

**Ad Hoc Committee to Elaborate a Comprehensive International Convention on
Countering the Use of Information and Communications Technologies for
Criminal Purposes**

Sixth Session, 21 August – 1 September 2023

UNICEF submission

1 August 2023

Introduction

UNICEF welcomes the opportunity to provide comments on the draft text of the convention ([A/AC.291/22](#)).

In advance of the sixth session, UNICEF wishes to reiterate the importance of expressly considering children’s rights and established principles of children’s rights law throughout the future convention. Building on our contribution in the [third intersessional consultation](#), we have set out below some brief observations and recommendations. We note that this analysis is not exhaustive, but we aim to focus on the provisions in the draft text that have significant implications for children’s rights.

UNICEF remains committed to supporting Member States in the realization of children’s rights in relation to the digital environment.

Preamble

UNICEF recommends that the Preamble:

- (i) *recognizes* children as distinct subjects and holders of rights and empowered actors in the exercise of these rights, and
- (ii) *recalls* obligations to that end undertaken by States parties to the United Nations Convention on the Rights of the Child and its Optional Protocols.

UNICEF appreciates the inclusion of clause 11, which emphasises the importance of respecting human rights and fundamental freedoms. To strengthen this statement, we recommend removing the qualifier “applicable” from the clause. Additionally, we propose that clause 14 also explicitly acknowledges the primacy of international human rights standards and international humanitarian law to reinforce the commitment to upholding these essential tenets.

Article 2. Use of terms

UNICEF welcomes the definition of a child as ‘*any human being under eighteen years of age*’. The definition should include every child within a state’s jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 13. Offences related to online child sexual abuse or child sexual exploitation material

UNICEF welcomes the inclusion of offences related to online child sexual abuse or child exploitation material. The draft text of the convention offers updated legislative benchmarks for Member States to tackle the ever-evolving forms of this serious violation of children’s rights.¹

Article 13(1) Criminal actions

The proposed convention should attach a criminal consequence to the conduct of each participant in the chain of child sexual abuse and exploitation, from the production to the possession of child sexual abuse materials. At a minimum, UNICEF suggests the following acts or omissions should be included:

- Production of child sexual abuse material;
- Offering child sexual abuse material;
- Distribution or dissemination of child sexual abuse material;
- Importing or exporting child sexual abuse material;
- Interacting with child sexual abuse material online, for example, by commenting on photographs, sharing comments using the chat or ‘comments’ functions, or sending instructions, encouragement or direction remotely;
- Accessing child sexual abuse material, including both live and pre-recorded displays, acts or performances;
- Possession of child sexual abuse material regardless of the intent to distribute, subject to exceptions based on legitimate professional requirements, such as by law enforcement for the purposes of investigation and prosecution of crimes; and
- Production or dissemination of material advertising child sexual abuse or exploitation or making known to others where to find child sexual abuse

¹ The criminalization of offences related to online child sexual exploitation and abuse forms part of States parties’ obligations under Article 34 of the UN Convention on the Rights of the Child. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (‘**OPSC**’) details States parties’ obligations to criminalize particular forms of sexual exploitation, including child sexual abuse material. The Committee on the Rights of the Child underscores the need for legislation on child sexual abuse material to address the online or technology-facilitated dimensions: 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 (‘**OPSC Guidelines**’), [CRC/C/156](#), 10 September 2019, paragraph 61.

material.²

We note the draft text of the convention does not expressly criminalize the sexual extortion of children – 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 (for example, through social media).³ UNICEF recommends Member States consider expressly criminalizing the sexual extortion of children under the convention.

Article 13(4) ‘Self-generated material’

UNICEF notes the complexities of dealing with material that is produced by children themselves, what is often referred to as ‘self-generated’ sexual content or material.⁴ The ‘self-generated’ aspect of such material can increase the risk that the child who created the material is considered responsible, instead of being treated as a victim.⁵ Children can be tricked, coerced and forced into producing sexual material. In other cases, children may create and voluntarily share sexually suggestive or explicit content of themselves with each other.⁶ Once shared, the content may be shared beyond the child’s control or against the child’s wishes. It can also be used as a mechanism for sexual extortion and for sexual grooming, which can have serious and traumatizing consequences for the child.⁷

UNICEF draws attention to the authoritative guidance of the Committee on the Rights of the Child, which states that a distinction must be made between child sexual abuse materials, which constitute a criminal offence, and the production by children of ‘self-generated’ content of themselves. The Committee on the Rights of the Child underscores that a child should not be held criminally liable for the generation, possession, or voluntary and consensual sharing of sexual content of him/herself, solely for his/her own private use, but instead, States should:

- (i) Establish clear legal frameworks that protect children, and
- (ii) Through prevention efforts, ensure that children are educated about and made aware of the gravity of spreading the content of others and of oneself.⁸

The Committee on the Rights of the Child also explains that in cases where ‘self-generated’ content is created due to coercion, blackmail, or other forms of undue pressure against a child’s will, it is essential to hold those responsible for forcing the

² OPSC Guidelines, paragraphs 64-66

³ OPSC Guidelines, paragraph 69

⁴ As explained in UNICEF’s ‘[Legislating for the digital age: Global guide on improving legislative frameworks to protect children from online sexual exploitation and abuse](#)’ (page 63), the term ‘self-generated’ sexual content has been criticized for implying that the child is partly to blame for the abuse or exploitation that was involved in its generation, or which ensues from the content being distributed online. An alternative term to describe such acts has yet to be agreed under international standards. This submission uses the term ‘self-generated sexual content’ with the clarification that the use of this term is not intended to impose any degree of blame or responsibility on the victim for any abuse or exploitation they experience in connection with the content.

⁵ OPSC Guidelines, paragraph 67

⁶ OPSC Guidelines, paragraphs 42, 67

⁷ OPSC Guidelines, paragraph 42

⁸ OPSC Guidelines, paragraphs 42, 67; Committee on the Rights of the Child, General Comment No. 25 (2021) on children’s rights in relation to the digital environment, [CRC/C/GC/25](#), 2 March 2021 (‘**General Comment No. 25**’), paragraph 118

child to produce such content accountable.⁹ Furthermore, when ‘self-generated material’ is subsequently ‘*distributed, disseminated, imported, exported, offered, or sold as child sexual abuse materials*’, the individuals responsible for such acts should also face criminal liability.¹⁰ In such circumstances, prosecution may be permitted where other alternative measures are not appropriate, in line with international child justice standards (see further below, Articles 13(5) and 21).

Article 13(5) Safeguards for children accused

UNICEF welcomes the requirement for appropriate safeguards under domestic law to protect children who are accused of this offence. This aligns with the guidance of the Committee on the Rights of the Child to ‘*explicitly differentiate between adult and child offenders, with particular emphasis on the reformability of the latter*’.¹¹ This is particularly important in the context of sexual offences where States should avoid involving children and adolescents in the regular criminal justice system and, instead, use specialized systems that can refer them to appropriate support and services and prevent criminal records and their inclusion in registers.¹²

UNICEF recommends the safeguards in this article extend to protect children ‘*alleged, accused or convicted of*’ offences under the convention. As well as including these safeguards under Article 13, UNICEF recommends its inclusion in the general provisions of the convention on prosecution (see further below, Article 21).

Article 14. Solicitation of a child for sexual purposes through [a computer system] [an information and communications technologies device]

UNICEF welcomes the inclusion of an offence targeting the solicitation of a child for sexual purposes, an aspect that is not explicitly covered in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (‘OPSC’). Considering that this behaviour is commonly referred to as ‘grooming’ in other legislative contexts, using this terminology in the convention may enhance its understanding and effectiveness. It is important that the offence encompasses the entire process of online grooming, recognizing the inherent harm and exploitation it poses to children. Emphasizing the element of intent is crucial and the offence should not be contingent on the alleged perpetrator attempting to meet the child in person, engaging in physical contact, or engaging in any sexual activity by any means.¹³

⁹ OPSC Guidelines, paragraph 67

¹⁰ OPSC Guidelines, paragraph 67

¹¹ OPSC Guidelines, paragraph 71

¹² OPSC Guidelines, paragraph 71

¹³ Interagency Working Group, Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (‘**Luxembourg Guidelines**’), ECPAT International and ECPAT Luxembourg, pages 50-51; ICMEC, Online Grooming of Children for Sexual Purposes: Model Legislation and Global Review, 1st Edition, 2017, pages 11-14.

Article 15. Non-consensual dissemination of intimate images

UNICEF is pleased to see the inclusion of an offence targeting the non-consensual dissemination of intimate images. This issue is a significant concern, affecting both adults and children, with a particular impact on women and girls. The non-consensual dissemination of intimate images can result in humiliation, harassment, and various forms of harm.

We note that in cases of ‘images’ of persons under 18 years of age, there may be an overlap between this offence and Article 13 (online child sexual abuse material). Article 15 should not be used to weaken existing offences concerning online child sexual abuse material. At the same time, depending on the facts and circumstances, the provisions for online child sexual abuse material may not always be the most appropriate measure to address the core behaviour in the non-consensual sharing of intimate images of a person under 18 years of age, especially when the alleged perpetrator is also a child (i.e. under 18 years old). To effectively address this complexity, UNICEF suggests that the convention provides that each State Party shall adopt appropriate legislative and other measures to ensure that in cases of non-consensual dissemination of intimate images where the victim and alleged perpetrator are close in age, maturity, and development, and both are under 18 years of age, the best interests of the child victim and the best interests of the alleged child in conflict with the law are taken into account for the purpose of determining whether to apply the provisions of this Article or those in Article 13.

Article 20. Statute of limitations

UNICEF recommends a provision to avoid the establishment of a statute of limitations for child sexual abuse or exploitation cases. Child victims of sexual exploitation and abuse are particularly unlikely to report the crime or, if they do report, are only likely to do so many years after the offence has occurred.¹⁴ Feelings of fear, shame or guilt are often among the reasons for children not reporting or reporting when they are older.

Article 21. Prosecution, adjudication and sanctions

UNICEF recommends that Article 21 expressly refer to children alleged, accused, or convicted of offences under the convention. Under international human rights law, it is well-established that children alleged, accused or convicted of a crime must be handled within a separate child justice system in accordance with child-friendly justice principles and procedures.¹⁵ UNICEF reiterates the importance of States complying with their international and regional child justice obligations and applying recommended standards and good practices in this area. In line with good practice standards for criminal laws, UNICEF suggests Member States consider an additional penalty or aggravating circumstances for adults using children in the commission of offences under the convention.

¹⁴ OPSC Guidelines, paragraph 95

¹⁵ This obligation stems from Article 40(3) of the Convention on the Rights of the Child, which requires States parties to seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to these children, including the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, CRC General Comment No. 24 and various international standards on juvenile justice.

Article 33: Protection of witnesses

UNICEF recommends the strengthening of this article with reference to international and regional standards and good practices, such as the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime,¹⁶ to guide Member States in ensuring children's rights to assistance and protection in legal proceedings.

Article 34: Assistance to and protection of victims

UNICEF welcomes the express consideration of children in Article 34(5). We recommend that the provision also makes it clear that:

- (i) access to assistance and protection is not dependent on a child's participation in any proceedings related to the offence,¹⁷ and
- (ii) each State Party shall protect the privacy of victims and adopt legal and practical measures to guarantee the protection of child victims from intimidation and retaliation.¹⁸

UNICEF suggests elaborating further on the support required to address the unique needs of child victims. In this regard, the Committee on the Rights of the Child has recommended that States parties should:

(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.*¹⁹ (emphasis added)

UNICEF takes note of Article 34(6) obliging States Parties to take steps to ensure compliance with requests to remove or render inaccessible the content described in Articles 13-15. In this context, UNICEF emphasizes the importance of considering the vulnerability of children and acting promptly to prevent ongoing and future harm to them.²⁰ We suggest that the Article should highlight the importance of swift compliance.

¹⁶ ECOSOC Resolution 2005/20: Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime

¹⁷ OPSC Guidelines, paragraph 96(d)

¹⁸ OPSC Guidelines, paragraph 97(b)

¹⁹ OPSC Guidelines, paragraph 100

²⁰ General Comment No. 25, paragraph 46; OPSC Guidelines, paragraph 41.

Article 35: General principles of international cooperation

UNICEF recommends that the provision on international cooperation should include assistance to victims in their recovery, reintegration and repatriation, as appropriate.²¹

Article 53: Preventative measures

UNICEF welcomes the express consideration of prevention measures to keep children safe in relation to the digital environment. In addition to the draft text in Article 53(g), UNICEF recommends the addition of strengthening of child protection systems as well as investment in widely available, easily accessible, child- and gender-sensitive counselling, reporting and complaints mechanisms.

Article 59: Implementation of the Convention

UNICEF recommends the addition of the text 'while ensuring compliance with international human rights standards and international humanitarian law' to Article 59(2).

Key resources

- United Nations Children's Fund (2022) '[Legislating for the digital age: Global guide on improving legislative frameworks to protect children from online sexual exploitation and abuse](#)' UNICEF, New York.
- United Nations Children's Fund (2021), '[Reimagine Justice for Children](#)' UNICEF, New York.

²¹ OPSC Guidelines, paragraph 109