



As a result of the Fourth Session of the Ad Hoc Committee on the Cybercrimes ECPAT-USA and ECPAT International have the following recommendations regarding changes to the Consolidated negotiating document (*status: 20 January 2023*)

Page 3: Article 4 Protection of Sovereignty- **preferred language**:

This Convention shall apply, in accordance with its terms, to the prevention, detection, investigation and prosecution of adult perpetrators and enablers of the use of information and communications technologies for criminal purposes for offences set forth in this Convention or other international agreement to which the State is a party to.

This Convention shall also apply to the collecting, obtaining, preserving and sharing of evidence data or information, including but not limited in electronic form, of offences set forth in this Convention or other international agreements to which the State is a party to.

Page 3: Article 5 Respect for Human Rights- **preferred language** for Paragraph 1:

States Parties shall carry out their obligations under this Convention in accordance with their obligations under international human rights law, including but not limited to the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Discrimination against Women, and additional protocols and other applicable international human rights instruments to which they are a party.

Page 6: Article 5 Respect for Human Rights- **preferred language** for Paragraph 2:

States Parties shall address the particular impacts of cybercrime on members of diverse groups in measures undertaken to prevent and combat cybercrime.

Page 6 Clusters 1,2,3,4 Criminalization **comments**:

Language should be kept simple and forward looking to ensure that if a crime covered under this convention and/or another international agreement is committed utilizing information and communications technology, then the crime falls under extraterritorial jurisdiction. Adult perpetrators as well as enablers can be investigated and prosecuted by extraterritorial law enforcement and extraterritorial courts. Listing technologies, materials or how data can be manipulated should be



avoided. (As quickly as specifics are identified, new methods will be developed by the criminals.) Aren't the crimes listed in Clusters 1, 2,3,4 covered in other international agreements? If not, then perhaps a simple listing and definition would suffice.

Further, by each State adopting individual laws, fines, procedures, policies it is negating the effectiveness of an international agreement where cybercrime has no boundaries. What then, is the purpose of a cybercrimes treaty if each State must adopt its own rules?

#### CLUSTER 5: Article 18

##### General comments:

Overall, with regards to terminology, the use of **child sexual abuse and exploitation material as a term describing a range of sexually explicit digital media involving children, is welcome**, provided there are clear definitions. "Child pornography" should only be referenced in relation to existing laws and treaties, and the appropriate cross-referencing should be provided. Also caution on **self-generated** without careful definition as this is the most common but not agreed term globally.

However, the title of Article 18 remains unclear and, as per version dated 20<sup>th</sup> January 2023, maintains reference to "online child pornography", which should be removed. In order to comprehensively cover different crimes conducted in the online/digital environments, ECPAT recommends to title Article 18: Offenses related to child sexual abuse and exploitation facilitated by information and communications technologies.

Page 15, Article 18 **preferred language**--Offenses related to child sexual exploitation and abuse facilitated by information and communications technologies

- 1) Each state signatory declares that the sexual exploitation and/or abuse of any child by an adult perpetrator or an enabler constitute crimes covered by this convention and its terms regarding extraterritorial law enforcement and investigations.
- 2) Definition of child (person under the age of 18 years) as defined in the Convention on the Right of the Child and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Online child sexual exploitation and abuse should include:

- 1) Situations involving digital, internet and communication technologies at some point during the continuum of abuse or exploitation;



- 2) production, circulation, viewing and possession of child sexual abuse material (CSAM),
- 3) solicitation (grooming) of children for sexual purposes via ICTs 'with or without intent to meet in person;
- 4) Live-streaming of child sexual abuse;
- 5) Sexual extortion;
- 3) Sexual trafficking facilitated by ICTs, as defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.
- 6) Non-consensual sharing of self-generated sexual content involving a child or children;
- 7) Unwanted exposure to sexualized content.

#### Article 18 **comments—**

In the 20<sup>th</sup> January version of the negotiated document Article 18 includes a wide array of criminal conduct related to child sexual abuse material. A suggestion would be to incorporate all such conducts under one same section of Article 18 as, at the moment, it is quite disjointed and makes it difficult to paint a clear picture of criminalised conduct. As suggested by some States, ECPAT supports the recommendation to include the mere possession of child sexual abuse material (i.e., with no intent to distribute), as well as knowingly access such material, as also criminalised by the Council of Europe's Lanzarote Convention.

The definition of child sexual abuse material proposed is quite comprehensive but does not seem to include material depicting people appearing to be children (see. As reference Council of Europe's Convention on Cybercrime).

Article 18.4: The wording around criminalisation of children for self-generated content needs more work. Reference should be made to the Lanzarote Committee Opinion et al. Criminalisation should be limited to specific cases and only as a last resort. This area is however very complex from every angle. Awareness raising activities are not necessarily relevant to a cybercrime treaty we would propose removal.

#### Article 20 **comments—**

With regards to grooming/solicitation of a child for sexual purposes (Article 20 and 20bis), it is unclear why there are two distinct provisions. The term "solicitation" might be preferred as used in other internationally agreed standards. A specific reference should be made to the fact that the criminal conduct constitutes 'with or without intent to meet in person'. Similarly, solicitation should also refer to situations



where the sexual abuse/exploitation happens online, for example, if a child is coerced, manipulated, or convinced to send sexual content to an offender via online platforms. (see as reference Council of Europe's 2015 opinion on Article 23 of the Lanzarote Convention)

Both Article 20 and 20 bis conclude with an exemption from criminal liability for those who have taken steps to ascertain whether the person is not a child. As recommended by some States Parties, ECPAT also recommends the deletion of such exemption as ignorance on the age of the child should never be seen as a justification/exemption.

Live-streaming of child sexual abuse should be more clearly mentioned in the text of the Convention. States could be recommended to criminalise it either through standalone provisions or by directly indicating that existing provisions on child sexual abuse material and/or 'pornographic performances' also apply when the abuse is live-streamed online and materials are not downloaded or stored. The Convention should make clear that such provisions should clearly criminalise both those who request the sexual abuse to be live-streamed as well as those who facilitate and/or commit the in-person abuse.

Cluster 6 **comments**– illegal and harmful content that is not sexual – Although the intent is clear this feels misplaced in this treaty as too subjective.

Cluster 7 **comments** -Cluster 7 deals with Sexual Extortion but of adults (over 18) It is unclear whether cluster 6 fully covers the sexual extortion of children.

Cluster 11 **comments** – the inclusion of criminal liability for legal persons is welcome.

Article 38 **comments**: ECPAT advocates for the removal of statutes of limitations for all crimes of sexual abuse and exploitation of children (in reference to the Convention, crimes envisaged in Cluster 6). When victims of sexual exploitation/abuse in childhood do disclose their abuse, it is often delayed, potentially thwarting their access to justice. Therefore, it is recommended that there are no statutory limitation periods for all offences concerning sexual abuse and exploitation of children, allowing victims to come forward, if and when, they feel comfortable to do so.