\_en.pdf](https://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf)

<sup>65</sup> See for instance the Committee’s Concluding Observations for India, UN Doc. CRC/C/OPSC/IND/CO/1, 13 June 2014, paragraph 12.

<sup>66</sup> Committee on the Rights of the Child, Concluding Observations on New Zealand, UN Doc. CRC/C/OPSC/NZL/CO/1, 25 October 2016, paragraph 10-11. Similar remarks and recommendations were made in the CO’s for Cambodia (UN Doc. CRC/C/OPSC/KHM/CO/1, 26 February 2015, paragraph 8 and 9) and in the CO’s for Uruguay (UN Doc. CRC/C/OPSC/URY/CO/1, 6 March 2015, paragraphs 9 and 10).

<sup>67</sup> Committee on the Rights of the Child, General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, UN Doc. CRC/C/GC/13, paragraphs 11.d and 38-57.

<sup>68</sup> World Congress III against Sexual Exploitation of Children and Adolescents (2008). The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents, Call for Action, paragraph 35.

It should be noted that the demand side of sexual exploitation of children is often neglected, and that it may be necessary for States to draw the attention specifically to the demand side and assess ways to include this aspect more explicitly through their policies.<sup>69</sup> The Call for Action of the Rio de Janeiro World Congress recommended to “address the demand that leads to children being prostituted by making the purchase of sex or any form of transaction to obtain sexual services from a child a criminal transaction under the criminal law, even when the adult is unaware of the child’s age.”<sup>70</sup>

The role of social services in policies and strategies to end the sale and sexual exploitation of children is sometimes granted less attention. Social services have an important role in preventing and detecting child protection and welfare concerns and supporting children. They often work closely with community organisations, which also have an important role since, apart from universal services such as education, they often have direct contact with child victims. The partnership and regular communication and collaboration between social services, police services and associations assisting child victims should be promoted and supported as part of protection policies and strategies.

### RESOURCE TIPS

UN Study on Violence against Children (2006). [Available here](#)

Global survey: Toward a world free from violence (2016). [Available here](#)

Outcome of the World Congress on sexual exploitation of children and adolescents, Rio de Janeiro (2008). [Available here](#)

Council of Europe, Recommendation CM/REC(2011)12 of the Committee of Ministers on children’s rights and social services friendly to children and families (2011). [Available here](#)

### CONCRETE EXAMPLE OF GOOD PRACTICE

The United Kingdom has adopted Statutory guidance on inter-agency working to safeguard and promote the welfare of children (2015). [Available here](#)

## 23

*The Committee encourages States parties to pay increased attention to the role that financial institutions, banks, telecommunications operators, Internet providers, sports organizations, the travel and tourism industry and non-governmental organizations can play in enhancing child protection policies and strategies, and to use the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.*

In its General Comment No. 16, the CRC Committee recognised that the duties and responsibilities to respect the rights of the child extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises. Therefore, all businesses must meet their responsibilities regarding children’s rights and States must ensure that they do so. Furthermore, the Committee underscored the obligation of States to protect against infringements of children’s rights. “It means that States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children’s rights”. The failure to take such measures makes States responsible for the infringements caused by or contributed to by business enterprises.<sup>71</sup>

<sup>69</sup> With regard to the sexual exploitation of children in prostitution, the Lanzarote Convention establishes links between demand and supply by requiring criminal sanctions for both the “recruiters” and the “users” (Article 19). The same is true for conduct related to child sexual abuse material and related sexual exploitation of children (Articles 20-22).

<sup>70</sup> Rio de Janeiro 2008 Call for Action, paragraph 14.

<sup>71</sup> General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, UN Doc. CRC/C/GC/16, paragraphs 8 and 28.

As concrete examples of the type of measures mentioned above, the recommendations made for States in the Rio de Janeiro Call for Action (2008) appear particularly relevant. For instance, in paragraph 7 States are recommended to “take the necessary legislative measures to require Internet Service Providers, mobile phone companies, search engines and other relevant actors to report and remove child pornography websites and child sexual abuse images, and develop indicators to monitor results and enhance efforts”. In paragraph 8, the recommendation reads: “Call upon Internet Service Providers, mobile phone companies, Internet cafés and other relevant actors to develop and implement voluntary Codes of Conduct and other corporate social responsibility mechanisms together with the development of legal tools for enabling the adoption of child protection measures in these businesses”. And in paragraph 9: “Call upon financial institutions to undertake actions to trace and stop the flow of financial transactions undertaken through their services which facilitate access to child pornography”.

States parties could develop specific guidance material to inform private sector entities of the issue of sale and sexual exploitation of children and how it occurs in different sectors, as well as what can be done to tackle it. At the same time, it is recommended to include companies as part of the private actors that should assist in the implementation of the OPSC, along their value chains.

The UN Guiding Principles on Business and Human Rights were unanimously endorsed by the UN Human Rights Council in 2011.<sup>72</sup> They provide the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, and continue to provide the internationally accepted framework for enhancing standards and practices with regard to business and child rights. They are of direct relevance to the travel and tourism industry, ICT companies, the media, and the sports industry, including sports governing bodies.

Recommendation CM/Rec(2016)3 of the Committee of Ministers of the Council of Europe to member States on human rights and business (2016) aims to contribute to the effective implementation of the UN Guiding Principles on Business and Human Rights at the European level. It recommends states to take measures, including the drafting of policies, operational guidelines and/or codes of conduct to build awareness and support among business enterprises within their jurisdiction regarding their roles, responsibilities and impact on the rights of the child, and their cooperation with relevant stakeholders. It also recommends states to engage all relevant stakeholders, including business enterprises, in the design, drafting, implementation and evaluation of a national strategy or action plan.<sup>73</sup>

A comprehensive overview of issues related to the sale and sexual exploitation of children in the context of sports is available in the December 2018 Report of the Special Rapporteur on the sale and sexual exploitation of children.<sup>74</sup> The Report raises concerns regarding the contracting of young athletes, third-party ownership of the ‘economic rights’ of child players, the commodification of child athletes recruited through sports academies, and trafficking. In addition, power dynamics inherent in the sporting world render children vulnerable to sexual abuse and exploitation by their coaches, trainers, physician, managers and peers.<sup>75</sup>

<sup>72</sup> United Nations, UN Guiding Principles on Business and Human Rights, 2011. Available at: [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>73</sup> Council of Europe, of the Committee of Ministers to member States on human rights and business, Adopted by the Committee of Ministers on 2 March 2016. Available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c1ad4](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c1ad4) Obligations with regard to legal persons arise also from Articles 9.2 and 10.3 of the Lanzarote Convention.

<sup>74</sup> Report of the Special Rapporteur on sale and sexual exploitation of children, thematic study on the sale and sexual exploitation of children in the context of sports, 27 December 2018, A/HRC/40/51. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/446/93/PDF/G1844693.pdf?OpenElement>

<sup>75</sup> See for instance: Ingunn Bjornseth and Attila Szabo, “Sexual Violence Against Children in Sports and Exercise: A Systematic Literature Review”, in: *Journal of Child Sexual Abuse*, Volume 27, 2018 – Issue 4.

The Special Rapporteur's Report includes a series of recommendations to States and sports organisations. Among those directed to sport organisations are: the establishment of codes of conduct and ethics, the setting up and implementation of independent reporting systems, training of all individuals falling under the authority of sports organisations, the inclusion of human rights as a criterion in bidding process for major sports events, systematic background checks of anyone working with children, and awareness raising of children regarding the practice of safe sports, reporting mechanisms and reparations.<sup>76</sup>

Within the travel and tourism industry, phenomena such as “voluntourism” and “orphanage tourism” are producing harm to many children living in orphanages. These practices involve tourists, students, school children, faith groups, corporates and travellers coming from abroad to visit and/or volunteer in orphanages. While often undertaken with good intentions, it can be deeply harmful for children to have a rotation of untrained and unskilled strangers coming in to “care” for them. Furthermore, the practice has become a lucrative business for many orphanages, and there have been a number of cases in which children were trafficked and placed in orphanages despite their parents or other caretakers being alive, in order to fill the spaces and be able to request donations and other financial contributions.<sup>77</sup> Other cases have shown how foreign persons were allowed into orphanages to sexually abuse the children living there in exchange for payment.<sup>78</sup>

Understanding the potential impact of support for institutions such as orphanages, which perpetuate an outdated model of care that is not in children's best interests and can also render children more vulnerable to sale, trafficking and sexual exploitation, is crucial to be able to protect children from these offences. It is important to stress that it is possible to redirect money, time and resources towards alternatives that create a better future for children and a more sustainable care system, and that child protection experts should always support and guide this process. This should include prevention of family separation, family reunification (where possible and appropriate) and the development of quality alternative family-based care and community services.

There is a growing understanding that the flow of international volunteers and tourists into orphanages compounds the issue of child institutionalisation and acts as a driver to the unnecessary and deceptive separation of children from their families – an opportunity for traffickers to supply children to feed the business model.<sup>79</sup> Research has shown that orphanages are often being set up in the main tourist areas.<sup>80</sup>

## RESOURCE TIPS

United Nations, UN Guiding Principles on Business and Human Rights (2011). [Available here](#)

Report of the Special Rapporteur on sale and sexual exploitation of children, thematic study on the sale and sexual exploitation of children in the context of sports, 27 December 2018, UN Doc. A/HRC/40/51 (2018). [Available here](#)

Council of Europe Recommendation CM/Rec(2018)7 (adopted by the Committee of Ministers on 4 July 2018) containing Guidelines to respect, protect and fulfil the rights of the child in the digital environment. [Available here](#)

<sup>76</sup> With regard to awareness raising, the Council of Europe has launched a campaign on sexual abuse of children in sports, entitled “Start to Talk”. Available at: <https://www.coe.int/en/web/human-rights-channel/stop-child-sexual-abuse-in-sport>

<sup>77</sup> US State Department, Child Institutionalization and Human Trafficking, 2018. Available at: <https://www.state.gov/child-institutionalization-and-human-trafficking/>

<sup>78</sup> Lumos, Ending Institutionalisation of Children, March 2017: <https://www.wearelumos.org/resources/ending-institutionalisation-children/>

<sup>79</sup> Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, A/HRC/42/44, 25 July 2019, paragraph 18.

<sup>80</sup> See for instance: ECPAT International, Country Overview: Uganda. Available at: <https://www.protectingchildrenintourism.org/tourism-in-uganda-driving-demand-for-orphanages-putting-children-at-risk-sexual-exploitation/>

## D. Coordination, monitoring and evaluation

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*States parties should designate a national mechanism, which could be part of an existing entity such as a ministry or national human rights institution or a separate entity for the eradication of child sexual exploitation, charged with the coordination of all activities related to the implementation of the Optional Protocol. This coordinating mechanism should have a clear mandate to implement the Optional Protocol specifically, and sufficient authority to take the necessary measures and coordinate at the cross-sectoral, national, regional and local levels, including to ensure a framework for the referral of cases and effective support to child victims.*

Effective and efficient coordination of all activities carried out by governmental agencies and in cooperation with non-governmental organisations, the academic world, the private sector<sup>81</sup>, and workers' and employers' organisations<sup>82</sup> is crucial for the implementation of national policy instruments to protect children from sale and sexual exploitation.

Ideally, coordination should also be ensured with other national action plans and policies on related issues, such as on ending violence against women and on combating trafficking of human beings, as there may be cross-cutting issues that would benefit from a joint approach.<sup>83</sup>

A coordination mechanism could be, as is the case in several countries, a Ministry or a National Council or Committee either for the coordination of the implementation of the rights of the child or more specifically for the eradication of sexual exploitation of children. It could also be an independent group of experts appointed specifically with the mandate to coordinate and oversee the implementation of the relevant policy.<sup>84</sup>

In addition, the mechanism could be used to strengthen and facilitate States parties' reporting obligations to international bodies, such as the Committee and the International Labour Organisation, by centralising relevant information from different state departments and authorities.

In monitoring the referral of cases involving the sale and/or sexual exploitation of children, it is important to consider how to extend the monitoring of identified cases until any existing risk for the child victim or other children ceases.

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*States parties should, on a regular basis and in a transparent manner, monitor and evaluate the implementation of the policy and strategy and, on the basis of the outcome, adjust the policy and strategy when necessary. Evaluations should be made public.*

<sup>81</sup> For instance financial institutions, banking and telecom operators, Internet providers, and the travel and tourism industry.

<sup>82</sup> Article 5 of ILO Convention 182 explicitly establishes the obligation for ratifying States to ensure monitoring mechanisms regarding the worst forms of child labour, either by newly establishing or designating existing ones: "Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention."

<sup>83</sup> The Council of Europe Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence contain detailed proposals on how to develop an integrated national strategy on the rights of the child and the eradication of violence against children. Available at: <https://www.coe.int/en/web/children/integrated-strategies>

<sup>84</sup> Committee on the Rights of the Child, General Comment 13 (2011) on the right of the child to freedom from all forms of violence, UN Doc. CRC/C/GC/13, Section VI on "National coordinating framework on violence against children".

Effective and systematic monitoring and evaluation processes of measures to implement the OPSC are still lacking in many States parties. Yet such processes can serve a crucial part in improving the protection system for children, since evaluations will contribute to a better understanding of the impact legal and policy measures are having. An active role of children’s Ombudspersons in the monitoring and evaluation of such measures can help provide an independent expert assessment aimed at strengthening existing measures and/or shaping new and better ones.

Transparency and accountability should accompany the implementation of measures to protect children from sale and sexual exploitation. With regard to monitoring and evaluation processes, making these public not only increases the chances of public scrutiny, which should be seen as positive, but also educates and informs the general public about these issues and what is being done to tackle them.

### CONCRETE EXAMPLE OF GOOD PRACTICE

An important monitoring mechanism is the monitoring system for recommendations (known as “SIMORE”) developed in Paraguay with the assistance of OHCHR. The system makes it possible to search all recommendations issued by United Nations human rights mechanisms and by the Inter-American Court of Human Rights in order to monitor how each recommendation is being implemented by relevant ministries and public institutions. Since the initial launch of the system, a new version called “SIMORE Plus” has been inaugurated to incorporate the 2030 Agenda, making it possible to link the implementation of human rights recommendations and the SDGs. Moreover, a new module called “OSC-Plus” has been created to facilitate the participation of civil society organisations in monitoring efforts to implement recommendations.

## E. Allocation of resources

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*The Committee recommends that States parties ensure specific and clear budgetary allocations for the implementation of the Optional Protocol as detailed in the present Guidelines, and note the guidance provided in the Committee’s general comment No. 19 (2016) on public budgeting for the realization of children’s rights.*

In its General Comment No. 19 (2016) on public budgeting for the realisation of children’s rights<sup>85</sup> the Committee elaborates on the meaning of Article 4 CRC. For the budgeting for children’s rights, including the prevention of and the protection against sale and sexual exploitation, the Committee presents five principles for public budgeting: Effectiveness, Efficiency, Equity, Transparency and Sustainability. It furthermore provides guidance and recommendations on how to realise children’s rights in relation to each of the four stages of the public budgeting process: planning, enacting, executing and following up.

The information contained in this General Comment is important for all actors in the field of children’s rights and in particular for professionals who are in direct contact with their Government on budgeting for child rights related activities.

<sup>85</sup> Committee on the Rights of the Child General Comment No. 19, (2016) on public budgeting for the realisation of children’s rights (art. 4), UN Doc. CRC/C/GC/19, 2016.

*States parties should ring-fence all human, technical and financial resources allocated for policies, strategies and mechanisms designed to implement the provisions of the Optional Protocol. Specific resources should be allocated to entities in charge of detection and reporting mechanisms, criminal investigations, legal assistance, compensation and the physical and psychological recovery and social reintegration of child victims of the offences covered by the Optional Protocol.*

While resource allocation can be a challenging matter, it is a crucial part of an effective child protection system. Besides being a matter of political priority, granting sufficient resources to put in place a solid system of prevention and protection is a long-term strategic investment for the future. Research has shown that the costs of medical and psycho-social care services for persons who have suffered severe forms of trauma such as sexual exploitation and abuse largely exceed the costs of preventing the same crimes.<sup>86</sup>

Some States face challenges in securing sufficient budgetary allocation due to low government revenue, and may need international assistance. In line with Article 8 of ILO C182,<sup>87</sup> States should try to assist one another in giving effect to the provisions of the OPSC and other legal instruments aiming to protect children from sexual exploitation and sexual abuse through enhanced international cooperation and/or assistance, including support for social and economic development, poverty eradication programmes and universal education.

Given the more recent tendency to attribute more relevance to the role that private entities can have in protecting children from sale and sexual exploitation, possibilities could be explored for the active involvement of such actors through awareness raising and establishing safeguarding programmes within their companies or organisations or by providing complementary/voluntary funding initiatives.

### CONCRETE EXAMPLE OF GOOD PRACTICE

In 2004, the Government of Panama created CONAPREDES, a technical administrative body for the prevention and eradication of sexual exploitation in the country. CONAPREDES issued a National Action Plan on SEC in 2008. The activities of the National Plan on SEC are funded through budget allocations from the Government as well as through the Sexual Exploitation Fund. The Fund, administered by CONAPREDES, collects money through a tax consisting on charging one Panamanian balboa (1 USD) to every foreign tourist leaving Panama from Tocumen International Airport. According to the CONAPREDES annual financial report, the Sexual Exploitation Fund collected 668,952.10 Balboas in 2018 via the airport tax and contains a total of 3,429,559.18 Balboas (equivalent to the same amount in USD) as of 31<sup>st</sup> December 2018. Most of the resources collected by the Sexual Exploitation Fund are destined to prevention activities (of the activities and projects conducted by CONAPREDES in 2018, 64% were prevention activities and 26% institutional strengthening activities).

Reference: Government of Panama, *Law No. 16 of 31 March 2004*, Articles 23, 25, 29. [Available here](#)

CONAPREDES, *Informe de Gestión enero a diciembre 2018*, p. 29, 56. [Available here](#)

<sup>86</sup> See for instance: K.C. Basile, et al., *STOP SV: A Technical Package to Prevent Sexual Violence*, Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2016. Available at: <https://www.cdc.gov/violenceprevention/pdf/sv-prevention-technical-package.pdf>, and: E.J. Letourneau et al., "The economic burden of child sexual abuse in the United States", in *Child Abuse and Neglect*, Vol. 79, May 2018, p. 413-422.

<sup>87</sup> ILO C182, Article 8: "Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education."

## F. Dissemination and awareness raising

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*To enhance the understanding of the purpose and provisions of the Optional Protocol, States parties should:*

- (a) Develop and conduct long-term educational and awareness-raising programmes and campaigns on preventive measures and the harmful effects of all offences covered by the Optional Protocol, including when these offences are facilitated or committed through ICT;*
- (b) Systematically disseminate information on the provisions of the Optional Protocol among government officials at the national, regional and local levels, among all relevant professional groups and all other persons who have regular contact with children, as well as the public at large, in particular children and their families. Information material should be tailored to the audience, and children should receive age-appropriate and child-sensitive information;*
- (c) Promote adequate knowledge among all persons, especially those caring for children, of different forms of sale, sexual exploitation and sexual abuse of children, and of the means to detect them and identify victims, as well as of existing reporting mechanisms and how to use them whenever there are reasonable grounds to believe that a child is a victim;*
- (d) Ensure that children at all levels of the educational system receive comprehensive sex education. Schoolchildren should receive appropriate materials to learn about the risks of sale, sexual exploitation and sexual abuse as well as the means to protect themselves offline and online. Educational programmes should always include information on concrete and practical ways for children to seek help and support, and to signal sexual abuse safely and confidentially;*
- (e) Take measures to target and reach children who are outside of the formal school system;*
- (f) Encourage the media to provide appropriate information regarding all aspects of the sale, sexual exploitation and sexual abuse of children, using appropriate terminology, while safeguarding the privacy and identity of child victims and child witnesses at all times.*

To promote and support the implementation of the OPSC, information about this legal instrument should be widely disseminated at national, regional and local levels. The general public should be informed and made aware of the fact that sale and sexual exploitation of children are offences that exist and occur everywhere. No country is immune to these crimes, and it should be broadly known that children are in need of adequate protection mechanisms and that knowledge is, in itself, a form of protection.

For children and adults around children to learn about their rights, the risks that exist, and the means that exist to prevent and protect themselves and others around them represents a first step towards preventing the offences covered by the OPSC from occurring.

Awareness raising and dissemination initiatives on offences covered by the OPSC may also be part of broader initiatives concerning children's rights, sexual health, crime prevention, online safety and child protection. The education system is a key mechanism by which to disseminate age-appropriate material on such topics to children and adolescents.

While the formal education system makes it possible to reach a broad population of children, not all children have access to formal education. The Committee points this out in e), reminding States that efforts should be made also for children outside school. For example, children in street situations are often not enrolled in formal education and will not receive information through such channels. To reduce the vulnerability of children in street situations and other out-of-school situations, non-governmental organisations, social workers and street workers should be informed about the provisions of the OPSC also, as such stakeholders are often the primary caregivers or educators for these children.<sup>88</sup>

In c), the Committee refers to persons “caring for children”. Such persons are, in particular, parents, teachers, educators, coaches/trainers and other persons working in close contact with children, as well as social- and health care professionals working with children. These groups of persons need to be targeted through dedicated awareness raising efforts.

As part of the broader efforts to raise awareness, attention should also be paid to informing the public – including young people, businesses, sports organisations, faith-based groups and other relevant stakeholders – about the potential harm that well-intentioned actions can have on children in vulnerable situations.

This can be exemplified by two misinformed actions that may inadvertently fuel the sale and exploitation of children:

The first is the practice of volunteer tourism (or “voluntourism”). This industry has seen a rapid growth in recent years, with reports estimating an annual worth of \$2 billion generated from the 10 million tourists seeking this type of experience.<sup>89</sup> Research has demonstrated that this practice is more prolific in countries where there is a significant tourism industry, with orphanages generally being set up in the main tourist areas.<sup>90</sup> If the industry continues to grow with poor oversight and an acute lack of child protection measures, so too does the risk of the continued proliferation of sale, trafficking and exploitation of children in this type of “business” on a global scale.

The second is the philanthropic giving to orphanages. When individuals, private trusts and foundations, faith-based groups and NGOs financially support orphanages, they risk to inadvertently prop up a system which runs counter to efforts to develop services to support vulnerable children and families within their communities and to prevent family separation.<sup>91</sup> If this type of pattern continues in countries in the absence of effective ring-fencing of resources and re-direction of funds, care reform becomes increasingly difficult to achieve.

If the general public is made aware of these harms through effective educational materials and awareness raising campaigns, their good intentions can be harnessed and redirected towards more sustainable community alternatives that will keep families together and protect vulnerable children from the many forms of exploitation and abuse associated with orphanages and other institutions.

<sup>88</sup> Consortium for Street Children, “Submission on Guidelines on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography”, 29 March 2019. Available at: <https://www.streetchildren.org/wp-content/uploads/2019/04/CSC-Submission-OPSC-Guidelines.pdf>

<sup>89</sup> Nigel Cantwell and Emmanuelle Werner Gillioz, “The orphanage industry: Flourishing when it should be dying” in: *Scottish Journal of Residential Child Care*, 2018, p.4.

<sup>90</sup> Consortium for Street Children, “Submission on Guidelines on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography”.

<sup>91</sup> For example, Lumos research traced philanthropic support to orphanages in Haiti exceeding \$100 million in one year, which is more than 130 times the reported Haitian child protection agency’s annual budget. See: *Funding Haitian Orphanages at the Cost of Children’s Rights* (2017). Available at: [https://lumos.contentfiles.net/media/documents/document/2018/01/Funding\\_Haiti\\_Orphanages\\_Report.pdf](https://lumos.contentfiles.net/media/documents/document/2018/01/Funding_Haiti_Orphanages_Report.pdf)

## G. Training

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*The provision of education and continued training to all relevant professionals, and support to families and caregivers, should be an integral part of any measure for the implementation of the Optional Protocol. States parties should:*

- (a) Ensure systematic and targeted multidisciplinary training on the provisions of the Optional Protocol and its implementation, including how to identify and address the offences covered and how to foster child- and gender-sensitive approaches when caring for child victims and survivors, for all relevant professionals and groups working with or for children;*
- (b) Encourage training on effective responses that are both victim-centred and survivor-led for child victims of offences covered by the Optional Protocol;*
- (c) Strengthen cooperation and strategic partnerships with non-governmental organizations and use their expertise and advocacy material to widen online literacy and safety among children and their families and promote responses to harm;*
- (d) Conduct regular assessments of training activities to ensure that the knowledge and skills acquired are translated into practice in order to effectively identify victims and protect children from the offences covered by the Optional Protocol.*

Working for the prevention and eradication of sexual exploitation and sexual abuse of children requires many different skills. The provision of continuous education and training of all relevant professionals, as well as the support to families and caregivers, should be an integral part of any national policy or NAP for the implementation of the OPSC.

There are too many unfortunate examples where child victims are subjected to secondary victimisation due to poor understanding and management of their situation by the professionals who are responsible for taking care of them.

Moreover, having to handle cases of sale and/or sexual exploitation and abuse of children is no easy matter, and professionals involved in different capacities to detect, identify, report, and assess cases, or care for the victims, deserve to be properly trained before having to intervene.

There has been increasing recognition of the role that survivors of sexual violence can play in raising awareness, identifying needs, and training professionals working with such cases.

### CONCRETE EXAMPLE OF GOOD PRACTICE

In the United Kingdom, CISTers is a survivor led specialist service for women who were sexually abused and exploited as children.

*With regard to specific groups who require specialized training, States parties should:*

- (a) Ensure that teachers and other professionals working in various forms of education of children, including sports and cultural activities, receive adequate training in order to be able to effectively teach and speak with children about the sale, sexual exploitation and sexual abuse of children;*
- (b) Train health-care professionals, social workers and child welfare and child protection professionals to detect signs and to report them, and to address children who may be victims of sexual exploitation or sexual abuse in a child- and gender-sensitive manner;*
- (c) Train all police units investigating offences covered by the Optional Protocol, including when these offences are facilitated or committed through ICT, as well as prosecutors and the judiciary, to identify and respond to child victims in a child- and gender-sensitive manner and to handle cases associated with ICT and digital evidence.*

Some professional groups are particularly likely to come into contact with children who are victims of sexual exploitation or abuse. In order to enable such professionals to detect the signs and identify cases that should be reported, including know how to effectively report, training is needed.

Such professionals are those who, through their work, come into contact with children on a frequent and regular basis, such as educational staff, managers, coaches and assistants engaged in children's sports, staff and volunteers involved in sport, leisure and cultural activities, and medical/para-medical staff responsible for children's physical and mental care and well-being, including social workers. Importantly, NGO workers and social workers who are active outside the educational arena and working, for instance, on the streets or in shelters, are also in need of specific training.

Another area in which training is strongly needed is in the law enforcement and justice sector. Police officers, lawyers, prosecutors and judges need to be trained in child-friendly investigation and hearing methods to avoid exposing children who are victims of sale or sexual exploitation to secondary victimisation.

Some States parties allow for undercover operations to investigate crimes such as grooming and the production and distribution of child sexual abuse material. Such investigations can be crucial for these types of offences, and should ideally be enabled in all States, under specific rules.<sup>92</sup> The Police should be trained specifically for these kinds of operations, with due respect for privacy considerations, and States would do good to strengthen international cooperation in this regard. INTERPOL has developed specialised skills and resources to tackle crimes against children, and can provide training and promote good practices to police in their member countries, including to help develop policing capabilities with regard to sexual exploitation and sexual abuse of children. Use can also be made of INTERPOL's Green Notices and the International Police Certificate.<sup>93</sup>

<sup>92</sup> Annual Report of the Special Representative of the Secretary-General on Violence against Children, UN Doc. A/HRC/28/55, paragraph 114.

<sup>93</sup> INTERPOL, Crimes against Children, see: <https://www.interpol.int/Crime-areas/Crimes-against-children/Crimes-against-children>

## IV. Prevention of the offences covered by the Optional Protocol

### A. General measures

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*States parties to the Optional Protocol have an obligation to adopt or strengthen, implement and disseminate laws, administrative measures and social policies and programmes to prevent the offences covered by the Optional Protocol.*

Article 9 of the OPSC sets forth that (1) States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices. In addition, (2) States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences covered by the OPSC. In fulfilling their obligations under Article 9, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes.

This is also an obligation under ILO C182, which sets forth in its Article 7(2) that “Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to: (a) prevent the engagement of children in the worst forms of child labour”.

Likewise, the Lanzarote Convention requires its State parties to take specific measures to prevent sexual exploitation and sexual abuse (Articles 4-9). These provisions, which may be of inspiration also to States that are not parties to this Convention, set forth detailed obligations on training and education for specific professional groups as well as for children.

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*In preventing the sale and sexual exploitation of children, States parties should pay attention to the underlying causes of these problems, which may serve to foster, normalize or perpetuate them, and which require specific awareness-raising measures. An important aspect of these offences, and which requires specific targeted efforts by States parties, lies in the demand that exists, among both sex offenders and economic profiteers, for children for the purposes of sexual exploitation and abuse. Efforts to combat demand should address different forms of exploitation and abuse, whether online or offline.*

Preventing offences against children is usually less resource demanding than repairing the damage done afterwards. Measures such as dissemination, awareness raising and training, which the Committee has provided guidance on in the previous paragraphs, are fairly easy to put in place even with modest resources, and represent key elements of a solid prevention programme.

The OPSC mentions the need for States parties to address “root causes” underlying the sale and sexual exploitation of children in its Article 10.3, referring to “poverty and underdevelopment, contributing to the vulnerability of children”.

But there are also other aspects of prevention, which need to be considered to reduce the occurrence of offences such as sale and sexual exploitation of children.

One of those aspects is the “demand side” of sexual exploitation, namely the fact that a real demand exists for sexual acts involving children. Addressing the demand for the sexual exploitation of children implies looking at three aspects: the individuals who want to sexually exploit or abuse children; the individuals or groups who facilitate the sexual exploitation (which could range from family members to criminal networks); and, lastly, the gender, social, cultural, economic and institutional constructs that contribute to creating an environment in which sexual exploitation of children is ignored, tolerated, or even accepted.<sup>94</sup>

As part of the prevention framework, and considering the first aspect of the demand side mentioned above, persons who have a sexual interest in children and/or fear that they might commit any of the offences covered by the OPSC should have access to preventive intervention and assistance measures.<sup>95</sup> Such measures should be developed to evaluate and reduce the risk of offences being committed, by supporting the persons who seek help in a manner that respects their right to privacy and, where appropriate, anonymity. Interventions can take the shape of online hotlines or phone helplines, or consist of therapeutic interventions with a specially trained psychologist.

### CONCRETE EXAMPLE OF GOOD PRACTICE

The Swedish “Preventell – Helpline for unwanted sexuality” is a helpline where persons who are worried about their own sexual thoughts or actions can call anonymously to get support and, if needed, further treatment. **Available here**

In the UK and Ireland, “Stop it now” provides a confidential support and advice helpline for persons with sexual thoughts about children. **Available here**

Similar help mechanisms to assist persons before they commit a sexual offence against a child should exist in every country, and be part of the prevention measures to implement the OPSC.

With regard to the second aspect of the demand side, attention should be paid for instance to socio-economic imbalances and the fact that children living in disadvantaged or poor circumstances may be at a heightened risk to become victims of sale and sexual exploitation. Support structures for families and children in such situations are needed to reduce the risks of sale and sexual exploitation.

Lastly, the third aspect of the demand side refers to the broader gender, social, cultural, economic and institutional constructs of society, in which the sexual exploitation of children occurs. Prevention with regard to this aspect implies a more long-term perspective and changing mentalities, and sometimes even long-lasting social and cultural behaviours. It involves enhancing gender equality and children’s rights, but also to address issues such as the current hyper-sexualisation of young girls in many countries, by which children are depicted in a sexual way or as sexual objects<sup>96</sup> in the media, in advertisements, and through other channels.

<sup>94</sup> ECPAT International, Defining the demand for the sexual exploitation of children, 2016. Available at: [https://www.ecpat.org/wp-content/uploads/2016/10/Demand-Summary-Paper\\_1.pdf](https://www.ecpat.org/wp-content/uploads/2016/10/Demand-Summary-Paper_1.pdf)

<sup>95</sup> This is also set forth by the Lanzarote Convention, Article 7.

<sup>96</sup> See for instance the Canadian Women’s Health Network, “Hypersexualisation of young girls, why should we care?”. Available at: <http://www.cwhn.ca/en/hypersexualizationprimer>

*The Committee recommends States parties to take all measures necessary to identify, support and monitor children at risk of falling victim to the offences covered by the Optional Protocol, especially children in vulnerable situations, and to strengthen prevention programmes and the protection of potential victims. To that end, States parties should:*

- (a) Conduct studies to analyse and assess the nature, extent, root causes and consequences on children of the offences covered by the Optional Protocol with a view to developing and adopting effective and targeted legislative, policy and administrative measures for the prevention of these offences;*
- (b) Provide social protection and financial support, including income-generating activities, to enable the economic empowerment of vulnerable families;*
- (c) Prevent and end all harmful practices and pay special attention to those practices that can amount to the sale, sexual exploitation or sexual abuse of children, such as child marriage. The prevention of harmful practices requires a gender perspective, to ensure that different practices affecting boys and girls are adequately addressed;*
- (d) Ensure that relevant actors from the private sector play a proactive role in the prevention and combating of offences covered by the Optional Protocol.*

In this paragraph, the Committee provides some more specific guidance with regard to prevention actions needed, recognising also the need for more research and studies that analyse the different aspects of sale and sexual exploitation of children.

In b) social protection and financial support, such as income generating activities for families, are mentioned as a form of prevention. Indeed, such support may make a huge difference, by enabling parents to keep their children safe at home, and avoiding unnecessary family separations, through which children may be more exposed to risks of sale and exploitation. Economic vulnerability is also sometimes a reason why young girls are married while they are still children, as this may reduce the economic burden of already vulnerable families.

The Committee points out that also in the prevention of sale and sexual exploitation of children, the private sector has a potentially significant role to play. A first measure in that regard would be to ensure that there is a legal obligation on anyone, including legal persons (such as private companies), who has reliable information concerning the preparation or attempt to commit an act prohibited by the OPSC to promptly report it to law enforcement.

In the paragraphs below, specific attention will be granted to the tourism and travel industry as well as the online environment.

### **CONCRETE EXAMPLE OF GOOD REGIONAL PRACTICE**

In April 2018, the African Committee of Experts on the Rights of the Child and the African Commission on Human and Peoples' Rights adopted their first joint General Comment on Ending Child Marriage in order to accelerate the fight against child marriage in the African region. It describes legislative, institutional and other measures that should be taken by States Parties to give effect to the prohibition of child marriage and to protect the rights of those at risk of or affected by child marriage. The scope of the General Comment covers children in child marriages, children at risk of child marriage and women who were married before the age of 18. [Available here](#)

*As an important general measure in the prevention of the sale, sexual exploitation and sexual abuse of children, States parties should require the screening of all persons applying for work in which they would be in direct contact with children.*

Part of a comprehensive program of prevention of the sexual exploitation and abuse of children involves the screening and supervision of those whose employment or volunteer work places them in direct contact with children. Such screening can be done for instance by requesting, from all employees and volunteers, as well as all applicants, a clean criminal record.

Such requirements should apply to everyone, without discrimination. This means that both women and men must provide the same documents, independent of their prior work positions or experience. Just because someone has already worked with children before, it does not mean she/he should be exempted from this requirement. There is still a lack of international best practice guidelines on this issue for businesses or NGOs recruiting international volunteers or employees, and current practices vary heavily and are often ad hoc.

In relation to this issue, child sex offender registers have sometimes been put forward as a good means for States to prevent persons convicted of sexual offences to work in proximity with children, and hence prevent recidivism. Across States parties there is a variety of rules and practices on the registration of sex offenders, for instance regarding the type of sex offences that justify registration of the offender.<sup>97</sup> Access to the register also differs from country to country, from exclusively for the police, probation service and prison service personnel<sup>98</sup> to open for the public.

Nevertheless, registers of convicted sex offenders could create a false sense of security and according to some research, having police-only registers (e.g. United Kingdom, Canada and Australia) reduces sex offender recidivism, while making information about sex offenders publicly available actually increases recidivism rates.<sup>99</sup> Other research did not back the claim that mandatory registration made society safer.<sup>100</sup>

Where child sex offender registers are used, access to such registers should be regulated, as well as the use of the information contained therein. In particular, with regard to juvenile sex offender registers, States parties should introduce rules which allow for an automatic removal from the criminal records of the name of a child who committed an offence upon reaching the age of 18. For certain offences of a particularly grave nature, removal could be made possible under certain conditions (e.g. not having committed an offence within two years after the last conviction).<sup>101</sup>

### CONCRETE EXAMPLE OF GOOD PRACTICE

The United Kingdom has developed an International Child Protection Certificate (ICPC) to help protect children from offenders who travel overseas to abuse vulnerable children through employment, volunteering and charity work. The ICPC confirms whether or not a person has a criminal history and provides details, including relevant conviction and non-conviction data. **Available here**

<sup>97</sup> The 2001 Sexual Offenders Act of Ireland, for instance, adapts the duration of the registration to the severity of the sentence.

<sup>98</sup> See for instance the UK Violent and Sex Offender Register under the Sexual Offences Act.

<sup>99</sup> J.J. Prescott and J.E. Rockoff, "Do sex offenders registration and notification laws affect criminal behavior?" in: *Journal of Law & Economics*, Vol. 54, No. 1 (2011), p. 161-206, available at: <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1079&context=articles>

<sup>100</sup> ATSA, *Sexual Offenders Residence Restrictions*, 2014, available at: <http://www.atsa.com/sexual-offender-residence-restrictions>. There is also no research to support that adult sex offenders proximity to schools or parks leads to recidivism.

<sup>101</sup> General Comment No. 10 (2007) on Children's rights in juvenile justice, UN Doc. CRC/C/GC/10, paragraphs 66 and 67, available at: <https://www.refworld.org/docid/4670fca12.html>

## B. Prevention of the sale and sexual exploitation of children in the context of travel and tourism

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*Research has shown that while children are at risk of sexual exploitation and sexual abuse from travelling offenders who cross borders to carry out premeditated abuse, they are equally at risk of falling victim to offenders travelling for business or tourism in their own countries, as well as to “opportunistic” offenders, who may not have planned to carry out a sexual offence prior to their travels. Illegal adoption may also be committed using the cover or pretext of travel and tourism.*

The sexual exploitation of children in the context of travel and tourism (SECTT) is an issue of increasing concern. The Global Study on sexual exploitation of children in travel and tourism,<sup>102</sup> published in 2016, provided some very important insights that States should be aware of when considering prevention measures:

Distinctions between countries of “origin”, “transit”, and “destination” are becoming blurred and outdated, as countries can be any of these, or all three, at different times. SECTT is now mainly a domestic and intra-regional crime, committed in both the world’s most developed and least developed countries.

Tourism has seen extraordinary growth over the past 20 years, with the number of international tourist arrivals soaring from 527 million in 1995 to 1,135 million in 2014. While tourism development can contribute to economic wellbeing, evidence gathered for the Global Study suggested that the rush for tourist dollars poses a threat to children in the absence of measures to ensure their protection.

The worldwide growth of travel and tourism has been accompanied by increasingly diverse forms of travel and tourism. New forms of travel have proliferated, such as tourism tied to volunteering (“voluntourism”) and peer-to-peer arrangements for accommodation. These have multiplied the opportunities and venues available to offenders and thus the risk to children.

At the same time, advances in Internet and mobile technology have contributed heavily to SECTT, allowing anonymity and hidden pathways for direct contact between offenders and victims. The private sector has a pivotal role to play in the solutions to SECTT - from prevention to awareness-raising, and from reporting to blocking the pathways exploited by offenders.

The Global Study found that children from minority groups, boys and young children are far more vulnerable than previously understood, along with girls and children living in poverty. While child victims come from a wide range of backgrounds, they tend to have one thing in common: their vulnerability.

SECTT has become more complex, involving not only international and domestic tourists but business travellers, migrant/transient workers and “voluntourists” intent on exploiting children.

These findings mean that it is necessary for States to broaden the scope of laws, policies, data collection mechanisms, research and programmes on the sale and sexual exploitation of children to include appropriate consideration for the travel and tourism sector within the scope of such frameworks.

<sup>102</sup> Offenders on the move: Global Study on sexual exploitation of children in travel and tourism, 2016.

*To prevent such offences in the specific context of travel and tourism, States parties should:*

- (a) Undertake awareness-raising and advocacy with the travel and tourism industry to draw attention to the harmful effects of the sale and sexual exploitation of children in the context of travel and tourism, inter alia by widely disseminating and encouraging the signature of the World Tourism Organization Global Code of Ethics for Tourism and by promoting the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism;*
- (b) Strengthen collaboration with stakeholders in the travel and tourism sector and ensure that the industry takes responsibility through, for instance, the adoption and enforcement of specific corporate policies and strategies for the prevention of the sale and sexual exploitation of children in the context of travel and tourism. Travel and tourism actors such as accommodation providers, travel agencies, tour operators, transportation companies, airlines, bars and restaurants often become, inadvertently or not, intermediaries in the commission of such offences, and should play a proactive role in preventing and combating the sexual exploitation of children;*
- (c) Form alliance with ICT companies that can take a lead on the development of technology-based solutions to combat the sale and sexual exploitation of children in the context of travel and tourism, such as the blocking of payments for related offences and new techniques to track payments to undermine the business model of offenders and their intermediaries;*
- (d) Consider measures to prevent convicted child sex offenders from reoffending in other countries, such as through cross-border exchange of information and travel restrictions on convicted offenders.*

The transnational character of these offences makes it important to consider measures to prevent convicted child sexual offenders from reoffending in other countries, for instance via systematic exchanges of information between authorities across borders and/or through organisations such as INTERPOL and Europol. Moreover, it is crucial that extraterritorial jurisdiction is in place and that suspected offenders can be tried even if the offence has been carried out abroad.

ICMEC emphasises the link between children going missing and sexual exploitation and abuse. There is no universal definition of a missing child. In many countries, statistics on missing children are not even available and, unfortunately, even available statistics may be inaccurate due to under-reporting/under-recognition, inflation, incorrect database entry of case information, and deletion of records once a case is closed. The lack of numbers, and the discrepancy in the numbers that do exist, is one of the key reasons why ICMEC developed and advocates for the Model Missing Child Framework, which assists countries with building strong, well-rounded national responses, and facilitates more efficient investigations, management, and resolution of missing children cases.

In relation to this context, there is also a growing concern about what has been labeled as “orphanage tourism”. This term refers to the practice of (often young) people to go abroad for a short period, e.g. during the holiday, to volunteer in an orphanage, most of the time in the developing part of the world. There is increasing evidence that this practice may result in sale and exploitation of children.<sup>103</sup>

<sup>103</sup> See for instance: C.H. Zeanah et al., “Misguided altruism: the risks of orphanage volunteering”, in: *The Lancet Child & Adolescent Health*, Vol. 3, No. 7, September 2019, p. 592 – 593; K.S. Rotabi et al., “Altruistic exploitation: orphan tourism and global social work”, in: *British Journal of Social Work*, Vol. 47, 2016, p. 648-665.

**RESOURCE TIP**

ICMEC, Model Missing Child Framework. The Framework outlines a robust, multi-faceted national missing child strategy and includes legislative provisions, policies, practices, systems, mechanisms, tools, and other key initiatives. It represents a best practice and an important step in changing the way the international community responds when a child goes missing. [Available here](#)

**CONCRETE EXAMPLE OF GOOD PRACTICE**

The Australian Government launched “The Smart Volunteering Campaign” in 2018 to prevent Australians from inadvertently contributing to child exploitation through the practice of orphanage tourism, including by participating in misleading volunteer programs. [Available here](#)

**C. Prevention of online sale and sexual exploitation of children****37**

*States parties should prevent and address online sale, sexual exploitation and sexual abuse of children through their implementation measures. National legal and policy frameworks should be assessed to ensure that they adequately cover all manifestations of the sale, sexual exploitation and sexual abuse of children, including when these offences are committed or facilitated through ICT.*

Online sale, sexual exploitation and sexual abuse are phenomena on the rise and in serious need of special attention.<sup>104</sup> To tackle these offences also when they are committed through or facilitated by ICT, States parties should integrate specific considerations for preventing and addressing online sale, sexual exploitation and abuse of children in their national child protection policies or within their NAP on the protection of children. National legal frameworks should also be assessed to ensure that they are adequately covering all manifestations of sale, sexual exploitation and abuse, including when these are committed through and/or facilitated by ICT.<sup>105</sup>

An important prevention measure is to ensure that there is a legal obligation for anyone, including legal persons, who has reliable information concerning the preparation or attempt to commit an act prohibited by the OPSC to promptly report it to law enforcement. The effective detection of such offences that occur in the digital environment can likely be achieved only with the close cooperation of private sector and civil society actors. Even if no exact information about a perpetrator or circumstances of the offence are known, the information may prove crucial to identify victims and/or offenders and prevent further cases. Failure to report should carry sanctions.

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*Online-specific analyses, research and monitoring should be conducted to better understand these offences, and responses to online offences should be developed in close collaboration with the relevant industries and organizations.*

A proactive approach of the ICT industry is needed, and States should encourage and support specific cooperation with companies that work to develop new and innovative solutions to track online sexual offences.

<sup>104</sup> See the outcome of the “We Protect” summits in London (2014) and Abu Dhabi (2015), Committee’s 2014 DGD report, Human Rights Council Report ADRC 2016.

<sup>105</sup> See also the Lanzarote Committee’s Interpretative Opinion on the applicability of the Lanzarote Convention to sexual offences against children facilitated through the use of information and communication technologies (ICT), adopted in May 2017. Available at: <https://rm.coe.int/t-es-2017-03-en-final-interpretative-opinion/168071cb4f>

### CONCRETE EXAMPLES OF GOOD PRACTICE

An example of a private initiative to detect online child sexual abuse material is the technology developed by Netclean, which works similar to an anti-virus programme. The software can be installed on any computer or network and will detect any images and videos that law enforcement agencies have classified as child sexual abuse material. [Available here](#)

WeProtect Global Alliance is an international multi stakeholder platform involving government, law enforcement, tech industry, civil society and international organisations to combat online child sexual abuse. [Available here](#)

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*Public education programmes to increase awareness, knowledge and reporting of cases of the sale, sexual exploitation and sexual abuse of children should include an online-specific dimension, and specialized training for law enforcement officials, lawyers, prosecution and judiciary professionals should include specific components on online issues, but also on online tools to facilitate victim identification techniques and rescue operations.*

### CONCRETE EXAMPLES OF GOOD PRACTICE

In the United States of America, the Internet Crimes Against Children (ICAC) Task Force Program is a national network of 61 coordinated task forces representing over 4,500 federal, state, and local law enforcement and prosecutorial agencies. These agencies are continually engaged in proactive and reactive investigations and prosecutions of persons involved in child abuse and exploitation involving the Internet. ICAC provides training, webinars and access to the ICAC Task Force resource library. [Available here](#)

Europol organises yearly 10-day trainings on combating online sexual exploitation of children (COSEC), in which law enforcement representatives from EU Member States, non-EU States, Europol and INTERPOL participate. In 2018 the 19th training took place at the Police Academy of North Rhine-Westphalia in Selm, Germany. The COSEC training is meant to expand the community of investigators who fight child sexual abuse and exploitation. Since its first edition in 2000, almost 1000 law enforcement officers have taken the course which encompasses open source investigations, forensics, victim identification and financial investigations. [Available here](#)

## 40

*States parties should:*

- a. Inform, support and engage parents, teachers and other caregivers so that they can support, advise and protect children when they access and use ICT and help them build the capacity to adopt online safety and coping strategies;*
- b. Ensure mandatory school education on online behaviour and safety to enhance children's capacity to better protect themselves (and their peers) from harm, by helping them to avoid and adequately react to risks that they may encounter and to use online reporting tools where necessary;*
- c. Provide meaningful child- and gender-sensitive information about how children's data are being gathered, stored, used and potentially shared with others, as well as about protection strategies, including ways to protect personal data and to use timely and effective alert mechanisms;*
- d. Encourage, involve and empower children to share their own ideas and knowledge about exploitative behaviours and ways to report and stop them, and take their proposals into consideration in prevention and protection strategies;*
- e. Ensure that adequate and effective services and expertise are in place and capable of rapid response whenever a child or adult reports suspicious online behaviour or cases of sexual exploitation or abuse of children.*

While there is often a general expectation that adults, e.g. parents and teachers, supervise children to mitigate online risks, States parties also have obligations under the OPSC to protect children from sale and sexual exploitation which occur online. This is particularly important in light of research showing that family members and persons within the child's inner circle of trust are often involved in the sexual exploitation and sexual abuse of children.<sup>106</sup>

States can work to prevent online offending by ensuring that adequate and up to date information is provided to children, parents, and persons working in contact with children. Such material can also be developed online, to make use of and boost children's digital skills also for learning more about how they can protect themselves from online offenders.

It is noteworthy to underline that many parents whose children fall victims of online offenders underestimate the risks online, but also the ways in which their children use the Internet and, in particular, social media. In that regard, there is sometimes a considerable gap between adults and their children, who have been labelled "digital natives"<sup>107</sup> and who spend a large amount of their time being connected online.<sup>108</sup>

## 41

*Considering that child sexual abuse material, such as images and videos, can circulate indefinitely online, the Committee alerts States parties to the fact that the continuous circulation of such material, in addition to perpetuating the harm done to child victims, contributes to a perception of the child as a sexual object and risks strengthening the belief among persons with a sexual interest in children that it is "normal" since many others share the same interest. The Committee therefore urges States parties to ensure that Internet service providers control, block and remove such content as soon as possible as part of their prevention measures.*

<sup>106</sup> See Lanzarote Committee, 1st Implementation Report, Protection of children against sexual abuse in the circle of trust.

<sup>107</sup> Marc Prensky, "Digital Natives, Digital Immigrants" in: On the Horizon, Vol. 9 No. 5, p. 1-6.

<sup>108</sup> However, the "digital native" concept has also been criticised. See for instance: P.A. Kirschner and P. De Bruyckere, "The myths of the digital native and the multitasker" in: Teaching and Teacher Education, Vol. 67, October 2017, p. 135-142.

In this paragraph the Committee is expressing its strong view that States must increase their efforts to ensure that Internet Service Providers (ISPs) and other entities providing online services proactively contribute to stopping child sexual abuse material from circulating online. The immense amount of such material existing online risks promoting an undercurrent in which children are perceived as sexual objects, and strengthening the belief that it is “normal” since many share the same interest for children.<sup>109</sup>

While legislating on this issue raises potential issues in relation to privacy and secrecy of communications, as well as the actual capacity of ISPs (in particular smaller actors) to carry out effective controls, these issues need closer attention by States parties. The responsibility to respect the rights of the child also applies to private actors and business enterprises and, in particular, private actors in the Internet industry who provide or operate services across domestic jurisdictions.<sup>110</sup>

## 42

*The Committee draws States parties’ attention to the need to address “sexting” by children, whereby self-generated sexual content is sent via mobile phone to others. Sexting often appears to be a product of youth peer pressure and, to a certain extent, teenagers increasingly consider sexting to be “normal”. While this conduct in and of itself is not necessarily illegal or wrongful, it involves a number of risks. Sexualized images of children can easily spread online or offline beyond or against the will of the child, can be very difficult to remove and can be used in the context of bullying and for sexual extortion, which can have serious and traumatizing consequences for children, including suicide. This complex issue needs careful attention, and the Committee encourages States parties to establish clear legal frameworks that protect children and, through prevention efforts, ensure that they are educated about and made aware of the gravity of spreading images of others and of oneself.*

### CONCRETE EXAMPLES OF GOOD REGIONAL PRACTICE

In an Opinion adopted in June 2018 on child sexually suggestive or explicit images and/or videos generated, shared and received by children, the Lanzarote Committee provides guidance on how to address the challenges raised by sexting. In particular, the Committee holds that:

1. When children are manipulated or coerced to generate and share sexually suggestive or explicit images and/or videos of themselves, they should be addressed to victim support and not subjected to criminal prosecution;
2. Children’s conduct (self-generation, sharing, reception and possession of images) does not amount to the “production, possession, offering or making available, distributing or transmitting, procuring, or knowingly obtaining access to child pornography” when it is intended solely for their own private use;
3. Children should only be criminally prosecuted for intentional conduct related to “child pornography” as a last resort, and priority should be given to more appropriate methods of dealing with their harmful behaviour (e.g. educational measures, therapeutic assistance).

The Lanzarote Committee’s Opinion is [available here](#)

<sup>109</sup> See Annual report of the Special Representative of the Secretary-General on Violence against Children (2014), UN Doc. A/69/264, paragraph 96.

<sup>110</sup> Human Rights Council, Resolution A/HRC/RES/31/7, Rights of the child: information and communications technologies and child sexual exploitation, 23 March 2016, paragraph 19.

## V. Prohibition of the offences covered by the Optional Protocol

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*Implementation of article 3 of the Optional Protocol requires the adoption of substantive criminal law prohibiting all the offences included in the Optional Protocol. The Committee recognizes that compliance with article 3 is a matter with respect to which each State party has to consider the specifics of its national legal system and practice.*

In examining the reports of the States parties, the Committee has noted that States parties are facing similar challenges in their efforts to implement Article 3. This section addresses such challenges in more detail, and makes suggestions for States parties to ensure full compliance with the OPSC.

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*Article 3 sets out a list of acts and activities that, as a minimum, States parties are required to ensure are fully covered under their criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis. The Committee encourages States parties to introduce new provisions in their criminal or penal law to ensure that they can also adequately address sexual offences against children when newly emerging means and modalities are used to commit them.*

This represents one of the most important recommendations in the Guidelines. It makes it clear that the Committee is concerned with the potential gaps in States parties' legal frameworks which may make an effective protection of children from sale and sexual exploitation difficult to achieve. The encouragement to introduce new provisions in the criminal law underscores not only the fact that the OPSC sets minimum obligations, but also the need to address new developments in the field of sexual exploitation which are not explicitly covered by the OPSC, such as grooming and sexual extortion (see hereafter under paragraphs 68 and 69).

It refers mainly to the increased use of ICT in committing and facilitating the offences covered by the OPSC. Nevertheless, it should not be seen as strictly limited to ICT, but rather as an encouragement to assess the how sale and sexual exploitation of children are being committed and how to ensure a broad protection system that prohibits any form these offences may take.<sup>111</sup>

Although the Committee mentions "sexual offences" in particular in paragraph 44 of the Guidelines, it should be recalled that the sale of children may also occur for other purposes than sexual exploitation (e.g. transfer of organs, illegal adoptions, sport contracts etc.). Hence, it would be important for States to recognise that acts and activities that do not constitute sexual offences against children, but still amount to offences under the OPSC, be treated in an equal manner and that new means and modalities to commit such acts be addressed as well.

### THE IWG'S ADVICE

To remember that the OPSC sets out minimum standards, and that States are welcome to go further in the protection of children from all forms of sale and sexual exploitation, in particular considering the increasing use of ICT in committing and facilitating such offences.

<sup>111</sup> In this regard, see also the Lanzarote Committee's Interpretative Opinion on the applicability of the Lanzarote Convention to sexual offences against children facilitated through the use of information and communication technologies (ICT), in particular paragraph 13. Available at: <https://rm.coe.int/t-es-2017-03-en-final-interpretative-opinion/168071cb4f>

*The Committee reminds States parties that, in accordance with article 3 (2) of the Optional Protocol, attempts to commit any of the said acts and complicity or participation in any of the said acts should also be covered under their criminal or penal law.*

This is a reminder to States parties that the obligation to criminalise offences covered by the OPSC apply also in case of attempts to commit such offences, or to any kind of subsidiary role in the commission of these offences, such as complicity or participation. Moreover, the recommendations the Committee makes with regard to criminalisation in its Guidelines, including the encouragement to make sure any use of ICT to commit or facilitate OPSC offences are covered by criminal/penal laws, should also apply to attempts, complicity and participation.

Article 3, paragraph 2 OPSC does not define what constitutes an “attempt”, meaning that it is left to the States parties to define in their national criminal laws what types of conduct amount to an attempt.

An attempt to commit a criminal offence is often defined as comprising three elements: 1) the intent to commit the act that constitutes a criminal offence (e.g. a plan or preparation to commit it); 2) conduct that constitutes a substantive step towards completing the relevant act (i.e. the start of the execution of the act), and 3) the failure to complete the relevant act (i.e. the involuntary termination of the act before an actual offence has been completed).

The second element, regarding substantive steps towards completing the offence, can be more or less developed, and some States require that material steps be taken in addition to any premeditated plans, while in other jurisdictions a detailed plan of the act to be carried out may be sufficient.

With regard to sale and sexual exploitation of children, making contact with a child for the purpose of sexually exploiting and/abusing her/him should be considered an attempt to commit a criminal offence.

For complicity and participation, similar considerations apply. These terms are not defined by the OPSC and it is left to national criminal laws to specify their exact definition. However, the differences between these two terms should be kept in mind:

If somebody participates in the act of committing a crime (*actus reus*) it means that he/she is a co-perpatrator and should, if the charges are proven, be punished as a perpetrator. In instances where participation and criminal conduct varies among the offenders, the issue may arise as to who is to be held responsible for which (part of the) crime, and to what degree they should be held responsible. Beside the principal offender(s), who is/are behind the crime, there may be other participating offenders who intentionally commit their own independent and/or linked criminal acts.

Complicity is the act of helping or encouraging another individual to commit a crime. It is also commonly referred to as “aiding and abetting”. Somebody is a complicit if he/she has been intentionally helpful in the commission of a crime or if he/she intentionally provided an opportunity, means, or information for the commission of a crime.

This last element may be of particular relevance in the context of sale and sexual exploitation of children, since complicity can also be about providing the means for the commission of a crime. The intent to do so may be a deliberate intent, but it may also consist of the failure to prevent the commission of the crime. As the Committee has pointed out in other parts of the Guidelines,<sup>112</sup> legal persons (e.g. private sector actors) which premises and/or (technological) means are used by sexual offenders to commit crimes against children, and which fail to take action to prevent such crimes, should be held accountable as complicit.

<sup>112</sup> OPSC Guidelines, paragraphs 16, 74, 79.

*Sale of children is defined in the Optional Protocol as any act or transaction whereby a child is transferred by any person or a group of persons to another for remuneration or any other consideration (art. 2 (a)). It may entail the movement of a child to another place, but not necessarily. The “remuneration or any other consideration” is the core element of the sale of a child, and the payment of money is usually part of the exchange. While it is not specified who should receive the remuneration, it will most likely be the person or group who transfers the child. However, there may be other reasons or considerations involved in the sale of a child, such as payment of a debt by the parents, a promise by the other person that the child will receive education or vocational training, or other kinds of offers of a better future.*

In this paragraph, the Committee points out that the core element of sale of children is the “remuneration or any other form of consideration” involved in the exchange. In that regard, it is crucial to note that a promise (e.g. for a better future, for education, etc.) can constitute a form of “consideration”.

By pointing this out, the Committee also sheds light on the fact that the sale of a child could potentially be done without the intent to exploit the child. While the sale of a child can be seen as inherently exploitative independent of the intentions behind it, as it exploits the vulnerable situation of the child who cannot consent or fully grasp the situation, it must still be acknowledged that some situations of sale may occur in which the persons selling or buying the child have no intention to exploit the child.

This is particularly the case with sale for adoption, as covered by OPSC Article 3(a)(ii). For instance, if a parent gives up a child to other persons or to an institution in exchange for the promise that the child will receive a better quality of life and/or education, the intent of the parent giving up (i.e. selling) the child is not necessarily to exploit her/him. Nevertheless, the child is the victim of a transaction, and such an act constitutes an offence under the OPSC, since the very act of using the child as part of a transaction violates her/his fundamental rights to dignity and to protection from exploitation.

Furthermore, there is growing evidence of institutions such as orphanages soliciting “child finders” to travel to local villages or communities – often those affected by war, natural disaster, poverty, or societal discrimination — who promise parents education, food security, safety, and healthcare for their children.<sup>113</sup> Children can also be sold onwards or recruited from orphanages into various forms of exploitation, such as illegal adoption, sexual exploitation, child labour, servitude or organ harvesting.

As explained in the 2018 Report of the Special Rapporteur on the sale and sexual exploitation of children, the contracting of children by sports organisations and ownership arrangements between ball clubs and third parties (individuals, investment funds, businesses, etc.) to own parts of the ‘economic rights’ of players also need to be viewed in the context of the OPSC’s prohibition of the sale of children.

States parties need to be aware of these forms of sale and ensure they are covered by their criminal laws.

<sup>113</sup> Lumos, Orphanage Entrepreneurs: The Trafficking of Haiti’s Invisible Children, 2018. Available at: [https://lumos.contentfiles.net/media/documents/document/2017/12/Haiti\\_Trafficking\\_Report\\_ENG\\_WEB\\_NOV16.pdf](https://lumos.contentfiles.net/media/documents/document/2017/12/Haiti_Trafficking_Report_ENG_WEB_NOV16.pdf)

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*Under article 3 (1) (a) (i), acts and activities in the context of the sale of children that must be criminalized include offering, delivering or accepting a child for the purpose of:*

- (a) Sexual exploitation of the child: the Committee is of the view that this legal provision covers all forms of sexual exploitation and sexual abuse, including when they are facilitated through ICT;*
- (b) Transfer of organs of the child for profit: it is important to specify that the purpose of such transfer must be “for profit”; the legal transfer of a child’s organ may entail costs which are not for profit;*
- (c) Engagement of the child in forced labour.*

Here it is noteworthy that the OPSC sets out the abovementioned purposes of sale as a minimum, meaning that States may criminalise sale also for other purposes, as they consider necessary. Indeed, Article 2(a) OPSC only sets forth that “*sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration*”.

After first having defined sale of children as “any act or transaction {...}”, Article 3(1)(a) OPSC then follows with the minimum criteria for how States are obliged to criminalise the sale of children, hence leaving it open to States parties to decide whether to include, among its criminal/penal provisions, any form of sale or only those explicitly mentioned in Article 3(1)(a).

For instance, States may consider criminalising the sale of children also for slavery and for any work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.<sup>114</sup> In addition, the Committee may recommend States parties to include in the criminalisation of sale of children also the forced or compulsory recruitment of children for the use in armed conflict, which, like forced child labour, falls under the definition of worst forms of child labour (ILO 182, Article 3).<sup>115</sup>

While the acts of sale for sexual exploitation (a) and for engaging a child in forced labour (c) have been prohibited by a large number of legal instruments and provisions, and have been described amply in policy guidance and advice developed by organisations working for children’s rights, the manifestation and the implications of sale for purposes of transfer of organs of a child (b) seem to have received comparatively less attention.<sup>116</sup> Yet the sale of children for organ transfer is a sad reality affecting, in particular, families and children in economically vulnerable situations,<sup>117</sup> and may need further consideration by States parties.

## 48

*The Committee emphasizes that the act of offering or accepting a child includes doing so through the use of ICT.*

Importantly, the Committee makes it clear in paragraph 48 of its Guidelines that it considers the use of ICT as being included in the acts of “offering” or “accepting” a child in the context of any form of sale of children. This may include offenders making contact over the Internet and preparing an offence online, as well as the online order and/or payment of any of the acts mentioned in paragraph 47 of the Guidelines. It may also include the fact of offering or accepting the depiction of a child, for instance through online child sexual abuse material.

<sup>114</sup> This form of work falls under the definition of the worst forms of child labour (art. 3 (d) ILO Convention 182).

<sup>115</sup> See Concluding Observations of the Committee on Sudan UN Doc. CRC/C/OPSC/SDN/CO/1, 8 June 2007, paragraph 35 and 36. See also for a broad interpretation of the provision on forced labour: Handbook on the Optional Protocol on the Sale of children, Child Prostitution and child Pornography, p. 11. Florence: UNICEF Innocenti Research Centre, 2009.

<sup>116</sup> The transfer of organs is also prohibited as a purpose for trafficking in human beings.

<sup>117</sup> See for instance A. Bagheri, Child organ trafficking: global reality and inadequate international response, in: Medicine, Health Care and Philosophy, Vol. 19 No. 2, June 2016, p. 239-246.

*While the sale of children and trafficking in children may overlap, their international legal definitions differ. The Committee underlines that, in accordance with the Optional Protocol, States parties are under an obligation to explicitly criminalize the sale of children for all of the above-mentioned purposes.*

In paragraph 15 of its Guidelines (section on Legislation), the Committee explained the main difference between the international legal definitions of sale and trafficking.

The international legal definition of trafficking can be found in Article 3(a) of the Protocol (to the Convention against Transnational Organized Crime) to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), adopted by UN General Assembly Resolution 55/25 in 2000.

It sets forth the following:

*“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”*

The way the trafficking definition is formulated makes it understandable that some governments assume that sale of children falls within the scope of the definition. However, a careful reading of Article 2 OPSC makes clear that sale of children differs from this definition of trafficking and requires a specific criminalisation in national criminal/penal law.<sup>118</sup>

It should be noted that the “transportation” criterion to define trafficking is today sometimes overseen in assessing cases of trafficking. This is also, to a certain extent, reflected in legal instruments such as the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, which sets forth that an “exchange or transfer of control over those persons” may suffice for an act to amount to trafficking, without requiring the transportation or movement of the person.

## RESOURCE TIPS

The Protocol (to the Convention against Transnational Organized Crime) to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), adopted by UN General Assembly Resolution 55/25 in 2000. [Available here](#)

Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) adopted and opened for signature in May 2005. This Convention is open for accession by any country world-wide. [Available here](#)

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. [Available here](#)

<sup>118</sup> See as examples of the lack of distinction between trafficking and sale of children: Concluding Observations on India, UN Doc.CRC/C/OPSC/IND/CO/1, 13 June 2014, paragraph 10; on Madagascar, UN Doc. CRC/C/OPSC/MDG/CO/1, 28 October 2015, paragraph30; on Peru, UN Doc. CRC/C/OPSC/PER/CO/1, 7 March 2016, paragraph24; and on Sri Lanka UN Doc. CRC/C/OPSC/LKA/CO/1, 3 July 2019, paragraph 27 (a).

*Under article 3 (1) (a) (ii), the act of improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption must be criminalized, as a form of sale of children. Provisions intended to prohibit this activity should reflect the two key components of this requirement, as follows:*

- a. Specifically, the phrase “improperly inducing consent for adoption” means obtaining consent for the adoption of a child in a dishonest or inappropriate manner. In light of the definition of the sale of children under article 2 (a), one form of “improperly inducing consent” is doing so through remuneration or any other consideration;*
- b. Regarding the phrase “in violation of applicable international legal instruments on adoption”, the Committee recommends that States parties require compliance with article 21 of the Convention and with the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (1993).*

Article 3.5 OPSC underscores the importance of taking legal and administrative measures to ensure that all persons involved in the adoption of a child, either domestic or intercountry, act in conformity with applicable international legal instruments. An adoption that seemingly follows the applicable rules regarding adoption, but that involves the sale of a child, should be deemed illegal.

As pointed out by the Special Rapporteur on the sale and sexual exploitation of children, illegal adoptions constitute serious violations of the rights of the child, ranging from the arbitrary deprivation of identity to exploitation through sale.

A major factor behind illegal adoptions is the financial gain that can be obtained from the procurement of children for adoption, in particular for intercountry adoption. As long as adoption fees lack transparency and donations to countries of origin are linked to making children available for adoption, substantial incentives for illegal adoptions will continue to exist.<sup>119</sup>

#### RESOURCE TIP

Report of the Special Rapporteur on the sale and sexual exploitation of children, Thematic Study on Illegal Adoptions, UN Doc. A/HRC/34/55 (2016). [Available here](#)

*The Committee draws the attention of States parties to the fact that the sale of children may occur in the context of child marriage. It recommends that States parties take all necessary measures, including regulation, to avoid any form of sale of children.*

<sup>119</sup> UN Press release: “Illegal adoptions: States must tackle the pressure of demand, and ensure redress for victims”, 7 March 2017. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21308&LangID=E>

In its General Comment No. 18, the Committee defined child marriage as “any marriage where at least one of the parties is under 18 years of age”.<sup>120</sup> A child marriage is also considered as a form of forced marriage given that one or both parties have not expressed their full, free and informed consent. The Committee is of the view that States parties to the OPSC have explicit obligations with regard to the child and/or forced marriage that include dowry payments or bride price as this could constitute a “sale of children” as defined in Article 2 (a) OPSC.

The Special Rapporteur on sale and sexual exploitation is faced with this issue in many of her country visits, and has pointed out a number of situations where children, mainly girls, are victims of sale for marriage.<sup>121</sup>

### RESOURCE TIP

Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination of Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices, UN Doc. CEDAW/C/GC/31-CR C/C /GC/18 (2014). [Available here](#)

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*Similar concerns exist with regard to surrogacy, which may also constitute sale of children. The Committee encourages States parties in which this practice exists to take all necessary measures, including regulation, to avoid the sale of children under surrogacy arrangements.*

Surrogacy as an increasingly popular method of family formation has emerged as an area of concern, where a demand-driven system based on a perceived “right to a child”, risks endangering the rights of children.<sup>122</sup> Exploitative practises in the context of commercial surrogacy arrangements commodifying children can amount to sale of children. While not all forms of surrogacy amount to sale of children, this practice, in particular in its commercial form with the involvement of for-profit intermediaries, often involves abusive practices, in which children are being sold as mere commodities.

The real threat of exploitation and commodification of children, and potentially of surrogates, is often related to the role of intermediaries. In general, this is due to the for-profit motives of private intermediaries, who have, as a guiding motive, the successful completion of the surrogacy agreement with little to no regard for the rights of those involved.

Many of the occurring abuses take place in unregulated contexts, in which a demand driven practice risks undermining the rights of the child. In its Guidelines, the Committee is therefore encouraging States parties in which the practice does exist to make sure it is regulated.<sup>123</sup>

The prohibition of surrogacy arrangements carried out abroad is problematic as domestic laws prohibiting surrogacy will often be sidestepped. States will inevitably be confronted with surrogacy arrangements carried out abroad, leading to issues surrounding, inter alia, rights to identity, access to origins and the family environment for the child. Such surrogacies should neither be automatically rejected nor accepted, the only valid consideration being the best interests of the child.

<sup>120</sup> Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination of Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices, Doc. CEDAW/C/GC/31-CR C/C /GC/18, 2014.

<sup>121</sup> See for instance the Report of the Special Rapporteur on the sale and sexual exploitation of children on her visit to the Dominican Republic, A/HRC/37/60/Add.1, 2018.

<sup>122</sup> Report of the Special Rapporteur on the sale and sexual exploitation of children, January 2018, “Study on surrogacy and sale of children”. Available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/37/60](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/37/60).

<sup>123</sup> See also recommendations regarding surrogacy in Concluding Observations by the Committee on the Rights of the Child: on the USA, UN Doc. CRC/C/OPSC/USA/CO/2, paragraph 29; on Mexico, UN Doc. CRC/C/IND/CO/3-4, paragraph 57 (d); on Mexico, UN Doc. CRC/C/MEX/CO/4-5, paragraph 69 (b); on the USA, UN Doc. CRC/C/OPSC/USA/CO/3-4, paragraph 24; and on Israel, UN Doc. CRC/C/OPSC/ISR/CO/1, paragraph 28.

The existence of oversight mechanisms is of vital importance in order to prevent any sale and exploitation of children in the context of surrogacy. If not properly overseen and regulated, surrogacy arrangements risk compromising the fundamental right of the child to human dignity, the right to know and be cared for by his or her parents (Article 7 CRC), the right to preserve his or her identity, including nationality, name and family relations (Article 8 CRC), or the right not be separated from his or her parents against their will (Article 9 CRC). It also risks disproportionately exposing persons in vulnerable contexts to sale and/or trafficking of children, including women and girls forced into pregnancy and/or giving up their children for sale.

It should be noted that national legal systems diverge widely in how they handle the issue of surrogacy. Some countries have banned all forms of surrogacy (France and Germany), while others have limited the ban to cover international commercial surrogacy (Thailand, Nepal, and India submitted the Surrogacy (regulation) Bill to parliament for the purpose of banning and criminalising this form of surrogacy).<sup>124</sup>

### RESOURCE TIPS

Report of the Special Rapporteur on the sale and sexual exploitation of children, Thematic Study on surrogacy and sale of children (January 2018). [Available here](#)

Report of the Special Rapporteur on the sale and sexual exploitation of children, Thematic Study on safeguards for the protection of the rights of children born from surrogacy arrangements (July 2019). [Available here](#)

## 53

*The Optional Protocol covers the offence of the exploitation of children in prostitution as “child prostitution” and defines it as the use of a child in sexual activities for remuneration or any other form of consideration (art. 2 (b)), without specifying what those sexual activities would be. The Committee is of the view that such sexual activities should include, at a minimum and whether real or simulated, all forms of sexual intercourse and intentional sexual touching involving a child, independent of the sex of all involved persons, and any lascivious exhibition of the genitals or the pubic area of a child.*

“Sexual activities” is not defined in the OPSC, and States parties may interpret this notion differently in their national legal systems. What is crucial in paragraph 53 of the Committee’s Guidelines is that it becomes crystal clear that the presence of penetration is not a necessary element for an act to constitute sexual activities. Indeed, the lascivious exhibition of the genitals or pubic area of a child, or the touching of a child in a sexual manner, constitute sexual activities.<sup>125</sup>

Importantly, the Committee also points out that the victims can be girls and boys alike, as sexual activities can occur independent of the sex of all involved persons.

States parties should keep this definition in mind when drafting legislative provisions meant to criminalise the sexual exploitation of children in prostitution. Such provisions should contain the two components of the offence: sexual activities and remuneration or other consideration.

### THE IWG’S ADVICE

The list of acts included in the notion “sexual activities” is not exhaustive, and the Committee is merely providing the minimum criteria. The focus should be on the sexual violation of the child in each specific case.

<sup>124</sup> For more (recent) information see for instance C. Achmad, *Children’s Rights in International Commercial Surrogacy. Exploring the challenges from a child rights, public international human rights law perspective*. Leiden: E.M. Meijers Institute, 2018.

<sup>125</sup> As regards the definition of “sexual activities”, the Lanzarote Committee invited State parties “to review their legislation to address all serious harm to the sexual integrity of children by not limiting their criminal offences to sexual intercourse or equivalent acts” (see Recommendation R9, Chapter I, “Criminalisation of sexual abuse of children in the circle of trust”, Lanzarote Committee report on “Protection of children against sexual abuse in the circle of trust – The Framework”. Available at: <https://rm.coe.int/1st-implementation-report-protection-of-children-against-sexual-abuse-/16808ae53f>

## 54

*The definition of “child prostitution” in the Optional Protocol must not be understood as suggesting that the child could consent to the sexual activities in exchange for remuneration or any other form of consideration, or that the child is necessarily the recipient of money or other form of consideration. The reality is that children cannot, in any legally relevant way, consent to their own sexual exploitation. Moreover, such remuneration or consideration may be paid or given to any third person, and the child often does not receive anything directly, or the “consideration” is provided in the form of basic survival needs such as food or shelter.*

Whether there is an intermediary, pushing the child into prostitution, or not, children should never be criminalised for their “involvement” in prostitution. States should review existing legislation to decriminalise any offences that make children more vulnerable or push exploitation further into hidden domains.

Remuneration and other forms of consideration can be presented in various ways. The definition of this provision does not require that a remuneration is actually given to the child or another person, or that the “consideration” result in concrete benefits for the child or another person. However, even if it is argued that the remuneration is in the interest of the child, e.g. by providing food or health care, it does not change the fact that the act of exploiting a child in prostitution constitutes a criminal offence and that the (alleged) perpetrator has to be brought to justice.

## 55

*According to prevailing views, the term “child prostitution” does not accurately cover what really happens to the child and could be interpreted as implying that it represents a legitimate form of sex work, or could contribute to shifting the blame onto the child. The Committee encourages State parties to avoid the use of the term “child prostitution” as much as possible, and to use instead the term “sexual exploitation of children in prostitution”. In addition, the Committee strongly recommends that States parties do not to use terms such as “child prostitute” or “child sex worker”, and to replace them by “children who are prostituted” or “children exploited in prostitution”.*

It is with reference to the Luxembourg Guidelines that the Committee recommends State parties to avoid the use of the term “child prostitution” as much as possible and suggests to use a wording that reflects what it is really about, namely sexual exploitation of children. In situations in which States feel a need to specify the context in which exploitation takes place, the advice is for them to use the term “sexual exploitation of children in prostitution”.<sup>126</sup> It is noteworthy that the CRC does not use the term “child prostitution” at all, but refers to “the exploitative use of children in prostitution” (Article 34(b) CRC).

The term “child prostitution” presents an inaccurate picture of what really happens to the child and can be interpreted in a manner as to imply that the phenomenon represents a (legitimate) form of “sex work” or could contribute to shifting the blame onto the child.

A child cannot consent, in any case or under any circumstances, to her/his own sexual exploitation, and the suggested terms make it clear that the child is a victim of exploitation and not someone who makes a free, conscious and responsible choice to get involved in prostitution. All children who are sexually exploited in prostitution should be considered victims, and should never be held liable for their exploitation.

<sup>126</sup> Luxembourg Guidelines, section E3 (p. 29 and 30).

Other terms used in the context of “child prostitution” such as “child prostitute” and “child sex worker” also suggest that the child has consented to engage in prostitution. These terms should not be used, and can be replaced by the term “children who are prostituted” as suggested by the Special Rapporteur on the sale and sexual exploitation of children,<sup>127</sup> or “children exploited in prostitution”.<sup>128</sup>

### CONCRETE EXAMPLE OF GOOD PRACTICE

In March 2015 the UK adopted the Serious Crimes Act, amending the Sexual Offences Act 2003 to remove references to “child prostitution or pornography” and replace these by “sexual exploitation of a child”. Moreover, references to “child prostitute or a child involved in pornography” were substituted by “child in relation to sexual exploitation”. [Available here](#)

In March 2017, the name of the mandate of one of the UN Special Rapporteurs was amended from “Special Rapporteur on the sale of children, child prostitution and child pornography” to “Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material” by Human Rights Council Resolution 34/16.<sup>129</sup> The name change was enacted following advocacy by the mandate holder for a more child rights compliant terminology. While the terms “child prostitution” and “child pornography” are still in the name, they were moved to a more subordinate part of the mandate’s name.

## 56

*States parties should prohibit by law any form of sexual exploitation of children in prostitution, including through the use of ICT. Article 3 (1) (b) of the Optional Protocol requires the criminalization of the acts of offering, obtaining, procuring or providing a child for prostitution. Such acts amount to sexual exploitation of children in prostitution when they are carried out for remuneration or any other form of consideration. The Committee emphasizes that the promise of remuneration or any other form of consideration should be considered sufficient to constitute an offence, even where such remuneration or consideration is not actually paid or given.*

As is the case with sale of children, explained in paragraph 46 above, the exploitation of children in prostitution implies some form of exchange, be it a remuneration or any other form of consideration. And, as may be the case with sale, such a consideration can also take the form of a promise to receive something, whether or not the promise is kept.

This is particularly important in the case of children in vulnerable or particularly exposed situations, such as children in street situations or unaccompanied migrant children, who may receive a promise for food, shelter or other basic needs, in exchange for sexual acts. Their survival needs may hence make them vulnerable to sexual exploitation, and it is crucial that States treat them as victims, not as criminals.

## 57

*The Internet presents new challenges for the international protection framework, in particular when children are advertised for prostitution through websites or mobile phone applications. The Committee urges States parties to make it clear in their system of criminal or penal law that the prohibition of offering, obtaining, procuring or providing a child for prostitution includes doing so through the use of ICT.*

<sup>127</sup> See Report of the Special Rapporteur on the sale and sexual exploitation of children, UN Doc. A/HRC/28/56, 2014, paragraph 33.

<sup>128</sup> Luxembourg Guidelines, section E3 (p. 29 and 30).

<sup>129</sup> Human Rights Council Resolution 34/16, Rights of the child: protection of the rights of the child in the implementation of the 2030 Agenda for Sustainable Development, UN Doc. A/HRC/RES/34/16, 6 April 2017.

Here the Committee is using the strong verb “urging” in its recommendation for States parties to make it clear in their criminal provisions that the prohibition to offer, obtain, procure or provide a child for prostitution also includes situations in which this is done through the use of ICT.

*The sexual exploitation of children in prostitution also includes commodified “relationships” in which sexual acts are exchanged for cash, goods or benefits, often linked to economic survival or opportunities, educational achievement or social status. When such “relationships”, often inappropriately referred to as “transactional sex”, involve a child under the age of 18, the child should be seen as a victim of exploitation on the basis that children cannot legally consent to engaging in commercial or commodified sexual activities which include a remuneration or any other form of consideration. Any potential argument of the offender that the child consented to this form of sex is legally irrelevant.*

The way these terms have been explained in the Luxembourg Guidelines is that they “describe a commodified relationship in which sexual acts are exchanged for goods, cash, or benefits, often linked to economic survival, educational achievement, enhancing one’s economic opportunities, or boosting one’s social status.”<sup>130</sup>

Children engaged in transactional sex should be viewed as victims of sexual exploitation on the basis that children cannot consent to engaging in sexual activities in exchange for material benefits or any other form of consideration.<sup>131</sup>

It can be complicated to determine whether a sexual relationship between a child above the age of sexual consent and an adult constitutes sexual exploitation or a mutually consensual sexual relationship, especially when the age of sexual consent is as low as 12 in some countries. What makes transactional sex exploitative is “the imbalance of power, which is used by an adult to coerce, entice, or compel a child into engaging in sexual activities.”<sup>132</sup>

Testimonies gathered from children in street situations during the consultations for UN CRC General Comment No. 21 highlighted their particular vulnerability to “commodified relationships”.<sup>133</sup> In order to protect children who may be particularly vulnerable to “commodified relationships”, such as children in street situations, States would need to pay specific attention to risk factors and put in place adequate protection mechanisms for such children.

### CONCRETE EXAMPLE OF GOOD REGIONAL PRACTICE

The European Committee of Social Rights, in the case of FAFCE v. Ireland, stated that: “Article 7§10 of the European Social Charter requires that all acts of sexual exploitation of children be criminalised. [...] States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent”.

Reference: Complaint 89/2013, Decision of 12 September 2014, paragraph 58.

<sup>130</sup> Luxembourg Guidelines, section E.4.vi, p. 32-33.

<sup>131</sup> See the Committee’s view for instance in Concluding Observations on Latvia, UN Doc. CRC/C/OPSC/LVA/CO/1, 7 March 2016, paragraph 22 (c).

<sup>132</sup> Luxembourg Guidelines, p.32-33.

<sup>133</sup> Testimonies gathered from street children/youth participating in a consultation held in Bukavu, DRC, 23-25 February 2016, in Consortium for Street Children, “Africa Consultation Report for the UN Committee on the Rights of the Child’s General Comment on Children in Street Situations. February - March 2016”, 2016. Available at: <https://www.streetchildren.org/wp-content/uploads/2016/05/Report-on-Ghana-Zimbabwe-DRC-consultations-April-2016-1.pdf>

*Sexual exploitation of children in travel and tourism, often inappropriately referred to as “child sex tourism”, is included in the offences covered by the Optional Protocol, which requires States parties to take measures to end this practice. Offenders may be foreign or domestic tourists and travellers or long-term visitors.*

The term “child sex tourism” is referred to in the preamble as well as in Article 10 OPSC and is considered related to the sale of children, child prostitution and child pornography. In paragraph 59 of its Guidelines, the Committee states its view that the term is inappropriate, and prefers to refer to this practice as the sexual exploitation of children in travel and tourism. This is indeed in line both with the Global Study on the sexual exploitation of children in travel and tourism (2016)<sup>134</sup> and the Luxembourg Guidelines (2016).<sup>135</sup> It is a form of sexual exploitation of children that is embedded in a context of travel, tourism, or both. The offence can be committed by either foreign or domestic tourists and travellers and longer-term visitors.

The OPSC explicitly requires States parties to take measures to end this practice, including by strengthening international cooperation. Nevertheless, it is important to underscore that States also need to criminalise this practice as a form of sale for sexual purposes and/or sexual exploitation of children (in prostitution).

While the context of travel and tourism can and does make a difference in terms of the responses to this offence (e.g. the stakeholders that can be involved in prevention and protection efforts), the fact that an offence is committed within this particular context does not change the prohibition of the offence under Article 3 OPSC.<sup>136</sup>

In addition, States parties have an obligation to take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children’s rights. Such measures can encompass the passing of laws and regulations, their monitoring and enforcement.<sup>137</sup> States parties that fail to take such measures can be held responsible.

The travel and tourism industries also have a responsibility regarding children’s rights, which includes inter alia an obligation to take the necessary measures to prevent violations of children’s rights in their business sector (see above paragraphs 35 and 36) and, of course, not to commit, participate in, or be complicit in any of the acts criminalised under Article 3 OPSC. In order to attach concrete consequences to this responsibility, Article 3(4) OPSC requires States parties to establish, where appropriate, the liability of legal persons for offences established Article 3(1). Such liability may be criminal, civil or administrative depending on the legal framework of the State concerned.

## THE IWG’S ADVICE

The sexual exploitation of children in travel and tourism is an offence covered by Articles 2 and 3 OPSC. The specific context is not important to the qualification of the crime, but has an importance in terms of prevention and protection efforts that can be made, and which stakeholders can play a role in such efforts.

<sup>134</sup> Offenders on the move: Global Study on sexual exploitation of children in travel and tourism, 2016.

<sup>135</sup> Luxembourg Guidelines, p.54-56.

<sup>136</sup> See for instance the Reports of the Special Rapporteur on the sale and sexual exploitation of children, A/HRC/23/54 (2012) and A/HRC/37/60/Add.1. (2018).

<sup>137</sup> Committee on the Rights of the Child, General Comment No. 16 (2013) of the CRC Committee on State obligations regarding the impact of the business sector on children’s rights, UN Doc. CRC/C/GC/16, paragraph 28.

## 60

*Child sexual abuse material is covered under article 2 of the Optional Protocol as “child pornography” and is defined as any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes (art. 2 (c)). The Committee recommends that States parties, in line with recent developments, avoid the term “child pornography” to the extent possible and use other terms such as the “use of children in pornographic performances and materials”, “child sexual abuse material” and “child sexual exploitation material”.*

In this paragraph, and having regard to the Luxembourg Guidelines, the Committee is showing its agreement with the increasingly prevalent view that the term “child pornography” should be avoided as much as possible. Among the reasons behind this change is the fact that this term could be misleading and insinuate that a child could consent to such practices, undermining the gravity of the crimes or switching the blame onto the child.

For instance, the term “child pornography” undermines the situation of the victim because it suggests a connection with pornography – a conduct that is often legal and in which the subject is participating voluntarily and is capable of consenting – which is far from the reality of children depicted in such material.<sup>138</sup>

Hence, the term “child pornography” is increasingly replaced by expressions such as “child sexual abuse material” (CSAM) and/or “child sexual exploitation material” (CSEM) to reflect what it really is, namely the recorded material (images, videos, audio recordings etc.) of children being sexually abused.<sup>139</sup>

It is noteworthy that the terminology used in Article 34(c) CRC also seems to cover such offences in a more appropriate manner by referring to “the exploitative use of children in pornographic performances and materials”. In addition, Article 27(c) of the African Charter on the Rights and Welfare of the Child contains the terms “the use of children in pornographic activities, performances and materials”, and Article 3(b) of ILO C182 speaks of “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances”. These terms better emphasise the fact that a child is being subjected to the act by someone or something else. Many stakeholders, including the UN Special Rapporteur on the sale and sexual exploitation of children, support this change to avoid trivialising the abuse suffered by children.<sup>140</sup>

## 61

*The qualification “by whatever means” reflects the broad range of material available in a variety of media, both online and offline. Such material is increasingly being circulated online, and States parties should ensure that the relevant provisions of their criminal or penal codes cover all forms of material, including when any of the acts listed in article 3 (1) (c) of the Optional Protocol are committed online.*

By this paragraph, the Committee wishes to make clear the fact that child sexual abuse material today can appear not only as recorded files (i.e. photos and videos) but also exist temporarily as live streaming broadcasts, different forms of webcam appearances, and also be a question of orchestrated online shows in which children are ordered by remote exploiters to carry out sexual acts. For example, such “shows” have been organised via the dark net, but they have also occurred in private groups or chat rooms on social media platforms and apps. In 2017, law enforcement officials responding to a survey answered that they had seen an increase in live-streaming in chatrooms and through chat applications where online abuse happens in real-time. Such live-stream shows tend to be encrypted and are broadcast over conferencing or messaging programs.<sup>141</sup>

<sup>138</sup> The reasons for this change are described in more detail in the Luxembourg Guidelines”, section F, p 35-45.

<sup>139</sup> INTERPOL and INHOPE are examples of law enforcement agencies and hotlines that refrain completely from using the term “child pornography” and instead refer to CSAM and/or CSEM.

<sup>140</sup> See Report of the Special Rapporteur on the sale and sexual exploitation of children, UN Doc. A/HRC/28/56 (2014), paragraph 29. For further explanations as to why the term « child pornography » should not be used, see the Luxembourg Guidelines. INTERPOL and INHOPE are also among the stakeholders that have supported this change in terminology.

<sup>141</sup> Netclean, the Netclean Report, 2017, Trend 7, available at: <https://www.netclean.com/netclean-report-2017/>

Previously, the representation of a child has usually been associated with a photo or similar visual depiction of the child. However, Article 2 (c) does not limit the representation to this form. “By whatever means” can include the representation of a child engaged in real or simulated sexual activities in audio files, in writing, or in a visual manner that is not necessarily recorded.<sup>142</sup>

## 62

*The phrase “simulated explicit sexual activities” includes any material, online or offline, that depict or otherwise represents a child appearing to engage in sexually explicit conduct. Moreover, “any representation of the sexual parts of a child for primarily sexual purposes” falls under the definition of this offence. Where it may be complicated to establish with certainty whether the representation is intended or used for primarily sexual purposes, the Committee deems it necessary to consider the context in which it is being used.*

In paragraph 62 of the Guidelines, the Committee is acknowledging the difficulty of establishing what is intended for “primarily sexual purposes”, and the need to have a case by case analysis in this regard. For instance, literature or art in which fictional children are exposed in sexual contexts for the purpose of telling a story should not be considered child sexual abuse material. Family photos in which children without clothes appear should not be considered child sexual abuse material. And pictures or drawings of children’s genitalia for purposes of scientific or medical studies should not be considered child sexual abuse material.

On the other hand, when, for instance, a family picture of a naked child is picked up online by someone with a sexual interest in children and shared and/or used for primarily sexual purposes, such a picture may come to be considered, in that specific context, as a child sexual abuse image. Indeed, in that specific context, the image of a real child is being used by someone else for sexual purposes. This means that it is not only a certain image per se that determines if it pertains to the category of child sexual abuse material or not, but also the use that is made of that same image.

The question as to what constitutes “any representation of the sexual parts of a child for primarily sexual purposes” may be decided on the basis of national standards pertaining to bodily harm, or the classification of materials as obscene or inconsistent with public morals.<sup>143</sup> This representation is also known in some countries, like the USA, as “lascivious exhibition” and is considered to constitute “child pornography”. The determination of what types of pictures constitute a “lascivious exhibition” has been dealt with in the jurisprudence of courts in the USA and resulted in the so-called Dost test with 6 factors/criteria that should play a role in answering the question.<sup>144</sup>

With regard to the definition of “sexual activities”, the Committee provided its interpretation of this notion in paragraph 52 of the Guidelines. The Explanatory Report to the Lanzarote Convention also provides, in paragraph 143, a minimum list of real or simulated acts that fall under “sexually explicit conduct”, such as sexual intercourse, bestiality, masturbation and the lascivious exhibition of the genitals or the pubic area of a child. The Report also points out that it is not relevant whether the conduct depicted is real or simulated.

<sup>142</sup> The definition of “child pornography” in Article 20, paragraph 2 of the Lanzarote Convention uses “any visual depiction of a child”. The Explanatory report on this Convention states in paragraph 141 that paragraph 2 of Article 20 is based on the OPSC.

<sup>143</sup> See paragraph 142 of the Explanatory Report to the Lanzarote Convention.

<sup>144</sup> See for instance: Carissa Byrne Hessick (ed), Refining Child Pornography Law, Part I on Defining Child Pornography Crimes, paragraph 3 on The “Dost Test” in Child Pornography Law. Ann Arbor: University of Michigan Press, 2016.

## 63

*The Committee is deeply concerned about the large amount of online and offline material, including drawings and virtual representations, depicting non-existing children or persons appearing to be children involved in sexually explicit conduct, and about the serious effect that such material can have on children's right to dignity and protection. The Committee encourages States parties to include in their legal provisions regarding child sexual abuse material (child pornography) representations of non-existing children or of persons appearing to be children, in particular when such representations are used as part of a process to sexually exploit children.*

In this paragraph, the Committee expresses its concern that depictions of non-existing children may have an adverse effect on children's right to protection from sexual exploitation and abuse.

In particular, advances in technology are making it increasingly feasible to produce highly realistic representations of non-existing children, so called "deep fakes". Such imagery is becoming so realistic that it is close to indistinguishable from real children, and should therefore fall under the meaning of "any representation of a child" contained in Article 2 OPSC.

There are several potential risks with this kind of material becoming increasingly available. One is that children are increasingly shown involved in sexual activities, in the attempt to normalise the sexualisation of children. Respect for and protection of the dignity of the child is a fundamental right of the child as a human being. This right is not compatible with the fact of presenting a child (existing or non-existing) as a sexual object. Such representations, in particular when large scale, may contribute to the normalisation of seeing children as objects to satisfy the sexual desires of other (mainly adult) individuals. The OPSC is not only an instrument for the protection of an individual child but also for enhancing the understanding of the child as a human being with human rights, including the rights to dignity and to respect for privacy.

## 64

*The Committee encourages States parties to criminalize the acts of recruiting, or coercing a child into participating in pornographic performances or causing a child to participate in such performances, profiting from or otherwise exploiting a child for such purposes, and knowingly attending pornographic performances involving children.*

The content of this paragraph can be linked to Article 34 CRC, which explicitly requests States parties to take measures to prevent the exploitative use of children in pornographic performances and materials.

Aware of the linkages between Article 34 CRC and the scope of the OPSC, the Committee encourages States parties to the OPSC (of which all but one are also parties to the CRC) to criminalise activities that involve a child in pornographic performances. Such criminalisation should also cover the situations of persons who are spectators of pornographic performances involving children through digital media such as webcams and live streaming.

"Knowingly attending" does not only require that the person intends to attend a pornographic performance but also that he/she knows that the performance will involve children.<sup>145</sup>

<sup>145</sup> See for an elaborated provision in this regard Article 21 of the Lanzarote Convention and paragraphs 146-150 of the Explanatory Report to this Convention.

## 65

*Article 3 (1) (c) of the Optional Protocol obliges States parties to criminalize the acts of producing, distributing, disseminating, importing, exporting, offering, selling or possessing, for the purposes of sexual exploitation, “child pornography”. The Committee strongly recommends that States parties criminalize the mere possession of such material, while granting due consideration to potential exceptions to this prohibition, such as where professional requirements, which should be clearly defined by law, justify the possession of such material.*

In paragraph 65 of the Guidelines, the Committee interprets the criminal offence of possessing “child pornography” in a broad manner, by strongly recommending States parties to criminalise the mere possession of such material, without the need to specify the purposes for such possession.

This recommendation is in line with Article 20.1(e) of the Lanzarote Convention, which states “possessing child pornography” *tout court*.

The sentence “for specific purposes” should rather serve in the opposite way, namely to consider potential exceptions to the prohibition of possessing child sexual abuse material. Such exceptions may be law enforcement divisions working specifically with sexual crimes against children, hotlines with special authorisation or permission to receive reports on CSAM, or medical professionals involved in health care for victims of sexual exploitation or abuse. Such exceptions should be clearly assessed and well established in national regulation or law.

The criminalisation should cover the possession of “child pornography” by whatever means, whether online or offline, such as (but not limited to) magazines, video cassettes, portable/mobile telephones, tablets and computers, files on hard disks, softwares, as well as detachable storage devices such as USB sticks, diskettes, DVDs or CD-roms.

#### CONCRETE EXAMPLE OF GOOD PRACTICE

In Vietnam, the “Law on Amendments to the Criminal Code” amended the Criminal Code by substituting the word ‘store’ with the term ‘posses’ with regard to the possession of child sexual abuse material. Moreover, providing pornographic material to a child under the age of 18 was established as an aggravating factor.

Reference: Government of Viet Nam, “Law on Amendments to the Criminal Code”, Law 12/2017/QH14 (2017), Article 124, and “Criminal Code”, Article 326(2).

## 66

*In accordance with article 9 (5) of the Optional Protocol, States parties should criminalize the production and dissemination of material advertising the offences described in the Protocol. For instance, any insertion of an online or offline medium, such as an advertisement or a commercial, that promotes the sexual exploitation of children in any way must be criminalized.*

The intention of the Committee in this paragraph is to capture the case of a party advertising or otherwise promoting access to the sexual exploitation or abuse of children (including to child sexual abuse material). The Committee regularly draws the attention of States parties to the importance, also from a prevention perspective, to criminalise the advertising of activities that are criminalised under the OPSC.<sup>146</sup>

<sup>146</sup> See for instance the concluding Observations of the Committee on Honduras UN Doc. CRC/C/OPSC/HND/CO/1, 2 July 2016, paragraph 25 (e).

*An increasing number of children produce sexual images, such as representations of their own sexual parts, either exclusively for themselves or to share with their boyfriends or girlfriends or a wider group of peers (often through “sexting”). A distinction must be made between what the Optional Protocol refers to as “child pornography”, which constitutes a criminal offence, and the production by children of self-generated sexual content or material representing themselves. The Committee is concerned that the self-generated aspect of such material could increase the risk that the child is considered responsible instead of being treated as a victim, and underscores that children should not be held criminally liable for producing images of themselves. If such images are produced as a result of coercion, blackmailing or other forms of undue pressure against the will of the child, those who made the child produce such content should be brought to justice. If such images are subsequently distributed, disseminated, imported, exported, offered or sold as child sexual abuse material, those responsible for such acts should also be held criminally liable.*

In this paragraph, the Committee is pointing out a complex issue in need of careful attention. The need to strike the right balance between, on the one hand, establishing clear legal frameworks protecting children while, on the other hand, ensuring that children are made aware of the gravity of such behaviour and that it may carry consequences in terms of criminal liability.

Part of the difficulty lies in the fact that the creation and distribution of child-generated sexual content can be part of an “intimate” interaction between adolescents exploring their sexuality, but it can also come as a result of peer pressure or threats, intimidation and coercion.

What is sure is that self-generated sexual content has become a widespread phenomenon. “Sexting”, which is a form of self-generated sexual content, occurs when such content is created, shared and forwarded as a message through, for instance, mobile phones. Sexting has been observed to be a product of youth peer pressure and, to a certain extent, teenagers increasingly report thinking that sexting is “normal”.<sup>147</sup> While this conduct in and of itself is not necessarily illegal or socially unacceptable, there are risks that any such content can be circulated online or offline against the will of the child, including to harm children, or be used as a basis to extort favours. Self-generated content may also be coerced or induced, and is often part of a process of “grooming” or “sexual extortion”.<sup>148</sup>

The Committee shows, in this paragraph, its concern that the “self-generated” aspect of such material could increase the risk that the child is considered responsible instead of treated as a victim. The Committee wishes to emphasise that many young children are forced or induced to produce such material against their will or better knowing. Therefore, the child should always be treated as a victim of sexual exploitation and/or abuse in such cases.

For self-generated sexual material depicting very young children (e.g. pre-pubescent children) in particular, the assumption ought to be that it is the result of an abusive or coercive relationship or interaction with an adult or another child, and care should be taken to make sure the child does not suffer further harm.<sup>149</sup>

At the same time, it must be acknowledged that the negative impact (whether unexpected or deliberate) of sharing self-generated sexual content with others can be serious and long-lasting. The impact is not lesser if the person who has shared the material is another child, and States parties should take all appropriate measures to inform children about the possible consequences of sharing such content.

<sup>147</sup> KidsHealth, “Sexting, What Parents Need to Know”, 2018, available at: <https://kidshealth.org/en/parents/2011-sexting.html>

<sup>148</sup> ICMEC, Studies in child protection: Sexual extortion and non-consensual pornography, October 2018. Available at: [https://www.icmec.org/wp-content/uploads/2018/10/Sexual-Extortion\\_Nonconsensual-Pornography\\_final\\_10-26-18.pdf](https://www.icmec.org/wp-content/uploads/2018/10/Sexual-Extortion_Nonconsensual-Pornography_final_10-26-18.pdf)

<sup>149</sup> Human Rights Council Report ADRC 2016, paragraph24; Luxembourg Guidelines, p.43-44.

## CONCRETE EXAMPLE OF GOOD REGIONAL PRACTICE

On 6 June 2019 the Lanzarote Committee published its Opinion on child sexually suggestive or explicit images and/or videos generated, shared and received by children. States parties to the OPSC may benefit from the views of the Lanzarote Committee when developing legislation or policies to address the difficult matter of self-generated sexual material and the risk of its wide distribution. (See above paragraph 42.)

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*The term “grooming” is often used to refer to the solicitation of children for sexual purposes. It refers to the process of establishing a relationship with a child either in person or through the use of ICT to facilitate online or offline sexual contact. Although grooming or the solicitation of children for sexual purposes is not covered explicitly in the Optional Protocol, it is a form of child sexual exploitation that may constitute an offence covered by the Optional Protocol. For instance, the grooming of children often involves the production and dissemination of child sexual abuse material (“child pornography”).*

Although the terms grooming or solicitation of children for sexual purposes are not mentioned explicitly in the OPSC, they represent a form of online child sexual exploitation.<sup>150</sup> Evidence is showing that the dynamics of this threat have changed considerably over the last few years and that the period of time between the initial engagement with a child and an offending outcome is often extremely short, as offenders focus on quickly gaining leverage over a victim.<sup>151</sup>

The solicitation of children for sexual purposes (grooming) is covered by Article 23 of the Lanzarote Convention, which requires Parties to criminalise the intentional proposal, through ICT, of an adult to meet a child to sexually abuse or exploit him or her.

As the solicitation of a child through ICT does not necessarily result in a meeting in person, in an Opinion adopted in June 2015, the Lanzarote Committee has recommended Parties to broaden the interpretation of Article 23 and cover also online meetings with a child.<sup>152</sup> Online grooming without the intent to meet the child in person has been criminalised in at least 34 countries.<sup>153</sup>

The process of grooming is a key component of child sexual exploitation in many contexts, including in sports. The close relationship that develops between a child and her/his coach, trainer or sports physician creates a complex context that makes grooming for sexual purposes difficult for the victim and others to easily recognise.<sup>154</sup>

## RESOURCE TIPS

ICMEC, Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review. 2017 1<sup>st</sup> Edition. Report of the International centre for missing & exploited children. Alexandria USA (2017). [Available here](#)

Lanzarote Committee, Opinion on Article 23 of the Lanzarote Convention, Solicitation of children for sexual purposes through information and communication technologies (Grooming) (2016) [Available here](#)

<sup>150</sup> See for instance: ICMEC, Online grooming of children for sexual purposes, Model legislation and Global Review, 2017. Available at: [https://www.icmec.org/wp-content/uploads/2017/09/Online-Grooming-of-Children\\_FINAL\\_9-18-17.pdf](https://www.icmec.org/wp-content/uploads/2017/09/Online-Grooming-of-Children_FINAL_9-18-17.pdf)

<sup>151</sup> CEOP, « Threat assessment of child sexual exploitation and abuse (2013). Available at : [https://www.norfolkscb.org/wp-content/uploads/2015/03/CEOP\\_Threat-Assessment\\_CSE\\_JUN2013.pdf](https://www.norfolkscb.org/wp-content/uploads/2015/03/CEOP_Threat-Assessment_CSE_JUN2013.pdf)

<sup>152</sup> See in particular paragraphs 17-20 of the Lanzarote Committee’s Opinion on Article 23 of the Lanzarote Convention. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064de98>

<sup>153</sup> ICMEC, Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review. 2017 1st Edition. Report of the International centre for missing & exploited children. Alexandria USA, 2017. Available at: [https://www.icmec.org/wp-content/uploads/2017/09/Online-Grooming-of-Children\\_FINAL\\_9-18-17.pdf](https://www.icmec.org/wp-content/uploads/2017/09/Online-Grooming-of-Children_FINAL_9-18-17.pdf)

<sup>154</sup> See for instance: Ingunn Bjornseth and Attila Szabo, “Sexual Violence Against Children in Sports and Exercise: A Systematic Literature Review”, in: Journal of Child Sexual Abuse, Volume 27, Issue 4, 2018.

## 69

*Sexual extortion, sometimes referred to as “sextortion”, of children is a practice whereby a child is forced into agreeing to give sexual favours, money or other benefits under the threat of sexual material depicting the child being shared on, for example, social media. This practice is often linked to grooming and sexting, and the Committee is concerned by the increase in more extreme, violent, sadistic and degrading demands by offenders, which expose children to severe risks.*

According to the Virtual Global Taskforce, the use of coercive techniques, including aggression and blackmail to ensure victim compliance, has become a feature of online solicitation (i.e. grooming), and has evolved into a new form of criminal activity.<sup>155</sup>

In 2016, the UN Human Rights Council called upon States to “criminalize all relevant conduct related to the sexual exploitation of children online and offline, including but not limited to its newest forms, such as the solicitation of children for sexual purposes known as “child grooming”, sexual extortion, and streaming of child abuse, and possession or distribution of, access to, or exchange or production of or payment for child sexual abuse material and the viewing, conducting or facilitation of children’s participation in live sexual abuses transmitted through information and communications technologies, while ensuring that their legislation takes into account possible future developments in the modi operandi for online child sexual abuse and exploitation”.<sup>156</sup>

It should be noted that, even if recent attention has focused mainly on online sexual extortion, the sexual extortion also exists as a form of offline sexual exploitation. This can be the case when, for instance, individuals in caregiving or law enforcement roles use coercive techniques to receive sexual favours from children in vulnerable situations in exchange for assistance. This issue is highlighted in the Committee’s General Comment No. 21 with regard to children in street situations.<sup>157</sup>

#### RESOURCE TIP

Virtual Global Taskforce, “Child Sexual Exploitation Environmental Scan” (2015). [Available here](#)

## 70

*The Committee notes that children are sometimes made to witness sexual activities, and encourages States parties to criminalize the intentional causing, for sexual purposes, of a child to witness sexual abuse or sexual activities, even without having to participate.*

The intentional causing, for sexual purposes, of a child to witness sexual abuse or sexual activities, even without having to participate is covered by Article 22 of the Lanzarote Convention on “Corruption of children”. It should be noted that, in the context of Article 22, a “child” is specifically qualified as a child below the legal age for sexual activities. Such a distinction between children above or below the age of sexual consent has not been reflected in paragraph 70 of the OPSC Guidelines, in which the Committee encourages States parties to criminalise such conduct against any person below the age of 18.<sup>158</sup> In any event, if the perpetrator uses any form of mental or physical violence to make a child witness sexual activities, that act should be qualified as a crime.

<sup>155</sup> Virtual Global Taskforce, “Child Sexual Exploitation Environmental Scan” (2015). Available at: <https://www.europol.europa.eu/newsroom/news/2015-vgt-child-sexual-exploitation-environmental-scan>

<sup>156</sup> United Nations, Human Rights Council Resolution 31/7, adopted on 23 March 2016, paragraph 4. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/083/35/PDF/G1608335.pdf?OpenElement>

<sup>157</sup> UN Committee on the Rights of the Child, “General Comment No. 21 (2017) on Children in Street Situations”, UN Doc. CRC/C/GC/21, paragraph 60. See also: Testimonies gathered from street children/youth participating in a consultation held in Harare, Zimbabwe, 9-11 March 2016, in Consortium for Street Children, “Africa Consultation Report for the UN Committee on the Rights of the Child’s General Comment on Children in Street Situations. February - March 2016”, 2016. Available at: <https://www.streetchildren.org/wp-content/uploads/2016/05/Report-on-Ghana-Zimbabwe-DRC-consultations-April-2016-1.pdf>

<sup>158</sup> The Luxembourg Guidelines (Section A.3.ii, p. 7-8) recommend a strict protection standard covering all children under the age of 18.

*Legislative and other measures to combat sexual offences should explicitly differentiate between adult and child offenders, with particular emphasis on the reformability of the latter. In considering the definition and prohibition of sexual offences, it is important to avoid drawing children and adolescents into the criminal justice system, due to their special status. Children should always be dealt with in specialized systems, which should divert them to therapeutic services where appropriate and avoid criminal records or inclusion in registers.*

With the increased use of ICT children are also increasingly, whether knowingly or not, involved in distributing sexualised material of other children, which can produce the same traumatising effects on the victims as if an adult does it. Moreover, the material, once circulating online, can be very difficult to remove.

While a child should never be held criminally liable for the production of self-generated sexual content depicting her-/himself, the dissemination of sexual content depicting others may, in some States, be subject to liability. This complex issue needs careful attention, and States parties are encouraged to establish clear legal frameworks protecting children but also ensuring that children are made aware of the gravity of such behaviour and that it may carry consequences in terms of criminal liability.<sup>159</sup> The potential criminal liability of children should respect international legal standards on the matter.<sup>160</sup>

Children may display sexually harmful behaviour in different ways. Working with children who commit sexual offences in ways that enable them to develop into non-offending adults is challenging but possible. In responding to a sexual offence allegedly committed by a child, priority should be given to measures other than criminal proceedings, providing that human rights and legal safeguards are fully respected (Article 40(3) (b) CRC). This approach is known as “diversion” and allows for a variety of non-judicial measures, depending on the seriousness of the offence and the profile of the young offender.

For instance, an alternative to prosecution may be that the child participates in a course on sexuality/sexual offences and their impact, or that the child participates in a restorative justice program which could include a mediation between the child and the victim with a view to restoring the damage done not only to society but also to the societal relation between the child and the victim. Where possible, the involvement of parents in intervention measures is often beneficial.

In accordance with Article 37 CRC, deprivation of liberty of the child must be a measure of last resort. The Committee has made known that setting a minimum penalty for a child who committed an offence is not in compliance with international standards regarding children’s rights and juvenile justice. A mandatory minimum penalty makes it impossible for the judge to take into account the profile or personality of the child, her/his family and social background, and possible mitigating circumstances.

<sup>159</sup> The Lanzarote Committee has provided concrete guidance in this regard in its Opinion on child sexually suggestive or explicit images and/or videos generated, shared and received by children. Available at: <https://rm.coe.int/opinion-of-the-lanzarote-committee-on-child-sexually-suggestive-or-exp/168094e72c>

<sup>160</sup> See: United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), the United Nations Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”), the UNODC Manual for the measurement of juvenile justice indicators, and the Council of Europe Guidelines on child-friendly justice.

**RESOURCE TIPS**

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), adopted by General Assembly Resolution 40/33 of 29 November 1985. [Available here](#)

UN General Assembly, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), adopted by General Assembly Resolution 45/112 of 28 March 1991. [Available here](#)

UNODC Manual for the measurement of juvenile justice indicators (2006). [Available here](#)

UNICEF, Diversion not Detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific (2017). [Available here](#)

Guidelines for Action on Children in the Criminal Justice System, Recommended by Economic and Social Council Resolution 1997/30 of 21 July 1997. [Available here](#)

**72**

*The Committee emphasizes that a child under the age of 18 can never consent to any form of their own sale, sexual exploitation or sexual abuse, and that States parties must criminalize all the offences covered by the Optional Protocol, committed against any child up to the age of 18. Any presumed consent of a child to exploitative or abusive sexual acts should be considered as null and void.*

No confusion must exist between the age of sexual consent and the fact of consenting to exploitation.<sup>161</sup> Even if the offender and/or the child victim her/himself were to believe that she/he consented to acts relating to her/his sale or sexual exploitation, such presumed “consent” does not change the criminal nature of such acts nor could it be considered as a mitigating circumstance.

A number of States parties allow children to engage in sexual activities from a certain age, known as “the age of sexual consent”.<sup>162</sup> This is generally understood as the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child in all circumstances, the consent of the child being irrelevant.<sup>163</sup> A child at or above the age of sexual consent may, with his/her consent, be engaged in sexual activities.

The age of sexual consent differs significantly between different States parties, and is sometimes as low as 12 or 13 years of age.<sup>164</sup>

An inadequate understanding and use of the age of sexual consent can be confusing and, ultimately, harmful for the child.

It is important to underscore the following:

- (a) The age of sexual consent can be considered as recognising the evolving capacities of the child but should not be set too low given the possible risks of engaging in sexual activities;
- (b) No child should ever, under any circumstances, be able to legally consent to her/his own exploitation or abuse;<sup>165</sup>
- (c) Children at or above the age of sexual consent should be provided with all the necessary information on all aspects and consequences of consenting to sexual activities.<sup>166</sup>

<sup>161</sup> On this issue, the ILO body supervising the application of C182 in 2016 noted with satisfaction the legislative amendment in Switzerland (with reference also to the Lanzarote Convention). The ILO Committee emphasized that “it is necessary to make a distinction between the age of sexual consent and the freedom to engage in prostitution.” See [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3298377:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3298377:NO)

<sup>162</sup> For a mapping of the minimum age requirements for sexual consent in Europe, see research undertaken by the European Union Agency for Fundamental Rights: <http://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/sexual-consent>

<sup>163</sup> See Article 2 of the European Union (EU) Directive 2011/93 on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography and the Luxembourg Guidelines, p. 7-8.

<sup>164</sup> ICMEC’s national legislative summaries list the age of consent in each country report. Available at <https://www.icmec.org/education-portal/international-national-law/>

<sup>165</sup> See the Luxembourg Guidelines, p. 7-8.

<sup>166</sup> Such information should be provided, inter alia, through school curricula for sexual and reproductive health and rights. Such prevention programmes are addressed in more detail in section V Prevention above.

*States parties should not criminalize adolescents of similar ages for consensual sexual activity.*

This recommendation by the Committee applies in particular for adolescents at or above the age of sexual consent. If they consent to sexual activities with another adolescent or young adult the activity does not constitute a criminal offence, and criminal sanctions for such activities should be out of the question. With regard to the notion of “similar ages”, it is up to each State party to establish an age gap considered appropriate.

Difficulties may however arise in certain cases in which one of the two involved persons has not reached the age of sexual consent, such as, for instance, if a boy of 16 (or, depending on the country, just above any other age of sexual consent) engages in sexual activity with a girl of 15 (or, depending of the country, just below any other age of sexual consent) with her consent. Under national law, this may be considered a criminal offence since the girl is presumed unable to consent, and a parent/legal representative of the girl may report it to the prosecutor.

While the Committee could not recommend for such cases not to be prosecuted altogether, a case-by-case assessment appears necessary, and it should be kept in mind that a prosecution may not be in the best interest of neither the boy nor the girl. How to address such cases in practice is left to the States parties, and they may establish a certain judicial practice and/or rules on how to handle such cases in the best interests of all children involved.

#### **CONCRETE EXAMPLE OF GOOD PRACTICE**

When a prosecutor in the Netherlands receives a report of a situation such as the one mentioned above from the parent/legal representative of the girl, he/she will only start a prosecution after he/she has heard the adolescent girl for whom the report was made. The prosecutor would meet the girl and listen to her views. Following this hearing he/she may decide not to prosecute the boy. (Article 65, paragraph 1, Criminal law and Article 165 a, Law of criminal procedure)

#### **CONCRETE EXAMPLE OF GOOD REGIONAL PRACTICE**

Article 18.3 of the Lanzarote Convention does not govern consensual sexual activities between children. “It is not the intention of this Convention to criminalise sexual activities of young adolescents who are discovering their sexuality and are engaging in sexual experiences with each other in the framework of sexual development. Nor is it intended to cover sexual activities between persons of similar ages and maturity”. (Lanzarote Convention, Explanatory Report, §129).

## VI. Sanctions

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*The Committee recalls that, under article 7 of the Optional Protocol, States parties are obliged to take measures to provide for the seizure and confiscation of any goods used to commit or facilitate offences under the Optional Protocol and of any proceeds derived from such offences, and to take measures aimed at closing premises used to commit such offences. International cooperation should also be guaranteed in this regard, and any requests from another State party for such seizure or confiscation should be granted.*

Regarding sanctions for offences covered by the OPSC, some additional observations and information may be helpful. The OPSC contains two Articles that refer to sanctions. The first is Article 3.3, which is of a general nature, and the second is Article 7, which specifically addresses measures of seizure and confiscation. Both Articles are applicable to natural persons (individuals) and legal persons (business corporations, social services and non-profit organisations) convicted for having committed or attempted to commit an offence covered by the OPSC or for having been a complicit or a participant in such an offence.

Article 3(3) OPSC states that all OPSC offences must be “punishable by appropriate penalties that take into account their grave nature”. The text of Article 3(3) OPSC makes clear that all offences against a child covered by the OPSC are to be seen as of a grave nature. Nevertheless, the different acts covered by the OPSC arguably differ in degree of gravity, and the incorporation of this rule in national law may raise certain challenges. The rape of a child is generally considered as an act of a very grave nature, while it may be more difficult to assess, for instance, the gravity of possessing child sexual abuse material (which may depend also on the quantity of material, the nature of the material, how it has been procured, etc.).

Following the assessment of the degree of gravity of an offence covered by the OPSC, States must express that degree of gravity in an appropriate sanction or penalty. Determining, for instance, what an appropriate penalty is for the rape of a child, the production or possession of child sexual abuse material, or for other acts that may be criminalised, such as causing a child to witness sexual activities, is also a challenging exercise.

Aggravating circumstances that may play a role in this determination process are factors such as the age and/or particularly vulnerable situation of the child victim, the abuse of a position of trust or authority by the offender, the physical and mental trauma suffered by the child, and the involvement of more than one perpetrator.

Article 7 OPSC uses terms such as seizure, confiscation, goods, instrumentalities and proceeds, but without defining these notions, leaving it to the States parties to do so. In that regard, States could benefit from definitions provided in the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime of the Council of Europe.<sup>167</sup>

Lastly, consideration should be given to the possibility that the proceeds of crime or property confiscated can be allocated to a special fund in order to finance prevention and assistance programs for victims of offences covered by the OPSC.<sup>168</sup>

<sup>167</sup> Council of Europe, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Strasbourg, 8.XI.1990 (ETS No. 141).

<sup>168</sup> At the European level, this is foreseen by the Lanzarote Convention, Article 27.5.

### CONCRETE EXAMPLE OF GOOD PRACTICE

An example of how the gravity of OPSC offences could be assessed and what would be an appropriate penalty is the *Definitive Guideline on Sexual Offences* developed by the Sentencing Council of the UK. It is a Guideline that contains detailed information on the assessment of the gravity of a sexual offence against a child, distinguishing main categories and factors that should play a role in assessing the level of culpability of the alleged perpetrator, followed by suggested ranges of penalties and a list of aggravating and mitigating factors that could play a role in the final decisions on the duration of the penalty. [Available here](#)

### CONCRETE EXAMPLE OF GOOD REGIONAL PRACTICE

The Lanzarote Convention (art. 27) provides that legal persons liable under the rules of Article 26 (on corporate liability) shall be subject to effective, proportionate and dissuasive sanctions which shall include monetary criminal or non-criminal fines and may include (non exhaustive list): exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities and placing under judicial supervision.

## 75

*Given the increase in the use of ICT to commit or facilitate the offences covered by the Optional Protocol, States parties need to pay close attention to the different electronic means, including both hardware and software, used to commit such offences. The Committee emphasizes the need to apply article 7 of the Optional Protocol to these new ways of committing such offences, which may involve online “premises”, such as chat rooms, online forums and other online spaces that are not physical premises in the traditional sense of the term.*

The Committee underlines that, anno 2019, “premises” are a broader concept than was the case in 2000 when the OPSC was adopted by the United Nations General Assembly. It means that also “premises” like chat rooms, online for a and other online spaces can and should be considered in order to ensure an effective protection of children from sale and sexual exploitation.

## 76

*Clear rules and procedures should be established for how evidence may be collected during investigations into offences under the Optional Protocol, how, where and for how long it must be stored and who may have access to it. The Committee also recommends States parties to set forth clear rules regarding the destruction of evidence, in particular child sexual abuse material, the circulation of which can continue to revictimize the victims long after the initial offence was committed.*

From a law enforcement perspective, child sexual abuse material is documented evidence of the crime of sexual abuse or rape. Digital forensic techniques, automated search, image analysis and image databases, data mining and analytics are tools that can be used for detection of such evidence.<sup>169</sup> However, there are still significant challenges in achieving effective cooperation regarding online investigations and electronic evidence in criminal matters related to the offences covered by the OPSC.

<sup>169</sup> UNODC, Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children, Vienna, 2015. Available at: [https://www.unodc.org/documents/Cybercrime/Study\\_on\\_the\\_Effects.pdf](https://www.unodc.org/documents/Cybercrime/Study_on_the_Effects.pdf)

Evidence of the criminal actions (e.g. in the form of audio and written messages, electronic connections, photographs and videos) can be transmitted through networks and platforms owned and operated by multiple individuals. This provides a potentially far greater range of investigative starting points than in “offline” cases of abuse taking place in one physical location.<sup>170</sup>

In a cloud and remote server-based web environment, investigators are increasingly required to collect evidence from private actors such as Internet Service Providers, mobile telephone companies, social media and photo sharing businesses and other third-party providers. Such third parties tend to delete data after a certain period in order to clear server space for further use.<sup>171</sup>

The interplay between law enforcement and service providers is complex and national legal obligations and private sector data retention and disclosure policies vary widely by country, industry and type of data. Service providers commonly require due legal process for disclosure of customer data. Accordingly, in many jurisdictions, a court order must be obtained in order to access electronic evidence from service providers. As an increasing number of sexual offence against children involve digital evidence held by private actors, it is critical that industry and governments work together to develop mechanisms for timely law enforcement access to data in emergency situations, combined with fair and transparent legal processes for routine investigations.<sup>172</sup>

### RESOURCE TIP

UNODC, Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children, Vienna (2015). [Available here](#)

## 77

*The sale and sexual exploitation of children constitute serious violations of children’s rights and have a long-lasting negative impact on child victims. The Committee urges States parties, in accordance with article 3 of the Optional Protocol, to make all the offences covered therein punishable under national criminal or penal law by appropriate criminal sanctions that take into account their grave nature.*

An issue that is often raised with regard to appropriate sanctions is whether the law should require a mandatory minimum penalty for sexual offences (in particular when such offences are committed against children). Such an approach leaves little or no room for judges or courts to consider mitigating factors, and there are arguments both for and against mandatory minimum penalties.<sup>173</sup>

In most considerations made about sanctions, little or no attention is granted to sanctions for children who have committed an offence covered by the OPSC. However, children can commit such offences and should be treated in full compliance with the rules and standards set forth in the CRC and other relevant instruments (see above at paragraph 71).

Regarding the rather common assumption that juvenile sex offenders develop into adult sex offenders, recent research and empirical studies show that this assumption is not valid any more (with some exceptions).<sup>174</sup> A recent Dutch study has shown that the majority of juvenile sex offenders does not continue after adolescence to commit sexual or other offences. An important factor that reduces further delinquency is having a job.<sup>175</sup> These findings are important to take into account when developing legal and policy responses to sexual offences committed by children and adolescents.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> Ibid.

<sup>173</sup> See for instance Evan Bernick and Paul J. Larkin, Reconsidering Mandatory Minimum Sentences: *The Arguments for and against Potential Reforms*. The Heritage Foundation, Legal Memorandum No. 114, February 10 2014.

<sup>174</sup> See for instance F.E. Zimring, A.R. Piquero & W.G. Jennings, Sexual delinquency in Racine. Does early sex offending predict later sex offending in youth and young adulthood? *Criminology and Public Policy*, 2007, 6, p. 507 – 543.

<sup>175</sup> C.J.W. van den Berg, *From Boys to Men: Explaining Juvenile Sex Offenders’ Criminal Careers*. Amsterdam: VU University, 2015.

**CONCRETE EXAMPLE OF GOOD PRACTICE**

A system with rules for mandatory minimum penalties can be found in the USA. In January 2019, the United States Sentencing Commission published the “Mandatory Minimum Penalties for Sex Offences in the Federal Criminal Justice System”. An interesting key finding: Offenders convicted of sex offences carrying a mandatory minimum penalty are sentenced to longer terms than those convicted of sex offences not carrying a mandatory minimum penalty. Reference: Mandatory Minimum Penalties for Sex Offenses in the Federal Criminal Justice System, January 2019, p. 5. [Available here](#)

**CONCRETE EXAMPLE OF GOOD REGIONAL PRACTICE**

EU Directive 2011/93 on combating the sexual abuse and sexual exploitation of children and child pornography establishes, for the offences of child sexual abuse and sexual exploitation, the minimum term of imprisonment of at least 1 year for offences considered of a “lesser” gravity (causing a child to witness sexual activities) and of at least 5 years (for engaging with a child below the age of consent in sexual activities), etc. EU Member States had the obligation to bring into force laws, regulations and administrative provisions necessary to comply with the rules of this Directive by 18 December 2013 (Directive art. 27). [Available here](#)

**78**

*Distinctions should be made between complicity in an offence, participation in the offence and an attempt to commit the offence. Each of these different roles in the commission of an offence covered by the Optional Protocol should be criminalized under national criminal or penal law.*

As with paragraph 45 of the Guidelines, this is again a reminder to States parties that the obligation to criminalise offences covered by the OPSC apply also in case of attempts to commit such offences, or to any kind of subsidiary role in the commission of these offences, such as complicity or participation.

Moreover, the recommendations the Committee makes with regard to criminalisation in its Guidelines, including the encouragement to make sure any use of ICT to commit or facilitate OPSC offences are covered by criminal/penal laws, should also apply to attempts, complicity and participation. Sanctions for these types of involvement in an offence covered by the OPSC may be adapted in accordance with the gravity of the offence, but also the importance of the role played by, for instance, the accomplice or participant. Punishments for attempt are often less severe than the punishment would be had the crime been completed.

**79**

*States parties are required to ensure that legal persons can be held liable, under criminal, civil or administrative law, for having committed, attempted to commit, been complicit in or participated in the offences covered by the Optional Protocol. States parties should establish by law the responsibility of ICT companies to block and remove child sexual abuse material hosted on their servers, of financial institutions to block and refuse financial transactions intended to pay for any such offences, of the sport and entertainment industries to take child protective measures, and of the travel and tourism sector, including online travel agencies and booking websites, to refrain from facilitating the sexual exploitation of children.*

The OPSC provides limited details regarding the criminal responsibility of legal persons. Article 3.4 OPSC requires State parties to take measures, where appropriate, to establish liability of legal persons for offences covered in the OPSC, and such liability can be criminal, civil or administrative.

Legal persons can be held liable for an OPSC offence committed by any natural person acting as part of an organ of that legal person. But liability can also be established for failure to prevent an OPSC offence, for instance due to a lack of supervision or control of a natural person (who is part of an organ of the legal person or in a leading position) who commits an offence covered by the OPSC, or for lack of control of how the legal persons premises or means are being used, if these are used to commit or facilitate an offence covered by the OPSC. In such cases, the legal person as such can be subject to measures which may be of a civil or criminal nature.

In paragraph 79 of the Guidelines, the Committee draws particular attention to the responsibility that ICT companies, financial institutions, the sporting and entertainment industries, as well as the travel and tourism sector can and should have in preventing the sale and sexual exploitation of children and collaborating towards their effective protection.

There is a pressing need to fight impunity for the offences covered by the OPSC. The sale and sexual exploitation and abuse of children are among the most serious violations of children's rights to dignity and protection, and these extremely serious offences have a long-lasting negative impact on the victims. It is therefore imperative that States parties take all measures to prosecute and punish offenders of such crimes by imposing appropriate sanctions.<sup>176</sup>

<sup>176</sup> Committee on the Rights of the Child, Concluding Observations on Sri Lanka, UN Doc. CRC/C/OPSC/LKA/CO/1, 3 July 2019, para 29 and 30; the Democratic Republic of Congo, UN Doc. CRC/C/OPSC/COD/CO/1, 28 February 2017, paragraph 29; Benin, UN Doc. CRC/C/OPSC/BEN/CO/1, 29 November 2018, paragraph 28-29; Angola, UN Doc. CRC/C/OPSC/AGO/CO/1, 29 June 2018, paragraph 27-28.

## VII. Jurisdiction and extradition

80

*As a minimum, States parties must establish criminal jurisdiction over all offences mentioned in article 3 (1) of the Optional Protocol, as discussed in section V above, when the offences are committed in their territory or on board a ship or aircraft registered in that State, regardless of the location of the ship or aircraft. Such jurisdiction allows the State to investigate and prosecute all these offences regardless of whether the alleged perpetrator or the victim is a national of that State. If necessary, the State can issue an international warrant for the arrest of an alleged perpetrator. The Committee urges States parties to ensure that legislation is in place to comply with this obligation.*

The Committee is simply reiterating what is set forth by Article 4 OPSC, underscoring that the obligation contained therein sets the minimum criteria for criminal jurisdiction of offences covered by the OPSC.

81

*The Committee encourages States parties to expand the investigatory capacity of police to find and rescue child victims and make it possible for law enforcement to be trained in and conduct undercover operations, which are vital in investigating crimes such as the production and distribution of child sexual abuse material. The Committee also encourages States parties to strengthen international cooperation in this regard, and to make use of the specialized skills and resources developed by the International Criminal Police Organization (INTERPOL) to tackle crimes against children.*

Many different actions are undertaken to identify child victims of sexual abuse or exploitation. The biggest initiative is INTERPOL's International Child Sexual Exploitation (ICSE) database, the only global platform of its kind. The ICSE database enables specialist officers to use sophisticated image and video comparison software to make connections between victims, abusers and locations. Certified users in member countries can access the database directly and in real time, providing immediate responses to queries related to child sexual exploitation investigations.

In addition, both INTERPOL and Europol have launched Victim Identification Task Forces which meet regularly to boost victim identification capacity and to analyse intelligence for identifying and locating child victims of sexual exploitation.

### RESOURCE TIP

INTERPOL, Crimes against children. [Available here](#)

## 82

*In accordance with article 4(2) of the Optional Protocol, each State party should also establish its jurisdiction over offences covered by the Optional Protocol that are committed outside its territory (extraterritorial jurisdiction) when the alleged offender is a national of that State or a person whose habitual residence is in its territory, or when the child victim is a national of that State. Under extraterritorial jurisdiction, a State can initiate the investigation and prosecution of alleged offenders if the above criteria are met. For this action, it is not necessary for the alleged offender to be present in the territory of the State. While the State in which the offence was committed is primarily responsible for the investigation and prosecution of the offender, the State of which the alleged offender is a national or in which she or he has her or his habitual residence has the authority to investigate and prosecute, which may include issuing an international warrant for the alleged offender's arrest.*

Although the text of Article 4(2) OPSC does not explicitly mention the term “extraterritorial jurisdiction”, it is clear from the context of Article 4, which begins with territorial jurisdiction in paragraph 1, that paragraph 2 concerns extraterritorial jurisdiction. The content of paragraph 2 would not make sense if linked to territorial jurisdiction.

Extraterritorial jurisdiction is an important tool for bringing perpetrators of sale and sexual exploitation of children to justice and should be used whenever necessary. Given the primary responsibility of the State on which territory the crime is committed, it is a matter of good practice that the State of which the alleged offender is a national contacts the law enforcement authority of the other State before exercising its extraterritorial jurisdiction. In addition, when exercising its extraterritorial jurisdiction, a State should seek to cooperate with the authorities of the State where the crime was committed, as it may provide relevant information for the prosecuting authorities.

## 83

*Regarding legislation on extraterritorial jurisdiction, the Committee encourages States parties to include cases in which a child victim is not a national but has her or his habitual residence in the territory of the State.*

It is not clear why, in Article 4(2) OPSC, the use of extraterritorial jurisdiction is extended not only to offenders who are nationals of a State but also to those who have their habitual residence in its territory, while the same provision is limited to a child victim who is a national of the same State.

Concretely, this means that an offender who has her/his habitual residence in the State can be prosecuted for an offence committed abroad, while a child who has her/his habitual residence in the State and who is a victim of sale or sexual exploitation abroad cannot benefit from a prosecution by the law enforcement authority of the country she/he lives in because she/he is not a national. Such a distinction arguably amounts to discrimination, which is prohibited under Article 2 CRC.

Given the often-present transnational character of offences covered by the OPSC, child victims may be of any nationality and origin. In order to secure equal protection for all children from sale and sexual exploitation, and with due regard to children's right to non-discrimination, it would be appropriate for States to exercise their jurisdiction also when the victim is a child who has her/his habitual residence in that State, independent of nationality, in particular if the State of which the child is a national is unwilling or unable to exercise jurisdiction.

### CONCRETE EXAMPLE OF GOOD REGIONAL PRACTICE

Article 25 of the Lanzarote Convention refers explicitly to both the nationality and the habitual residence of the person committing the offence and of the person against whom the offence is committed.

84

*States parties should remove the requirement of double criminality, making it possible to exercise extraterritorial jurisdiction over offences covered by the Optional Protocol committed in another State even if the relevant offence is not criminalized in that State. The principle of double criminality creates a gap in the law which enables impunity and should not be applied.*

The principle of “double criminality” means that the act which will be subject to prosecution has to be a crime under the law of the country where the act took place as well as in the country where the prosecution will be initiated with the use of extraterritorial jurisdiction. This requirement may represent a serious obstacle in bringing perpetrators to justice, in particular in cases of sexual exploitation of children in the context of travel and tourism. The Committee has repeatedly recommended States parties to remove the double criminality requirement from national law.<sup>177</sup>

### CONCRETE EXAMPLE OF GOOD REGIONAL PRACTICE

Article 25.4 of the Lanzarote Convention requires States parties to take the necessary legislative or other measures to ensure that double criminality is not a condition for prosecuting the alleged perpetrator and this rule is considered as a major step forward in the protection of children from certain acts of sexual exploitation and abuse.

85

*Extraterritorial jurisdiction is particularly important for offences constituting the sale or sexual exploitation of children where the offender is likely to travel to another country, such as in the case of sale for trade in organs or for illegal international adoption, or sexual exploitation in travel and tourism. As the exploitation may not be detected until the offender has departed the country in which the offence took place, it is essential to ensure that States parties have the capability to prosecute the offender.*

This is also established in ILO Recommendation 190, Paragraph 15 (d), which was drafted with sexual offences committed in the context of travel and tourism particularly in mind. It reads: “Other measures aimed at the prohibition and elimination of the worst forms of child labour might include the following: {...} (d) providing for the prosecution in their own country of the Member’s nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country”.<sup>178</sup>

<sup>177</sup> See for instance: Committee on the Rights of the Child, Concluding Observations on Sri Lanka, UN Doc. CRC/C/OPSC/LKA/CO/1, 3 July 2019, paragraph 36; Concluding Observations on Czechia, UN Doc. CRC/C/OPSC/CZE/CO/1, 5 March 2019, paragraph 29; Concluding Observations on Niger, UN Doc. CRC/C/OPSC/NER/CO/1, 12 December 2018, paragraph 27.

<sup>178</sup> International Labour Organisation, R190 – Worst forms of child labour recommendation, 1999. Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R190)

## 86

*The Committee reminds States parties that they must, as a minimum, establish their jurisdiction over offences covered by the Optional Protocol committed abroad when the alleged offender is present in their territory and would not be extradited because she or he is one of their nationals (art. 4 (3)). The Committee urges States parties to make all legislative adjustments necessary to comply with this obligation. In situations of porous borders, where offenders can easily move and cross back and forth between different countries, regional law enforcement and judicial cooperation is essential to fight impunity.*

It has become increasingly easy to travel across borders, and in many regions travel restrictions and controls have been eased. In such a context, exchange of information on travellers who have been convicted for sexual offences against children become increasingly important, both to prevent that convicted offenders commit similar crimes in neighbouring countries and to increase the chances to arrest and prosecute (including to gather evidence against) sexual offenders who move back and forth between countries in a certain region.

## 87

*The Committee is concerned about the increased use of ICT to commit sexual offences against children and the new challenges to territoriality. An offender can, for instance, be in one country, watching or even ordering the live streaming of a child being sexually abused in another country. To effectively put an end to the still widespread impunity for offences where there is no “hands-on” act, and ensure that offenders committing crimes through the use of ICT are prosecuted, the Committee encourages States parties to establish universal jurisdiction for all offences covered by the Optional Protocol; that is, to enable the investigation and prosecution of such offences regardless of the nationality or habitual residence of the alleged offender and victim. Moreover, the Committee recalls that many of the offences covered by the Optional Protocol can also be committed or facilitated through the use of ICT, and that jurisdiction must also cover such manifestations of the offences.*

As set forth by the Special Rapporteur on the sale and sexual exploitation of children in her 2014 report to the Human Rights Council, “countries must also take appropriate steps to tackle criminal behaviour that transcends borders thanks to the Internet. Article 4 of the Optional Protocol on the sale of children, child prostitution and child pornography requires States to consider adopting the principle of extraterritoriality to combat the sale and sexual exploitation of children.” However, “the Internet poses new challenges to territoriality. An offender can be in one country watching the live streaming of a child who is being abused in another country. National laws should prohibit those who watch the abuse of children wherever in the world it occurs.”<sup>179</sup>

<sup>179</sup> Report of the UN Special Rapporteur on the sale and sexual exploitation of children, UN Doc. A/HRC/28/56 (2014), paragraph 56. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/248/31/PDF/G1424831.pdf?OpenElement>

*The Committee wishes to recall the following rules on extradition for offences covered by the Optional Protocol, on the basis of article 5:*

- (a) The Optional Protocol provides a sufficient legal basis for extradition between States parties for the offences that it defines. As a consequence, as far as these offences are concerned, and in accordance with article 5 (2), States parties do not need to have an extradition treaty with other States parties to be able to grant an extradition request;*
- (b) States parties that do not make extradition conditional on the existence of a treaty should, in accordance with article 5 (3), consider such offences as extraditable offences between themselves;*
- (c) Such offences should be treated, under article 5 (4) and for the purposes of extradition between States parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4. In addition, if a State party does not extradite the alleged offender on the grounds that she or he is a national of that State, it is required under article 5 (5) to take measures to prosecute her or him, in line with the obligation to extradite or prosecute.*

This paragraph is important as it shows clearly that extradition of an alleged offender for offences covered by the OPSC is not in need of any particular bilateral treaty. The OPSC is, in and by itself, sufficient as a legal basis for extradition for the offences that it covers.

With regard to paragraph 88(a), the observation that an extradition treaty is not necessary does not imply that the Committee expects States parties to abolish any laws they may have which require a bilateral treaty as a basis for extradition. However, it does suggest that even in such States, an extradition decision should be possible on the basis of the OPSC.<sup>180</sup>

With regard to paragraph 88(c), it does not imply that a State that refuses extradition has to assume jurisdiction where such jurisdiction would not be appropriate, for instance if an extradition request has to do with a politically motivated intention to prosecute the person concerned.

In addition to these provisions related to the extradition, there are a number of regional treaties on extradition which may also contribute to make judicial cooperation more effective and simplify extradition measures.

### **CONCRETE EXAMPLES OF GOOD REGIONAL PRACTICE**

The Inter-American Convention on Extradition, adopted on 25 February 1981, in force 28 March 1992.

The European Convention on extradition by the Council of Europe from 1957,<sup>181</sup> and the Convention relating to extradition between the Member States of the European Union from 1996.<sup>182</sup> The latter aims to supplement and improve the functioning of the 1957 European Convention on Extradition and considerably increases the number of situations likely to give rise to extradition.

League of Arab states, Riyadh Arab Agreement for judicial cooperation, 6 April 1983, part VI on extradition of accused or convicted persons.

<sup>180</sup> This is also in line with the Committee's recommendations in Concluding Observations, for instance on Sri Lanka, UN Doc. CRC/C/OPSC/LKA/CO/1, 3 July 2019, paragraph 36; Benin, UN Doc. CRC/C/OPSC/BEN/CO/1, 29 November 2018, paragraph 31; Angola, UN Doc. CRC/C/OPSC/AGO/CO/1, 29 June 2018, paragraph 32b.

<sup>181</sup> Council of Europe, European Convention on Extradition, ETS No. 024, adopted on 13 December 1957. Some non-European States, such as South Africa and South Korea, have also accessed this Convention. Available at: <https://rm.coe.int/1680064587>

<sup>182</sup> Official Journal of the European Communities, Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union, 1996. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41996A1023%2802%29:EN:HTML>

*The Committee encourages States parties to extend the applicability of extradition to attempts to commit and complicity and participation in any offences covered by the Optional Protocol.*

As set forth already in paragraph 45 of the Guidelines, the Committee is reminding States parties that the obligations deriving from the OPSC apply also in case of attempts (including failed attempts) to commit such offences, or to any kind of subsidiary role in the commission of these offences, such as complicity or participation. This should be the case also for extradition orders.

## VIII. The child victim's right to assistance and protection in legal proceedings

### A. General observations

90

*The Committee recognizes the significant progress made by States parties in making criminal justice systems more accessible and welcoming to children and underlines the importance of finding effective ways to enable and empower children to use them. This is especially relevant for child victims of offences covered by the Optional Protocol, who still rarely enter the criminal justice system or participate in criminal proceedings.*

In recent years, States around the world have put in place a wide range of measures to make their justice systems more accessible and child-friendly. While these advances have surely helped many child victims of crime to access justice, child victims of sexual exploitation continue to struggle.

Even the most child- and gender-sensitive criminal justice system can be of little use if States parties do not find an effective way to enable and empower children to make use of it. Under-reporting remains a huge problem for child victims of sexual exploitation and sexual abuse, with few of these children entering the criminal justice system, and fewer still participating in justice proceedings until their conclusion. Indeed, it is rare for sexually exploited children to receive any legal remedy at all.<sup>183</sup>

This represents a challenge to States parties, which need to consider ways of reducing taboos and stigma, making it easier for child victims to find safe places and safe persons to talk to, and also of training and informing adults on how to recognise the signs of exploitation and abuse and on how to address and treat children in the first contact following identification of a case of exploitation. In particular, training police forces and other relevant stakeholders to refrain from treating child victims of offences covered in the OPSC as criminals, especially during and after raid operations on sex venues, including those who may be considered as illegal migrants, is crucial.<sup>184</sup>

In addition, there is a real risk that children without legal identification documents are left out and unable to access services and exercise their right to assistance and protection in legal proceedings. This may be the case, for instance, for children in street situations or children in migration. States would need to take measures to ensure that all provisions regarding child victims' right to assistance and protection in legal proceedings apply also to children who are not citizens of the State in which they are residing, or who have no birth registration or legal identity documents.

91

*The Committee encourages States parties and other relevant stakeholders to use the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime to guide them in ensuring children's right to assistance and protection in legal proceedings.*

<sup>183</sup> ECPAT International, "Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation" (2017). Available at: [https://www.ecpat.org/wp-content/uploads/2017/04/Through-the-Eyes-of-the-Child\\_Barriers-to-Access-to-Justice-thematic-report.pdf](https://www.ecpat.org/wp-content/uploads/2017/04/Through-the-Eyes-of-the-Child_Barriers-to-Access-to-Justice-thematic-report.pdf)

<sup>184</sup> *Ibid.*

According to the UN Guidelines mentioned in paragraph 91, child victims should have access to assistance which may include financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's reintegration (paragraph 22).

Professionals assisting the child victim should make every effort to coordinate support so that the child is not subjected to excessive interventions (paragraph 24). In addition, children should be protected from hardship during the justice process. Measures to do so may include, according to the UN Guidelines, the use of child-sensitive procedures including interview rooms designed for children, interdisciplinary services for child victims in the same location, modified court environment that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, and an appropriate notification system to ensure that the child goes to court only when it is absolutely necessary (paragraph 30(d)).

Furthermore, special procedures for the collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice system, such as through the use of video recording (paragraph 31(a)). If the hearing and/or cross-examination of a child victim or witness is necessary, it should take place out of sight of the alleged perpetrator. Moreover, separate waiting rooms and private interview areas should be provided (paragraph 31 (b)).

#### RESOURCE TIP

Guidelines on Justice in matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20 (2005). [Available here](#)

UNODC and UNICEF, UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime – Model law and related commentary (2009). [Available here](#)

#### CONCRETE EXAMPLE OF GOOD PRACTICE

In August 2016, the Ugandan judiciary launched guidelines for the High Court in Kampala to receive evidence by audio-video link from child witnesses, particularly those who are victims of sexual and gender-based violence to reduce the risk of secondary victimisation.<sup>185</sup> This measure involved the use of CCTV, opaque screens, and one-way mirrors that allow child victims to present testimony without viewing their offender. The use of these measures requires the prosecutor to obtain the court's consent.<sup>186</sup>

Such measures are critical to protecting child victims and witnesses, in particular in legal systems that place a large weight on oral testimony.

<sup>185</sup> Republic of Uganda, The Justice Law & Order Sector, "Judiciary launches audio-visual guidelines", 19 August 2016, available at: <https://jlos.go.ug/index.php/com-rsform-manage-directory-submissions/services-and-information/press-and-media/latest-news/item/565-judiciary-launches-audio-visual-guidelines>

<sup>186</sup> D. Nabasitu, Examining Measures Facilitating Participation of Female Child Victims in Prosecution of Sexual Abuse Cases in Uganda's Criminal Justice System. UCC Legal Research Series Working Paper No. 8, September 2018, available at: <https://www.ucc.ie/en/media/academic/law/ccjhr/publicationsseptember2018/CCJHRWPSNo8DaisyNabasituChildVictimsinUgandanCriminalJusticeSept2018.pdf>

*The Committee urges States parties to ensure child victims' right to information and right to be heard in an age-appropriate and gender-sensitive way, regardless of their legal capacity. Child victims, as well as their parents, guardians or legal representatives, should receive all the information necessary, in a language that they can understand, to help them make an informed decision about filing a criminal complaint against the alleged perpetrator, including information about their rights, their expected role in the criminal process, and the risk and benefits of participation. Once they are part of legal proceedings, they should receive regular updates, be provided with explanations about delay, be consulted on key decisions and be adequately prepared before hearings or trials.*

Child victims are recognised by Article 8(1)(a) OPSC to be particularly vulnerable and in need of procedures that are adapted to their special needs.

Child victims should be informed of their rights, their role, and the scope, timing and progress of the proceedings and of the disposition of their cases (Article 8(1)(b) OPSC). According to the UN Guidelines mentioned above, the child victim (and witnesses), their parents or guardians and legal representatives should, from the first contact with the justice system, be informed about, inter alia, the importance, timing and manner of testimony, and ways in which questioning will be conducted during the investigation and trial; the progress of the disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case; existing opportunities to obtain reparation from the offender or from the State through the justice process, through alternative civil proceedings or through other processes (paragraph 19(b) and 20(a) and (b)).

When there is uncertainty as to whether or not a victim is a child, States should create a legal presumption that a victim is a child, and treat her/him as such until an ethical age verification process, respectful of the fundamental rights to human dignity and physical integrity, has been conducted. States should also bear in mind that there are circumstances and situations in which age assessments will be inconclusive.

In that regard, it can be noted that Article 11.2 of the Lanzarote Convention states that: "Each Party shall take the necessary legislative or other measures to ensure that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age".

The Council of Europe's Ad hoc Committee for the rights of the child is currently developing a recommendation on human rights principles and guidelines on age assessment for children in the context of migration.

#### RESOURCE TIP

Council of Europe, How to convey child-friendly information to children in migration: A Handbook for frontline professionals (2019). [Available here](#)

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*The Committee urges States parties to adopt the best interests of the child as a primary consideration in the criminal prosecution of an alleged offender, in accordance with article 3 of the Convention and general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. In that context, the recovery and well-being of the child should be given due consideration, and it may be necessary first for the victim to be given a period of time in which to receive the necessary support before becoming involved in criminal proceedings. This point can be of even greater importance in cases where the alleged offender is a member of the child's family, and where the child must be separated from one or more family members. In such cases, due consideration is also needed for any siblings.*

In paragraph 93 of the Guidelines, the Committee recommends that States incorporate the principle of the best interests of the child as a primary consideration in judicial proceedings against an alleged offender, and points out that this may imply providing the victim with a period of time for support and recovery before it can be expected that she/he participates in the judicial proceedings. This observation has also been made by the Special Rapporteur on sale and sexual exploitation of children, who also points out that child-sensitive assistance is needed to support the child in her/her interaction with the justice system.<sup>187</sup>

This requirement should be balanced with considerations regarding the need to secure evidence and the right of the accused to a process without undue delay. It may be the case that the criminal investigation and proceedings can begin while the victim receives support, if adequate measures are taken to respect the child's well-being and recovery. For instance, if direct contact can be avoided between the child victim and the alleged offender, and if the child's testimony can be taken by specially trained professionals outside of the court room (e.g. in a "Barnahus"/Children's house) and allowed as evidence in the proceedings, it may be possible to speed up the process without causing additional harm to the child.

### CONCRETE EXAMPLE OF GOOD PRACTICE

The German Code of Criminal Procedure (section 48(3)) provides that in cases where the witness is also the aggrieved person, the hearings, examinations and other investigation measures are always to be carried out in a manner which takes into account the special need for protection of the witness.<sup>188</sup> Support services are available for children in such situations, and children are also made aware that these services exist. This is guaranteed by a multi-faceted infrastructure of assistance and support services for children at the federal and Land levels, as well by requiring criminal prosecution authorities to keep aggrieved persons informed during the criminal proceedings.

94

*In order to reduce reliance on the testimony of child victims, the Committee strongly encourages States parties to make full and effective use of crime scene evidence, including digital evidence, and the introduction of such evidence in courts, and of evidentiary rules, such as child sexual abuse shield laws. In that vein, the Committee urges States parties to allow for the possibility of the prosecution starting an investigation without the victim's complaint.*

<sup>187</sup> Report of the Special Rapporteur on the sale and sexual exploitation of children, UN Doc. A/HRC/28/56, 2014, paragraph 58.

<sup>188</sup> Germany, Code of Criminal Procedure (*Strafprozessordnung* – StPO), section 48(3).

With regard to the Committee’s recommendation in paragraph 94, it appears particularly important for States to enable the use of video recorded hearings with child victims and witnesses as evidence in court. Such measures can contribute to creating a proper balance in the area of tension between the mission of ascertaining the truth and the rights of the accused to a fair trial on the one hand, and the justified interest of the child victims to protection against renewed trauma on the other.

In addition to the Committee’s encouragement to States to initiate investigations into offences covered by the OPSC without the need of a complaint by a victim, the principle of “enhanced due diligence” can serve as an important guiding principle in investigations and judicial proceedings regarding such offences. This principle implies that States need to adopt special measures and adapt judicial processes involving children in order to prevent their secondary victimisation.

### CONCRETE EXAMPLE OF GOOD REGIONAL PRACTICE

The regional standards developed by the Inter-American Court of Human Rights establish that in cases of violence against children and adolescents, States have a duty of enhanced due diligence, which implies the adoption of special measures and the development of an adapted process with a view to preventing their revictimization.

### CONCRETE EXAMPLE OF GOOD PRACTICE

In Mexico, the Supreme Court of Justice of the Nation has indicated that “there is a duty of due diligence of the state to protect and guarantee the rights of minors in accordance with the principle of their best interests”.

## B. Counseling, reporting and complaints mechanisms

95

*Child victims of offences covered by the Optional Protocol are particularly unlikely to report what has been done to them, or they report only many years after the offences occurred. A variety of reasons, such as feelings of fear, shame or guilt, are behind this difficulty to disclose what has happened, often because the perpetrator is someone they know. In light of this, the Committee recommends that States parties avoid establishing a statute of limitations in respect of such offences. Where such statutes exist, the Committee urges States parties to adjust them to the particular nature of the crime and ensure that they begin to run only when the victim reaches the age of 18.*

Research in a number of countries by ECPAT International has led to the key recommendation that statutes of limitations for offences related to the sale and sexual exploitation of children should be eliminated or, at the very least, be of a reasonable length in accordance with the offences committed and begin to run only from the moment the victim reaches the age of 18.<sup>189</sup>

<sup>189</sup> ECPAT International, “Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation”, 2017. Available at: [https://www.ecpat.org/wp-content/uploads/2017/04/Through-the-Eyes-of-the-Child\\_Barriers-to-Access-to-Justice-thematic-report.pdf](https://www.ecpat.org/wp-content/uploads/2017/04/Through-the-Eyes-of-the-Child_Barriers-to-Access-to-Justice-thematic-report.pdf), or: ECPAT International, “Barriers to compensation for child victims of sexual exploitation. A discussion paper based on a comparative legal study of selected countries”, 2017. Available at: [https://www.ecpat.org/wp-content/uploads/2017/07/Barriers-to-Compensation-for-Child\\_ebook.pdf](https://www.ecpat.org/wp-content/uploads/2017/07/Barriers-to-Compensation-for-Child_ebook.pdf)

### CONCRETE EXAMPLE OF GOOD PRACTICE

In the USA, a number of States have recently enacted legal reforms to amend their laws on statutes of limitations for sexual offences against children. For an overview, see ChildUSA. [Available here](#)

In France, the statutes of limitations for sexual offences against children were amended in 2018 and prolonged from 20 to 30 years. Act 2018-703 of 3 August 2018 strengthening the fight against sexual and sexist violence (*Loi n°2018-703 du 3 août 2018 renforçant la lutte contre les violences sexuelles et sexistes*).

### CONCRETE EXAMPLE OF REGIONAL GOOD PRACTICE

Article 33 of the Lanzarote Convention states that: “Each Party shall take the necessary legislative or other measures to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question.”

### RESOURCE TIP

ECPAT International, “Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation” (2017). [Available here](#)

96

*The Committee urges States parties to provide an assistance and protection framework that is conducive to the creation of an environment in which children feel that they will be believed and that it is safe to talk. In particular, States parties should:*

- (a) Establish widely available, easily accessible, child- and gender-sensitive and confidential psychosocial counselling and reporting mechanisms for children, to facilitate the disclosure of abuse by child victims. Such mechanisms should be regulated by law and should define clearly the actors, services and facilities responsible for the care and protection of children. They should include reporting channels for children, such as online and telephone helplines and other points of contact, as well as child protection, law enforcement and judicial systems. They should enable children to seek help in any way that they feel most comfortable with (even anonymously) and report if they have been sexually abused, but also to seek advice or help regarding self-generated sexually explicit content;*
- (b) Centralize services for child victims and witnesses in one safe space, using models such as the Barnahus (“children’s house”) or similar child-friendly and multidisciplinary one-stop centres, in which all the different actors intervening for the child’s care and protection converge, including by providing therapeutic and medical services. Such places offer multidisciplinary and inter-agency collaboration to ensure that child victims and witnesses benefit from a child- and gender-sensitive, professional and effective response in a safe environment, preserving their best interests at all times;*
- (c) Provide a specific mandate to national institutions responsible for guaranteeing human rights, such as the national human rights institution or ombudsperson, to receive, investigate and address complaints by children in a child- and gender-sensitive manner, ensure the privacy and protection of victims and undertake monitoring, follow-up and verification activities for child victims;*
- (d) Make absolutely clear, by law, that access to all the above-mentioned services is not dependant on a child’s participation in any proceedings related to the offence.*

In 2016, the Human Rights Council used the strongest terms, urging States to establish widely available, easily accessible, child- and gender-sensitive and confidential counselling, reporting and complaints mechanisms for children, such as child helplines, to report inappropriate interactions and violence encountered online and to protect children.<sup>190</sup>

In cases where private institutions or organisations have set up independent reporting mechanisms for children, these must work in tandem with the State's child protection frameworks, and they must explicitly enshrine the reporting obligations of all individuals falling under the authority of such institutions or organisations.

The Special Rapporteur on the sale and sexual exploitation of children and the Special Representative of the Secretary-General on Violence against Children presented in their joint report of 2011 a set of Guiding Principles for the development of effective, child-sensitive counselling, reporting and complaint mechanisms. They underscored in their recommendations, inter alia, that such mechanisms should be a core dimension of a well-functioning and well-resourced national child protection system and should be grounded in a solid legal framework framed by international standards.<sup>191</sup>

### RESOURCE TIP

PROMISE and the European Barnahus Movement. PROMISE supports the establishment of Barnahus and child-friendly institutions, notably by sharing good practices and high-quality standards. [Available here](#)

## C. Participation in criminal justice proceedings

97

*The Committee reminds States parties of their obligation to provide appropriate support and legal counselling to assist child victims of offences covered in the Optional Protocol at all stages of criminal justice proceedings and protect their rights and interests, and to ensure that the best interests of the child is a primary consideration. This includes:*

- (a) Ensuring that legal and investigative procedures are child- and gender-sensitive, while also enabling officials to adapt such procedures to the specific needs of the individual child. Forensic interviews should be conducted according to evidence-based protocols in a child-friendly environment to enhance evidential validity and to avoid the secondary victimization of the child. Confrontation with the alleged offender and multiple interviews should be avoided. The Committee recommends that the child's testimony be taken under conditions of due process outside the court room and be admissible as evidence in court. Police officers, judges, prosecutors and lawyers should be trained in children's rights and child-friendly justice measures;*
- (b) Protecting the privacy of child victims in investigation and trial procedures, as well as ensuring legal and practical measures to guarantee appropriate and sufficient protection of child victims from intimidation and retaliation;*
- (c) Providing free legal aid, including assigning (depending on the national legal system) a lawyer or guardian ad litem or another qualified advocate to represent the child, and mental health support by well-trained professionals such as child psychiatrists, psychologists and social workers to every child victim during the criminal justice process;*

<sup>190</sup> Human Rights Council, Resolution A/HRC/RES/31/7, paragraph 19. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/062/03/PDF/G1606203.pdf?OpenElement>

<sup>191</sup> Joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on Violence against Children, UN Doc. A/HRC/16/56, 2011, paragraphs 110-112.

- (d) Using, where possible, appropriate communication technology to enable child victims to be heard during the trial without being present in the courtroom. This becomes essential in judicial proceedings involving Optional Protocol offences committed against children abroad, to enable testimonies from victims in other countries. If such technological means are unavailable, or if the child's physical presence is absolutely necessary during a trial, States parties should ensure that the child is not confronted with the alleged perpetrator, by, for example, alternating the presence of the child and the defendant in the courtroom;
- (e) Taking special precautionary measures, as needed, when the alleged perpetrator is a parent, a family member, another child or a primary caregiver. Such measures should involve careful consideration of the fact that a child's disclosure should not worsen her or his situation and that of the other non-offending members of the family, and should not aggravate the trauma experienced by the child. The Committee encourages States parties to consider removing the alleged perpetrator rather than the child victim, since removal can be experienced by the child as a punishment.

Access to justice for children implies the ability to obtain a just and timely remedy for violations of rights under international law. For sexually exploited children, the criminal justice system is an important way to secure legal remedies, including the compensation and services they need to recover and return to healthy lives. Indeed, participating in a criminal case against their offender is sometimes their only avenue for redress, as it can be costly and impractical for them to seek damages through separate civil lawsuits, and aid from state compensation funds, when available, is usually minimal.<sup>192</sup>

A comprehensive and interdisciplinary approach, in which different stakeholders involved in the proceedings communicate and cooperate, enables a process in which the child's best interest can be upheld and an adequate level of support for the child can be upheld at all times, from the moment of disclosure until the end of a criminal justice process.<sup>193</sup>

In addition, all necessary administrative and legal measures should be adopted to guarantee the rights to privacy, provide protection, safety and adequate information for all children involved in ongoing criminal investigations and judicial proceedings, before, during and after such investigations and proceedings.<sup>194</sup> For instance, disclosure and discovery by the parties of sexual abuse imagery in evidence may need to be restricted, remote testimony via camera may not be the most appropriate means for children who were victimised through those digital means, and the necessity to hold such cases in judges' chambers reassessed if this requires the victims to speak in even closer proximity to the alleged perpetrator than usual.

With regard to the Committee's recommendation in paragraph 97 e) of the OPSC Guidelines, the Human Rights Council has also stated that States should "ensure a safe environment for children in justice processes and that children, including unaccompanied children, in contact with the justice system are protected from any form of hardship by adapting procedures and adopting appropriate protective measures against abuse, exploitation, manipulation, violence, including sexual and gender-based violence, harassment, intimidation, reprisals or secondary victimization, taking into account that the risks faced by boys and girls may differ and that special precautionary measures may be needed when the alleged perpetrator is a parent, a member of the family or a primary caregiver".<sup>195</sup>

<sup>192</sup> ECPAT International, "Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation" (2017). Available at: [https://www.ecpat.org/wp-content/uploads/2017/04/Through-the-Eyes-of-the-Child\\_Barriers-to-Access-to-Justice-thematic-report.pdf](https://www.ecpat.org/wp-content/uploads/2017/04/Through-the-Eyes-of-the-Child_Barriers-to-Access-to-Justice-thematic-report.pdf)

<sup>193</sup> See for instance the Council of Europe, 1st Implementation Report, Protection of children against sexual abuse in the circle of trust, the framework, Recommendation 24.

<sup>194</sup> Human Rights Council Resolution, A/HRC/RES/31/7, 2016, paragraph 16. See also the Committee on the Rights of the Child, Concluding Observations on Morocco, UN Doc. CRC/C/OPSC/Mar/CO/1, 17 March 2006; Denmark, UN Doc. CRC/C/OPSC/DNK/CO/1, 17 October 2006; Democratic Republic of the Congo, UN Doc. CRC/C/OPSC/COD/CO/1, 28 February 2017, paragraph 35.

<sup>195</sup> Human Rights Council Resolution 25/6 Rights of the child: access to justice for children, Doc. A/HRC/RES/25/6, 2014, paragraph 8(a).

98

*The Committee reaffirms that a core principle of child-friendly justice is the speediness of the procedures. Action following reports of offences covered in the Optional Protocol should not be delayed. Cases concerning the sale, sexual exploitation and sexual abuse of children should be expedited through priority tracking, continuous hearings or other methods, and delays should be approved only after considering the child's views and best interests.*

## RESOURCE TIPS

Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, adopted by the Committee of Ministers on 17 November 2010.

The Guidelines on child-friendly justice have been prepared in order to support governments and professionals in guaranteeing children's effective access to justice and adequate treatment in justice procedures. The Guidelines address children's rights in all areas of law (civil, administrative, criminal), at all stages of procedures (before, during and after), and in all capacities and circumstances (be the children victims, witnesses, authors of crime, or otherwise affected by legal proceedings).

99

*The Committee strongly encourages States parties to extend the assistance and protection measures described above to child victims and witnesses in criminal, civil and administrative proceedings, as appropriate.*

It should be noted that the text of article 8 OPSC on assistance and protection is limited to criminal procedures. In paragraph 99 of the Guidelines, the Committee underscores that it is of the view that the provisions set forth in article 8 OPSC as well as in the UN Guidelines should, as far as they are relevant, be applicable also in civil and administrative proceedings.

## IX. The child victim's right to recovery, family and social reintegration and compensation

100

*The Committee reminds States parties that providing redress to child victims, compensating them for the harm suffered and enabling their recovery and reintegration is as important as punishing the offenders, and is an obligation under article 9 (3) and (4) of the Optional Protocol. To that end, the Committee recommends that States parties:*

- a. Ensure that the relevant services for medical care, social reintegration and physical and psychological recovery of victims are accessible free of charge throughout the country to all children who need them, and that persons providing such services have certified training and the necessary expertise;*
- b. Develop a comprehensive continuum of care and support that includes closely monitored post-trial reintegration services, including for foreign victims who find themselves in the territory of the State party;*
- c. Carefully consider which form of compensation is preferable for each child victim, depending on her or his specific situation, personal opinion and prospects for life. In addition, or as an alternative to cash payments, compensation may be provided in the form of financial or other support for education and/or income-generating activities, which could benefit the victim in the long term.*

The Committee has repeatedly recommended States parties to ensure that adequate services are available for child victims, including for their physical and psychological recovery and social reintegration.<sup>196</sup>

The obligation to provide redress and compensation to child victims and enable their recovery and reintegration is also laid down in ILO C182, Articles 6 on programmes of action and 7(2) on effective measures including direct assistance and rehabilitation, social reintegration, as well as Recommendation 190, paragraph 15. In particular, C182 Article 7(2) reads: “Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to: {...} (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour; {...}”. Moreover, ILO Protocol of 2014 to the Forced Labour Convention, 1930, Article 4, sets forth that: “all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation”.

Reintegration into the child's family should be a key objective in the child's recovery. However, it should be acknowledged that some children do not have families or cannot be reunited with their families due to an ongoing abusive or unsafe environment within the home. In such cases, it is important that decisions on where the child will live or receive care from should always be taken together with the child, in line with the Committee's General Comment No. 21.<sup>197</sup> Care arrangements should avoid institutional care as much as possible and favour foster family and family-type settings.<sup>198</sup>

<sup>196</sup> See for instance: Committee on the Rights of the Child, Concluding Observations on Costa Rica, UN Doc. CRC/C/OPSC/CRI/CO/1, 2 May 2007; Sudan, UN Doc. CRC/C/OPSC/SDN/CO/1, 8 June 2007; Guatemala, UN Doc. CRC/C/OPSC/GTM/CO/1, 8 June 2007.

<sup>197</sup> Committee on the Rights of the Child, General Comment No. 21 (2017) on Children in Street Situations, UN Doc. CRC/C/GC/21, paragraph 45.

<sup>198</sup> European Union Agency for Fundamental Rights, Children deprived of parental care found in an EU Member State other than their own, 2019, p. 112. Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-children-deprived-of-parental-care\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-children-deprived-of-parental-care_en.pdf)

## 101

*The detection of online sexual exploitation and abuse does not necessarily lead to identifiable offenders and child victims. States parties should adopt clear measures to strengthen the identification of victims, including through mutual legal assistance and international cooperation and INTERPOL, and to guide their rescue and repatriation. States parties should also use similar means, including image analysis systems, to identify offenders.*

In this paragraph, the Committee points to a crucial issue related to online sexual exploitation of children, which is the fact that the detection of such offences, e.g. through child sexual abuse material, often does not allow investigators to identify the victims depicted in such material. This makes it imperative for States to invest in the development of technological tools necessary to enable identification, investigation and prosecution before the courts of online sexual exploitation.<sup>199</sup>

For instance, States could use hash-based filtering systems such as PhotoDNA to identify known images of child sexual abuse so that they can be swiftly blocked or removed.

### CONCRETE EXAMPLE OF GOOD PRACTICE

Microsoft developed the photo DNA in 2009, and has since continued to develop it also for video, making this tool freely available to law enforcement. [Available here](#)

Project VIC develops innovative technologies and victim-centric examination workflows to help law enforcement face the challenges of identifying children in child sexual abuse material. [Available here](#)

## 102

*In many cases where ICT has been used to commit or facilitate an offence covered by the Optional Protocol, a permanent record exists in the form of child sexual abuse material. The Committee is deeply concerned about the continued impact that this can have on the child's recovery and reintegration. States parties should increase awareness about such situations and take adequate measures to provide long-term social and psychological services as needed.*

Interviews with victims and survivors of online sexual exploitation show that the negative psychological effect of knowing that the material depicting them continues to circulate online and can be viewed by anyone anywhere is immense and continues to impact their lives for many years after the abuse has stopped.<sup>200</sup> States need to be prepared for this reality and step up access to and the duration of support services.

## 103

*The continued existence and circulation online of material depicting the sexual abuse of a child also risks exacerbating the child's stigmatization and increasing the shame that the child and her or his family may feel, making reintegration back into the home and community more difficult. The Committee recommends that States parties provide fast and effective procedures for blocking and removing harmful material involving children, in order to prevent such material from continuing to be accessed and shared. Such procedures should be established in collaboration with law enforcement and reporting hotlines, as well as the private sector, in particular Internet service providers and social networks.*

<sup>199</sup> Committee on the Rights of the Child, Report of the 2014 Day of General Discussion "Digital media and children's rights, paragraph 35.

<sup>200</sup> See for instance: Better Internet for Kids, 2018, <https://www.betterinternetforkids.eu/web/portal/practice/awareness/detail?articleId=3853901>

A good way to prevent the continued increase of situations where victims and survivors continue to suffer is also to promote and encourage reporting hotlines for online child sexual abuse material and work towards ensuring that illegal content can be identified and taken down.

### CONCRETE EXAMPLE OF GOOD PRACTICE

The International Association of Internet Hotlines (INHOPE) is an international network of hotlines through which anyone can signal, anonymously, any material they come across that appears illegal. States in which there is no INHOPE hotline yet should consider supporting the setting up of such a mechanism. In 2018, INHOPE detected a total of more than 200.000 illegal images and videos.

#### 104

*States parties should provide victims with the possibility of claiming compensation through legal action regardless of their economic status, including through the provision of legal aid or the establishment of a State-operated compensation system, and ensure that they cannot be deemed ineligible due to their involvement in the offences in question. If such legal proceedings are based on civil action, they should integrate the same child- and gender-sensitive measures as those described for criminal proceedings, as appropriate.*

Article 9(4) OPSC is very clear in stating that States parties shall ensure that all child victims of the offences described in OPSC have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible. Here it should be kept in mind that “those legally responsible” are not only individual persons who committed the offence but can also be a legal entity.

The roots for this provision in the OPSC can be found in article 8 of the Universal Declaration of Human Rights (1948): “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

#### 105

*The issue of compensation is particularly complex in cases where the sale, sexual exploitation and sexual abuse of a child are committed or facilitated through the use of ICT. Children suffer serious harm when they are being sexually abused in front of the camera, but also each time those images or other representations of their abuse are accessed online by others. Even in countries where compensation for victims who are depicted in child sexual abuse material is required by statute, it has proven difficult for courts to calculate the amount of compensation each viewer should pay to the child.*

Deciding on what would be an appropriate compensation is clearly a challenge. Such compensation should not be limited to financial compensation only and, depending on the needs of the child victim, other forms of compensation can be considered. For instance, compensation could consist of assistance that would contribute to a safe and better future for the child, such as access to education free of charge or adequate housing. It could also consist of the setting up of an investment fund or a trust fund for children (for instance in the case of a legal entity held responsible for an OPSC offence).

The Inter-American Court of Human Rights has shown through its case law that a variety of compensation measures could be applied depending on the circumstances, including the seriousness of the offence. For instance, the Court has ordered the State to name a school or a public place (a square or a street) after a child who was a victim of sexual violence.<sup>201</sup>

## 106

*To improve the chances of victims receiving compensation from convicted offenders, States parties are encouraged to enable the identification and attachment of defendants' assets early in the proceedings and to amend money laundering laws to allow victims to be paid from forfeited property. Compensation measures should be enforced in line with international standards.*

**RESOURCE TIP**

Organisation for Security and Co-operation in Europe (OSCE), *Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings* (2014). [Available here](#)

## 107

*The Committee reminds States parties that the investigation and prosecution of offenders can also serve as a means of rehabilitation of their victims, who gain justice, and prevention of other similar offences through deterrence. In that context, the Committee encourages States parties to demonstrate political will and be proactive in ensuring accountability for offences covered by the Optional Protocol and fighting against impunity.*

Additional measures that are generally included under the right to remedy, such as satisfaction (e.g. public apologies, commemorations, tributes to victims, declarations or judicial decisions restoring the dignity, reputation and rights of the victims), guarantees of non-repetition (e.g. measures to review and reform laws and provide education and training to law enforcement), and restorative justice measures<sup>202</sup> can also serve the victim's - and society's - need for justice.

<sup>201</sup> See the variety of cases in which the Inter-American Court of Human Rights decided on compensation for child and/or adult victims: Monica Feria-Tinta, "The CRC as a Litigation Tool Before the Inter-American System of Protection of Human Rights", in: Ton Liefwaard, Jaap E. Doek (eds), *Litigating the Rights of the Child. The UN Convention on the Rights of the Child in Domestic and International Jurisprudence*, Springer 2015, p. 231 – 248.

<sup>202</sup> See for instance: UNHRC Resolution A/HRC/RES/25/6 Rights of the child: access to justice for children, 2014.

## X. Mutual legal assistance and international cooperation

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*The Committee reminds States parties that they are required, under article 6 (1) of the Optional Protocol, to afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences covered by the Protocol, including assistance in obtaining evidence at their disposal necessary for the proceedings. In concrete terms, States parties should share information that may be useful in the investigation of offences, and contribute in any way possible to facilitating investigations in their territory.*

An excellent example of this kind of mutual legal assistance and cooperation are the joint investigation teams (JITs). JITs are a tool of international cooperation based on an agreement of competent authorities, such as prosecutors, (investigative) judges and law enforcement officers of two or more States established for a limited period of time and for a specific purpose, i.e. to carry out criminal investigations in one or more of the involved States. This practice has been successful in different cases, for instance in the dismantling of a network of child-abuse photographers operating in six EU countries, which led to the arrest of 10 individuals and the seizing of evidence. The network of JITs, supported by Europol, has published a Practical Guide for joint investigations.<sup>203</sup>

### RESOURCE TIP

Europol and Eurojust, Practical Guide to Joint Investigation Teams. This Guide provides advice, guidance, useful information, as well as answers to FAQs by practitioners. [Available here](#)

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*In accordance with article 10 of the Optional Protocol, States parties are required to cooperate more broadly for the prevention, detection, investigation, prosecution and punishment of those responsible for offences covered by the Optional Protocol. Such cooperation should cover, inter alia, effective detection and reporting systems, information-sharing, and safeguarding and transmission of evidence of crimes, including electronic evidence, in a timely manner. Cooperation should also cover assistance to victims in their recovery, reintegration and repatriation, as appropriate.*

The obligation to cooperate is also established by the ILO C182, Article 8, and Recommendation 190, paragraphs 11 and 16. Article 8 of C182 reads: “Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.”

<sup>203</sup> See for more information: [www.europol.europa.eu/activities-services/joint-investigation-teams](http://www.europol.europa.eu/activities-services/joint-investigation-teams)

R190, paragraph 11 reads: “Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labour as a matter of urgency by: (a) gathering and exchanging information concerning criminal offences, including those involving international networks; (b) detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances; (c) registering perpetrators of such offences.” R190 Paragraph 16 reads: “Enhanced international cooperation and/or assistance among Members for the prohibition and effective elimination of the worst forms of child labour should complement national efforts and may, as appropriate, be developed and implemented in consultation with employers’ and workers’ organizations. Such international cooperation and/or assistance should include: (a) mobilizing resources for national or international programmes; (b) mutual legal assistance; (c) technical assistance including the exchange of information; (d) support for social and economic development, poverty eradication programmes and universal education.”

Given the global nature of online sexual exploitation of children, it is important that States strengthen cooperation through multilateral, regional and bilateral arrangements. Such cooperation should cover, inter alia, effective detection and reporting systems, information-sharing, safeguarding and transmission of evidence of crimes, including electronic evidence in a timely manner.<sup>204</sup>

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*The Committee encourages States parties to take appropriate steps to assist one another in giving effect to the provisions of the Optional Protocol and other legal instruments aimed at protecting children from sexual exploitation and sexual abuse through enhanced international assistance, including support for social and economic development, poverty eradication programmes and universal education.*

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*The Committee strongly encourages States parties to enter into bilateral and multilateral agreements involving State agencies, law enforcement actors, judicial authorities and other relevant stakeholders. Partnerships should also be established with the private sector and specialized non-governmental organizations to develop the technological tools necessary to enable the identification, investigation and prosecution of offenders before the courts, as well as the identification of victims.*

International cooperation should be complemented by partnerships with other stakeholders, particularly the private sector, to develop the technological tools necessary to enable identification, investigation and prosecution before the courts, as well as the active involvement and participation of children as advocates of child protection.<sup>205</sup>

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*States parties should, through increased cooperation, remove obstacles to effective investigations of and prosecutions for the sale of children, child sexual exploitation and sexual abuse both online and offline by facilitating access by authorized actors to evidence of crimes committed across borders. The private sector should collaborate and comply with the law enforcement measures taken in that respect.*

<sup>204</sup> Human Rights Council Resolution A/HRC/RES/31/7 on the rights of the child: information and communications technologies and child sexual exploitation 2016, preambular paragraph 23, and Report of the Office of the United Nations High Commissioner for Human Rights, Information and communications technology and child sexual exploitation, A/HRC/31/34, 1 December 2015, paragraphs 41 and 42.

<sup>205</sup> Report of the Office of the United Nations High Commissioner for Human Rights, Information and communications technology and child sexual exploitation, UN Doc. A/HRC/31/34, 1 December 2015, paragraphs 41 and 42.

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*The Committee encourages States parties to support national and international alliances to protect children from sale and sexual exploitation and to ensure effective cooperation in the investigation and prosecution of criminal networks and perpetrators.*

Alliances such as the Virtual Global Taskforce and the WePROTECT Global Alliance to End Child Sexual Exploitation Online operate for an effective cooperation in the fight against criminal networks and perpetrators.<sup>207</sup> Other relevant international multi-stakeholder initiatives, promoted in partnership with Governments, law enforcement and judicial authorities, private actors and business enterprises, and civil society are for instance the Global Programme on Cybercrime of the United Nations Office on Drugs and Crime, the Child Online Protection Initiative of the International Telecommunication Union, or the Virtual Global Taskforce.<sup>208</sup>

Another type of cooperation is the European Financial Coalition against commercial Sexual Exploitation of Children Online, a coalition of key actors from law enforcement, the private sector (e.g. Visa, Mastercard, PayPal, Microsoft and Google) and civil society (INHOPE, ICMEC). Established with financial support of the European Commission it is focusing on the developments in the online distribution of child sexual abuse material (including via the Dark net and Deep web) and the different forms of payment for such material.<sup>209</sup>

Such international and regional initiatives should be supported and strengthened, as they can make a significant contribution in the fight to end the sale and sexual exploitation of children and uphold the human rights of the child.

States parties could also consider establishing a permanent global task force to harmonise practices and procedures, share expertise and scale up good practices, and provide assistance to States for the development of national legislation, policies and strategies to effectively combat online child sexual exploitation. Such a task force could also serve as a point of information or develop a central database to collect information across borders on customer/transaction records with virtual currencies.<sup>210</sup>

It is worth reiterating that the Lanzarote Convention, despite being a regional instrument, is open for accession by all States world-wide and the Lanzarote Committee works to enhance cooperation and information sharing across its States parties. It represents a useful forum for States to communicate and exchange views on how to best tackle the sexual exploitation and sexual abuse of children.

For States parties that are also members of INTERPOL, it is recalled that this organisation has developed specific tools and services, in particular to have notices circulated internationally or to locate, identify or obtain information relevant to an investigation.<sup>211</sup>

<sup>206</sup> Human Rights Council Resolution A/HRC/RES/31/7, 20 April 2016, paragraph 7.

<sup>207</sup> Special Rapporteur on the sale and sexual exploitation of children in her 2014 report to the UN Human Rights Council, UN Doc. A/HRC/28/56.

<sup>208</sup> Human Rights Council Resolution A/HRC/RES/31/7, 20 April 2016.

<sup>209</sup> See for more information: [www.europeanfinancialcoalition.eu](http://www.europeanfinancialcoalition.eu)

<sup>210</sup> Taken from the recommendation made by the Special Rapporteur on the sale and sexual exploitation of children in her 2014 report to the UN Human Rights Council, UN Doc. A/HRC/28/56.

<sup>211</sup> See: <https://www.interpol.int/Crime-areas/Crimes-against-children/Crimes-against-children>



