

Renewed Opportunities

The Convention on Countering the Use of ICTs for Criminal Purposes to Further Strengthen the Protection of Children

Vienna / online – 3 November 2022

Outline

1

Consider children and children's rights throughout – best interests as a primary consideration

3

Child-friendly justice principles and procedures for children alleged, accused or convicted of a crime

2

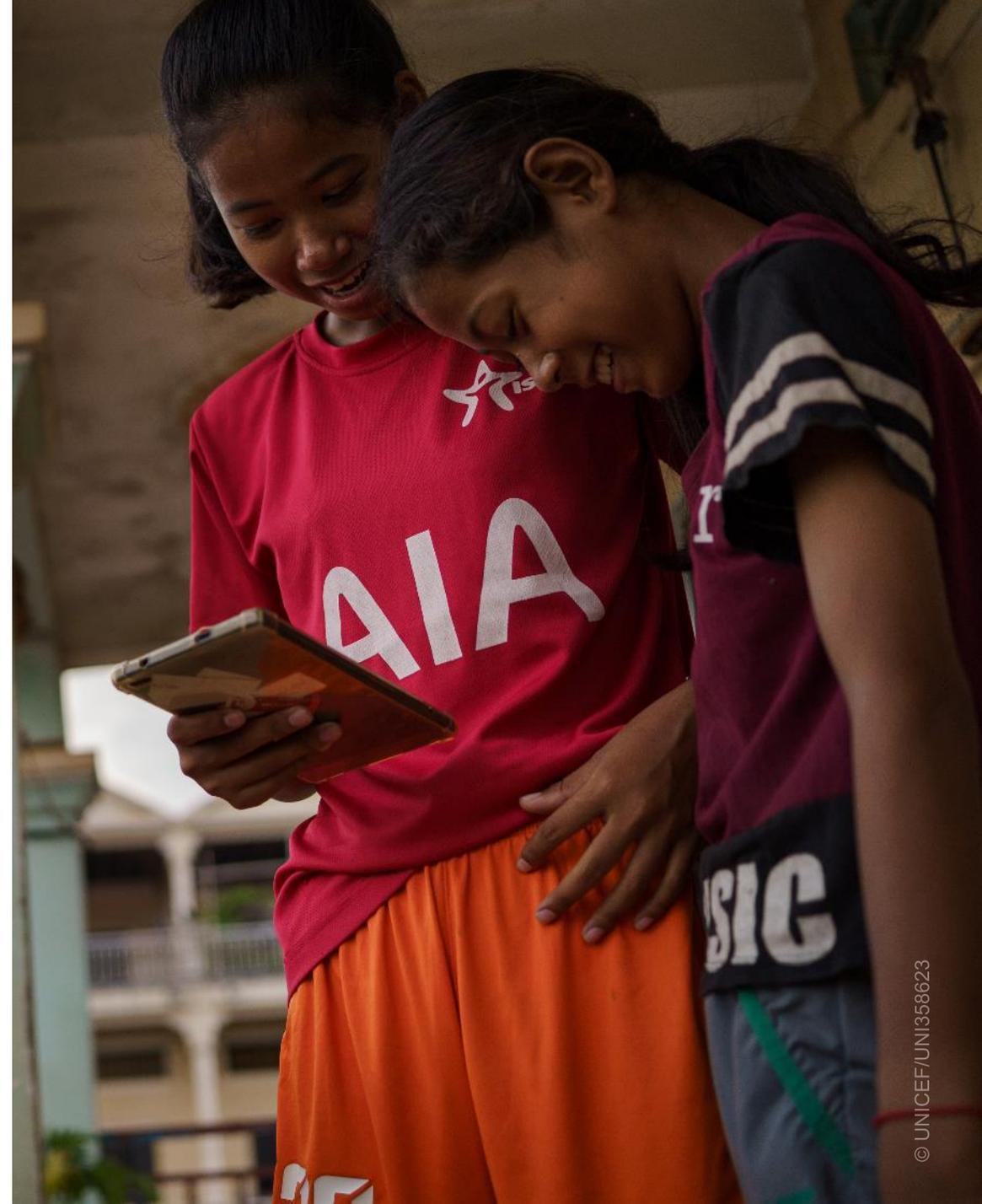
Comprehensive offences relating to online child sexual exploitation and abuse

4

Special measures for child victims and witnesses

1. Express consideration of children and children's rights

- Children constitute at least **one-third** of internet users. Even children that are not internet users can be negatively impacted by ICT-enabled offences.
- Children may be **victims** of ICT-enabled offences. Children may also be **alleged as, accused of, or convicted** of ICT-enabled offences.



1. Express consideration of children and children's rights (cont.)

- UN Convention on the Rights of the Child
- UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography ('OPSC')

'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration.**'

- Article 3, UN Convention on the Rights of the Child

'...the child shall in particular be provided **the opportunity to be heard in any judicial and administrative proceedings affecting the child**, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.'

- Article 12(2), UN Convention on the Rights of the Child

1. Express consideration of children and children's rights (cont.)



1. Introduction	7. Duties and responsibilities in relation to business
2. Consolidated checklist	8. Procedures and methods of investigation
3. Evidence-based legislation	9. Victim support, rehabilitation, reintegration and redress
4. Stakeholder engagement and catalysts for legal reform	10. Independent monitoring and regulation
5. Methods of legislative reform	11. Implementation of legislation
6. Criminalization	12. Glossary

Available at: <https://www.unicef.org/reports/legislating-digital-age>. Extracts follow over.

2. Offences relating to online child sexual exploitation and abuse

1. Ensure that a child is defined as **any person under the age of 18 years**
2. Ensure that presumed consent by the child to the abuse or exploitation is **null and void**
3. Adolescents who are close in age, maturity and development **should not be criminalized** for consensual and non-exploitative sexual activity, provided that there is no element of coercion, abuse of trust or dependency between the adolescents
4. Ensure that the law includes specific crimes relating to producing, offering, distributing, disseminating, importing, exporting, interacting with, accessing, possessing, and producing or disseminating material to advertise, child sexual abuse material, **including live-streaming of child sexual abuse**
5. Criminalize **sexual extortion, online grooming** and other specific crimes relating to online child sexual exploitation and abuse **'cyber flashing', 'cyber stalking'**

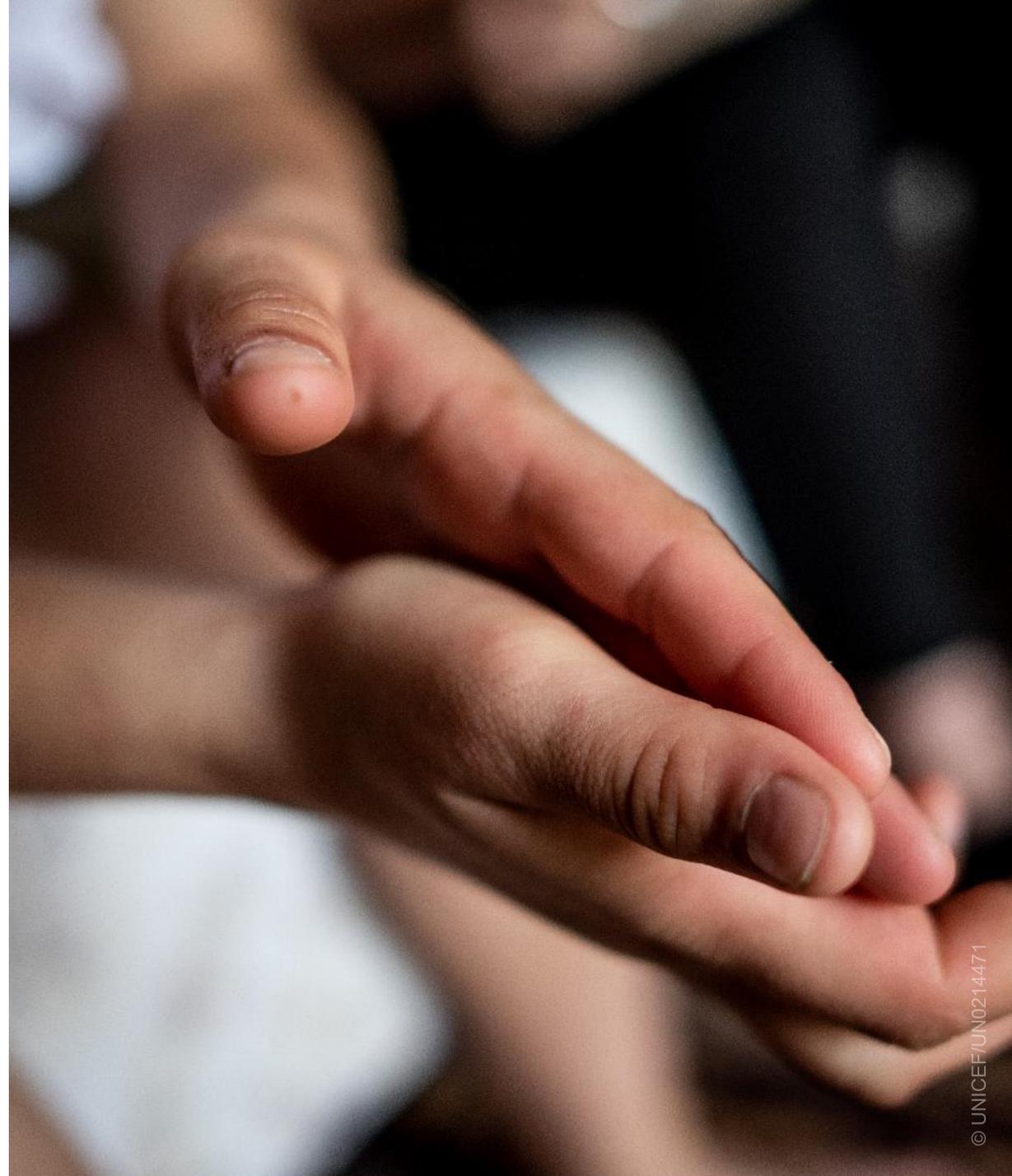
2. Offences relating to online child sexual exploitation and abuse (cont.)

6. 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 own private use, but instead States should:
 - Establish clear legal frameworks that protect children and
 - Through prevention efforts, ensure that children are educated about and made aware of the gravity of spreading content of others and of oneself
7. **Statute of limitations** in respect of offences of child sexual exploitation and abuse should be removed
8. Ensure minimum penalties/sanctions for adult perpetrators and enhanced penalties/sanctions for aggravating factors e.g. **young age of the victim**

A note on terminology

‘...some of the terms used in international and regional instruments on the rights of the child, such as “child pornography” ...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.**’

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
<https://www.ohchr.org/en/documents/legal-standards-and-guidelines/crcc156-guidelines-regarding-implementation-optional>



3. Child-friendly justice

- Ensure that children alleged as, accused or convicted of a crime are handled within a separate child justice system in accordance with child-friendly justice principles and procedures

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. ...

- Article 40, UN Convention on the Rights of the Child

4. Special measures for child victims and witnesses

- Ensure child-friendly practices and support are applied in the justice system
- Differing forms of and platforms for compensation for child victims

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process...

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.'

- Article 8, UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Appropriate reparation includes restitution, compensation and satisfaction and may require apology, correction, removal of unlawful content, access to psychological recovery services or other measures. In relation to violations in the digital environment, remedial mechanisms should take into account the vulnerability of children and the need to be swift to halt ongoing and future damage.

- Para 46, UN Committee on the Rights of the Child, General Comment No. 25 (2021) on children's rights in relation to the digital environment

Closing

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unicef 
for every child

Thank you.

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